IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL WRIT PETITION NO. 1874 OF 2024

IGL Industries Ltd ...Petitioner

Versus

Micro and Small Enterprises Facilitation Council, Aurangabad and Anr ...Respondents

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- Mr. R. R. Totala, Advocate for the Petitioner
- Mr. A. P. Bhandari, Advocate for Respondent No. 2

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CORAM : R. M. JOSHI, J
DATE : APRIL 21, 2025

PER COURT :

1. A question arises in this Petition is as to whether a party who has already taken exception to the Arbitral Award passed by the Micro and Small Enterprises Facilitation Council (for short '**the Council**') by invoking the provisions of Section 34 of the Arbitration and Conciliation Act, 1996 (for short '**Arbitration Act**') can be permitted to institute a Writ Petition under Articles 226 and 227 of the Constitution of India only for the reason that provision of Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short '**MSMED Act**') only for reason that Section 19 thereof, requires mandatory

deposit of 75% of arbitral amount for the challenge to the Arbitral Award under Section 34 of the Arbitration Act.

2. The facts which led to the filing of this Petition can be narrated in brief as under:

Petitioner is a Company incorporated under the Companies Act. Respondent No. 2 is registered under the MSMED Act. There are business transactions between Petitioner and Respondent No. 2 in respect of supply of material by Respondent No. 2 to Petitioner. There occurred dispute between them and as a result of which, Respondent no. 2 lodged complaint in Council for recovery of amount of Rs. 18,32,161/- along with interest against the material supplied to the Petitioner. On 29.03.2023, Council issued first notice to the Petitioner under Section 18(3) of the MSMED Act and the Petitioner was called upon to appear on 11.04.2023. On that day, Council directed the Petitioner to file reply to the complaint on or before 02.05.2023. On 02.05.2023, reply came to be filed to the complaint made by Respondent No. 2 raising issues with regard to the quality of the material, etc. It is specifically claimed by the Petitioner that there was rejection of the material supplied by Respondent No. 2 and it was duly communication. Council thereafter issued another notice under the Act of 2006 to the Petitioner to cause appearance on 16.05.2023. On that day, parties were directed to file their respective submissions. Further hearing was scheduled on 23.05.2023. It is the case of the Petitioner that without conducting conciliation, as mandated under Section 18(2) of the MSMED Act, an award came to be pronounced adjudicating the disputes between Petitioner and Respondent No. 2. It is further case of the Petitioner that Arbitral Award has not been signed by all the members of the Council and therefore, it is not an award in terms of law. On these amongst other contentions, the Petitioner has challenged the Arbitral Award dated 30.11.2023 passed by the Council. Hence, this Petition.

3. Respondent No. 2 resisted the Petition by filing affidavit-in-reply. It is the case of this Respondent that an award came to be passed by Council on 30.11.2023 and the same has been challenged by the

Petitioner by filing Civil. M. A. No. 695/2024 before the District Court under Section 34 of the Arbitration Act. It is specifically claimed therein that all the issues sought to be raised in this Petition are specifically agitated before the District Court, Aurangabad. On these amongst other contentions, dismissal of the Petition is sought.

4. Learned Counsel for the Petitioner submits that the award passed by the Arbitral Tribunal is not in consonance with the provisions of the Act of 1996 and more particularly, Section 31(8) thereof. He relies upon the judgment of the Hon'ble Supreme Court in case of ***Jharkhand Urja Vikas Nigam Limited vs. State of Rajasthan and Others, (2021) 19 SCC 206***, to contend that in view of Section 18(2) and (3) of the MSMED Act Council is obliged to conduct conciliation and there must be an order of unsuccessful conciliation and it is only thereafter the Council can take up the arbitral proceedings. It is his submission that the Hon'ble Supreme Court has held that in absence of conciliation proceedings, as mandated under the Act of 1996, there is no question of passing arbitral award. It is his

further submission that though the Hon'ble Supreme Court has referred the issue with regard to the maintainability of the Writ Petition against award of MSEFC to the larger bench in view of judgment of ***Jharkhand Urja Vikas Nigam Limited*** (supra) which is prior in time will hold the field. Thus, it is his submission that since in the instant case no conciliation proceedings has taken place the Arbitral Award is not sustainable. As far as the maintainability of the Petition is concerned, it is his submission that when the award is not signed by all the members, it is not an valid award and as such, it is open for the parties to challenge the same by invoking writ jurisdiction of the High Court. To support his submissions, he refers to the judgment of Hon'ble Supreme Court in case of ***Dakshin Haryana Bijli Vitaran Nigam Limited vs. Navigant Technologies Private Limited, (2021) 7 SCC 657***.

5. He also refers to the judgment of Division Bench of this Court in case of ***ITI Limited vs. Micro and Smal Enterprises Facilitation Council and Anr, Writ Petition (L) No. 17571/2024***. It is pertinent to note

that said judgment is passed by consent of the parties. Hence, the same is kept out of consideration.

