IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5162 OF 2025

Priyadarshini Sahakari Soot Girni Pvt Ltd.
Through It's Managing Director
Fakira Daga Patil, Age 73 years,
Occ. Service, R/o Shirpur,
Tq. Shirpur, District Dhule Petitioner

Versus

M/s PAR Advisory Services Pvt Ltd
Through Its Authorized Representative
Plot No.31, Pushpgiri Apartment,
Paud Road, Rambaugh Colony,
Pune – 411 038. Respondent.

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Advocate for Petitioner : Mr. D.S. Bagul
Advocate for Respondent : Mr. A. P. Bhandari

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CORAM : S. G. CHAPALGAONKAR, J.
Dated : July 03, 2025

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. Petitioner impugns the order dated 25.5.2023 passed by the Micro and Small Enterprises Facilitation Council, Pune (for short referred to as 'MSME Council').

3. Brief facts giving rise to present writ petition are as under :-

Respondent initiated proceeding against the petitioner under section 20 of Micro, Small and Medium Enterprises Development Act, 2006 (for short 'MSMED Act, 2006') with MSME Council, Pune, contending that respondent is engaged in providing advisory/consultation service. Petitioner being co-operative society engaged him to raise various Credit facilities. The terms of assignment were modulated by agreement dated 16.8.2010. The respondent provided his services in terms of the agreement, however, petitioner failed to pay the amount of remuneration that made respondent to initiate the proceeding vide petition No.30 of 2012 under section 20 of MSMED Act, 2006. Petitioner raised objection/maintainability of the petition as financial services rendered by respondent do not come under the scope of MSMED Act, 2006. Further, put up a defence that respondent had not provided services for obtaining any loan or cash credit. Amount of Rs.2.00 Lakh is already paid to respondent towards service charges for Credit Limit sanctioned by Dena Bank and there are no dues as claimed.

4. On 1.8.2014 Reference Court passed an Award under section 18 (3) of MSMED Act, 2006 holding that respondent is entitled for dues for first stage as per fixed structure given in the agreement dated 16.8.2010 and petitioner was directed to consider payment of service charges towards finances provided by Dena Bank, Ratnakar Bank and IDBI Bank Limited. On 18.5.2015 the decree was transferred to District Judge/Competent Designated Judge for execution. However, on 21.5.2015 respondent submitted a letter to Member, Secretary, MSME Council, Pune to modify the decree and specify decretal amount. However, on 27.6.2015 Council refused to entertain the application as award was already transferred for execution to Competent Court.

5. Meanwhile, respondent submitted invoices regarding financial services provided by him towards obtaining loan of Rs.17 Crores from Ratnakar Bank. Petitioner refused to entertain such invoice. Thereafter, respondent submitted three different bills before learned District Judge, Dhule in Special Darkhast No.50 of 2017 raising the claim of Rs.4,44,854/-, Rs.5,75,000/- and Rs.10,75,250/- and claimed an amount of Rs.32,05,134/- from petitioner. Petitioner opposed such claims

and contended that respondent is entitled for Rs.44,854/- only. Learned District Judge refused to entertain petitioner's contention on the ground that Executing Court cannot go beyond the decree vide his order dated 22.9.2021. Petitioner assailed said order in Writ Petition no.12003 of 2021. This Court, after hearing the parties, allowed said writ petition vide order dated 23.8.2022, granting liberty in favour of respondent to approach the MSME Council, Pune for correction of order dated 1.8.2014. Accordingly, on 3.3.2023 Respondent approached the MSME Council. On 25.5.2023 MSME Council passed corrected award and directed petitioner to pay principal amount of Rs.7.00 Lakh towards first stage of payment alongwith the interest within a period of one month.

6. According to Mr. Bagul, learned advocate appearing for petitioner, quantification of the amount is without foundation. The order passed by MSME Council is non-speaking and sans requisite reasons. On 31.1.2025 respondent filed application for issuing warrant and same is allowed against the petitioner. Although, petitioner sought stay to the order issuing warrant, objecting calculations of the amount to be recovered, the same is not considered.

7. Per contra, Mr. Bhandari, learned advocate appearing for respondent submits that, award dated 1.8.2024 passed by the MSME Council holds respondent entitled only for first stage payment dues and further directions were given to petitioner for payment of service charges of sanctioned loan by Dena Bank, Ratnakar Bank and IDBI Bank subject to submission of invoices by respondent. It has attained finality. Thereafter, in pursuance to directions of this Court, respondent had approached MSME Council for clarification of award and accordingly, award dated 25.5.2023 is passed under provisions of MSMED Act, 2006.

8. According to Mr. Bhandari, in view of section 18(3) of MSMED Act, 2006, once Arbitration proceeding is taken up by MSME Council, it would be governed by Arbitration and Conciliation Act, 1996 and same can be challenged under section 34 of said Act within limitation period of 90 days, as prescribed. Even, otherwise as per section 19 of the MSMED Act, 2006, remedy is available only on deposit of 75% of awarded amount. Petitioner failed to avail statutory remedy within time schedule. According to Mr. Bhandari, present writ petition would not be maintainable in

aforesaid legal background. Mr. Bhandari, submits that respondent is deprived of its claim amount for more than 13 years. Entertaining present writ petition would be against legislative behind enacting MSMED Act, 2006. Therefore, he urges to reject the writ petition.

