

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Judgment reserved on 20-10-2016****Judgment delivered on 13-01-2017****WPC No. 2498 of 2016**

1. M/s Jms Mining Services Private Limited (Formerly Known As Joy Mining Services India Pvt. Ltd.) (A Company Incorporated Under Companies Act 1956) Having Registered Office At 27, Shakshpeare Sarani Kolkalta 700017 Through Its Athorized Signatory Shri Ganesh Gupta, S/o Late Shri Sidh Nath Gupta

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Commerce & Industries, Mantralaya Mahandi Bhawan, Naya Raipur Chhattisgarh
2. Directorate Of Industries, Chhattisgarh Udyog Bhawan, Ring Road, No 1 Telebandha, Raipur Chhattisgarh Through Its Director,
3. Micro & Small Enterprises Facilitation Council, Chhattisgarh, Directorate Of Industries, Chhattisgarh Having Office A Udyog Bhawan, Ring Road No 1, Telebandha Raipur Chhattisgarh Through Its Director
4. M/s Arora Fabricators, Industrial Estate, Manendragarh, District Korea Chhattisgarh

---- Respondent**And****WPC No. 2501 Of 2016**

1. M/s Jms Mining Services Private Limited (Formerly Known As Joy Mining Services India Pvt. Ltd.) (A Company Incorporated Under Companies Act 1956) Having Registered Office At 27, Shakshpeare Sarani Kolkalta 700017 Through Its Athorized Signatory Shri Ganesh Gupta, S/o Late Shri Sidh Nath Gupta

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of Commerce & Industries, Mantralaya Mahandi Bhawan, Naya Raipur Chhattisgarh
2. Directorate Of Industries, Chhattisgarh Udyog Bhawan, Ring Road, No 1 Telebandha, Raipur Chhattisgarh Through Its Director,
3. Micro & Small Enterprises Facilitation Council, Chhattisgarh, Directorate Of Industries, Chhattisgarh Having Office A Udyog Bhawan, Ring Road No 1, Telebandha Raipur Chhattisgarh Through Its Director
4. M/s D.D. Enterprises, Industrial Area, Plot No 109, D Sector B Sirgitti Industrial Estate, Bilaspur Chhattisgarh

---- Respondent

And

WPC No. 2500 Of 2016

1. M/s Jms Mining Services Private Limited (Formerly Known As Joy Mining Services India Pvt. Ltd.) (A Company Incorporated Under Companies Act 1956) Having Registered Office At 27, Shakshpeare Sarani Kolkalta 700017 Through Its Athorized Signatory Shri Ganesh Gupta, S/o Late Shri Sidh Nath Gupta

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of Commerce & Industries, Mantralaya Mahandi Bhawan, Naya Raipur Chhattisgarh
2. Directorate Of Industries, Chhattisgarh Udyog Bhawan, Ring Road, No 1 Telebandha, Raipur Chhattisgarh Through Its Director,
3. Micro & Small Enterprises Facilitation Council, Chhattisgarh, Directorate Of Industries, Chhattisgarh Having Office A Udyog Bhawan, Ring Road No 1, Telebandha Raipur Chhattisgarh Through Its Director
4. M/s Steel Experts, 10 Industrial Area, Village Chainpur, Manendragarh, District Korea Chhattisgarh

---- Respondent

And

WPC No. 2499 Of 2016

1. M/s Jms Mining Services Private Limited (Formerly Known As Joy Mining Services India Pvt. Ltd.) (A Company Incorporated Under Companies Act 1956) Having Registered Office At 27, Shakshpeare Sarani Kolkalta 700017 Through Its Athorized Signatory Shri Ganesh Gupta, S/o Late Shri Sidh Nath Gupta

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of Commerce & Industries, Mantralaya Mahandi Bhawan, Naya Raipur Chhattisgarh
2. Directorate Of Industries, Chhattisgarh Udyog Bhawan, Ring Road, No 1 Telebandha, Raipur Chhattisgarh Through Its Director,
3. Micro & Small Enterprises Facilitation Council, Chhattisgarh, Directorate Of Industries, Chhattisgarh Having Office A Udyog Bhawan, Ring Road No 1, Telebandha Raipur Chhattisgarh Through Its Director

