

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

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Reserved on:08.05.2023**Date of Decision:01.08.2023****M/S CCS OSTEM PROJECTS PVT. LTD.****.....PETITIONER****VERSUS****STATE OF HARYANA
AND ANOTHER****.....RESPONDENTS****CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.**

**Present: Mr. Madhur Panwar and
Mr. Drupad Sangwan, Advocates,
for the petitioner.**

Mr. Pankaj Mulwani, DAG, Haryana.

**Mr. Kunal Dawar, Advocate,
for respondent No.2.**

VINOD S. BHARDWAJ, J.

Challenge is to the communication dated 24.08.2020 (Annexure P-5) whereby the Facilitation Council had made a reference to the Facilitator/Arbitrator in case No.1570/2020 submitted by respondent No.2-M/s Me Machines. The petitioner is engaged in the business of manufacturing various types of heavy machinery used in stone crushing and washing plants. The petitioner also use to provide complete project-based solutions for design, civil work, manufacturing, logistics, installation, testing and final commissioning at site. The petitioner had received a notice from the Facilitation Council dated 13.03.2020 which stated that the case before MSME is listed for hearing on 18.03.2020. It was also averred that

respondent No.2 had supplied a machine on 20.07.2017 vide bill No.021/17-18 and full payment was to be made after the machine was installed in proper working condition. It was averred that the machine was, however, faulty and did not work. Intimation in this regard was immediately sent to respondent No.2 who agreed to rectify the defect and to get the machine functioning. Respondent No.2 was, however, unable to do so and that the petitioner had already paid an amount of Rs.8,60,000/- to respondent No.2. However, respondent No.2 was not able to fix the machine whereupon the petitioner had to get it fixed from a third-party vendor and had to incur an expenditure of Rs.1,04,312/-. The machine in question was although made functional, however, the same was not at an optimum level. It was thus on the above account that respondent No.2 raised the first demand after a lapse of more than two years i.e. on 04.11.2019. On being confronted that the machine was not a functional machine, respondent No.2 admitted the lapse, however, it was contended that as the machine had become functional, hence, payment fell due. A demand of Rs.15,00,000/- raised by respondent No.2 was uncalled for and unjustified since the goods/products supplied by the petitioner were defective and there was no undisputed liability towards respondent No.2.

Written statement on behalf of respondent No.2 was filed wherein reference was made to various judgments justifying the proceedings that had been initiated and it was contended that the operations of respondent No.2 started from 07.08.2014 which is specifically mentioned in the Registration Certificate and the initiation of operation of the enterprise is to be seen for computing jurisdiction and not the date from which its registration was renewed under the MSME. It was averred that the said

respondent was to provide old and used floor boring machine to the petitioner and the payment in question was to be released upon receipt of the machine. However, only an amount of Rs.3,60,000/- was released on 24.08.2017 and an amount of Rs.5,00,000/- was released on 03.04.2018. The balance payment of Rs.15,00,000/- which was due, was withheld whereupon the claim was filed before the Facilitation Council. It was also stated that the petitioner had purchased the aforesaid second-hand machine from respondent No.2 on "As is where is basis" and it was denied that the machine in question was faulty. The machine was installed in the year 2017, whereas repair is stated to have been done in the year 2018. The scope of work of respondent No.2 was only to supply the machine and not to carry out its repairs. It is contended that frivolous objections have now been levelled to delay the payment and the lawfully pending dues to respondent No.2.

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 disposed of, 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
seema

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No