

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

WRIT PETITION NO.2105 OF 2022

Kerala State Electronics
Development Corporation Ltd. Petitioner

Vs.

MICRO and Small Enterprises
Facilitatiion Council & Ors. Respondents

Mr.P.D. Prasadrao a/w Mr.Amit R. Pandey i/b Mr.Atul R.
Pandey for the petitioner
Mr. Vishal Kanade a/w Ms.Jhanvee Joshi i/b Mr.Mohan B.
Jadhav, Mr.Vaibhav Gargade for the Respondent no.3
Mr.S. B.Kalel, A.G.P. for the State

**CORAM: S.V. GANGAPURWALA &
DHIRAJ SINGH THAKUR, JJ.**

DATED : JUNE 10, 2022

P.C.

1. Heard the learned counsel for the petitioner and the
learned counsel for the respondents.

2. The contention of the learned counsel for the
petitioner is that the matter was referred for conciliation
under section 18 of the Micro, Small & Medium Enterprises
Development Act, 2006 (Act, 2006). The conciliation failed.
The Micro & Small Enterprises Facilitation Council
(MSEFC) has now resorted to arbitration to be decided by

itself. According to the learned counsel for the petitioner, the same is not permissible. Reliance is placed by the learned counsel upon the judgment of the Division Bench of this court in the case of Gujarat State Petronet Ltd. vs. Micro and Small Enterprises Facilitation Council and Ors. in Writ Petition No.5459 of 2015 dated 06.08.2018 and also some interim orders passed in other Writ Petitions.

3. The learned counsel for the respondent no.3 submits that the judgment in Writ Petition No.5459 of 2015 relied upon by the learned counsel for the petitioner would not apply to the facts of the present case. In the present matter, conciliation proceedings have not been decided on merits. The present petitioner was not ready for amicable settlement and / or not ready to proceed with the conciliation proceedings. In that event, it was observed that the conciliation failed. No decision on merit has been arrived at. In that light of the matter, there would be no impediment for the MSEFC to take up the arbitration proceedings. The learned counsel further submits that even pleadings are filed in the said Arbitration Proceedings. The matter has proceeded further. It is contended that the

Respondent no.3 is entitled for the benefit of section 19 and 24 of the Act, 2006. The extra protection is granted to the investors like respondent no.3. In view of that, the learned counsel submits that the proceedings before the Arbitrator are not bad in law and same deserves to be continued.

4. We have considered the submissions canvassed by the learned counsel for the parties. In Writ Petition No.5459 of 2015 decided by the Division Bench of this court on 06.08.2018 also the conciliation proceedings failed because the party was not ready to proceed further with the conciliation. In spite of that, the Division Bench of this court held that the MSEFC ought not to have taken up the Arbitration Proceedings under section 18(3). Under sub section 3 of section 18 of the Act, 2006 where the conciliation initiated under sub section 2 of the said section is not successful and stands terminated, for settlement between the parties, the council may itself take up the dispute for Arbitration or refer to any institution of centre providing Alternate Dispute Resolution Services for such arbitration and in that event, the Arbitration and Conciliation Act, 1996 are made applicable.

5. Apart from taking up Arbitration Proceedings itself, council can also refer it to any institution or centre providing Alternate Dispute Resolution Services. The discretion has been given to the council in that regard. Considering the judgment of the Division Bench of this court in Writ Petition No.5459 of 2015 (Supra) and also the interim orders passed in other matters referred to by the learned counsel for the petitioner, the said matter certainly requires consideration. It would be no use keeping the matter pending. Respondent no.3 would be at a loss if the Arbitration Proceedings are not proceeded further and in that event, it would be appropriate for the council to refer the dispute for arbitration to any institution or centre providing Alternate Dispute Resolution Services as per its discretion and choice. In light of the above, we pass the following order:

- a. The council shall not continue with the arbitration proceedings itself and shall refer the dispute between the present parties to any institution or centre providing Alternate Dispute Resolution

Services for Arbitration as per its choice.

b. The same shall be done expeditiously preferably within three weeks. Upon the matter being referred to Arbitration now. We hope and trust that the Arbitrator would decide the said proceeding expeditiously.

c. All contentions of respective parties are kept open.

d. With the aforesaid observation and directions, Writ Petition stands disposed of.

(DHIRAJ SINGH THAKUR,J.) (S.V. GANGAPURWALA, J.)