9. Having considered submissions advanced, it can be observed that initially Award is passed against petitioner on 1.8.2014. Operative part of the said award reads thus :-

ORDER

> “1. The Reference Petition No.30 of 2012 is partly allowed.
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> 2. The petitioner is entitled only for the first stage of the payment dues under the Fees Structure given in the Agreement dated 16.8.2010.
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> 3. The Respondent is directed to consider the payment of the service charges of the sanctioned loan by Dena Bank, the Ratnakar Bank Ltd and IDBI Bank Ltd. If the petitioner submits invoices with due explanations.”

10. Lateron, in pursuance to the directions given by this Court under order dated 23.8.2022 respondent approached for correction/rectification of the Award. The MSME Council entertained application and passed following order dated 25.5.2023, which reads thus :-

O R D E R

"1. The Reference Petition No.30 of 2012 is partly allowed.

2. The Respondent is hereby directed to pay principal amount of Rs.7,00,000/- (Rs. Seven Lakhs only) towards first stage of payment as per Agreement dated 16.8.2010 alongwith the interest as per the provisions of section 15 and 16 of MSMED Act, 2006 till realization of the amount to the petitioner.

3. The principal and interest amounts are to be paid within one month from the date of receipt of this award.

4. No order as to cost."

11. The aforesaid order is assailed in the present writ petition, which is presented to this Court on 15.4.2025.

12. Section 18 of the MSMED Act, 2006 provides for special provisions to deal with the dispute with regard to the amount due towards goods supplied or services rendered by the supplier. On reference of such dispute, the Council can conduct Mediation or refer the dispute to Mediation Service Provider, however, in case of unsuccessful attempt of mediation, the dispute can be taken up by the Council itself for Arbitration. On such reference, the provisions of Arbitration and Conciliation Act, 1996 applies to the dispute as if Arbitration was in pursuance to Arbitration and Conciliation

Act. Section 19 of the Act provides for remedy against Arbitration Award passed under section 18 with non-obstante clause that application for setting aside decree, award or order shall not be entertained unless 75% of the amount in terms of the decree, award is deposited.

13. It is, therefore, evident that MSMED Act, 2006 provides for entire scheme/mechanism to deal with the disputes pertaining to the dues of MSME.

14. In the present case, it can be observed that petitioner raises challenge to award dated 25.5.2023 passed by MSME Council after 23 months without availing the alternate statutory remedy, particularly, having lost to avail the same within limitation prescribed. In case of **M/s. Duro Shox Pvt. Ltd. Vs. State of Maharashtra and others in Writ Petition No.6690 of 2024**, this Court, after considering scheme of the Act and various Judgments of the Supreme Court observed in paragraph no.18 as under :-

> "18. Considering the above Judgments, i.e. {1} **Jharkhand Urja** (surpa), {2} **Bhaven Construction** (supra), {3} **SBP & Co.** (supra) and {4} **M/s. India Glycols Limited** (supra), the law on the subject of entertainment the petition by the High Court under Article 226/227 of the Constitution of India to challenge an 'Award' or orders passed by the Facilitation Council/Arbitral Tribunal under the MSMED Act is summarized as under :-

> {1} The power of the High Court under Article 226 of the Constitution of India to issue writs / directions is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation **L. Chandra Kumar Vs. Union of India, (1997) 3 SCC 261**. However, the High Court under Articles 226 and 227 of the Constitution of India would interfere rarely in exceptional circumstances in the arbitral proceedings, when the order passed by the Facilitation Council/ Arbitral Tribunal is perverse and patently lacking in inherent jurisdiction and, when there is no semblance of 'Award' as contemplated under Section 18 of the MSMED Act.
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> {2} **M/s. India Glycols Limited (supra), does not overrule Jharkhand Urja** (surpa). **M/s. India Glycols Limited** (supra), should be construed as imposing a higher bar to invoke jurisdiction of the High Court under Article 226 of the Constitution of India, as it is held that entertaining a petition under Articles 226 / 227 of the Constitution of India, in order to obviate compliance with the requirement of pre-deposit under Section 19, would defeat the object and purpose of the special enactment which has been legislated upon by Parliament.
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> {3} When the 'Award' is made by the Facilitation Council / Tribunal by exercising jurisdiction vested in it, however erroneous the 'Award' may be, the same has to be **challenged only by invoking Section 34 of the Arbitration Act,** and this court would not exercise jurisdiction under Articles 226 and 227 of the Constitution of India, only to avoid the aggrieved party from the hardship of deposit of 75% of the award amount in terms of Section 19 of the MSMED Act."

15. In light of the aforesaid exposition of law, when MSME Facilitation Council/Tribunal has passed award under section 18 of the MSMED Act, 2006 and petitioner could not

raise challenge to award before the Court under section 34 of the Arbitration Act within time span. In light of the law laid down by the Supreme Court of India in case of **M/s. India Glycols Limited and anr. Vs. Micro and Small Enterprises Facilitation Council, Medchal-Makajgiri and ors.** dated 6.11.2023 passed in Civil Appeal No.7491 of 2023, present writ petition cannot be entertained, particularly, looking to the observations in paragraph no.14, which reads thus :-

> **"14 ...We cannot accept this submission for the simple reason that Section 18 of the MSMED Act 2006 provides for recourse to a statutory remedy for challenging an award under the Act of 1996. However, recourse to the remedy is subject to the discipline of complying with the provisions of Section 19. The entertaining of a petition under Articles 226/227 of the Constitution, in order to obviate compliance with the requirement of pre-deposit under Section 19, would defeat the object and purpose of the special enactment which has been legislated upon by Parliament."**

16. Hence there is no reason to entertain present writ petition. In the result, Writ Petition stands **dismissed**. Rule, discharged.

(S. G. CHAPALGAONKAR)
Judge.

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