

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on : 13.03.2024.

Pronounced on : 10.02.2025.

Case:- **CM(M) No. 385/2023**

- 1. UT of Jammu & Kashmir
through Chief Engineer System & Operation Wing, Kashmir.**
- 2. Executive Engineer TLMD-IV, JKPTCL Pampore.
.....Petitioners**

Through: Mr. Ab. Rashid Malik, Sr. Advocate with
Mr. Mohd Younis Hafiz, Advocate

Vs

**M/s Gulati Metals & Alloys, Lane No. 3, Phase-II
SIDCO Industrial Complex, Bari Brahmana, Jammu
through its Sole Proprietor
Sh. Sandeep Gulati, Aged 55 years,
S/o Late Sh. Wazir Chand Gulati,
C/o Lane No. 3, Phase-II SIDCO Industrial Complex,
Bari Brahmana, Jammu.**

..... Respondent

Through: Mr. Karman Singh Johal, Advocate

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

01. This petition filed by reference to article 227 of the Constitution of India by two petitioners finds its nemesis at the very first outing by a very sharp and short submission of Mr. Karman Singh Johal, Advocate for the respondent-caveator submitting that there is no scope for the petitioners to invoke and no maneuverability for this Court to grant indulgence for supervisory jurisdiction under article 227 of the Constitution of India in the

present matter in view of legal position unambiguously settled by the Hon'ble Supreme Court of India which leaves no scope whatsoever for the petitioners to enjoy any foothold to agitate and assail, by a non-statutory route, an award passed under the Micro, Small & Medium Enterprises Development Act, 2006 (**"MSMED Act, 2006"** in short). In fact, Mr. Karman Singh Johal, Advocate meets this Court upfront to submit that in view of the judgment in the case of **"M/s India Glycols Limited and another Vs Micro and Small Enterprises Facilitation Council, Medchal – Malkajgiri and others"** (2024 AIR SC 285) this Court cannot even venture to scan and survey the factual contents of the case at the asking of the petitioners except by over-reaching the mandate of the Hon'ble Supreme Court of India's judgment supra and doing an exercise in futility.

02. Through the medium of this petition, the Chief Engineer, System & Operation Wing, Kashmir and the Executive Engineer TLMD-IV, JKPTCL Pampore are the ones asking for setting aside of an award dated 30.11.2023 passed by the Micro & Small Enterprises Facilitation Council, (in short **"MSEFC"**), Jammu in case No. **JK/19/S/11117** under section 18 of MSMED Act, 2006.

03. The award in reference bears a direction unto the two petitioners to release an amount to the tune of Rs.10,59,460/- (Rs. 86,973/- as principal amount and Rs.9,72,487/- on account of interest on delayed payments) which is outstanding in respect of P.O.No. CE/PMM/P-32/S-I/2011-12/8618-29 dated 28.12.2011 as

per claim statement upto 31.12.2019 furnished by the MSE duly certified Gupta Gupta & Associates LLP and an amount of Rs. 1,42,94,633/- on account of an interest on delayed payment which is outstanding in respect of P.O.No.CE/PMM/P-06/S-I/2011-2012/**7157-57** dated 02.12.2011 as per statement upto **31.10.2019** furnished by the MSE duly certified **Gupta Gupta Associates LLP**.

04. As against the arguments made by Mr. Abdul Rashid Malik, learned Sr. AAG representing the petitioners aiming to hit at the said award from all sides, factual as well as legal, Mr. Karman Singh Johal, Advocate for the respondent draws the attention of this Court towards para 15 of the Hon'ble Supreme Court of India's judgment in the case of **"M/s India Glycols Limited"** (supra), wherein it is observed that when the High Court of Telangana had come to hold that a petition under section 227 of the Constitution of India was not maintainable in assailing an award under MSMED Act, 2006, then it was unnecessary for the High Court to have entered upon the merits of the controversy which arose before the Facilitation Council.

05. It is by reference to this paragraph of the judgment of the Hon'ble Supreme Court of India, Mr. Karman Singh Johal, Advocate sets up a caveat and constraint for this Court not to undertake an exercise of factual enquiring into the case except at the cost of precious loss of court's time and energy and by missing the mandate of the judgment of the Hon'ble Supreme Court of India.

