

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1754 of 2013**

- M/s Sunmarg Steels (P) Ltd. Through Authorized Representative Mr. Dilip Patel, S/o Shri Babubhai Patel Aged About 36, Manager Of M/s. Sunmarg Steels Pvt. Ltd. Ring Road No.2, Gondwara, Industrial Area, Raipur C.G.

---- Petitioner**Versus**

1. Micro Small & Medium Enterprises Facilitation Council (MSMEFC) Under MSMED Act 2006, Through Its Director Cum President, Udyog Bhawan, Raipur, C.G.
2. M/s. Abha Power & Steel Pvt. Ltd. Hardikala, Silpari Industrial Area, Bilaspur C.G.

---- Respondent

For Petitioner : Shri Neeraj Choubey, Advocate.
 For Respondent No.1 : Shri Adhiraj Surana, Deputy GA.
 For Respondent No.2 : Shri Vivek Chopda, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****18/11/2015**

1. The petitioner has suffered an award by the Facilitation Council under the Micro, Small and Medium Enterprises Development Act, 2006 (for short 'the Act, 2006') and Chhattisgarh, Micro and Small Enterprises Facilitation Council Rules, 2006 (for short 'the Rules, 2006') vide Annexure-P/1.
2. This writ petition has been preferred on submission that since the Facilitation Council has not followed the procedure under the Act, 2006 and the Rules, 2006 before passing the impugned award, it cannot be treated as award and as such, this Court has jurisdiction to entertain a plea against such an order despite there being an

internal remedy under Section 18 of the Act, 2006 read with Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act, 1996').

3. There were transactions between the petitioner and respondent No.2 in regard to supply of Steel Angles. Respondent No.2 alleged non-payment of an amount of Rs.14 lacs against the material supplied and Rs.1,97,247/- for accrued interest. For recovery of the said amount, it moved an application before the Directorate of Industries, Chhattisgarh, who acts as Chairman of the Micro, Small and Medium Enterprises Facilitation Council ('Council'). The said Council issued notice to the petitioner under Rule 5 (10) and thereafter another notice was issued under sub-rule (18) of Rule 5. However, the petitioner failed to reply to the said notice. The Council provided another opportunity to the petitioner and issued fresh notice to which the petitioner responded and appeared before the Council and thereafter the impugned order has been passed.
4. Shri Choubey, learned counsel for the petitioner would submit that there being absolute non-compliance of the procedure prescribed under the rules, by no stretch of imagination, the impugned order can be termed as an award under the act or the rules. He would submit that the Council did not initiate any conciliation proceedings nor there exists any order referring the matter for arbitration to the Council itself, therefore, this pre-requisites having not been complied with, the award cannot be passed by the Council. Placing reliance on the judgments in the matters of **Process Equipments India and Another Vs. HP Micro and Small Enterprises Facilitation Council and another**¹, **Agriculture Finance Co Ltd Vs. Micro & Small Enterprises Facilitation Council & ANR**², **Paper & Board Convertors Vs. UP State Micro & Small Enterprises and others**³, **Zuari Cement Ltd Vs. Regional Director ESIC Hyderabad & Ors**⁴, he would submit that his case being similar, the writ petition is maintainable.

1 2014 Law Suit (HP) 313 (Civil Writ Petition No.5769/2013, decided on 24th May, 2014)

2 2013 Law Suit (Cal) 1056 (Writ Petition No.18318/2012, decided on 12th June, 2013)

3 2014 Law Suit (All) 1297 (Writ Petition C No.24343/2014, decided on 29th April, 2014)

4 2015 Law Suit (SC) 619 (Civil Appeal No.5138/2007 & other matters, decided on 2nd July, 2015)

