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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

APPEAL NO. 119 OF 2024

Hindustan Petroleum Corporation
Limited

.. Appellant

Versus

Capital Metal Industries

.. Respondent

Mr. Zal Andhyarujina, Senior Advocate with Mr. Vijay Purohit, Ms. Ishani Khanwilkar, Mr. Pratik S. Jhaveri, Ms. Ishani Khanwilkar & Mr. Samkit Jain i/b P & A Law Offices, for Appellant.

Mr. Vinod Joshi with Ms. Shivani Chandolkar & Ms. Sudha Gond, for Respondent.

**CORAM: ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.**

DATE: 25th AUGUST, 2025

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JUDGMENT [Per Sandeep V. Marne, J.] :

1. This appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 (the Act) challenging the order dated 8th June, 2022 passed by the learned Single Judge of this Court dismissing Arbitration Petition (L) No. 8937 of 2022 filed by the appellant under Section 34 of the Act challenging the arbitral award of the Micro and Small Enterprises Facilitation Council (Facilitation Council).

2. Briefly stated facts of the case are that a tender notice was published by appellant - HPCL on 23rd December, 2015 for

supply of Seamless and Welded Pipes above 10" for its Vishakhapantam Refinery. Respondent was successful bidder and was awarded purchase order dated 15th March, 2016 under which the supply was to be completed within six months, i.e., upto 12th September, 2016. The contract apparently contemplated a Third-Party Inspection (TPI) before actual supply of the contractual material. Respondent had nominated M/s Projects Development India Ltd. (PDIL) as TPI agency to certify the quality of pipes under the purchase order. Respondent produced certificate dated 24th October, 2016 of PDIL in respect of inspection conducted between 21st October, 2016 to 24th October, 2016. The pipes were delivered on 28th October, 2016. The appellant, however, disputed the quality of the pipes supplied and addressed e-mail to the respondent calling for various documents, such as test certificate, guarantee certificate, TPI certificate etc. Some of the documents were submitted by the respondent on 7th November, 2016. Respondent was called to conduct fresh inspection in respect of supplied pipes through its TPI. A joint inspection was conducted by respondent and PDIL on 16th December, 2016 and by a letter dated 19th December, 2016 PDIL cancelled its earlier TPI certificate dated 24th October, 2016 stating that pipes inspected earlier were different than the one supplied. Appellant - HPCL refused to make payment in respect of supplied pipes.

3. Respondent approached the Facilitation Council and filed its claim bearing Reference Petition No. 136/2017 on 20th January, 2018. Appellant appeared in the proceeding and filed its defence statement on 2nd February, 2018 and disputed

the claim. By award dated 24th February, 2022, the Facilitation Council allowed Reference Petition No. 136/2017 and directed appellant – HPCL to pay the respondent an amount of Rs.29,11,396 along interest. The award dated 24th February, 2022 was challenged by the appellant by filing Arbitration Petition (L) No. 8937/2022 under Section 34 of the Act. By order dated 8th June, 2022, the learned Single Judge had proceeded to dismiss the petition filed by the appellant. Aggrieved by the order passed by the learned Single Judge on 8th June, 2022, the appellant has filed the present appeal under Section 37 of the Act.

4. Mr. Andhyarujina, the learned senior counsel appearing for the appellant would submit that the learned Single Judge has grossly erred in dismissing the appellant's challenge to the arbitral award under Section 34 of the Act. That the learned Single Judge has erroneously assumed that the appellant did not file statement of defence though the opening line of paragraph 7 of the order refers to filing of statement of defence by the appellant. That the impugned order is perverse as it ignores vital evidence produced by the appellant before the Facilitation Council. That PDIL's letter dated 19th December, 2016, which provides complete answer to the rejection of pipes by HPCL, has been brushed aside by the learned Single Judge by recording totally erroneous findings. That the finding of the learned Single Judge that letter dated 19th December, 2016 is not connected with the supply in question is perverse not only because the letter refers to the impugned supply but also because respondent never raised the plea of the said letter having no connection with the

supply in question. Additionally, the Facilitation Council did not record finding of the letter not having relevance to the supply in question. That the further finding that the letter dated 19th December, 2016 was not proved in evidence by examining competent officer of PDIL is clearly erroneous as the letter has been read in evidence by the Facilitation Council. Additionally, HPCL did express desire for examining PDIL's officer before the Facilitation Council. That the third reason for ignoring letter dated 19th December, 2016 of same being addressed to respondent and not to appellant is also erroneous as the person to whom the same is addressed is an irrelevant factor. That the learned Single Judge erred in not appreciating that the Facilitation Council did not record even a single reason for awarding the claim of the respondent. That despite noticing conduct of joint meeting with PDIL on 16th December, 2016, the Facilitation Council has not dealt with consequences arising out of letter dated 19th December, 2016.

