

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

950 WRIT PETITION NO. 8615 OF 2024

M/s. Indsur Gears Limited
(Now IGL Industries Limited)
Through Its Authorized Representative
Dilip Joshi, Aged : 64 years,
Plot No. P-31, MIDC Chikalthana,
Aurangabad, Maharashtra 431006

...Petitioner

VERSUS

1. Ms Vijay Enterprises
Through Its Representative
Mr D. L. Pahade
Age : 45 years, Occupation-Business
Having office at Plot No.M-106/6
MIDC Waluj, chh. Sambhaji Nagar,
-431136

2. Micro & Small Enterprises
Facilitation Council, Chh
Sambhajnagar
Joint Director of Industries
2nd Floor, Vikas Bhavan,
Adalat Road, Near Baba Petrol Pump
Chh Sambhajnagar – 431001

...Respondents

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Mr.Rahul R. Totala a/w. Mr. Swapnil V. Lohiya, Advocate for the
petitioner.

Mr.Harish Adwant h/f. Mr. S. V. Adwant, Advocate for Respondent
No.1

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CORAM : ROHIT W. JOSHI, J.

DATED : 3rd JULY 2025

JUDGMENT :-

1. The present petition takes exception to an award dated
22.07.2024 passed by the Micro and Small Enterprises Facilitation

Council, Aurangabad (for short “MSEFC”) under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006 (for short “the Act”).

2. The learned Counsel for respondent no.1 raises a preliminary objection with respect to alternate remedy that the award passed under the Act can be challenged by filing an application under Section 34 of the Arbitration and Conciliation Act, 1996.

3. The learned Counsel for the petitioner counters stating that the award passed by the MSEFC in the present case is a nullity in the eyes of law in as much as out of five members only four have signed the award and no reason is assigned in the award for the fifth member not signing the same. Placing reliance on the Section 21(1) (2) of the Arbitration Act the learned counsel for the petitioner contends that in the event all the members of the Tribunal do not sign the award, the award will be valid if it is signed by majority of members, however this is subject to rider that reason for omission of the signature of remaining member/s must be mentioned in the award. He states that this mandatory condition of law is observed in breach in the present case.

4. The learned Advocate next contends that the Council gets

jurisdiction to initiate arbitration only on failure of conciliation. Referring to the provisions of Section 18 of the MSME Act he contends that it is obligatory for the Council to refer the parties to conciliation or conduct conciliation itself and it is only on failure of the conciliation that arbitration can be initiated. The learned Advocate has placed reliance on judgment in the matter of ***Jharkhand Urja Vikas Nigam Limited Vs. State of Rajasthan and Ors.*** Reported in ***(2021) 19 SCC 206*** in support of this contention.

5. Mr. Adwant, learned Advocate for respondent no.1 also points out from the record that the petitioner had also raised a counter claim before the MSEFC. He contends that although the counter claim was not entertained on merits since it was held to be not maintainable, the record indicates that the petitioner had also raised a claim to be adjudicated by way of arbitration although conciliation was not undertaken. Mr. Adwant contends that the argument of the petitioner that failure of conciliation is a prerequisite for initiation of arbitration should not be entertained. Mr. Totala counters the contention arguing that there cannot be any estoppel against law and merely because the petitioner had filed a counter claim cannot be itself a ground for ignoring the jurisdictional error committed by the Council.

6. Per contra, Mr. Adwant, the learned counsel for respondent No.1

places reliance on judgment of the Hon'ble Supreme Court in the matter of India ***India Glycols Ltd. V Micro and Small Enterprises Facilitation Council, Medchal-Malkjigiri & Ors.*** reported in ***(2023) SCC online SC 1852*** to contend that Section 34(3) is an absolute bar for entertaining a Writ Petition against award passed under Section 18(3) of the MSME Act.

7. Mr.Adwant, further draws attention to a judgment dated 21.04.2025 passed in Civil Writ Petition No.1874 of 2024 (***IGL Industries Ltd. Vs. Micro Small Enterprises Facilitation Council, Aurangabad and Another***). He submits that in an identical set of facts the said petition was filed by the present petitioner and after considering all the judgments on which the petitioner is placing reliance in the present petition, including the judgment in the matter of ***Jharkhand Urja Vikas Nigam Limited (supra)***, this Court has refrained from exercising Writ Jurisdiction upholding the objection pertaining to alternate remedy. Mr. Adwant states that the same course needs to be adopted in the present matter as well as.

8. Mr. Totala distinguishes the judgment by pointing out that in the said matter earlier an application under Section 34 of the Arbitration Act was filed and thereafter the same award was challenged by filing a petition before this Court. This according to Mr.

Totala is the distinguishing feature between the two cases.

9. Mr. Adwant, the learned Advocate for the respondent further contends that the petitioner is deliberately avoiding to avail of the alternate remedy in view of mandate of Section 19 of the MSME Act which warrants a 75% deposit as a pre-condition for challenging the award passed by the MSME.

10. Mr. Totala, learned Advocate for petitioner retorts that since the award is nullity, the petitioner is justified in approaching the writ court without availing of alternate remedy. He contends that in the peculiar facts of the case where the award is nullity, the petitioner should not be compelled to avail of alternate remedy, which is subject to extremely onerous condition of depositing 75% of the amount.

11. Having heard the rival submissions as aforesaid, and having perused the judgments on which the learned Advocates have placed reliance I am unable to agree with Mr.Totala that a different view than the one which is taken in Writ Petition No.1874 of 2024 can be taken in the present set of facts. It will be profitable to reproduce observations of the learned Single Judge in paragraph 9 of the judgment where it is clearly held that all the contentions that were agitated in the said petition could have very well been raised in the

objections under Section 34 of the Act. Relevant observations are as under :-

"9. It is thus, clear that all the issues raised by the Petitioner in this Petition are capable of being agitated before the District Court under Section 34 of the Act of 1996.

..... Efficacious remedy thus is available for the Petitioner to challenge the said award and same has been already exhausted."

The learned Single Judge has categorically held that in view of efficacious remedy available under Section 34 the petition was not being entertained.

12. Thereafter, in paragraph 10 it is observed that the alternate remedy that was available in law was infact availed of in the said case. This appears to be an additional reason for not entertaining the petition. Even independent of the observations in paragraph 10, the learned Single Judge on referring to all the judgments on the point has upheld the objection pertaining to alternate remedy. I will respectfully refrain from taking a different view.

13. As regards the requirement of predeposit for challenging the

award passed by the MSEFC, the learned Single Judge has in the matter of **IGL Industries Ltd, (supra)** held that having regard to the statement of objects and reasons and the underlying object of the Act, which is to ensure speedy recovery of dues to medium, small and micro enterprises, the provision of Section 19, which contemplates a predeposit to challenge arbitration award under the Act is mandatory and writ petition cannot be entertained in order to enable the petitioner to circumvent the said mandatory provision. The contention of the learned counsel for respondents with respect to predeposit needs to be accepted in view of observations in paragraph 11 of the said judgment.

14. It also needs to be mentioned that the present petitioner had also raised a counter claim before the MSEFC. Although the counter claim was turned down as not maintainable it is apparent on the face of record that the petitioner had also invoked the jurisdiction of MSEFC although Conciliation was not conducted according to the petitioner.

15. In view of the aforesaid, the preliminary objection relating to alternate remedy raised by the respondent is upheld. The petition is dismissed reserving liberty in favour of the petitioner to challenge the award in accordance with law. The period spent in prosecuting the

present petition will be excluded having regard to the Section 14 of the Limitation Act.

16. Civil Applications, if any, stand disposed of accordingly.

[ROHIT W. JOSHI, J.]