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WA-1997-2024

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&amp;

HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 5<sup>th</sup> OF MARCH, 2026WRIT APPEAL No. 1997 of 2024*M/S SHRI CHAIN PERFUMERY WORKS**Versus**UNION OF INDIA AND OTHERS*

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Appearance:

*Shri Amit Sahani - Advocate for the appellant.*

*Shri Sunil Kumar Jain - Additional Solicitor General (through video conferencing) with Ms. Preeti Singh - Advocate for the respondent No.1/UOI.*

*Shri Piyush Jain - Government Advocate for the respondent No.2/State.*

*Shri Alabhya Bajpai - Advocate and Shri Bipul Singh Yadav - Advocate for the respondent No.4.*

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ORDER

*Per. Justice Vivek Rusia*

The appellant/petitioner has filed this writ appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, being aggrieved by order dated 14.08.2024, whereby the Writ Petition No.21177/2024 has been dismissed as not maintainable with liberty to avail the remedy under Section 34 of the Arbitration and



Conciliation Act, 1996.

Facts of the case, in short, are as under:

2. The respondent No.3, being a Micro and Small Enterprises Facilitation Council (hereinafter referred to as "MSEF Council) to claim pending amount of Rs.51,54,584/- with interest to the tune of Rs.14,63,656/- in accordance with Section 16 of the Micro, Small and Medium Enterprises Development Act, 2006 (in short "MSMED Act"), issued notice dated 21.11.2022 to the present appellant and same was duly served calling upon to submit a reply within 15 days. The appellant/petitioner approached this Court by way of W.P. No.28874/2022, challenging the aforesaid notice that no opportunity of conciliation as well as reply, has been granted. Vide order dated 20.12.2022, the Writ Court disposed of the writ petition with the direction to the petitioner to file a reply within 7 days, failing which, it will be deemed that the petitioner is not interested in conciliation, then the authority will be free to proceed with the arbitration in accordance with law.

Copy of the order is reproduced below:

*"Petitioner's basic objection to the notice dated 21/11/2022 is that in absence of filing reply consequences of passing ex-parte award and then making recovery of dues arrears of land revenue has been made which is illegal and contrary to the provisions contained in Sections 76 and 80 of the Arbitration and Conciliation Act, 1996.*

*To this extent, notice, prima facie, appears to be illegal but still it was duty of the petitioner to have filed reply pointing out the illegalities in the notice to the notice of the authorities. Petitioner could not extend time by approaching this Court in the name of one of the clauses of the notice being illegal.*

*Operative portion of the notice is set aside that no action will be taken by the Council without following the due process as prescribed under law. Petitioner is granted seven days' time to appear before the Council and participate in the proceeding. If reply is not filed within aforesaid time, it will be deemed that petitioner is not interested in conciliation, then authorities will be free to proceed with the arbitration in accordance with law.*

*In above terms, this petition is disposed of."*



3. Despite the aforesaid liberty, the appellant/petitioner did not file any reply on merit. The petitioner/appellant sent a letter dated 24.12.2022 disclosing that they are not interested in conciliation and further do not agree with the arbitration by the Conciliator or MSEF Council; thus, an independent arbitrator may be appointed. The appellant also disclosed the fact of filing a money recovery suit of Rs.66,80,072/- against the respondent No.4. Thereafter, the proceeding remained pending for two years, but no one appeared on behalf of the appellant/petitioner. Hence, the learned MSEF Council passed the arbitration award dated 02.07.2024 in favour of respondent No.4 for payment of Rs. 51,54,584/- and interest to the tune of Rs. 14,63,656/-.

4. Being aggrieved by the aforesaid order, instead of approaching the Commercial Court by way of application under Section 34 of the Arbitration and Conciliation Act, the appellant/petitioner has filed the writ petition before this Court on the ground that the award dated 02.07.2024 cannot be said to be an award under the law, hence the petitioner cannot be relegated to a proceeding under Section 34 of the Arbitration and Conciliation Act, in view of the law laid down by the Apex Court in case of *Jharkhand Urja Vikas Nigam Limited vs. State of Rajasthan and others, reported in 2021(19) SCC 206*. The Writ Court dismissed the writ petition *in limine* as not maintainable with a liberty to the petitioner to avail the remedy available under Section 34 of the Arbitration and Conciliation Act. Hence, this writ appeal is before this Court.