5. Per contra, learned counsel for the respondents would submit that the petitioner had initially preferred an appeal under Section 34 of the Act, 1996 before the District Judge, Raipur but upon raising a preliminary objection by respondent No.2 regarding non-payment of deposit of 75% of the awarded amount, the petitioner left the proceedings mid way and preferred this writ petition without disclosing that such appeal was ever filed by him. It is further submitted that the petitioner appeared before the Council through his lawyer but no objection was raised to the continuation of the proceedings. Learned counsel would also urge that even though no decision on merits was passed by the District Judge, the present writ petition is hit under the principle of constructive *res judicata*. Reliance is placed in the matters of **Principal Chief Engineer Vs. Manibhai and Brothers**⁵ and **State of UP Vs. Nawab Hussain**⁶.
6. To dwell on the rival contentions, it is necessary to refer to the provisions contained under the Act, 2006 and the rules framed thereunder. Sections 18 and 19 of the Act, 2006 being pertinent are reproduced hereunder for ready reference:-

“18. Reference to Micro and Small Enterprises Facilitation Council. - (1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for

⁵ 2012 AIR (Guj) 44

⁶ (1977) 2 SCC 806

arbitration or refer to it any institution or centre providing alternative dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternative dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.

19. Application for setting aside decree, award or order.- No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternative dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case subject to such conditions as it deems necessary to impose.”

7. Procedure for conduct of arbitration is provided under Rules 5 & 6 which is reproduced hereunder:-

“5. Procedure to be followed. - (1) Applicant make a reference to the Council under section 18 of the Micro, Small and Medium Enterprises Development Act, 2006.

(2) The amount due from a buyer together with the amount of interest calculated in accordance with Section 16 of the said Act shall be recoverable by the supplier from the buyer by way of a suit or other

proceedings under any law for the time being in force. Supplier shall contain full particulars of the supply and its status, supplied goods or services, terms of payment, if any, agreed between the supplier and buyer, actual payment received with date etc., in the application.

(3) Any party to a dispute may file an application to the Council in the form appended to these rules stating the facts supporting his claim, the points at issue and the relief or remedy sought in person or by any agent or by registered post with acknowledgement due addressed to the Secretary of the Council.

(4) The application shall be presented in duplicate.

(5) The applicant will have to pay such application fee as prescribed by State Government from time to time.

(6) Where the number of respondents is more than one, as many extra copies of the application as there are respondents, shall be furnished by the applicant.

(7) If on scrutiny, the application is found to be in order it shall be duly registered and given a serial number.

(8) If the application on scrutiny is found to be defective and the defect noticed is formal in nature, the Chairman may allow the applicant to rectify the same in his presence and if the said defect is not formal in nature the Chairman may allow the applicant such time to rectify the defect as he may deem fit. The time of rectification shall not be more than 15 days.

(9) If the applicant fails to rectify the defect within the time allowed under sub-rule (7) the Chairman may by order and for reasons to be recorded in writing decline to register the application and inform the applicant accordingly in writing.

(10) After registering the case, Council shall issue a notice to the non-applicant accompanied by a copy of the application filed by the applicant.

(11) If the respondent refuses to take notice then such refusal shall be endorsed in the notice by the person serving the notice and it shall be deemed to have been served on the respondent.

(12) Each respondent intending to contest the

application shall file in duplicate the reply of the application to the Chairman of the Council within 15 days of the service of the notice of application on him.

(13) In reply, the respondent shall specifically admit, deny or explain the facts stated by the applicant in his application and also state such additional facts as may be found necessary for a just decision in the case.

(14) The Council may allow filing of the reply after the expiry of the prescribed period.

(15) The parties may submit with their statement all documents which they consider to be relevant or may add a reference to the documents of other evidence.

(16) Either party may amend or supplement the claim or defence during the course of the proceedings unless the Council considers it inappropriate to allow such amendment or supplement.

(17) The Council shall decide whether to hold oral hearing for the presentation of evidence or for oral argument or whether the proceedings shall be conducted on the basis of documents and other materials :

Provided that the council shall hold oral hearing at an appropriate stage of the proceeding on a request by a party unless the parties have agreed that no oral hearing shall be held.

(18) The parties shall be given sufficient advance notice of any hearing and of any meeting of the Council.

(19) Where without sufficient cause a party fails to appear at an oral hearing or to produce documentary evidence, the Council may continue the proceedings and make the award on the basis of evidence before it.

