

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Reserved on:12.05.2023**Date of Decision:01.08.2023****M/S R.V. INDUSTRIES****.....PETITIONER****VERSUS****MICRO AND SMALL ENTERPRISES
FACILITATION COUNCIL,
HARYANA AND OTHERS****.....RESPONDENTS****CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.****Present: Mr. R.S. Randhawa, Advocate,
for the petitioner.****Mr. Vivek Chauhan, Addl. A.G., Haryana.****Mr. Prateek Aggarwal, Advocate,
for respondent No.3.************VINOD S. BHARDWAJ , J.**

Challenge in the instant petition is to the *ex parte* award dated 12.01.2019 (Annexure P-1) passed by the District & Sessions Judge (Retd.) as a Sole Arbitrator in arbitration case No.666/2018 arising out of reference made under Section 18 of the MSMED Act, 2006 and respondent No.3 was held entitled to recover the amount of Rs.2,24,47,273/- along with compound interest @ 18.75% w.e.f. 21.07.2017 with yearly interest till its realization. It was submitted that respondent No.2 is registered as a Small Scale Manufacturer under the MSMED Act, 2006 and the claim in question

had been filed before the Facilitation Council alleging that there were financial/trade relations between the respondent-firm as well as the petitioner. The bills w.e.f. 22.03.2016 upto 20.07.2017 were claimed for a sum of Rs.1,65,25,127/- against which an *ex parte* award was passed on 12.01.2019 and the execution proceedings had thereafter been instituted before the Executing Court. It was alleged that respondent No.3 i.e. M/s Tirupati Steel had been registered as an MSME unit on 22.08.2017 and the invoices in question pertained to the period much prior to the date of registration of respondent No.3 as an MSME unit i.e. for the period from 22.03.2016 to 20.07.2017. Hence, the benefit is being claimed for the period during which respondent No.3 was not registered under the MSMED Act, 2006.

Reply on behalf of respondent No.3 had also been filed wherein it was alleged that the petitioner has not approached with clean hands and attempted to mislead the Court by incorrect facts and false averments. It was averred that respondent No.3 had filed the claim petition before the Facilitation Council and notices were issued to the petitioner. However, despite service, he failed to appear before the council whereupon the claim was referred to the Arbitrator to adjudicate the dispute between the parties. An *ex parte* award was thus passed due to non-appearance of the petitioner before the Arbitrator. It was also stated that during pendency of the arbitration proceedings, the petitioner also issued four post-dated cheques for a sum of Rs.20,00,000/- which is specifically mentioned in the arbitral award as well. The cheques were dishonoured for which proceedings under Section 138 of The Negotiable Instruments Act were initiated. It was further stated that the notice of the appointment of the Arbitrator as well as the

arbitration proceedings was duly served upon the petitioner through registered post and the same finds mention in the arbitral award as well. The petitioner chose not to appear on the dates despite service. The original proofs of services are maintained by the Sole Arbitrator. An execution petition was duly filed before the Commercial Court, at Gurugram wherein the petitioner entered appearance on 13.03.2019. He was proceeded against *ex parte* even before the Executing Court on 17.07.2019 and numerous orders have been passed against him during the execution proceedings. An *ex parte* order dated 17.07.2019 was thereafter set aside subject to cost vide order dated 19.09.2019. The petitioner has been delaying the execution on one frivolous pretext or the other and no objections under Section 34 of the Arbitration and Conciliation Act had been filed. Simple imprisonment of one of the partners of the petitioner-firm was also ordered by the Commercial Court on 21.12.2021 and that even the said order became final. It was alleged that the petitioner did not raise any challenge to the proceedings and/or the claim either before the Facilitation Council and/or before the Arbitrator. Besides, the execution proceedings are going on and various orders passed therein had also attained finality. Thus, the petitioner having lost his right to raise a challenge to the award cannot be permitted to re-agitate and challenge the award.

Replication to the abovesaid written statement was also filed by the petitioner reiterating its averments already made in the writ petition.

It is relevant to mention here that the controversy in the present writ petition has already been considered in CWP-12338-2019.

In view of the above, the present writ petition is allowed, in terms of the judgment of even date passed in **CWP-12338-2019**, titled as

“Indian Oil Corporation Limited Versus Haryana Micro and Small Enterprise Facilitation Council, Chandigarh, Haryana and another”.

August 01, 2023
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(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No