6. It is argued by referring to following judgments that there is no bar created under the law for entertainment of a Writ Petition against the Arbitral Award. It is his submission that the inherent powers of the High Court of entertaining the Petition under Articles 226 and 227 of the Constitution of India cannot be restricted. On instructions, he makes statement that the Petitioner would withdraw the application filed before the District Court under Section 34 of the Act of 1996. In support of his submissions, he placed reliance on following judgments: ***M/s Tamil Nadu Cements Corporation Limited vs. Micro and Small Enterprises Facilitation Council and Another, SLP (C) Diary No. 3776/2023***, ***Faze Three Exports Ltd vs. Pankaj Trading Co. and Others, 2004(2) Mh.L.J. 196***, ***M/s Sterkem Pharma Private Limited vs. Symbiosis Pharmaceuticals Private Limited and Others, CMPMO No. 274/2023 (Himachal Pradesh High Court)***, ***M/s ISC Projects Private Limited vs. Steel Authority of India Limited, O.M.P. (COMM)370/2021***, ***Silpi Industries and***

Others vs. Kerala State Road Transport Corporation and Another, (2021) 18 SCC 790 & ***Writ Petition No. 1603/2023***.

7. Learned Counsel for Respondent No. 2 opposed the entertainment of the Petition by submitting that the Petitioner has already exhausted efficacious remedy and all the issues sought to be raised in this Petition are specifically taken up in the challenge to the award passed by the Council. It is his submission that even if it is held that this Court has jurisdiction to entertain Writ Petition, question of entertaining Petition at this stage only for the reason that there is a mandatory provision of pre deposit of 75% of arbitral amount for entertainment of application under Section 34 of the Act of 1996, the remedy of writ cannot be permitted to be availed.

8. There cannot be any dispute with regard to the position of law that unless specifically barred by any law, the powers under Articles 226 and 227 of the Constitution of India enable the High Court to entertain Writ Petition cannot be restricted. There need not be any exception thereto in respect of

challenge to the Arbitral Award in a Writ Petition, which is per se illegal and non est. However, question arises now is as to whether it would be allowed to the Petitioner to take exception to the award passed by the Council only for the reason that there is mandate under Section 19 of the MSMED Act of deposit of 75% of the arbitral amount as a pre condition for entertainment of the challenge to the Arbitral Award.

9. The record indicates that the Petitioner has challenged the Arbitral Award passed by the Council on 11.12.2023 whereas the present Petition came to be filed on 09.01.2024. Application filed before the District Court under Section 34 of the Arbitration Act clearly indicates that all the issues now sought to be raised in this Petition are taken up for challenge to the Arbitral Award. Section 34 of the Act of 1996 provides that an Arbitral Award may be set aside by the Court if it is in contravention with the fundamental policy of Indian law or it is in conflict with the most basic notions of morality or justice. Similarly, where the Arbitral Award is in conflict with the public policy of India, the same can be taken exception to and

set aside under this provision. Similarly, under Section 34(2A), an Arbitral Award can be set aside by the Court if the Court finds that the award is vitiated by patent illegality appearing on the face of the award. 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. In fact, the Petitioner has challenged the award impugned before District Court by invoking the provisions of Section 34. Efficacious remedy thus is available for the Petitioner to challenge the said award and same has been already exhausted.

10. Now question arises as to whether it would be open for the Petitioner to claim that Petitioner would not press the Arbitral Application under Section 34 and be permitted to continue with the present Petition. Once it is held that the Petitioner has efficacious alternative remedy and the Petitioner has already initiated the proceedings under Section 34 before the District Court, only for the reason that there is mandatory provision of Section 19 of the Act of 2006, which requires the Petitioner to deposit 75% amount of

the arbitral award in the Court, the same cannot be allowed to become a ground for entertaining the present Petition.

11. In this regard, it is necessary to take into consideration the statement of objects and reason of the MSMED Act. The object of this enactment is to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises. Keeping in mind the said aim of the Act section 19 has been introduced to ensure the speedy recovery of the amount awarded to MSM enterprises. This provision is mandatory in nature. Thus, the Petition cannot be entertained to enable the Petitioner to circumvent the said mandatory provision of Section 19.

12. As a result of above discussion, though this Court is of the view that in appropriate case a Writ Petition challenge the award passed by the Council may be maintainable, however, in the facts of the case when the Petitioner has alternate efficacious remedy and it has already been availed by filing an application under Section 34 of the Act of 1996 and also in view of hidden agenda of the Petitioner to circumvent the

provision of Section 19 of the Act of 2006, this Petition is not entertained.

13. Since all issues sought to be raised are subject matter of application under Section 34 of the Arbitration Act before District Court, this Court does not find it appropriate to record any findings thereon.

14. In view of above discussion, Petition stands dismissed.

(R. M. JOSHI, J.)