

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 6192 OF 2019

Goyal Technochem Private Limited,
a company incorporated under the
Companies Act, 1956, through
director, having its registered office
at Plot No.90, M.I.D.C., Hingna
Road, Nagpur – 440 016

.... **PETITIONER**

// **VERSUS** //

1. Micro, Small, Medium Enterprises
Facilitation Council, Udhyog
Bhawan, Civil Lines, Nagpur – 440
001
2. M/s. Shivalik Power and Steel
Private Limited, C – 33, 3rd floor,
Ashoka Millennium, Ring Road no.1,
Rajendra Nagar Chowk, Raipur,
Chattisgarh – 492 001.

.... **RESPONDENTS**

Shri R. Khemuka, Advocate for the petitioner.
Shri H.A. Khedikar, Advocate for the respondent no. 2.

CORAM : ROHIT B. DEO, J.
DATED : 03.03.2022

ORAL JUDGMENT :

Heard. **RULE.** With consent, the petition is heard finally.

2. The petitioner claims to be a creditor *vis-a-vis* respondent 2,
having supplied certain material to be used in the process of manufacture of
Steel.

3. Evidently, there is a dispute in existence between the petitioner and respondent 2, as regards the alleged liability of respondent 2 to pay for the both supplied.

4. Considering the extremely narrow compass in which the controversy lies, it would not be necessary to elaborate in detail the nature of the dispute.

5. Only few facts, which are essential for determining the issue involved, need be noted.

6. The petitioner approached the Micro and Small Enterprises Facilitation Council (the Council) in Reference Petition 83 of 2015 under Section 18 read with the other provisions of the Micro, Small and Medium Enterprises Development Act, 2006 ('the Act, 2006').

7. The relevant date of the proceedings is 15.04.2019, and it would be apposite to reproduce the order-sheet :

"17	15.04.2019	<i>Counsel of NA present, applicant absent. NA informed that applicant has moved to NCLT for recovery of their dues. Council noted that both the parties not coming on common ground for appointment of mutually agreeable arbitrator. NA requested the council to recall the order passed on 25.07.2018 for arbitration before this council and continuing the arbitration initiated by them under the terms of agreement between the parties. Council is unable to proceed further hence decided to close the case without any order."</i>
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8. It is clear from the order-sheet reproduced *supra*, that the only

reason recorded by the Council to close the reference case is the statement made by the respondent 2, that the applicant/petitioner herein has moved the National Company Law Tribunal (NCLT) for recovery of the dues.

9. It is not in dispute that there are no proceedings pending before the said Tribunal under the Insolvency and Bankruptcy Code, 2016 (the Code) or any other law, in the matter of the dispute raised before the Council. A statement was apparently made that the petitioner has approached the NCLT since the petitioner issued notice under Section 8 of the Code. However, since the petitioner received a reply from the respondent 2 claiming the existence of dispute, in view of the statutory scheme, no step was taken under Section 9 of the Code to initiate the corporate insolvency resolution process.

10. In view of this irrefutable position, the order impugned will have to be quashed.

11. The order impugned is quashed.

12. The Council shall proceed with Reference Petition 83 of 2015 on priority and conclude the proceedings either way, and at any rate, till the stage of arbitration, within the next 90 days.

13. The petition is allowed in the afore-stated terms.