



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 5581 OF 2024

M/s. Ideal English School Wagle, Thru. Its President, Thane
Vs.

Shails International, Mr. Shailendra Jeet Singh, Nagpur

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. A.S. Shukla, Advocate for petitioner.
Mr. P.V. Bawankule, Advocate for respondent.

CORAM : N.R. BORKAR, J.

DATE : 06.12.2024.

This petition takes exception to the order dated 13.08.2024 passed by M & S Enterprise Facilitation Council (for short 'the Council') established under Section 20 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short 'the Act').

2. The respondent herein had filed a reference before the Council under Section 18 (1) of the Act for recovery of certain amount against the present petitioner.

3. The reference was taken up for conciliation. However, as during conciliation no

settlement could be arrived at between the parties by the order impugned the Council in terms of Section 18 (3) of the Act decided to refer the matter for arbitration.

4. The learned counsel for the petitioner submits that objection was filed taking exception to the jurisdiction of the Council to entertain the reference. It is submitted without deciding the said objection, the Council has taken up the matter for arbitration. It is submitted that the same is not permissible in view of decision of this Court in *Bharat Kolkatta Container Terminals Pvt. Ltd. Vs. Goa Micro and Small Enterprises and anr. 2024 SCC OnLine Bom 2162*.

5. On the other hand the learned counsel for the respondent has supported the order impugned. The learned counsel for the respondent has however, not disputed that the Council has not passed any order on the objection filed by the present petitioner.

6. This Court in *Bharat Kokatta Container Terminals Pvt. Ltd. Vs. Goa Micro and Small Enterprises and anr.* has held thus:

“15. The object and propose of such procedure is to consider first whether the matter could be conciliated between the parties and only if it is not possible to give a failure report and then ask the Council to refer it to the panel of arbitrators. Thus, when a jurisdiction is raised even at the stage of conciliation, the Council must at least prima facie give its verdict about the jurisdiction even to refer the matter to Arbitrator, so that the aggrieved party could take proper recourse.

16. The impugned notice which is produced on record at page 47 would clearly go to show that it is simple failure report by the Deputy Director/Nodal Officer. There is no provisions as found in the Act itself that even at the conciliation stage the Conciliator or the Nodal Officer is not empowered to decide about the jurisdiction to take up the matter for conciliation, and then refer to Arbitration.”

7. As the Council has not decided the objection filed by the petitioner taking exception to the jurisdiction of the Council to entertain the reference the order impugned cannot be allowed to stand and the same is set aside. The Council shall first decide the objection filed by the present petitioner and then shall proceed in accordance with the law. The petition is disposed of in aforesaid terms.

(N.R. BORKAR, J.)