CGHC010234632022 2026:CGHC:46848

NAFR

VISHAKHA BEOHAR Digitally signed by VISHAKHA BEOHAR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 3364 of 2022

Order Reserved on 30.09.2026

Order Delivered on 05.11.2026

1 - M/s Seirra Infraventure Pvt. Ltd. Through Authorized Signatory - Ashok Jain S/o Shri Anupchand Jain , Aged About 62 Years , Residence Of DL /53 Sector - 2, Salt Lack Kolkata Bengal Vidhannagar (North) Kolkata

... Petitioner(s)

versus

1 - Micro And Small Enterprise Facilitation Council Msefc (Constituted Under The Msmed Act, 2006), Through Secretary / Competent Authority, Udyog Bhawan, Ring Road No. 1, Telibandha, Raipur, Chhattisgarh

2 - R.K. Automotives Through Its Director, Arvind Garg S/o Shri Vishwamitra Prasad Garg, R.K. Automotives, 43, A/2, Tifra, Industrial Area, Bilaspur , District - Bilaspur Chhattisgarh , 495223,

... Respondents

(Cause-title taken from the Case Information System)

For Petitioner	:	Mr. Apoorva Tripathi, Advocate
For Respondent No. 2	:	Mr. Soumitra Kesharwani, Advocate on behalf of Mr. Apurv Goyal, Advocate

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SB-Hon'ble Shri Justice Amitendra Kishore Prasad

CAV Order

1. By way of this petition, the petitioner seeks to challenge the legality, validity and propriety of the ex parte order dated 30.10.2021 passed by the Micro and Small Enterprise Facilitation Council (MSEFC), Chhattisgarh, on the ground that the impugned order was passed without ensuring due service of notice upon the petitioner and without affording him a proper opportunity of hearing. It is contended that, despite issuing notice on 07.09.2021, the Council proceeded to hear the matter ex parte, reserved its order on 14.09.2021 and ultimately passed the impugned order on 30.10.2021, without ensuring due service of notice or making any genuine attempt to initiate conciliation between the parties as contemplated under Sections 18(1), 18(2) and 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006. The petitioner further submits that the impugned order is arbitrary, illegal and violative of the principles of natural justice and Articles 14, 19 and 21 of the Constitution of India. It is also stated that

an FIR was lodged against the petitioner on 01.03.2022, that this Court passed an order in W.P.(C) No. 1609 of 2022 on 04.04.2022, and that the petitioner subsequently withdrew the said petition on 26.04.2022.

2. The following reliefs have been sought by the petitioner in the present petition:-

> *"This Hon'ble Court may be pleased to call for the records of the case pertaining to the petitioner from the respondents for its kind perusal.*
>
> *A. This Hon'ble Court may be pleased to set aside the Ex- party order dated 30.10.2021 passed by the respondent no.1 against the petitioner (Annexure P-1).*
>
> *B. Any other relief which this Hon'ble Court may deem fit in the facts & circumstances of case.*
>
> *C. Cost of the petition may also be awarded."*

3. Brief facts of the case are that the petitioner is a company incorporated in the year 2008 and engaged in coal excavation and transportation work at the Parsa East and Kanta Basan Coal Block, Surguja, Chhattisgarh. The petitioner has challenged the legality and validity of the ex parte order dated 30.10.2021 passed by the Micro and Small Enterprise Facilitation Council (MSEFC), Chhattisgarh, whereby a sum of Rs. 24,04,061/-, including interest, was directed to be paid to respondent No. 2 towards the alleged outstanding dues for

the supply of lubricants. The petitioner disputes the claim and contends that the alleged goods were neither ordered nor received by it. It is further contended that the Council proceeded ex parte on 14.09.2021 without ensuring due service of notice upon the petitioner or affording it an opportunity of hearing. Although the impugned order records that notice was sent through the Samadhaan web portal and WhatsApp, it does not disclose the mobile number used or establish that the notice was duly served upon the petitioner. The petitioner further contends that the Council passed the impugned order without undertaking conciliation as contemplated under Section 18(2) of the Micro, Small and Medium Enterprises Development Act, 2006, or following the subsequent statutory procedure under Section 18(3) of the said Act. It is also stated that respondent No. 2 lodged an FIR against the petitioner in respect of the same dispute, which was subsequently quashed by this Court on 18.03.2025 on the ground that the dispute was civil in nature. The petitioner had earlier filed W.P.(C) No. 1609 of 2022, which was dismissed as withdrawn on 26.04.2022 with liberty to file a duly constituted petition. Accordingly, the petitioner has filed the present petition challenging the impugned order on the

grounds of violation of the principles of natural justice, non-compliance with the statutory procedure and arbitrariness.

