



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7768 OF 2025

M/s. GG Construction Company,
Through it's Authorized Person,
Mr. Madhukar Shamrao Shirole, Age: 42 Years
Having Office at: Gargi Visawa Nagar,
B/h. Taj Patil Hotel, ITI Corner,
Nr. Ruby Hospital, Nanded- 431602
Maharashtra.

PETITIONER

VERSUS

1. M/s Engg. Susmita Punjabrao Suryawanshi.
Through Its Proprietor
Smt. Susmita Punjabrao Suryawanshi,
Having Office at: Plot no.32/B.H. No.1-19-788
Vithai Niwas, Baba Nagar, Nr. Siddhivinayak Mandir
Parisar Nanded – 431601 Maharashtra
2. Micro and Small Enterprises Facilitation Council,
Chh. Sambhajinagar, Joint Director of Industries.
2nd Floor. Vikas Bhavan, Adalat Road,
Near Baba petrol Pump,
Chh. Sambhajinagar – 431001, Maharashtra

... RESPONDENTS

Mr. Rahul R. Totala & Siddhant Somani. Adv. For Petitioner.
Mr. P.R. Katneshwarkar , Sr. Adv i/by Ms. Khushi K. Varma,
Advocate for respondent no.1'
Respondent no.2-served.

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CORAM	S. G. CHAPALGAONKAR, J.
Dated	2nd April, 2026.

JUDGMENT :-

1. Rule. Rule made returnable forthwith. With consent of parties matter is taken up for final hearing at admission stage.

2. The petitioner impugns the award dated 13.6.2025 passed by the Micro Small Enterprises and Facilitation Council, Aurangabad in case no.ROABAD/MSEFC/Award/2025/118 under section 15, 16 and 17 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short hereinafter called as MSMED Act).

3. Respondent no.1 - Micro, Medium and Small Enterprises (for short hereinafter called as MSME) approached Micro and Small Enterprises Facilitation Council under section 17 of the Micro, Small and Medium Enterprises Act, 2006 for recovery of the dues from the petitioner. It is contended that the petitioner availed services of the respondent no.1 as a sub-contractor in terms of registered agreement for execution of the contract dated 1.8.2019. According to the respondent no.1, petitioner failed to release the amount of Rs.2,54,39,416/- against invoices. Petitioner was served with the notice of proceeding. On 22.10.2024 respondent was directed to serve copy of the petition filed before the Council through E-mail. On 26.11.2024 final notice was served upon the petitioner. On 18.1.2025 the proceeding was closed for ex-parte award and final award came to be passed on 13.6.2025.

4. Mr. Totla, learned advocate appearing for the petitioner would submit that the impugned award is ex-parte and passed without providing sufficient opportunity to the petitioner. The nature of the contract between the petitioner and respondent no.1 would show that it was a contract for supply of goods or rendering services, which are covered within the ambit of MSMED Act, 2006. It was undisputedly a work contract for construction/improvement of road. Therefore, the proceeding before the Council was without jurisdiction. Mr. Totla, would further submit that the impugned award is not signed by all Coram members of the Arbitral Tribunal. Signature of Mr. Satish Bhakkad, Chairman Laghu Udyog Bharti is absent. There is no explanation for omission of his signature. Thus, the award is violative of section 31 (1) and (2) of Arbitration and Conciliation Act, 1996. Mr. Totla would further submit that the respondent no.2 Council passed the award without conducting conciliation and recording failure as mandated under section 18 (2) and (4) of the MSMED, Act. Hence, the procedure and manner in which proceeding was conducted was without jurisdiction and exfacie illegal.

