IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(125)

CWP-1088-2024
Date of decision:- 23.01.2024

M/s Usha Shriram Enterprises Pvt. Ltd.

... Petitioner

Versus

District Level Micro & Small Enterprises Facilitation Council, Fatehgarh Sahib and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Raghav Gulati, Advocate for the petitioner.
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SUVIR SEHGAL, J. (*ORAL*)

1. Instant writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the entire proceedings conducted by respondent No.1 with regard to claim/case No.MSEFC/143 as well as arbitral award dated 05.10.2023, Annexure P-10, passed under the Micro, Small and Medium Enterprises Development Act, 2006 (for short "the MSMED Act").

2. Learned senior counsel has been heard.

3. In ***M/s India Glycols Limited and another Versus Micro and Small Enterprises Facilitation Council, Medchal – Malkajgiri and others, Law Finder Doc Id # 2388701***, Hon'ble Supreme Court has observed as under:-

> "*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. In the judgment of this Court in Gujarat State Civil Supplies Corporation Limited (supra), a two-Judge Bench of the Court has observed, in the course of drawing its conclusions, that:

> *"The proceedings before the Facilitation Council/institute/centre acting as an arbitrator/Arbitral Tribunal under Section 18(3) of the MSMED Act 2006 would be governed by the Arbitration Act, 1996."*

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.

13. For the above reasons, we are in agreement with the view of the Division Bench of the High Court that the writ petition which was instituted by the appellant was not maintainable."

4. In view of the dictum of the Supreme Court, the instant petition is not maintainable and is dismissed as such. Liberty is, however, granted to the petitioner to take recourse to the remedy available to him under the MSMED Act in accordance with law.

23.01.2024 **(SUVIR SEHGAL)**
Kamal **JUDGE**

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No