5. Mr. Andhyarujina would further submit that the learned Single Judge ought to have appreciated that the respondent is a dishonest supplier who supplied different product than the one which were inspected by PDIL in October, 2016. That PDIL has clearly certified vide letter dated 16th December, 2016 that the inspected pipes in October, 2016 were electro-fusion seamed welded pipes whereas the pipes actually supplied had different specifications. That the supplied pipes were found to be painted with black colour to cover the pitting (rusting). That the test certificate of M/s Jindal Saw Limited was also found to be bogus. That the pipes actually supplied were found to be wrong and inferior pipes which led to cancellation

of TPI certificate dated 24th October, 2016. That the Facilitation Council ignored all this vital material which was a fit ground for the learned Single Judge to interfere in the award in exercise of jurisdiction under Section 34 of the Act. He would accordingly pray for setting aside the impugned order of the learned Single Judge as well as the award of the Facilitation Council.

6. The appeal is opposed by Mr. Joshi, the learned counsel appearing for the respondent. He would submit that the Facilitation Council and the learned Single Judge have concurrently ruled in favour of the respondent and there is no warrant for inference by this Court in exercise of jurisdiction under Section 37 of the Act. That the PDIL's letter dated 19th December, 2016 has rightly been ignored by the learned Single Judge. That the finding recorded in the said letter are totally irrelevant as the alleged inspection was conducted long after delivery of pipes which were lying in the premises of HPCL located near coastal area subjecting the pipes to the risk of getting rusted. That the condition of the pipes at the time of supply is relevant. That pipes were inspected between 21st to 24th October, 2016 and the same were delivered on 28th October, 2016. The so-called inspection conducted after more than one and half months cannot decide the quality of the supplied pipes. That the contract did not envisage inspection post delivery. That PDIL is government agency which had certified the quality of pipes and such certification was binding on the appellant - HPCL. That the learned Single Judge has rightly held that the letter dated 19th December, 2016 has no connection with the pipes delivered by the respondent. That

the learned Single Judge has rightly appreciated the object and intention of the Micro, Small and Medium Enterprises Development Act, 2006 (MSME Act) and that the respondent is a small-scale enterprise who was made to litigate over a small amount. Having accepted delivery of the pipes, HPCL cannot deny the responsibility of making payment therefor. That the pipes continue to remain in the custody of HPCL who has unjustly enriched itself by denying payment therefor to the respondent. That the jurisdiction of the appeal Court under Section 37 of the Act is in extremely narrow compass and even more circumscribe than the jurisdiction under Section 34 of the Act. He would pray for dismissal of the appeal.

7. Rival contentions of the parties now fall for our consideration.

8. Respondent's claim filed before the Facilitation Council for Rs.28,01,532/- was towards non-payment of price of pipes supplied to the appellant -HPCL under purchase order dated 15th March, 2016. The conditions of the purchase order envisage third party inspection and the supplier was required to submit material test certificate, original TPI certificate etc. Respondent nominated PDIL to conduct inspection and certification of the pipes which were kept ready for delivery at the premises of the respondent. PDIL apparently conducted inspection of the pipes during 21st October, 2016 to 24th October, 2016 and issued "Inspection Report/Certificate bearing No. 1500-005000023142-C dated 24th October, 2016. The report/certificate certified the pipes to be in order and remarked that the material could be released as per terms

and conditions of purchase order. Based on the inspection report/certificate dated 24th October, 2016, respondent proceeded to deliver the pipes to HPCL on 28th October, 2016. Right from the delivery, appellant started disputing the quality of pipes supplied by the respondent. On 4th November, 2016, respondent was called upon to produce various documents, such as test certificate, guarantee certificate, TPI certificate which were furnished by the respondent on 7th November, 2016. On 16th November, 2016, appellant communicated to the respondent that the appellant's inspecting team noticed pitting over large areas in respect of most of the pipes indicating that the pipes had suffered external corrosion. Respondent was called upon to depute its technical person for conduct of joint inspection. Respondent responded on the same day objecting to HPCL raising issue about quality of pipes. On 17th November, 2016, appellant sent photographs of pipes which were found to have corrosion and once again requested the respondent to depute its technical person for joint inspection. Thereafter, appellant HPCL repeatedly requested the respondent to depute its technical person to carry out joint inspection. Since respondent kept on referring to the test report of PDIL, HPCL finally wrote to PDIL on 7th December, 2016 calling upon it to depute its personnel to inspect the material. This is how finally PDIL's inspection team conducted joint inspection along with representatives of appellant and respondent on 16th December, 2016. Minutes of joint inspection of 16th December, 2016 were produced before the Facilitation Council.

