IN THE HIGH COURT OF JHARKHAND, RANCHI
W.P. (C.) No. 6308 of 2012

Steel Authority of India Limited, Bokaro Steel Plant, Ispat Bhawan, Bokaro Steel Plant, PO and PS – Bokaro Steel City, District – Bokaro, 827001, represented by the Deputy General Manager, PS Dviwedi, S/o Late Pandit Deoki Nandan Shastri, Bokaro Steel Plant, BS City, R/o Bokaro Steel City, PO and PS – Bokaro Steel City, District - Bokaro **.... Petitioner**

-- Versus --

1. The State of Jharkhand
2. The Director of Industries-cum-Chairman Jharkhand Micro Small and Medium Enterprises Facilitation Council, Jharkhand, Ranchi
3. Ratnawali Industries, having its registered office at Plot No.1/A – 60/2, Bokaro Industrial Area, Bokaro Steel City, District – Bokaro, 827014 (Jharkhand), through its Proprietor Prity Singh, daughter of Late Nathuni Singh, resident of Plot No.1/A – 60/2, Bokaro Industrial Area, Bokaro Steel City, PO and PS – Balidih, District - Bokaro **.... Respondents**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner	:-	Mr. Shresth Gautam, Advocate
For the State	:-	Mr. Mr. Shishir Suman, Advocate
For respondent No.3	:-	Mr. Rahul Lamba, Advocate
	:-	Mr. Anish Kamal, Advocate
	:-	Ms. Kanu Priya, Advocate

---

*15/**01.09.2026*** Heard learned counsel appearing for the petitioner, learned counsel appearing for the State and learned counsel appearing for the respondent No.3.

2. This petition has been filed under Article 226 of the Constitution of India for setting aside the award dated 22.03.2012

passed by Jharkhand Micro, Small and Medium Enterprises Facilitation Council in Case No. JHMSEFC – 04/2011.

3. Mr. Shresth Gautam, learned counsel appearing for the petitioner submits that the petitioner is a Government company registered under Section 617 of the Indian Companies Act, 1956 and Bokaro Steel Plant is its unit at Bokaro Steel City.

4. Mr. Gautam, learned counsel further submits that respondent No.3 filed an application before the Chairman, Jharkhand Micro, Small and Medium Enterprises Facilitation Council under Section 18 of the Jharkhand Micro, Small and Medium Enterprises Development Act, 2006 (here-in-after referred to Act) for recovery of the old standing dues after inordinate and unreasonable delay of more than 8 years and the said was numbered as JHMSEFC – 04/11 contained in Annexure-1 of the writ petition. He then submits that notices have been issued by the authority and the petitioner has appeared and disputed the claim of the applicant by stating that the order was passed in support of 4 no. of pump shafts and pump shaft was supplied on 19.02.98. He next submits that all the 4 nos. of pump shaft were found defective shaft and were returned on 25.09.98. He also submits that 4 pumps were lifted by the company/respondent on 24.04.98 for rectification and further on 16.03.99 and 06.08.99 two nos. of pumps shaft were replaced. He also submits that thereafter on 20.05.2002 two nos. of pump shaft were settled by the parties and upon performance it

was found that one pump shaft was still defective and therefore the payment of one no. of pump was withheld. He also contended that the said application was time barred and respondents were in total default and committed breach of agreement and therefore was not liable for any payment. He next submits that the petitioner has not accepted the claim of respondent No.3 in terms of written statement filed before the authority contained in Annexure-2 of the writ petition. He next submits that respondent No.2 without following the mandatory provision of Section 18(3) of the said Act passed the impugned order dated 22.03.2012 which is wholly without jurisdiction. He refers to Section 21 of the said Act and submits that the said section provides the composition of Micro, Small and Medium Enterprises Facilitation Council, however, the award has been passed by only one member of the Council *i.e.* by the Chairman. He next submits that this aspect is already settled in the case of ***Jharkhand Bijli Vitran Nigam Limited vs. Vexcel Upkram Private Limited reported in 2022 SCC Online Jhar 1459*** wherein at paragraph No.31 it has been held as under :-

> ***31.*** *Thus, it is evident that the provision of Section 21 of the Act, 2006 provides composition of the Council cannot be less than three or more than five members and if the Council has been constituted of members having less than three or more than five, it will be said to be contrary to the statutory provision and the thing which is contrary to the statutory provision will be said to suffer from a jurisdictional error.*

5. He next submits that this aspect has been further considered by Division Bench in ***Electrosteel Steels Limited vs.***

State of Jharkhand and Others in W.P.(C.) No.1159 of 2017

wherein at paragraph No.24 it has been held as under :-

> ***24.*** *Having heard the learned counsels for the parties and upon going through the record, we find that Section 21 of the MSMED Act is clear and unambiguous in its terms, when it says that the Micro and Small Enterprises Facilitation Council shall consist of not less than three but not more than five members, to be appointed amongst the categories detailed under that section. There is no scope of any inclusion of more members in the Council as per Section 21 of the Act. Rule 4 of the 2007 Rules was in clear contravention of Section 21 of the MSMED Act, when it provided for the constitution of the Council with not less than five and not more than nine members in the Council, and in fact, pursuant to the said Rule, the Council was even constituted by the State Government with nine members. Clearly the constitution of the said Council was in accordance with Rule 4 of the 2007 Rules, whereas in clear contravention of Section 21 of the MSMED Act. In case, the petitioner is forced to challenge the impugned Award before the Commercial Court, under Section 34 of the Arbitration Act, the only answer that is likely to come from the Commercial Court is that the constitution of the Council was in accordance with the Rules, which was binding on the Commercial Court, and as there is no scope for the Commercial Court to entertain the appeal on the ground that Rule 4 of 2007 Rules was ultra-vires Section 21 of the Act. Accordingly, no effective and efficacious remedy was available to the petitioner before the Commercial Court. Indeed, there is no alternative remedy to the petitioner to challenge the notices issued by the Council, as no appeal is provided against the notice issued by the Council, either under the MSMED Act, or under Section 37 of the Arbitration Act. In that view of the matter, we are of the considered view that the arguments of the learned Additional Advocate General and the learned counsel for the private respondent that it was open for the petitioner to challenge the impugned Award before the Commercial Court, though such remedy is available, but it was not effective and efficacious in the sense that the Commercial Court could not look into the virus of the Rules.*

6. Learned counsel appearing for the State submits that dispute was there and authorities have passed the award, however,

he is admitting the law pointed out with regard to the composition of the said facilitation.

7. Learned counsel appearing for the respondent No.3 submits that disputes are there and that has already been decided and in view of the settled law with regard to the composition of the said facilitation and he is also not disputing the argument of learned counsel for the petitioner.

8. In view of the above and considering that only one member has passed the award which is against the mandate of Section 21 of the act, the impugned order cannot sustain and as such the same is hereby set aside.

9. The matter is remitted back to the respondent No.2 to decide the said issue afresh after providing opportunity to all the sides.

10. All the issues are kept open to be decided afresh by MSME Council.

11. The parties appearing herein shall cooperate for disposal of the case expeditiously.

12. This writ petition is allowed in above terms and disposed of.

(Sanjay Kumar Dwivedi, J.)

Dated 01.09.2026
Sangam/