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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3264 OF 2014

M/s.Narmada Offshore and Technical
Services Private Limited

...Petitioner

v/s.

Micro and Small Enterprises Facilitation Council and Anr.

...Respondents.

Ms.Anuja Dhole a/w Mr.Suresh Dhole, for the Petitioner.

Mr.Gunjan Kumar Chaubey, for the Respondent No.2.

**CORAM: A. S. OKA &
REVATI MOHITE DERE, JJ.**

DATED : 8th JULY, 2015.

P.C.

1. Notice for final disposal at the admission stage was already issued in this petition.

2. On the last date, we have heard the learned counsel appearing for the parties. The issue which arises for consideration is about the illegality and validity of the proceedings before the Micro and Small Enterprises Facilitation Council (first respondent). The first respondent exercised power under Section 18 of the Micro, Small and Medium

Enterprises Development Act, 2006 (for short 'the said Act of 2006). It will be necessary to give brief reference to the facts of this case.

3. There was a commercial transaction between the petitioner and the second respondent. The second respondent made an application to the first respondent by way of a Reference under the provisions of the said Act of 2006. The second respondent invoked Section 18 of the said Act of 2006. On 21st June, 2011 the first respondent issued a direction to resolve the dispute amicably. Thereafter, there were meetings held of the first respondent. One such meeting was held on 17th August, 2013 when the petitioner was absent. The first respondent recorded the following order on that date : -

“The petitioner was present in the sitting. No one on the part of the respondent were present. Also on 20.07.2013 no one room the respondent was present in the sitting of the Council. In this matter seven sittings were held so far. It was brought to the notice that the respondent was given sufficient period to pay the delayed amount and it is presumed that the respondent has nothing to say in this matter, the process of conciliation is being brought to end and the respondent to pay the amount with interest Rs.11,93,565/- to petitioner is the decision of the Council.”

(Underline supplied)

4. It appears that thereafter the petitioner purported to file a Revision Application before the first respondent. In the meeting dated 18th January, 2014, the said application was turned down by the first respondent and final order was ordered to be issued.

5. We must note here that in the reply filed by the second respondent, it is contended that on 15th February, 2014 an executable award was passed by the first respondent on the basis of the order dated 17th August, 2013. The challenge in this petition under Article 226 of the Constitution of India is to the order recording the proceedings dated 17th August, 2013 and 18th January, 2014.

6. The learned counsel appearing for the petitioner relied upon a decision of this Court dated 24th October, 2013 in Writ Petition No.6636 of 2012 in the case of ***Lanco Infratech Limited v/s Micro and Small Enterprises Facilitation Council, Pune and Anr.*** The learned counsel urged that without issuing a specific notice after the closure of conciliation, arbitration was commenced and an ex-parte order has been passed directing the petitioner to pay an amount of Rs.11,93,565/- inclusive of interest to the second respondent.

7. The learned counsel appearing for the second respondent submits that an alternate remedy is available to the petitioner as an executable award has been made by the first respondent. Relying upon the contentions raised in the affidavit-in-reply, he urged that it is because of the default on the part of the petitioner that ultimately an executable award has been passed and no interference is called for.

8. We have carefully considered the submissions. We have already quoted the order recorded in the meeting held on 17th August, 2013. It records that there were seven sittings held by the first respondent. It records that the process of conciliation is being brought to an end. By the same order, a direction was issued to the petitioner to pay a sum of Rs.11,93,565/- . The executable award is purported to have been made in terms of the said order.

9. At this stage it will be necessary to make a reference to the Judgment and Order dated 24th October, 2013 passed in Writ Petition No.6636 of 2012 (***Lanco Infratech Limited v/s Micro and Small Enterprises Facilitation Council, Pune and Another***). In paragraph 14 the Division Bench has considered the provisions of Section 18 of the said

Act of 2006. In paragraph 15 of the said decision, the Division Bench has held thus :-

“15. Perusal of the said section discloses that the Council has an authority to act both, as a Conciliator and as an Arbitrator. The section, however, is divided into two compartments. Initially, the Council has to act in the capacity of a Conciliator and upon failure of conciliation, by virtue of section 18 Council itself can act as an Arbitrator between the parties by operation of statute. Therefore, after failure of conciliation, the Council has to continue the proceedings as an Arbitrator. Perusal of sub-section (3) clearly indicates that when the Council acts as an Arbitrator, it has to follow the procedure laid down in the Arbitration and Conciliation Act, 1996. In our view, therefore, it is the duty of the Council to inform both the parties about failure of conciliation and commencement of arbitration proceedings, so that the parties can lead further evidence in support of their case and, therefore, it is a bounden duty of the Council to inform the parties that its role as a Conciliator is over and it is now acting as an Arbitrator and permitting the parties to lead evidence or file additional documents.”

(Underline added)

10. Thereafter, in paragraph 16, this Court noted that in several cases the first respondent without issuing a notice informing the parties about the commencement of the arbitral proceedings, has passed awards

on the same day on which the conciliation proceedings failed. In paragraph 16 the Division Bench has observed as under :-

“16. Secondly, we have noticed that a period of 90 days which is referred to in the said section has been interpreted to mean that within a period of 90 days, both conciliation and arbitration proceedings are to be completed. In our view, the said period of 90 days cannot be calculated in such a manner since it would not be in consonance with the provisions of the Arbitration and Conciliation Act, 1996. It would be advisable for the Council therefore to commence conciliation proceedings and upon failure of parties to resolve the dispute commence arbitration proceedings after giving notice to both the parties and, if possible, the said proceedings should be completed within 90 days after giving an opportunity to the parties to lead evidence and file additional documents. In the present case, therefore, the said procedure of issuing notice to the parties was not followed and, therefore, the impugned order will have to be set aside and the matter will have to be remanded to the Council for initiation of arbitration proceedings. We are fortified in the view which we have taken by the decision of the Division Bench of Gujarat High Court in Principal Chief Engineer vs. Manibhai & Brothers (Sleeper) & 1 delivered in Letters Patent Appeal No.1997 of 2011.”

(Underline added)

11. In the present case, the conciliation was brought to an end on 17th August, 2013 and on the very same day, it appears that the first respondent concluded the arbitration proceedings and directed the petitioner to pay the amount. What is done by the first respondent is completely contrary to the law laid down by the Division Bench in the aforesaid Judgment and Order.

12. As far as the objection regarding maintainability of the petition is concerned, similar objection has been dealt with by the Division Bench in the same decision and for the reasons recorded in paragraph 17, the same has been overruled.

13. Therefore the petition must succeed and we pass the following order :-

ORDER

- i) The impugned orders are quashed and set aside. In view of the setting aside of the impugned orders, even the executable award will not survive ;
- ii) We direct the first respondent – Council to give notice to the petitioner and the second respondent calling upon them to remain present on a particular date ;

- iii) An endeavour shall be made by the first respondent to conclude the arbitration proceedings as expeditiously as possible and preferably within a period of 90 days from the date fixed for appearance of the parties before it ;
- iv) We direct the petitioner to co-operate with the first respondent for early conclusion of the arbitration proceedings ;
- v) All contentions on merits are kept open ;
- vi) The petition is partly allowed on above terms. There shall be no order as to costs ;
- vii) The first respondent to act on an authenticated copy of this Order.

(REVATI MOHITE DERE,J.)

(A.S. OKA,J.)