4. Mr. Apoorva Tripathi, learned counsel for the petitioner would submit that the impugned ex parte order dated 30.10.2021 passed by the Micro and Small Enterprise Facilitation Council (MSEFC), Chhattisgarh, is illegal, arbitrary and contrary to the provisions of the Micro, Small and Medium Enterprises Development Act, 2006. It is contended that the Council proceeded ex parte without ensuring due service of notice upon the petitioner and without affording an effective opportunity of hearing, thereby violating the principles of natural justice. Learned counsel would further submit that the Council failed to initiate and complete the conciliation proceedings as contemplated under Section 18(2) of the Act and proceeded to pass the impugned order without following the procedure prescribed under Section 18(3) of the Act read with the relevant provisions of the Arbitration and Conciliation Act, 1996. Placing reliance upon the judgment of the Hon'ble Supreme Court in *Silpi Industries v. Kerala State Road Transport Corporation*, 2021 SCC OnLine SC 439, it is argued that the statutory procedure prescribed under Section 18 of the MSMED Act is required to be followed before proceeding to arbitration. It is further submitted that no notice

of commencement of arbitration proceedings was served upon the petitioner, nor was the petitioner afforded an opportunity to file its statement of defence or counterclaim. Learned counsel would also contend that the Council erroneously relied upon photocopies of invoices and vouchers, without examining the original documents or verifying whether the same had been acknowledged by the petitioner, and thereby directed recovery of Rs. 22,34,117/- along with interest.

5. In support of his submissions, learned counsel places reliance upon the decisions of the Hon'ble Supreme Court in ***Jharkhand Urja Vikas Nigam Limited v. State of Rajasthan, (2021) 19 SCC 206; Gujarat State Civil Supplies Corporation Limited v. Mahakali Foods (P) Limited, (2023) 6 SCC 401; Electrosteel Steel Limited v. Ispat Carrier (P) Limited, (2025) 7 SCC 773; Silpi Industries v. Kerala State Road Transport Corporation, (2021) 18 SCC 790; Tamil Nadu Cements Corporation Limited v. Micro and Small Enterprises Facilitation Council, (2025) 4 SCC 1;*** and ***India Glycols Limited v. Micro and Small Enterprises Facilitation Council, Medchal-Malkajgiri*****, (2025) 5 SCC 780**, to contend that the statutory framework governing references before the MSEFC

and the arbitral proceedings contemplated under the MSMED Act must be duly followed. Reliance is also placed upon ***Union of India v. Tecco Trichy Engineers & Contractors, (2005) 4 SCC 239***, in support of the requirement of effective communication of relevant proceedings; ***Kiran Singh v. Chaman Paswan, AIR 1954 SC 340***, on the consequences of proceedings conducted without jurisdiction; and ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai, (1998) 8 SCC 1***, to contend that the availability of an alternative remedy does not operate as an absolute bar to the exercise of writ jurisdiction, particularly where the proceedings suffer from a violation of natural justice or jurisdictional infirmity. Learned counsel further relies upon ***Assistant Commissioner (CT), LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Limited, (2020) 19 SCC 681***, in support of his submissions concerning the statutory remedy and the circumstances governing judicial interference in proceedings where an alternative remedy is available. Reliance is also placed upon ***Sarguja Transport Service v. State Transport Appellate Tribunal, (1987) 1 SCC 5***, and the judgment of the Chhattisgarh High Court in ***M/s Jai Balaji Industries Limited v. Garuda Ispat Private Limited, WP227 no. 67/2025*** decided on 22.06.2026, in support of his

submissions concerning the maintainability of the present petition and the legal issues arising in the matter. On the aforesaid grounds, learned counsel submits that the impugned order deserves to be set aside.