5. In support of his contentions, he relies upon the observations of **Orissa High Court in case of Indian Oil Corporation Vs. Adarsh Nobel Corporation Limited** passed in Writ Petition no. civil 20210/2025 dated 10.10.2025. The division Bench Judgment of this Court in case of **Sterling and Wilson Pvt Limited and Another Vs. Union of India** represented by the Ministry of Micro, Small and Medium Enterprises and Others reported in AIR 2017 Bom 242. Judgment of this Court in case of **National Textile Corporation Limited Vs. Elixir Engineering Pvt. Ltd.**, reported in (2023) 2 Bom CR 345, judgment of the Hon'ble Supreme Court of India in case of **Jharkhand Urja Vikas Nigam Ltd. vs. State of Rajasthan and Ors.** reported in (2021) 19 SCC 206. Judgment of Supreme Court in case of **Dakshin Haryana Bijli Vitran Nigam Ltd. Vs. Navigant Technologies Pvt. Ltd.** reported in (2021) 7 SCC 653, judgment of learned Single Judge of this Court in case of **P. L. Adke Vs. Vardha Municipal Corporation/Council** reported in (2021) SCC online Bom 13986.

6. Per contra, Mr. Katneshwarkar, learned Senior Counsel appearing for respondent no. 1 submits that section 19 of the MSMED Act provides remedy to raise challenge to the award passed by the Council in Reference under section 18.

Considering object and scope of the MSMED Act, the petitioner has no right to invoke writ jurisdiction of this Court by avoiding alternate remedy. He would submit that objection to the award which are sought to be raised by way of present petition are technical in nature and does not render the award invalid. All such contentions can be raised by filing application under section 34 of the Arbitration Act after making statutory deposit contemplated under section 19.

7. In support of his contentions, he relies upon observations of this Court in case of **M/s. Duro Shox Pvt. Ltd., Vs. State of Maharashtra and Ors. reported in 2024 (6) Bom CR 568** and judgment of the Hon'ble Supreme Court in case of **India Glycols Limited and Another Vs. Micro and Small Enterprises Facilitation Council, MEDCHL- Malkajgiri and others reported in (2025) 5 SCC 780**.

8. Having considered submissions advanced by learned advocates appearing for the respective parties, this Court finds that undisputedly, the petitioner and respondent no.1 entered into agreement for execution of the work contract. The petitioner had secured a contract from Public Works Division for improvement of Kuntur Kumbhargaoon Kundalwadi Nagni to

State Border road MDR-85 Km 93/600, Tq. Biloli, Dist. Nanded and improvement to State Highway 251 to Harnala Khaparala Arali Sawali Biloli Laghul Sagroli to MSH- 16 road MDR -46 Km 18/00 to 21/00 Tq. Biloli, Dist. Nanded. The petitioner entered into registered agreement and appointed respondent no.1 as sub-contractor for execution of the work secured under contract with PWD. Respondent no.1 executed the work under said agreement and raised invoices with petitioner. On failure of the petitioner to release the amount as per invoice, he approached the Council under MSMED Act, 2006 for recovery of the outstanding unpaid amount of Rs.2,54,39,416/- plus interest. The respondent no.2 council passed impugned award directing the petitioner to pay principal amount as claimed alongwith interest.

9. Certified copy of the Award dated 13.6.2025 indicates that the award is passed by the Tribunal consisting of five members. Signature of one of the Member namely Satish Bhakkad is missing. No reason is discernible from award or otherwise explaining the absence of signature of member. Section 31 of the Arbitration and Conciliation Act, 1996

prescribes the form and content of Arbitral award. Subsection (1) and (2) and (3) of section 31 reads thus :-

31. Form and contents of arbitral award.—

(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(3) The arbitral award shall state the reasons upon which it is based, unless— (a) the parties have agreed that no reasons are to be given, or (b) the award is an arbitral award on agreed terms under section 30.

10. In case of **Dakshin Haryana Bijli Vitaran Nigam (supra)** the Hon'ble Supreme Court observed in paragraph no.26 as under :-

“26. Section 31 (1) is couched in mandatory terms, and provides that an arbitral award shall be made in writing and signed by all the members of the Arbitral Tribunal. If the Arbitral Tribunal comprises of more than one arbitrators the award is made when the arbitrators acting together finally express their decision in writing, and is authenticated by their signatures. An award takes legal effect only after it is signed by the arbitrators, which gives it authentication. There can be no finality of the award, except after it is signed since signing of the award gives legal effect and validity to it. The making and delivery of the award are different stages of an arbitration proceeding. An award is made when it is authenticated by the person who makes it. The statute makes it obligatory for each of the members of the Tribunal to sign the award, to make it a valid award. The usage of the term “shall” makes it a mandatory requirement. It is not merely a ministerial act, or an empty formality which can be dispensed with.”

