

Jvs.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9589 OF 2019

Union of India, through	}	
Ministry of Defence & Ors.	}	Petitioners
versus		
M/s. A. V. Enterprise & Anr.	}	Respondents

Ms. Naveena Kumai for the petitioners.

Capt. Nischay V. present in Court.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE: 30th JANUARY 2024

P.C.:

1. Heard learned counsel for the petitioners.
2. This petition under Article 226 of the Constitution of India challenges an award made by the Facilitation Council under the provisions of Micro, Small and Medium Enterprises Development Act, 2006 (hereafter referred to as "the MSME Act"). No satisfactory reply comes forth from the learned counsel for the petitioners when she was confronted with the query as to how this petition is maintainable in view of the provisions contained in sections 18 and 19 of the MSME Act read with section 34 of the Arbitration and Conciliation Act, 1996 (hereafter referred to as "the Arbitration Act").

3. Admittedly, the petitioners have an alternative statutory remedy by invoking the provisions of section 34 of the Arbitration Act in view of the provisions contained in sections 18 and 19 of the MSME Act.

4. Aforesaid view is supported by a latest judgment of the Hon'ble Supreme Court rendered in the case of ***M/s. India Glycols Limited vs. Micro and Small Enterprises Facilitation Council, Medchal-Malkajgiri***, reported in ***AIR 2024 SC 285***. Hon'ble Supreme Court, in the said case, opined that an award made by the Facilitation Council under the MSME Act can be challenged by taking recourse to section 34 of the Arbitration Act, however, it appears that the petitioner in the said case attempted to avoid the obligation to deposit 75% of the award amount if section 34 of the Arbitration Act was to be invoked. The Hon'ble Supreme Court observed that taking recourse to jurisdiction under Article 226/227 of the Constitution of India was clearly impermissible.

5. In view of the aforesaid, we are not inclined to entertain this writ petition, which is hereby dismissed. However, notwithstanding dismissal of this writ petition, it will be open to the petitioners to take recourse to legal remedy which may be available to them in law. In case recourse to any such legal remedy is taken by the petitioners, it will be open to the parties to raise their contentions which may be permissible.

JAYANT
VISHWANATH
SALUNKE

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JAYANT VISHWANATH
SALUNKE
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(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)