6. Mr. Soumitra Kesharwani, Advocate, appearing on behalf of Mr. Apurv Goyal, learned counsel for respondent No. 2, would submit that the impugned order dated 30.10.2021 passed by the Micro and Small Enterprise Facilitation Council (MSEFC), Chhattisgarh, is in accordance with the provisions of the Micro, Small and Medium Enterprises Development Act, 2006. It is contended that respondent No. 2 supplied lubricants to the petitioner against purchase orders issued by it, and a sum of Rs. 22,34,117/- remained outstanding towards the said supplies. Learned counsel would further submit that the petitioner acknowledged its liability in the e-mail dated 16.06.2021 and in paragraphs 8.8 and 8.9 of the writ petition. It is further contended that respondent No. 2, while filing the reference before the Council on 16.08.2021, furnished the petitioner's address, e-mail address and mobile number of its Director, and the Council duly issued notices through physical and electronic modes, including WhatsApp, which were seen by the petitioner. Despite due service of notice and sufficient opportunity, the petitioner failed to

appear before the Council on 14.09.2021, compelling the Council to proceed ex parte and pass the impugned order. Learned counsel would also submit that the reference was decided within the period prescribed under Section 18(5) of the Act, 2006, and the impugned order does not suffer from any illegality warranting interference by this Court.

7. Learned counsel would further submit that the petitioner had earlier challenged the same order in W.P.(C) No. 1609 of 2022, wherein this Court, by order dated 04.04.2022, directed the petitioner to deposit Rs. 5,00,000/- as a condition for staying recovery of the remaining amount. However, instead of complying with the said direction, the petitioner withdrew the petition on 26.04.2022 and subsequently filed the present petition on substantially identical facts and grounds. It is, therefore, contended that the petitioner cannot be permitted to invoke the writ jurisdiction of this Court to circumvent the statutory remedy available under Section 34 of the Arbitration and Conciliation Act, 1996, read with Section 19 of the MSMED Act, 2006, which mandates pre-deposit of 75% of the awarded amount. Learned counsel further submits that the statutory period of limitation for challenging the award has expired and that the present petition has been filed to avoid

the mandatory pre-deposit and the consequences of the earlier proceedings.

8. In support of his submissions, learned counsel places reliance upon the decisions of the Hon'ble Supreme Court in ***India Glycols Limited v. Micro and Small Enterprises Facilitation Council, Medchal-Malkajgiri, (2025) 5 SCC 780,*** and ***Assistant Commissioner (CT), LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Limited, (2020) 19 SCC 681***, as well as the judgment of the Division Bench of this Court in ***Collector and District Mission Director, Office of the District Project, Rajeev Gandhi Shiksha Mission (SSA) v. Micro and Small Enterprises Facilitation Council, Chhattisgarh and Others, W.A. No. 427 of 2024***. On the aforesaid grounds, learned counsel for respondent No. 2 prays for dismissal of the writ petition.

9. I have heard learned counsel for the parties and perused the pleadings as well as the original record of the proceedings before the Micro and Small Enterprises Facilitation Council, Chhattisgarh.

10. The principal challenge in the present writ petition is to the ex parte order dated 30.10.2021, whereby the Micro and Small Enterprises Facilitation Council directed the petitioner to pay Rs.22,34,117/- towards the outstanding amount, along

with interest of Rs.1,69,944/-, aggregating to Rs.24,04,061/-, in respect of the goods allegedly supplied by respondent No.2. The petitioner has questioned the proceedings primarily on the ground of non-service of notice and alleged non-compliance with the procedure prescribed under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short, “the MSMED Act”).

11. A perusal of the impugned order reveals that respondent No.2, a registered micro enterprise, approached the Council claiming outstanding payment against the supply of lubricants, including HYSPIN AWH 68 SC, HYSPIN AWH 100 SC and GREASE EP2. In support of its claim, respondent No.2 produced copies of invoices, the purchase order dated 04.01.2021, the authorisation letter, an affidavit and its Udyam Registration Certificate. The Council considered the documents produced by respondent No.2 and recorded that an amount of Rs.1,30,342/- had already been paid by the petitioner, leaving an outstanding principal amount of Rs.22,34,117/-.

12. The impugned order further records that the proceedings were fixed for hearing on 14.09.2021 and that notice was issued to the parties through letter Nos.775-76 dated 07.09.2021. It also records that the hearing notice was

transmitted to the petitioner through the Samadhan web portal and WhatsApp and that the notice had been viewed by the petitioner. Despite the same, the petitioner did not appear before the Council, nor did it file any reply disputing the claim of respondent No.2. The Council, therefore, proceeded ex parte.

13. The original record has been examined in the light of the petitioner's objection regarding service of notice. The material recorded in the impugned order indicates that the petitioner was informed of the date of hearing through the modes referred to therein. The petitioner has not demonstrated, on the basis of the material placed before this Court, that the Council proceeded without any notice or that the proceedings were conducted in a manner which, by itself, warrants interference in the exercise of writ jurisdiction. Mere non-appearance before the Council, in the circumstances recorded in the impugned order, does not establish that the order is vitiated for want of an opportunity of hearing.