4. M/s Radha Vallabh Industries, Plot No 133/A & B Sector B,
Sirgitti Industrial Area, Bilaspur Chhattisgarh

---- Respondent

For Petitioner	Shri Ashish Shrivastava Advocate
For Respondent/State	Shri Shashank Thakur, Govt. Advocate
For Respondent No.4	Shri Y.C. Sharma, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

1. The present batch of four petitions would challenge the award passed by the Micro and Small Enterprises Facilitation Council, Chhattisgarh, Directorate of Industries, Chhattisgarh (for short '*the Facilitation Council*') allowing the separate claim arising from four different supply orders issued by the petitioner in favour of the respondent No.4. For brevity the documents filed in WPC No.2498 of 2016 are referred for disposal of the petitions.

2. The issue for determination is –

Whether despite there being appeal remedy available to the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 (for short '*the Act, 1996*'), a writ petition to question the impugned award is maintainable ?

3. Facts of the case, very briefly stated, are that pursuant to supply orders issued by the petitioner in favour of the respondent No.4, the said respondent supplied Fish Plate, Roof Bolt, etc. to the petitioner, but, according to the said respondent, payment for the goods supplied were not made, therefore, it being a small industry registered with District Trade and Industries Centre moved an application before the Facilitation Council for resolution of dispute, which has been allowed by the impugned award.
4. Assailing the impugned award, learned counsel appearing the petitioner, would contend that since the procedure prescribed under the Chhattisgarh Micro and Small Enterprises Facilitation Council Rules, 2006 (for short '*the Rules, 2006*') framed under the Micro, Small and Medium Enterprises Development Act, 2006 (for short '*the Act, 2006*'), has not been followed, the writ petitions would be maintainable. Elaborating the submission, it is argued that the award has been passed without giving proper opportunity of hearing to the petitioner inasmuch as copy of the minutes of the meeting was not supplied, despite order

passed by this Court on 4-7-2016 in WPC No.1640 of 2016 and other connected writ petitions and, as such, this Court is empowered to exercise writ jurisdiction in the matter. It is further argued that under the agreement, the Court at Kolkata (West Bengal) has the jurisdiction, but the award has been passed by the Facilitation Council, therefore, the same being without jurisdiction, the writ petitions are maintainable. To buttress his contention, learned counsel would rely on **Swastik Gases Private Limited v. Indian Oil Corporation Limited**¹.

5. Per contra, learned counsel appearing for the caveator/respondent No.4 would oppose the writ petitions.
6. To dwell on the rival submissions, it would be apt to refer to relevant provisions contained under the Act, 2006 and the Chhattisgarh Rules framed thereunder.
7. Sections 18 and 19 of the Act, 2006 being relevant the same 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

¹ (2013) 9 SCC 32

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 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.”

8. Procedure for conduct of arbitration is provided under Rules 5 and 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.”

9. This Court had an occasion to consider a similar issue in WPC No.1754 of 2013, decided on 18-11-2015, wherein the following was held in paras 8, 9 & 11 :

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 prerequisite 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.

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.

10. The above order of this Court has been affirmed by the Division Bench in Writ Appeal No.107 of 2016 and, thereafter, review petition No.89 of 2016 has also been dismissed by the Division Bench.
11. In the present cases, the petitioner has raised issue of jurisdiction of the facilitation council. Reference has been made to the matter of **Swastik Gases Private Limited** (supra), however, in the cases at hand, the supply order is unilateral and is not signed by the respondent No.4, therefore, in view of the judgment rendered by the Supreme Court in **R.S.D.V. Finance Co. Pvt. Ltd. v. Shree Vallabh Glass Works Ltd**², wherein it is held that such exclusion clause in the agreement made unilaterally by one of the party shall not be treated as agreement between the parties to exclude the jurisdiction of Courts other than the Court mentioned in the agreement.

² (1993) 2 SCC 130

12. For the foregoing, this Court is of the considered view that there being remedy available to the petitioner under Section 34 of the Act, 1996 for filing objection to the award before the jurisdictional Principal Civil Court of original jurisdiction, the writ petitions are not maintainable.
13. As an upshot, all the writ petitions are dismissed, subject, however, liberty in favour of the petitioners to prefer appeal under Section 34 of the Act, 1996.
14. There shall be no order as to cost (s). Sd/-

Judge
Prashant Kumar Mishra

Gowri