

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

108

LPA-2126-2023 (O&M)

Date of decision: 18.04.2024

M/s M.N Agencies

....Appellant

Versus

MSE Facilitation Council, Ludhiana and others

...Respondents

**CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Ms. Aarushi Mahajan, Advocate
for the appellant.

DEEPAK SIBAL, J.(ORAL)

The present intra-Court appeal is directed against the judgment dated 02.11.2023 passed by a learned Single Judge of this Court dismissing the appellant's writ petition filed by it to challenge therein the award dated 16.02.2023 passed by the District Level Micro and Small Enterprises Facilitation Council, Ludhiana (for short – the Council).

2) After hearing the learned counsel for the appellant and going through the record of the case as also examining the impugned judgment, we find that the learned Single Judge dismissed the appellant's writ petition on the ground that before knocking the doors of this Court the appellant had not availed the efficacious statutory remedy available to it under Section 19 of the Micro Small and Medium Enterprises Development Act, 2006 (for short – the MSMED Act, 2006). In this regard, the following observations by the learned Single Judge may be referred to:-

“At the outset, it is noticed that even though the petitioner has averred that it has exhausted all available avenues for seeking resolution of the dispute and is left with no other remedy and is hence forced to approach this Court. Such an averment in the writ petition is factually incorrect inasmuch as the remedy of appeal has been prescribed under Section 19 of the MSMED Act, 2006.

Merely because a claimant pleads that it is not in a capacity to make a pre-deposit cannot be the reason to approach the High Court directly and in violation of the procedure prescribed in law. Notwithstanding that there is no material to support the above plea, the same cannot be accepted as a sufficient ground to approach the High Court directly. The MSMED Act, 2006 mandates a pre-deposit and there is no challenge to the statutory provision. In the absence of any challenge to the statute, its requirement cannot be done away with. The mandate is thus required to be followed and an inconvenience in making a pre-deposit cannot be construed as a valid ground to not avail the alternative remedies. The question as regards the relationship between the parties being that of the principal and agent requires consideration on the basis of the evidence adduced and not merely on the strength of a projection made. There is nothing on the basis whereof it can be held that the Court where the objections would lie is not competent to examine the said issue and/or to adjudicate the aspect including that of jurisdiction of the Facilitation Council to examine the said issue.

The sole reason which thereafter survives for approaching this Court is the condition of a mandatory pre-deposit. I am of the considered opinion that such a reason cannot be the basis for approaching this Court directly. The legislature has specifically enshrined the above said clause for the protection of the Micro, Small and Medium Enterprises and has provided for a mandatory pre-deposit so as to impose restrictions to protect the Micro, Small and Medium Enterprises from being subjected to unnecessary litigation and delay in disbursement of their dues. The constitutional validity of the said clause being not under challenge, there can be no laxity against Rule of Law.”

3) Thus, the learned Single Judge has held that the appellant cannot be allowed to rush to this Court by bye-passing the statutory remedy of appeal available to it only because at the time of availing of such remedy the appellant is required to make a pre-deposit especially when, the

condition with regard to making of the pre-deposit had not even been challenged by the appellant.

- 4)Dismissed.
- 5)Pending miscellaneous application(s), if any, also stand disposed of.

(DEEPAK SIBAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

18.04.2024
Sapna

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No