11. Similarly, the High Court of Delhi in case of **M/s ISC Projects Private Limited Vs. Steel Authority of India Limited**, after considering various judgments in the issue laid down following basic principles. Paragraph no.31 reads thus :-

31. From the aforesaid judgments, the following basic principles, relevant to the adjudication of the present case, emerge:

“I. It is the award of the majority alone that constitutes an arbitral award; the opinion of a dissenting arbitrator is not an "award" at all.

II. Signatures of all members of the arbitral tribunal should be available on the award. The signing of an award is not a ministerial act, but a substantive requirement.

III. If the signature of any member of the tribunal is omitted, the reasons should be stated. However, the reasons can be supplied separately and subsequently.”

12. In light of the aforesaid exposition of law, this Court finds that the award which is not signed by one of the member of Arbitral Tribunal and where no reasons are assigned or supplied for such omission cannot be termed as valid award in terms of section 31 of the Arbitration and Conciliation Act.

13. The second contention raised by petitioner that the dispute based on work contract cannot be entertained by the council. The Division Bench of this Court in case of **Sterling**

and Wilson Pvt Limited (supra) observed in paragraph nos.42 and 43 as under :-

42. The provisions of Section 11 of the Act and clause 3 of the Policy envisage procurement of “goods and services” produced and provided by MSEs. The Provisions of the Act and the Policy and therefore applicable to procurement of “goods and services” produced and provided by MSEs. Answer to FAQ No. 18 also makes it abundantly clear that the policy is meant for procurement of only goods produced and services rendered by MSEs. However, traders are excluded from purview of Public Procurement Policy.

43. The provisions of the Act would therefore not be applicable to work contracts, which are essentially contracts of composite nature involving supply of goods as well as labour/services etc. Similar view has been taken by Delhi High Court in *Shree Gee Enterprises* (supra) wherein it has been held that the policy is not applicable to work contracts simplicitor and that it is only meant for goods produced and services rendered by MSEs.

14. In case of **P. L. Adake Vs. Wardha Municipal Corporation** this Court observed that:-

“one major stumbling block that the appellant faced is on the nature of the contract. While the appellants contend that they are suppliers and the respondents are buyers, considering the terms of the contract, I am of the view that the contract to be performed by the appellant is clearly a Works Contract. Multiple decisions have come to the common conclusion that a

Works Contract is not amenable to the provisions of the MSMED Act, 2006”.

15. In case of **Kone Elevator India Private Limited Vs. State of Tamil Nadu reported in (2014) 7 SCC 1** it is observed that:

(i) the work contract is an indivisible contract but, by legal fiction, is divided into two parts one for sale of goods, and the other for supply of labour and services;

(ii) the concept of “dominant nature test” or, for that matter, the “degree of intention test” or “overwhelming component test” for treating a contract as a works contract is not applicable;

(iii) the term “works contract” as used in clause (29-A) of Article 366 of the Constitution takes in its sweep all genre of works contract and is not to be narrowly construed to cover one species of contract to provide for labour and service alone; and

(iv) once the characteristics of works contract are met with in a contract entered into between the parties, any additional obligation incorporated in the contract would not change the nature of the contract.

16. The aforesaid exposition of law prima facie shows that the work contract would not fall within the ambit and scope of the MSMED Act, 2006 whereby the dispute between parties for recovery of the amount due towards goods supplied or services rendered can be referred to MSME Council under section 18 of the Act. However, it is for the council to rule upon nature of contract between the parties and decide whether the dispute in question is arbitrable by council within the ambit and scope of

MSMED Act, 2006. Looking to the impugned award, it is not discernible that the Council has delve into the aforesaid aspect or render findings on nature of contract before assuming its jurisdiction under MSMED Act, 2006.