9. Based on the findings recorded in joint inspection conducted on 16th December, 2016, PDIL issued letter dated 19th December, 2016 to the respondent, which reads thus:

"Ref: PBIS/4004004149/3221 Dated: 19.12.2016

To,
M/s Capital Metal Industries
28/30 Dr. Wilson Street,
5A Ground Floor, P.O. Box No. 3660,
V.P. Road, Mumbai-400004.

Subject: 16" Pipes supplied by you against M/s HPCL
P.O. No. 15001388-OS-46002/VSK Dated 15.03.2015

As per the request from M/s HPCL Visakh Refinery, we have made visit to site premises for inspection of the 16" pipes supplied by you against the subject P.O. Joint observations are given below.

1. The pipes are observed as Seamless pipes in-place of EFSW pipes, which were inspected by us, however the pipes are stenciled with A672 marking.
2. The pipes are found painted with black colour externally and up to 1-1.5 ft length internally at both ends, covering the pitting.
3. Almost all the pipes are found with wide spread pitting.
4. The T.C. submitted by you was referred to M/s Jindal Saw Ltd., for ascertaining its genuinity & they confirmed that the same T.C. was not issued by them.

On the above observations it is understood that after our inspection visit, the pipes at M/s HPCL site is different and supplied wrong & inferior pipes. Furthermore we want to clarify that our issued inspection certificate is in line with the EFSW pipes & not for the seamless pipes.

So the above IC issued by us, vide cert. no. 1500-5000023142C dated 24.10.2016 stands cancelled.

You are strictly instructed to clarify immediately, why the supplied pipes are different from the Inspected lot."

10. Thus, PDIL found the supplied pipes to be totally different than the ones which were inspected between 21st to 24th October, 2016. PDIL also noticed substantial pitting (corrosion) in respect of almost all the pipes. The test certificate submitted by respondent was also found to be ingenuine as M/s Jindal Saw Limited denied having issued the said certificate. PDIL accordingly proceeded to cancel its certificate No. 1500-5000023142-C dated 24th October, 2016.

11. The Facilitation Council took note of the joint inspection conducted on 16th December, 2016 as well as the minutes thereof which is clear from para 8 of the award which reads thus:

"8. As per joint meeting with HPCL and PDIL held on 16.12.2016, joint report & observations send (Point no.3) the pipes are observed to seamless pipes as against to specifications of A672 EFSW Pipes. Hence, PDIL rejected inspection certificate provided previously by them only."

12. Again, in para 3 of the award under heading "Conclusion", the Facilitation Council recorded as under:

"3. Respondent conducted joint meeting with PDIL held on 16.12.2016. As per joint report and observations, the pipes are seamless which was against the specifications of A672 EFSW Pipes. Hence, PDIL rejected inspection certificate which was provided previously by them only."

13. Thus, the Facilitation Council read into evidence the observations made by PDIL in joint inspection conducted on 16th December, 2016. The PDIL's letter dated 19th December, 2016 is premised on the observations made in joint inspection conducted on 16th December, 2016. The contents of minutes of joint inspection dated 16th December, 2016 are more or less similar to the contents of letter dated 19th December, 2016.

14. Despite the Facilitation Council taking note of the minutes of joint inspection dated 16th December, 2016 (and consequently of letter dated 19th December, 2016), the learned Single Judge has proceeded to ignore the letter dated 19th December, 2016 for following three reasons:

- (i) Letter is not connected to or relevant for the supply in question and appellant's inability to show that the letter was issued in the context of the purchase order.
- (ii) Letter dated 19th December, 2016 was not proved by examining competent officer from PDIL.
- (iii) Letter dated 19th December, 2016 was addressed by PDIL to respondent and not to appellant.

15. In our view all the three reasons recorded by the learned Single Judge for not taking into consideration letter dated 19th December, 2016 are factually incorrect and hence findings relating thereto are perverse. The letter dated 19th December, 2016 specifically refers to the inspection report/certificate No. 1500-5000023142-C dated 24th October, 2016. The same number is reflected on PDIL's inspection report/certificate submitted by the respondent while making the supply in

question. Secondly and more important that it was neither the case of the respondent nor any finding was recorded by the Facilitation Council that letter dated 19th December, 2016 has no connection with the supply in question. Though respondent and Facilitation Council never disputed the position that the joint inspection was conducted on 16th December, 2016 in relation to the pipes delivered by respondent and the letter dated 19th December, 2016 was also *qua* the said supply, the learned Single Judge has held that there is no connection between the said letter and supply in question. The finding is clearly perverse.

