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WP-46131-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

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HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 5th OF DECEMBER, 2025WRIT PETITION No. 46131 of 2025*N.T.P.C LIMITED**Versus**MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL
BHOPAL AND OTHERS*

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Appearance:

*Shri Brien D'Silva - Senior Advocate with Shri Rajiv Chandra
Shrivastava and Shri Abhishek Dilraj - Advocates for the petitioner.*

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ORDER

Per. Justice Vivek Rusia

The petitioner-Company has filed this present petition, being aggrieved by the order dated 15.09.2025 (Annexure P/3), whereby the Commercial Court, Bhopal, has dismissed the application under Section 19 of the MSMED Act, 2006 due to non-fulfilment of the precondition of depositing 75% of the awarded amount.

2. The petitioner-Company is a Government of India undertaking and is registered as a Company under the provisions of the Companies Act, 1956. It owns an NTPC-Lara Super Thermal Power Project. The petitioner-Company issued a work order dated 30.07.2013 bearing No.5500013834 to the respondent No.2 for the construction of a pre-engineered building



structure of CISF Barracks at NTPC Lara STPP. During the work, the total amount of Rs.1,76,84,237/- was paid, and thereafter, the final payment of Rs.18,31,440/- was released to the respondent No.2. By communication dated 25.10.2016, the contract was closed.

3. The respondent No.3 approached the Facilitation Council established under the MSMED Act, 2006. The petitioner-Company opposed the said application and also raised the issue of maintainability of the application on the ground of limitation. Vide order dated 23.05.2023, the Facilitation Council, MSME passed an order under Section 18(3) of the Act, 2006 directing the petitioner-Company to pay the amount of Rs.61,63,634/- along with interest of Rs.2,83,26,727/-, which calculates in total Rs.3,45,10,361/-.

4. Being aggrieved by the aforesaid order, the petitioner-Company preferred an appeal along with an application under Section 19 of the MSMED Act, 2006, before the Civil Court, Bhopal (M.P.) without deposit of 75% of the awarded amount. Vide order dated 15.09.2025, the learned Commercial Court has dismissed the application as the petitioner-Company was not taking any interest in depositing the statutory amount of Rs.75,000/-. Hence, this petition is before this Court.

5. Learned counsel for the petitioner-Company has argued on various points about the maintainability of the application before the Facilitation Council as barred by limitation. The business of construction and the nature of the work carried out by the respondent do not come within the scope of the MSMED Act, 2006, etc. All these grounds are liable to be considered by



the Commercial Court. While deciding the application under Section 19 of the MSMED Act, 2006, there is a statutory requirement of pre-condition of depositing 75% of the awarded amount, then only the application under Section 9 of the MSMED Act, 2006 can be considered. In a catena of cases, the Apex Court has considered the appeal as mandatory and declined to entertain the writ petition.

6. In a recent judgment passed by the Apex Court in Civil Appeal No.7491/2023 in the case of *M/S India Glycols Limited and Another Vs. Micro and Small Enterprises Facilitation Council, Medchal - Malkajgiri and Others* [(2025) 5 SCC 780], para-9, 10, 11 and 12 are reproduced below:-

9. In terms of Section 19, an application for setting aside an award of the Facilitation Council cannot be entertained by any court unless the appellant has deposited seventy-five per cent of the amount in terms of the award. In view of the provisions of Section 18(4), where the Facilitation Council proceeds to arbitrate upon a dispute, the provisions of the 1996 Act are to apply to the dispute as if it is in pursuance of an arbitration agreement under sub-section (1) of Section 7 of that Act. Hence, the remedy which is provided under Section 34 of the 1996 Act would govern an award of the Facilitation Council.

10. However, there is a super added condition which is imposed by Section 19 of the MSMED Act, 2006 to the effect that an application for setting aside an award can be entertained only upon the appellant depositing with the Council seventy-five per cent of the amount in terms of the award. Section 19 has been introduced as a measure of security for enterprises for whom a special provision is made in the MSMED Act by Parliament. In view of the provisions of Section 18(4), the appellant had a remedy under Section 34 of the 1996 Act to challenge the award which it failed



to pursue.

11. In the judgment of this Court in Gujarat State Civil Supplies Corpn. Ltd. Vs. Mahakali Foods (P) Ltd., (2023) 6 SCC 401: (2023) 3 SCC (Civ) 7, a two-Judge Bench of the Court has observed, in the course of drawing its conclusions, that: (SCC p. 433, para 52)

"52.

52.4. The proceedings before the Facilitation Council/institute/centre acting as an arbitrator/Arbitral Tribunal under Section 18(3) of the MSMED Act, 2006 would be governed by the Arbitration Act, 1996."

12. The appellant failed to avail of the remedy under Section 34. If it were to do so, it would have been required to deposit seventy-five per cent of the decretal amount. This obligation under the statute was sought to be obviated by taking recourse to the jurisdiction under Articles 226/227 of the Constitution. This was clearly impermissible.

7. In view of the above, the present Writ Petition is devoid of merit and substance, hence **dismissed**.

(VIVEK RUSIA)
JUDGE

(PRADEEP MITTAL)
JUDGE

Shruti