

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

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Reserved on:06.07.2023**Date of Decision:01.08.2023****M/S NBCC (INDIA) LTD.****.....PETITIONER****VERSUS****HARYANA MICRO AND SMALL ENTERPRISES
FACILITATION COUNCIL AND OTHERS****.....RESPONDENTS****CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.**

**Present: Mr. Rajat Khanna with
Mr. Vishal Saini, Advocates,
for the petitioner.**

**Mr. Vivek Chauhan, Addl. A.G., Haryana,
for respondent No.1.**

**Mr. Narinder Kumar Vadehra, Advocate,
for respondent No.4.**

VINOD S. BHARDWAJ, J.

Challenge in the present petition is to the notice dated 27.04.2022 (Annexure P-4) i.e. Arbitrator's Declaration of Acceptance and order dated 08.05.2022 (Annexure P-5) vide which the Sole Arbitrator proceeded *ex parte* against the petitioner-Company and further petitioner is seeking alternative expeditious disposal of the 'Preliminary Objections/ Application' seeking dismissal of the complaint and stay of the arbitration proceedings.

The petitioner has alleged that the respondent No.2-Company is engaged in the business of Manufacturing, Sale, Supply and Installation of cooling towers and chilling plants. The petitioner-Company issued a Work Order to respondent No.2-Company for execution of the package of

‘Erection, Testing and Commissioning of Mechanical, Electrical and Instrumentation Equipments including supply of miscellaneous accessories, earthing and lighting protection, cable trays and its accessories for IDCT package of Mauda STPP-I (2x500MW) Distt-Nagpur (Maharashtra) as per tender conditions, specifications’, bill of quantities, negotiation etc. at a total cost of Rs.3,76,58,285/-.

Pursuant to disputes having arisen between the petitioner-Company and respondent No.2-Company under the Work Order, without deciding the ‘preliminary objections’ dated 15.07.2021 raised by the petitioner-Company, the parties were referred for arbitration before an empaneled Arbitrator, respondent No.3 herein (Sole Arbitrator). The petitioner-Company came to know about the appointment of the Arbitrator after receiving of e-mail from respondent No.3 informing about his appointment as Sole Arbitrator in case No 2586/2021 vide order dated 18.11.2021 and directed the petitioner-Company to appear on 08.05.2022 for arbitration proceeding.

The petitioner-Company vide e-Mail communicated to respondent No.3 that the petitioner-Company has not received any order/letter from respondent No.1-Council with respect to dismissal of ‘Preliminary Objections’ raised by the petitioner-Company before respondent No.1-Council in case No 2586/2021 and also submitted that the petitioner-Company has not received any order qua appointment of the respondent No.3 i.e. Arbitrator and requested respondent No.3 to supply the copies of order dated 18.11.2021 alongwith order of appointment and requested to keep the hearing in abeyance till challenge to the order dated 18.11.2021 is decided.

Respondent No 3 passed the order dated 08.05.2023 (Annexure P-5) vide which the Arbitrator proceeded *ex-parte* and observed that the proceedings shall be recorded in the absence of the petitioner-Company and adjourned the matter to 21.05.2022 for *ex-parte* evidence. That the petitioner-company sent email to respondent No 3 requesting to keep the hearing in abeyance and sought copy of the order issued by respondent No.1-Council regarding appointment of the Sole Arbitrator.

Separate written statement had been filed by respondent No. 4

i.e. Facilitation Council wherein it was averred that MSME Registration, presently known as Udyam Registration (UR) (formally referred as Udyog Aadhaar Memorandum) activities are covered on the basis of National Industrial Classification, 2008. There is no activity named “Work Contract” in NIC Code 2008. An enterprise is eligible for benefits of schemes/programmes of this Ministry as per the guidelines of that scheme/programmes if the enterprise has a UR for any activity which may be covered in its work contract. Moreover, the MSMED Act, 2006 does not differentiate between ‘Manufacturing’ and ‘service’ Activities so far as benefits are concerned.

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
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(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No