(20) The Council shall either itself conduct conciliation in each reference placed before it or seek the assistance of any institute or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation. The provisions of Section 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply to such a reference as if the

conciliation was initiated under Part III of this Act.

(21) The Council or the institute to which it has been referred for conciliation shall require the supplier and the buyer concerned to appear before it by issuing notices to both parties in this behalf. On the appearance of both parties, the Council or the institute shall first make efforts to bring about conciliation between the buyer and the supplier. The institute shall submit its report to the Council within fifteen days of reference from the Council or within such period as the Council may specify.

(22) When such conciliation does not lead to settlement of the dispute, the Council shall either itself act as an Arbitrator for final settlement of the dispute or refer it to institute for such arbitration, in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The supplier or the buyer may, either in person or through his lawyer registered with any court, present his case before the Council or the institute during the arbitration proceedings. The institute shall submit its report to the Council within such time as the Council may stipulate.

(23) The Council shall make an arbitral award in accordance with section 31 of the Arbitration and Conciliation Act, 1996 and within the time specified in sub-section (5) of section 18 of the Act. The award shall be stamped in accordance with the relevant law in force.

(24) The provisions of sections 15 to 23 of the Act, shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

(25) The Chairperson or any other officer authorised by the Chairperson shall forward the proceedings of every meeting of the council including annual progress report of the Council to the Member Secretary of the Advisory Committee.

6. Decision of the Council.- (1) After ascertaining the facts of the case by examining the parties or other witnesses or on inspection of the documents or after hearing oral arguments, the Council shall record an order showing the grounds for its decisions and communicate the decision to the applicant and respondent concerned.

(2) The decision of the Council shall be made by majority of all its members.

(3) Every order passed by the Council shall be dated and shall also be signed by every member of the Council present.

(4) Subject to the provisions of Section (16), (17) and (18) of the said Act, the decision of the Council shall be final and binding on the parties.”

8. A careful reading of the provisions would indicate that on receipt of application or reference under Section 18(1), the Council shall either itself conduct conciliation in the matter and in the event of same being unsuccessful, it can either itself take up the dispute for arbitration or refer it to any institution or centre providing alternative dispute resolution services for such arbitration and the provisions of the Act, 1996 shall then apply to the dispute as if the arbitration was in pursuance of the arbitration agreement referred to in sub-section (1) of Section 7 of the Act, 1996. When an award or decree or order is made, the same can be questioned by depositing 75% of the amount in terms of the decree/award/order, as the case may be. Rules 20, 21 and 22 of the Rules again makes a provision for conciliation and further procedure when the said conciliation fails. However, neither under the Act, 2006 nor under the Rules, 2006 any consequence has been provided for failure of the Facilitation Council to hold any conciliation. Holding of conciliation meeting is not pre-requisite for proceeding further to decide the dispute brought before the Council. Moreover, the petitioner has not raised any dispute before the Council regarding non-observance of the procedure prescribed under the Rules 20, 21 and 22 and has submitted to the jurisdiction of the Council without any demur.
9. Under sub-section (3) of Section 18 read with Rule 5 (23), the decision rendered by the Council while deciding the dispute is treated to be an arbitration pursuant to an agreement referred in sub-section (1) of Section 7 of the Act, 1996. In view of express provisions contained under Section 18(3) and Rule 5 (23), the award by the Council has been deemed to be an award under the Act, 1996. Therefore, any challenge to the said award can only be made in the manner prescribed under Section 34 of the Act, 1996 read with the provisions contained under the Act, 2006 and not

otherwise.

10. Learned counsel for the petitioner vehemently argued that alternative remedy is not available because there is flagrant violation of the procedure and the principles of natural justice.
11. However, once it has been found that decision on the reference/arbitration dispute is treated as an award under the Act, 1996 and the said award being appealable under Section 34 of the Act, 1996, in view of the law laid down by the Supreme Court in the matter of **Union of India and Others Vs. Major General Shri Kant Sharma and Another** {(2015) 6 SCC 773}, this Court does not deem present to be a fit case for interference.
12. The writ petition is accordingly dismissed as not maintainable.

Sd/-
Judge
(Prashant Kumar Mishra)

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