

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

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**CM-18461-CWP-2023
in/and
CWP-24540-2023
Date of decision: 02.11.2023**

M/S MN AGENCIES

.....Petitioner

VERSUS

MSE FACILITATION COUNCIL, LUDHIANA (DIC) AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Ms. Aarushi Mahajan, Advocate for
Ms. Taniya Sethi, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

CM-18461-CWP-2023

The instant application has been filed under Rule 3-A (i)
Chapter VI, Part-B, Vol. V of the High Court Rules and Orders for grant of
leave to file the present petition.

Application is allowed as prayed for.

CWP-24540-2023

Challenge in the present petition is to the award dated
16.02.2023 passed by the District Level Micro and Small Enterprises
Facilitation Council, Ludhiana on a claim petition filed by the respondent.

2. Briefly summarized the case of the petitioner is that it is an authorized dealer for supply of cable wires on behalf of the respondent-claimant and used to supply material to Indian Railways on its behalf. The respondent-claimant, however, filed a claim petition before the MSEFC on 22.05.2019 with a malicious intent and to harass and extract money from the petitioner and that the same has been accepted by the respondent-Facilitation Council notwithstanding that the relationship amongst the parties was that of principal and agent under Section 182 of the Contract Act, 1872 and not that of buyer and seller. An objection with respect to the jurisdiction of the Micro Small and Medium Enterprises Facilitation Council to examine the issues arising out of a principal agent relationship being beyond its jurisdiction capacity was although raised, however, the same was not decided. The award was hence wrongly passed. The issue and jurisdiction is required to be decided at the first instance and without such issue being decided, the Facilitation Council is not competent to pass an award. She fairly concedes that even though the remedy of appeal has been provided under the Micro Small and Medium Enterprises Development Act, 2006 (for short “the MSMED Act, 2006”, however, as there is a condition of pre-deposit to the extent of 75%, the same is onerous and the petitioner not having any liability to pay the amount, could not be compelled to make a pre-deposit.

3. It is also averred and argued that the petitioner itself is a registered MSME Unit with the Udyog Aadhar Memorandum and the material was supplied jointly. Hence, there is no separate right that would be ensuing in favour of the petitioner to seek recovery of his claim dues by means of institution of a claim petition before the Facilitation Council. The

award was thus impugned for the reason that Section 15 of the MSMED Act would have no applicability.

4. I have heard learned counsel appearing on behalf of the petitioner and have gone through the documents appended alongwith the present petition.

5. At the outset, it is noticed that even though the petitioner has averred that it has exhausted all available avenues for seeking resolution of the dispute and is left with no other remedy and is hence forced to approach this Court. Such an averment in the writ petition is factually incorrect inasmuch as the remedy of appeal has been prescribed under Section 19 of the MSMED Act, 2006.

6 Merely because a claimant pleads that it is not in a capacity to make a pre-deposit cannot be the reason to approach the High Court directly and in violation of the procedure prescribed in law. Notwithstanding that there is no material to support the above plea, the same cannot be accepted as a sufficient ground to approach the High Court directly. The MSMED Act, 2006 mandates a pre-deposit and there is no challenge to the statutory provision. In the absence of any challenge to the statute, its requirement cannot be done away with. The mandate is thus required to be followed and an inconvenience in making a pre-deposit cannot be construed as a valid ground to not avail the alternative remedies. The question as regards the relationship between the parties being that of the principal and agent requires consideration on the basis of the evidence adduced and not merely on the strength of a projection made. There is nothing on the basis whereof it can be held that the Court where the objections would lie is not competent to examine the said issue and/or to adjudicate the aspect including that of

jurisdiction of the Facilitation Council to examine the said issue. Even otherwise, while referring to the contention of the petitioner about the “agent principal” relationship, the Facilitation Council has recorded in Para No.4 of its award that even though the said plea has been raised in the application, however, such objection was not raised in the written statement that has been filed. It is common law that applications do not form part of the pleadings and only the response filed by way of reply/written statement has to be read as a part of the pleadings. Any argument which runs contrary to the pleading has thus been disregarded by the Facilitation Council. Thus, the argument is fallacious that the Facilitation Council has not examined the issue, rather, the aspect of jurisdiction was considered in light of the pleadings putforth by the respondent-claimant and that the improvement in the case being made was noticed in such argument and was declined.

7. Hence, it is not a case that the Facilitation Council has not considered the objection, rather, it has dealt with the same and has recorded its findings. If the petitioner is dis-satisfied with the finding, he has the remedy of a statutory appeal.

8. In view of the above, this Court is not inclined to accept the argument of the petitioner and to entertain the writ petition directly instead of the petitioner approaching the competent Appellate Court as per the procedure prescribed under the MSMED Act, 2006.

9. The sole reason which thereafter survives for approaching this Court is the condition of a mandatory pre-deposit. I am of the considered opinion that such a reason cannot be the basis for approaching this Court directly. The legislature has specifically enshrined the above said clause for the protection of the Micro, Small and Medium Enterprises and has provided

for a mandatory pre-deposit so as to impose restrictions to protect the Micro, Small and Medium Enterprises from being subjected to unnecessary litigation and delay in disbursement of their dues. The constitutional validity of the said clause being not under challenge, there can be no laxity against Rule of Law.

10. Taking into consideration all the aforesaid circumstances and after noticing that there has been concealment by the petitioner about the efficacious alternative remedy available to the petitioner, I am not inclined to entertain the present writ petition. The same is accordingly dismissed in *limine*.

(VINOD S. BHARDWAJ)
JUDGE

NOVEMBER 02, 2023
Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No