16. The second reason for ignoring letter dated 19th December, 2016 of appellant not proving the same by leading evidence of PDIL official is again erroneous as the findings of the joint inspection have been taken note of by the Facilitation Council in its award and, therefore, the material considered by the Tribunal could not have been ignored by the learned Single Judge citing the reason of failure to prove the same by leading evidence.

17. The third reason of the letter dated 19th December, 2016 being addressed to the respondent and not to appellant could not have been a ground to ignore the said letter. The joint inspection was conducted at the instance of appellant - HPCL. The representative of appellant - HPCL was present during the joint inspection. Therefore, mere addressing of the letter dated 19th December, 2016 (copy of which admittedly received by appellant - HPCL) was inconsequential.

18. In our view, therefore, the learned Single Judge has erred in ignoring the letter dated 19th December, 2016 and in

holding that the arbitral tribunal did not have the material to come to a different conclusion. The letter dated 19th December, 2016 clearly proves that the respondent delivered different pipes than the one inspected by PDIL during 21st to 24th October, 2016. Though the arbitral tribunal considered the contents of joint inspection report dated 16th December, 2016, it failed to record any finding about observations in the said report. After recording contents of joint inspection report dated 16th December, 2016, the Facilitation Council straightway proceeded to award the claim by recording that the terms and conditions of the purchase order envisaged making of 75% payment within seven days and remaining 25% payment within fifteen days. The findings recorded by the Facilitation Council are extracted below for facility of reference:

- "1. Petitioner Capital Metal Industries has delivered 16" STD EFSW Pipes ASTM A672 GR B60 CL 12 B E as per Purchase Order no. 15001388-OS-46002/VSK and as per terms and conditions mentioned in the Purchase Order along with pre inspection certificate from PDIL.
2. Petitioner has followed up the Respondent via mails and requested to release the payment.
3. Respondent conducted joint meeting with PDIL. held on 16.12.2016. As per joint report and observations, the pipes are seamless which was against the specification of A 672 EFSW Pipes. Hence PDIL, rejected inspection certificate which was provided previously by them only.
4. The case is accepted on the ground that as per Terms and conditions of Purchase order issued by HPCL the payment should be done 75% within 07 days after receipt of materials and original documents and remaining 25% within 15 days.

The Petitioner has supplied material as per terms and Conditions of Purchase Order along with Test Certificate and documents.”

19. Thus, the arbitral tribunal excluded relevant material while delivering the award which was fit ground for the learned Single Judge to interfere in the same.

20. The contention sought to be raised on behalf of the respondent that the pipes were inspected after passage of one and half months by which time the corrosion had occurred does not appeal to us. This was not the case of respondent before the Facilitation Council. The inspection report is not rejected by the Facilitation Council on the ground of delay in conduct of inspection. No finding of fact is recorded after appreciating any evidence produced by the respondent that the corrosion (pitting) observed in respect of the pipes on 16th December, 2016 was result of the pipes lying in the Refinery for more than one and half months. Even the learned Single Judge has not recorded any such finding as no such case was pleaded before him. It is another case that the respondent itself was responsible for delay in conduct of joint inspection as it initially resisted conduct of such joint inspection and later was left with no alternative but to participate in joint inspection when PDIL showed willingness to conduct the same. We are, therefore, not impressed by the submission made on behalf of the respondent about corrosion being caused on account of pipes lying in the Refinery located near coastal area for one and half months.

21. Considering the overall conspectus of the case, we are of the view that the appellant had made out a perfect case for setting aside the award of Facilitation Council under Section 34 of the Act as the effect of joint inspection dated 16th December, 2016 and of letter dated 19th December, 2016 was ignored while delivering the award. Non-consideration of the relevant material being a valid ground under Section 34 of the Act, the learned Single Judge ought to have set aside the award after taking note of the fact that the letter dated 19th December, 2016 proved supply of different pipes than the one inspected by PDIL earlier.

22. The impugned order of the learned Single Judge as well as the award of the Facilitation Council are thus indefensible and are liable to be set aside. The appeal accordingly succeeds and we proceed to pass the following order:

(i) Order dated 8th June, 2022 passed by the learned Single Judge in Arbitration Petition (L) No. 8937 of 2022 is set aside.

(ii) Award dated 24th February, 2022 passed by the Facilitation Council is also set aside.

23. The appeal is allowed in above terms. Considering the facts and circumstances of the case, there shall be no order as to costs.

(SANDEEP V. MARNE, J.)

(CHIEF JUSTICE)