

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

WRIT PETITION NO. 5455 OF 2014

M/s. GRD Steel Industries Pvt. Ltd. ... Petitioner

V/s.

Micro and Small Enterprises Facilitation
Council ... Respondent

Mr. Suresh Dhole for petitioner.

Mr. A. I. Patel, Addl. Govt. Pleader for respondent no.2.

Mr. Bharat K. Gala for respondent no.3.

**CORAM : NARESH H. PATIL AND
SMT. BHARATI H. DANGRE, JJ.**

1st July, 2017.

P. C.:

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The petitioner prays for following reliefs:

(i) To set aside the order No. JDIKD/MSEFC/2014/1104 dt. 19.05.2014 of the Member Secretary of Micro and Small Enterprises Facilitation Council, Konkan Division, Thane alongwith general remark of the council dt. 6.9.2013 at Annexure no.1 and direct the respondent to decide the reference petition of the petitioner on merit as per the provisions of law.

(i-A) The respondent no.3 is liable to pay to the petitioner the Principal amount of Rs.61,28,236/- (Rs. Sixty one lakhs twenty eight thousand two hundred thirty six only) of the brought from the petitioner for the material along with interest from due date as per the provisions of Micro, Small and Medium Enterprises Development Act, 2006, therefore, the Reference petition is to be decided as per Micro, Small and Medium Enterprises Development Act, 2006.

(ii) direct the respondents to adjudicate the matter within stipulated time period prescribed in the Section 18(5) of Micro, Small and Medium Enterprises Development Act, 2006.

3. By communication dated 19/05/2014 Member Secretary, Micro and Small Enterprises Facilitation Council & Joint Director of Industries, Konkan Region, Thane, informed the petitioner as under:

“ With reference to above subject, it is intimated that, as you are engaged in trading activity of Steel and you have taken Entrepreneur's Memorandum Acknowledgment Part II No. 27/22/21/01675 dtd. 23/4/2013 for Activity Trading – Dealers of Iron & Steel Product & Building material. Your application is rejected and returned herewith for the reason engaged in “Trading Activity” as per decision taken by this Facilitation Council on 6/9/2013. Copy of decision taken by Facilitation Council is enclosed.”

4. Learned Counsel submits that in fact the issue raised by the petitioner ought to have been addressed by the respondent no.1 Council. The petitioner did not receive any notice in respect of hearing before the Council. The Counsel submits that the petitioner's matter was not placed before Council. The Member Secretary based on a general opinion expressed by the Council in meeting dated 6th September, 2013 rejected the petitioner's petition and closed the file. Learned Counsel, therefore, submits that matter be remanded back to the respondent no.1.

5. We have heard the learned Counsel for respondent nos.2 and 3.

6. It appears from the impugned communication made by the Member Secretary dated 19th May, 2014 that the petitioner's application was not placed before the respondent no.1 Council. In fact, the petitions of this nature would be placed before the Council and decision shall be taken by the respondent no.1 on its own merits and in accordance with the provisions of Micro, Small and Medium Enterprises Development Act, 2006. The Council is expected to pass a brief reasoned order. The learned Counsel has referred to an order passed by this Court in Writ Petition No. 3009 of 2014 on 12th June, 2017, remanding matter back to the Council. We perused the said order.

7. We are inclined to remand the matter back to respondent no.1. Needless to mention that whether an enterprise has entered into trading activity or not shall have to be decided by the Council and not by the Member Secretary.

ORDER

- (a) The communication dated 19/5/2014 (Annexure No. P-1) is quashed and set aside.
- (b) The matter is remanded back to respondent no.1. We direct respondent no.1 to pass appropriate orders on the reference petition filed by the petitioner on its own merits. The respondent no.1 shall deal with the matter in accordance with law and pass a brief reasoned order at the earliest after hearing necessary parties.
- (c) All issues on merits are kept open.
- (d) It is clarified that this Court has not expressed any opinion on the merits of the issues raised by the contesting parties.
- (e) Rule is made absolute in the above terms.

(SMT. BHARATI H. DANGRE, J)

(NARESH H. PATIL, J.)