17. Third contention raised by Mr. Totla is based on the procedure contemplated under section 18 of the MSMED Act, 2006. The Award is objected on the ground that petitioner was served with the notice under section 18(3) of the Act without following mandate under section 18(2) of the Act. According to Mr. Totla, without following mandate of conciliation and recording failure thereof under section 18(2), the Arbitration Award cannot be passed.

18. In case of **Jharkhand Urja Vikas Nigam Limited Vs. State of Rajasthan & Ors.** Supreme Court observed that from a reading of section 18(2) and 18(3) of the MSMED Act, 2006, it is clear that the council is obliged to conduct conciliation for which the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 would apply, as if the conciliation was initiated under Part III of the said Act. Under section 18(3), when conciliation fails and stands terminated, the dispute between the parties can be resolved by arbitration. The

Council is empowered either to take up arbitration on its own or to refer the arbitration proceedings to any institution as specified in the said section. It is open to the council to arbitrate and pass an award, after following the procedure under the relevant provisions of the Arbitration and Conciliation Act, 1996, particularly Sections 20, 23, 24 and 25.

19. In the present case, it can be observed that there is nothing to indicate that conciliation proceeding was undertaken before the matter was taken for arbitration. The petitioner was given a notice of proceeding by the registered post. However, it was returned with the remark “refused” and finally ex-parte award is passed on 13.6.2025. The record does not indicate that there is formal stipulation in the roznama that conciliation is failed due to absence of the petitioner, hence, arbitration proceeding is taken up. The petitioner ought to have given first notice for arbitration on failure of the conciliation. It is true that when party is served upon a notice of a council and fails to participate in proceeding, the Council has no option than to proceed ex-parte against him. However, in present case fact remains that, Council did not initiate arbitration proceeding in accordance with relevant provisions of the Arbitration and Conciliation Act, 1996. In this backdrop

this Court finds that the order impugned cannot be termed as award, firstly, for want of signature of one of the Member of the Tribunal and, secondly, non-observance of procedure as contemplated under section 18(2) and 18 (3) of the Act.

20. Mr. Katneshwarkar, learned senior advocate appearing for the respondent raised objection to the maintainability of the writ petition in wake of the remedy under section 19 of the MSMED Act, 2006. However, it can be observed that when the impugned award is nonest being contrary to mandatory provisions under MSMED Act, 2006, as well as the Arbitration and Conciliation Act, 1996, it cannot be termed as Arbitral award in the eye of law. Hence, when the order impugned is without recourse to the mandatory provisions of the Special Act and in utter regard to the provisions of Arbitration and Conciliation Act, 1996, this Court finds that Constitutional Remedy to access writ court cannot be foreclosed. Availability of alternate remedy is not an omnibus rule of exclusion of the writ jurisdiction, but a principle applied by the High Court as a form of judicial restraint and refrain in exercising the jurisdiction. The powers to issue prerogative writs under Article 226 of the Constitution of India cannot be limited or

curtailed by any provisions of restrictions under any statute. It is well settled that where an order in a proceeding is without jurisdiction or in violation of principles of natural justice, it is open for the writ court to invoke constitutional powers. This Court finds that looking to the nature of controversy and nature of alternate remedy, which is onerous and burden-sum in character requiring pre-deposit of 75% of the amount, it is imperative to invoke writ jurisdiction in peculiar facts and circumstances of this case.

21. In result, following order is passed.

O R D E R

- i. Writ Petition is **allowed** by setting aside the impugned Award dated 13.6.2025 passed by respondent no.2-Micro and Small Enterprises Facilitation Council, Ch. Sambhajinagar.
- ii. Matter is relegated back to respondent no.2/Council to decide afresh.
- iii. The respondent no.2 shall first follow the procedure as contemplated under section 18(2) and (4) of the MSMED Act, 2006.
- iv. All contentions are kept open to be decided by the Council.
- v. Parties to appear before the Council on **16.4.2026**.

vi. The Council shall endeavour to decide the proceeding within a period of three (3) months from today.

vii. Writ Petition stands **disposed of**.

Viii. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
Judge

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aaa/-f.