### Arguments at the Bar

5. Shri Amit Sahani, learned counsel appearing for the appellant, submits that in view of the law laid down by the Apex Court in the case of *Jharkhand Urja Vikas Nigam Limited (supra)*, the Writ Court has wrongly dismissed the writ petition. The learned counsel simultaneously initiated the proceedings of conciliation as well as arbitration in violation of the provisions of Section 18 of the MSMED Act and Rule 7 of the M.P. Micro Small Enterprises Facilitation Council Rules, 2017. Once the petitioner has disclosed that they are not interested in a conciliation proceeding, then the matter is required to be referred for arbitration in view of Section 12(5) of the Act of 1996. Since the mandatory provision of Section 18 of the Act of 2006 has not been followed by the Council, the award is null and void, and the same is not liable to be challenged under Section 34 of the Arbitration and Conciliation Act, as held by the Apex Court in the case of *Jharkhand Urja Vikas Nigam Limited (supra)*. Learned counsel has referred to the relevant paras of the aforesaid judgment below:

*“14. From a reading of Sections 18(2) and 18(3) of the Msmmed Act 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.*

*15. There is a fundamental difference between conciliation and arbitration. In conciliation, the conciliator assists the parties to arrive at an amicable settlement, in an impartial and independent manner. In arbitration, the Arbitral Tribunal/arbitrator adjudicates the disputes between the parties. The claim has to be proved before the arbitrator, if necessary, by adducing evidence, even though the rules of the Civil Procedure Code or the Evidence Act may not apply. Unless otherwise agreed, oral hearings are to be held.*



*16. If the appellant had not submitted its reply at the conciliation stage, and failed to appear, the Facilitation Council could, at best, have recorded the failure of conciliation and proceeded to initiate arbitration proceedings in accordance with the relevant provisions of the Arbitration and Conciliation Act, 1996, to adjudicate the dispute and make an award. Proceedings for conciliation and arbitration cannot be clubbed.”*

6. The learned counsel appearing for the respondent opposes the aforesaid contention by submitting that in case of *India Glycols Limited and another vs. Micro and Small Enterprises Facilitation Council*, reported in *2023 SCC Online SC 1852*, the Apex Court has held that the writ petition is not maintainable against the award passed by the Council, and the only remedy is to file an application under Section 34 of the Arbitration and Conciliation Act. Therefore, the Writ Court has not committed any error while dismissing the writ petition.

7. Shri Sahani, learned counsel appearing for the appellant, submits that the judgment passed in case of *India Glycols (supra)* has been doubted by another Bench of the Supreme Court in the case of *M/s Tamil Nadu Cements Corporation Limited vs. Micro and Small Enterprises Facilitation Council and another, 2025 INSC 54*, and made a reference to the Larger Bench. Therefore, the law laid down in the case of *India Glycols (supra)* cannot be said to be a law of the land.

#### Appreciation and Conclusion

8. In the present case, the respondent No. 4 approached the MSME Facilitation Council in order to claim the pending amount with interest. A composite notice was issued to the petitioner for filing a reply. However, neither in the Act nor in the Rules is any format of notice prescribed. But in sum and substance, the notice was sent to call upon the appellant/petitioner



to submit a reply to the claim case submitted by respondent No. 4. The petitioner had challenged the said notice by way of a writ petition. In the writ petition, the petitioner has specifically disclosed that they are not interested in conciliation proceedings which is evident from perusal of paragraph-3 of Annexure P-5 enclosed with the said writ petition and same reads as under :

*"That, it is submitted that we are not interested in conciliation and further do not agree with the arbitration by the conciliator or the MSEFC and thus request to proceed for appointment of independent arbitrator as per Act, 2006 and Section 12 (5) of Arbitration and Conciliation Act, 1996. That, it is humbly submitted that our prior consent before appointment of any arbitrator is also required as per law and thus kindly seek our consent before any such appointment."*

9. Once the petitioner had declared that he was interested in participating in the conciliation proceedings, the Facilitation Council had no option but to proceed to decide the dispute by way of arbitration, for which no separate notice was liable to be issued. The petitioner was required to file a reply to the statement of claim submitted by the respondent. Even otherwise, this Court had granted seven days' time to file a reply, failing which, the Facilitation Council shall proceed for arbitration and the said order was passed at the instance of the appellant/petitioner.

10. Admittedly, after passing the order by this Court, the petitioner/appellant never appeared before the Council. On each date, either an email was sent or there was a telephonic discussion. Despite the opportunity of hearing for two years, the appellant/petitioner did not participate in the conciliation proceedings for adjudication of the dispute on merit.

11. The Apex Court, in a number of cases, has held that the MSMED Act has been enacted to protect the interest of Micro, Small and Medium



Enterprises, and the proceedings before the Council are summary proceedings, but the appellant/petitioner, instead of contesting the proceeding adopted a delay tactic and did not appear for two years physically. Therefore, the Council had no option but to pass an *ex-parte* award. Therefore, the Writ Court has not committed any error while dismissing the writ petition. We do not find any ground to interfere with the order dated 14.08.2024 passed in W.P. No.21177/2024.

12. Accordingly, the writ appeal is dismissed with the cost of Rs.25,000/- payable to the respondent with four weeks. After payment of the said cost, the receipt be submitted before the registry of this Court.

(VIVEK RUSIA)  
JUDGE

(PRADEEP MITTAL)  
JUDGE

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