

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4523 OF 2018**

M/s. Bellary Nirmithi Kendra	]	Petitioner
Vs.		
M/s. Capital Metal Industries	]	
and others.		Respondents

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**Mr. Mihir Joshi i/b Mr. Vijay Hiremath, Advocate for the Petitioner.
Mr. Raj Patel i/b M/s. SSP Legal & Co., Advocate for Respondent No.1.
Ms. Lata Patne a/w Ms. Krutika Patil and Ms. Minal Pawar-Patil, Advocate
for Respondents No.2 and 3.**

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**CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATE : 17th SEPTEMBER, 2019.

P.C:

The petitioner has challenged the Arbitral Award dated 17th November, 2017 passed by the Micro and Small Enterprises Facilitation Council, Mumbai under section 18 (3) of Micro Small and Minimum Enterprises Development Act, 2006 (hereinafter referred to as "MSMED Act"). By the impugned Award, claim of the respondent for payment of Rs.30,73,037/- with interest by the petitioner came to be allowed.

2. In the Petition, the petitioner in addition to challenging the said Award has also challenged the *vires* of the MSMED Act. However, at the outset, learned Counsel for the petitioner stated that he is not pressing the challenge to

vires of the said Act. He instead strenuously urged that the impugned Award has been passed without jurisdiction, without following statutory mandatory provisions and in gross violation of principles of natural justice. His contentions were that the respondent was not registered as a small micro Industry under the MSMED Act at the time when the contract for supply of goods was entered into between the petitioner and the respondent and, therefore, the arbitration under the said Act was not maintainable. The Counsel further submitted that conciliation which is pre-condition to commencement of arbitration, was also not undertaken as mandated under the Act. He lastly contended that all the notices of arbitration proceedings were served upon the petitioner either on the date of appearing or just before that, thereby preventing the petitioner from participating in such proceedings. He, therefore, submitted that despite availability of alternative remedy, this Petition should be entertained.

3. On the other hand, learned Counsel for the respondents opposed the Petition contending that remedy under section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “Act of 1996”) is available to the petitioner. This Petition is even otherwise not maintainable. He contended that the petitioner had remained present before the Arbitral Tribunal on one occasion on which date, he would have known the next date of hearing, during which hearing, the representative of the petitioner was absent. Arbitral Tribunal had granted two weeks for filing reply. On such date, the petitioner filed no reply. No objections to the jurisdiction of the Tribunal or irregularity in the conduct of the conciliation proceedings were raised.

4. Having thus heard learned Counsel for the parties and having perused documents on record, we are of the opinion that the Petitioner must avail of the remedy under section 34 of the Act of 1996. The statute has made a specific provision for challenging arbitral Awards. High Court's interference in exercise of writ jurisdiction, even if available in a given case, must be minimum. In the present case, the petitioner did not actively participate before the Arbitral Tribunal. No ground of lack of jurisdiction or irregularity in the conduct of conciliation proceeding which is pre-condition to commencement of arbitration were taken. Even otherwise, the question of jurisdiction is based on ascertaining of facts and thus becomes mixed question of law and facts. When the petitioner has not raised such a contention before the Arbitral Tribunal, allowing the Arbitral Tribunal to complete the proceedings and pass the final Award, we would not entertain such a mixed question of law and facts directly in a Writ Petition.

5. Leaving all contentions of the petitioner open, we do not entertain this Petition, leaving it open for the petitioner to avail a remedy under section 34 of the Act of 1996. With these observations, the Petition is disposed of.

(S.J. KATHAWALLA, J.)

(AKIL KURESHI, J.)