14. Section 18 of the MSMED Act provides the procedure for resolving disputes before the Micro and Small Enterprises Facilitation Council. Under Section 18(2) of the Act, the Council must first attempt to settle the dispute through conciliation. If conciliation fails, the Council may proceed with

arbitration itself or refer the matter to an appropriate institution under Section 18(3) of the Act. Both stages must be followed as prescribed by law, even if one of the parties remains absent.

15. In the present case, the petitioner has alleged non-compliance with Section 18 of the MSMED Act. However, such an allegation must be assessed with reference to the proceedings actually undertaken by the Council and the material contained in its record. The impugned order records the petitioner's non-appearance despite notice and the Council's consideration of the claim and supporting documents. On the material presently relied upon by the petitioner, no sufficient ground has been established to hold that the impugned order is liable to be set aside merely on the ground that it was passed ex parte. The conclusion on compliance with Sections 18(2) and 18(3) of the Act, however, rests on the original record of the proceedings and cannot be inferred solely from the fact of non-appearance.

16. It is also relevant that the petitioner did not file any reply before the Council disputing the claim, the invoices or the alleged outstanding amount. The Council recorded that no response or correspondence had been received from the petitioner and that the claim had not been controverted before

it. The absence of a reply does not, by itself, dispense with the Council's obligation to examine the material placed before it; nevertheless, the Council's order indicates that it considered the documents produced by respondent No.2 before determining the outstanding amount.

17. The dispute regarding the alleged supply of goods, the correctness of the invoices and the amount payable involves questions which are ordinarily to be examined in the statutory adjudicatory process. The writ jurisdiction of this Court is not intended to substitute for the statutory forum in the determination of disputed contractual or commercial claims, particularly where the petitioner had an opportunity to participate in the proceedings but did not do so. No independent ground of patent jurisdictional error or manifest illegality has been demonstrated which, on the material placed before this Court, would justify interference under Article 226 of the Constitution of India.

18. The availability of the statutory remedy is also a relevant consideration. An award or order arising from proceedings under Section 18 of the MSMED Act is subject to the remedies available under the applicable arbitration law, including Section 34 of the Arbitration and Conciliation Act, 1996, subject to the statutory requirements governing such

proceedings. Section 19 of the MSMED Act prescribes a pre-deposit requirement for an application to set aside a decree, award or other order made by the Council or an institution or centre providing alternative dispute resolution services. The existence of such a statutory mechanism is a material consideration while deciding whether extraordinary writ jurisdiction ought to be exercised.

19. It is settled that the rule of exhaustion of alternative remedies is a rule of judicial discretion and not an absolute bar to the exercise of writ jurisdiction. Nevertheless, where the statute provides a remedy for challenging the impugned adjudicatory decision, and the petitioner fails to establish a recognised ground for bypassing that remedy, interference under Article 226 would not ordinarily be warranted. In the present case, the petitioner has not established a sufficient ground to bypass the statutory mechanism solely on the basis of the objections raised in the writ petition.

20. The record also indicates that the petitioner had earlier approached this Court by filing WPC No.1609 of 2022 challenging the same impugned order. By order dated 04.04.2022, the petitioner was directed to deposit Rs.5,00,000/- as a condition for interim protection, whereafter the petitioner withdrew the said petition on 26.04.2022. The

present petition has again been filed challenging the same order. Although withdrawal of the earlier petition does not, by itself, determine the merits of the present challenge, the procedural history is a relevant circumstance while examining whether any exceptional ground has been established for interference in writ jurisdiction.

21. Having considered the impugned order, the objections raised by the petitioner, the response of respondent No.2 and the material available on record, this Court finds no sufficient ground, on the grounds presently urged, to set aside the impugned order in exercise of its extraordinary writ jurisdiction. The petitioner has failed to establish that the order is liable to be interfered with merely because the Council proceeded ex parte after recording that notice had been transmitted to the petitioner and that the petitioner did not appear or file a reply.

22. Accordingly, the writ petition is **dismissed**.

23. It is clarified that this Court has not undertaken an independent adjudication of the underlying commercial claim beyond examining the grounds raised for interference with the impugned order. Any remedy otherwise available to the petitioner under the applicable statutory provisions shall

remain governed by the conditions and limitations prescribed by law.

24. No order as to costs.

Sd/-

(Amitendra Kishore Prasad)
Judge

Vishakha