

**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**

**MAHLE ANAND FILTER SYSTEMS
PVT. LTD.**

.....PETITIONER**VERSUS**

**STATE OF HARYANA
AND OTHERS**

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

**Present: Mr. Amandeep Singh, Advocate,
for the petitioner.**

Mr. Vivek Chauhan, Addl. A.G., Haryana.

VINOD S. BHARDWAJ, J.

Challenge in the present petition is to the reference dated 22.12.2015 (Annexure P-1) sent by the Facilitation Council to the Arbitrator and also to the *ex parte* award passed by the Arbitrator dated 21.03.2016 (Annexure P-2) being non-est. Further, challenge was raised to the order dated 17.10.2022(Annexure P-3) whereby the District Collector had issued a recovery certificate against the petitioner.

The petitioner has averred that it was in a business relationship with respondent No.5 i.e. M/s Bestways Transport (India) Private Limited-BTPL since January 2003 and used to obtain transport services. Petitioner stopped seeking services from respondent No.5 around March 2012. On

11.04.2015, respondent No.5 filed a claim before the Facilitation Council for an alleged outstanding principal amount of Rs.14,39,869/-. It was averred that respondent No.5 did not file its memorandum of registration under the MSME Act until 30.06.2011 and was thus not entitled to file claim petition before the Facilitation Council. It is further averred that no invoices for supporting its claim had been filed and the award in question had been wrongly passed. It is further averred that respondent No.5 was not an MSME entity when the business relationship between the parties was entered into in the year 2003 and that notwithstanding the aforesaid, the reference was made. An *ex parte* award was thereafter passed by the Arbitrator on 21.03.2016 without the necessary invoices on record. It is further contended that amount had already been paid and the same stands acknowledged yet, crucial evidence had been ignored by the Arbitrator. The *ex parte* award was non-est in the eyes of law and respondent No.5 could not have demanded the amount as was claimed for. He further averred that even the *ex parte* award was passed on 21.03.2016, however, respondent No.5 did not take any steps for seeking enforcement of the said award for a period of nearly six years before an application was submitted to the District Collector, Gurugram for seeking execution of the said *ex parte* award. The Tehsildar, Gurugram was appointed as the recovery officer. A letter was thereafter issued to the petitioner by the Tehsildar for payment of the amount due. Reference was also made that there are certain factual inaccuracies in the abovesaid communications including the description of the order. It has been pointed out that even though the invoices in question were for an earlier period, however, the same were shown as due in the year 2012 i.e., before lodging of the proceedings before the Facilitation Council.

The reply of respondents was not asked for as the State Counsel relied upon the responses already filed on behalf of the Facilitation Council. The counsel appearing on behalf of other respondents submitted that as the issues raised before this Court are only legal, hence, submission of formal replies on the factual aspects are not necessary.

Perusal of the award, which has been issued by the former District & Sessions Judge, held the claimant entitled to a sum of Rs.14,39,869/- as principal amount and Rs.15,75,858/- as interest as on 31.03.2015. The present petition had been filed in the year 2022 i.e. after a gap of nearly six years of the passing of the award, without raising a challenge to the said award. An objection was raised that the filing of the writ petition, after the expiry of period of limitation under the MSMED Act, 2006 and the Rules framed thereunder would not be maintainable.

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
seema

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No