



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 5422 of 2023

CK Infratech Pvt. Ltd., New Delhi, through the Director Mr. Rohit Khandelwal ..vs.. Micro and Small Enterprises Facilitation Council C/o Joint Director Industries, Govt. of Maharashtra through the Member Secretary and ors.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M. R. Patil, Advocate for the petitioner
Mr. N. S. Khubalkar with Mr. S. D. Kalyani, Advocate for respondent no. 2

CORAM : ANIL L. PANSARE J.

DATED : 11-11-2024

Heard.

2. The challenge is to award dated 6-2-2023 passed by respondent no. 1 - Micro and Small Enterprise Facilitation Council, Nagpur in Reference Petition No. MH/20/M/NGR/2263/2021.

3. None appears for respondent no. 1 though served.

4. Learned counsel for respondent no. 2 submits that the petition is not maintainable in the light of the judgment passed by the Hon'ble Supreme Court in the case of *M/s India Glycols Limited and another Vs. Micro and Small Enterprises Facilitation Council, Medchal – Malkajgiri and others* in *Civil Appeal No. 7491/2023* dated 6-11-2023. The Supreme Court held thus :

“10. In terms of Section 19, an application for setting aside an award of the Facilitation Council cannot be entertained by any court unless the appellant has deposited seventy-five per cent of the amount in terms of the award. In view of the

provisions of Section 18(4), where the Facilitation Council proceeds to arbitrate upon a dispute, the provisions of the Act of 1996 are to apply to the dispute as if it is in pursuance of an arbitration agreement under sub-section (1) of Section 7 of that Act. Hence, the remedy which is provided under Section 34 of the Act of 1996 would govern an award of the Facilitation Council. However, there is a super added condition which is imposed by Section 19 of MSMED Act 2006 to the effect that an application for setting aside an award can be entertained only upon the appellant depositing with the Council seventy-five per cent of the amount in terms of the award. Section 19 has been introduced as a measure of security for enterprises for whom a special provision is made in the MSMED Act by Parliament. In view of the provisions of Section 18(4), the appellant had a remedy under Section 34 of the Act of 1996 to challenge the award which it failed to pursue.

11. ...

12. The appellant failed to avail of the remedy under Section 34. If it were to do so, it would have been required to deposit seventy-five per cent of the decretal amount. This obligation under the statute was sought to be obviated by taking recourse to the jurisdiction under Articles 226/227 of the Constitution. This was clearly impermissible.”

As could be seen, the persons like the petitioner if, is aggrieved by the award passed in terms of Micro, Small and Medium Enterprises Development Act, 2006 (for short ‘the MSMED Act, 2006’), the remedy available is under Section 34 of the Arbitration and Conciliation Act, 1996 (for short ‘the Act of 1996’) that too, after depositing an amount of 75% of the amount ordered to be paid in the arbitral award. The Supreme Court has in categorical

terms held that recourse to the jurisdiction under Articles 226/227 of the Constitution is impermissible. Despite such fact, the petitioner has approached this Court under Article 227 of the Constitution. The petition is thus not maintainable.

5. Learned counsel for the petitioner submits that the impugned award is passed without following the provisions of the MSMED Act, 2006, particularly, Section 21 thereof, which provides that the Micro and Small Enterprises Facilitation Council will consist of not less than three but not more than five members.

6. Learned counsel for the petitioner submits that only two members have signed the award and thus cannot be said to be an award signed by majority as required under Section 29 of the Act of 1996 which provides that any decision of arbitral tribunal shall be made by majority of its members.

7. Learned counsel for respondent no. 2 submits that this Court may not go into the merits of the case in as much as the Supreme Court in *M/s India Glycols Limited's* case has cautioned the High Court to not delve upon the merits of the case once it comes to the conclusion that petition is/was not maintainable.

8. True it is that High Court should not delve upon the merits of the case once it is found that petition is not maintainable, learned counsel for the petitioner is, however, insisting for order from this Court on the grounds raised by the petitioner. Accordingly order is being passed.

9. The contention is that the award has been not passed by majority. The argument is without any merit in as much as Section 21 of the MSMED Act, 2006 provides for arbitration tribunal consisting of not less than three and not more than five members. In that sense, the tribunal may consist of three or five members. The petition is completely silent as to how many were the members of the arbitration tribunal which has entertained the reference.

10. That apart, learned counsel for respondent no. 2 has invited my attention to Rule 11 of the MSMED Rules, 2007 which provides that any decision of the Council shall be made by majority of its members present at the meeting of the Council. The emphasis of the learned counsel for respondent no. 2 is on the expression “majority of the members present at the meeting” meaning thereby that it is not the number of members of arbitration panel but the number of members present at the time of taking decision, that matters for the purpose of deciding majority.

11. The petition is completely silent on the aforesaid aspect as to how many were the members of the arbitral tribunal and how many were present at the time of taking decision. In absence thereof, the argument that award is signed by only two members and is thus not signed by majority is without any substance. The petition is accordingly dismissed.

(Anil L. Pansare, J.)