06. In the aforesaid case of M/s India Glycols Limited and another, the Facilitation Council, Medchal – Malkajgiri passed an award on 28.10.2021 decreeing the claim of the MSME governed unit for a principal amount of Rs.40,29,862/- with interest of monthly rests at three times the bank rate prevailing on the date of the award which came to be challenged by recourse to article 226/227 of the Constitution of India which was allowed by the Single Judge of the High Court of Telangana by holding that the claim was barred by limitation but the Division Bench came to reverse the said judgment of the Single Judge by holding that the petition under article 226/227 of the Constitution of India was not maintainable in view of the specific remedies provided under MSMED Act, 2006, but nevertheless the Division Bench had also come to examine case on merits to hold that the claim was time barred.

07. The Hon'ble Supreme Court of India refused to entertain and approve submission that since the judgment of the Division Bench was suffering from a perversity and, as such, a petition under article 226 of the Constitution of India ought to have been entertained. The Hon'ble Supreme Court of India reminded that once section 18 of the MSMED Act, 2006 provides for recourse to a statutory remedy for challenging an award under the Act of 1996 and which remedy is subject to the discipline of complying with the provisions of section 19, then an entertainment of a petition under article 226/227 of the Constitution of India just in order to obviate a

requisite compliance of requirement of 75% pre-deposit of award amount under section 19, would defeat the object and purpose of the special enactment which has been legislated upon by the Parliament.

08. Mr. Karman Singh Johal, Advocate brings to the notice of this Court the essence of the particular provisions of the MSMED Act, 2006 bearing which in perspective it is urged that in case this Court starts extending indulgence, be it under writ jurisdiction or supervisory jurisdiction, under article 226/227 of the Constitution of India, then the very leitmotif of MSMED Act, 2006 is doomed to suffer frustration and also meaning to provide two hits against an award one under MSMED Act, 2006 and other under the Constitution of India through its articles 226/227.

09. Mr. Karman Singh Johal, Advocate, draws out the essence of MSMED Act, 2006 by referring to and reading of para 20, 21 & 22 of the judgment of the Hon'ble Supreme Court of India in the case of **"Gujarat State Civil Supplies Corporation Ltd. Vs Mahakali Foods Pvt. Ltd. & another,"** 2022 AIR SC 5545. Para 20, 21 & 22 of the said judgment are reproduced hereunder:-

"20. Keeping in view the afore-stated principles of statutory interpretations as also the proposition of law laid down by this Court with regard to the general rules of construction, let us proceed to examine whether the MSMED Act, 2006 is a special enactment having an effect overriding the Arbitration Act, 1996 which is perceived to be a general enactment? As stated earlier, the very object of enacting MSMED Act, 2006 was to facilitate the promotion and development, and enhance the competitiveness of micro, small and medium enterprises. The Act also aimed to ensure a timely and

smooth flow of credit to the micro, small and medium enterprises, and to minimize the incidence of sickness. One of the main objects of the Act was to delete the Interest on Delayed Payments to Small Scale and Ancillary Industry Undertakings Act, 1993, and to include stringent provisions as also to provide dispute resolution mechanism for resolving the disputes of non-payment of dues to the micro and small enterprises. Thus, the seed of MSMED Act, 2006 had sprouted from the need for a comprehensive legislation to provide an appropriate legal framework and extend statutory support to the micro and small enterprises to enable them to develop and grow into medium ones.

21. Section 15 to 25 contained in Chapter-V of the MSMED Act, 2006 pertain to the 'delayed payments to micro and small enterprises.' A bare perusal of the said provisions contained in Chapter-V shows that a strict liability is fastened on the buyer to make payment to the supplier who supplies any goods or renders any services to the buyer, prescribing the time limit in Section 15. Section 16 further fastens the liability on the buyer to pay compound interest if any buyer fails to make payment to the supplier as required under Section 15. Such compound interest is required to be paid at three times of the bank rate notified by the Reserve Bank, notwithstanding contained in any agreement between the buyer and supplier or in any law for the time being in force. An obligation to make payment of the amount with interest thereon as provided under Section 16 has been cast upon the buyer and a right to receive such payment is conferred on the supplier in Section 17. Thus, Section 17 is the ignition point of any dispute under MSMED Act, 2006. Section 18 thereof provides for the mechanism to enable the party to the dispute with regard to any amount due under Section 17, to make a reference to the Micro and Small Enterprises Facilitation Council.

22. Section 18 starts with a non obstante clause i.e., 'notwithstanding anything contained in any other law for the time being in force'. It means that the said provision has been enacted with the aim to supersede other laws for the time being in force. Further a dedicated statutory forum i.e., the Micro and Small Enterprises Facilitation Council (As established under Section 20 of the MSMED Act, 2006), has been provided to which a reference could be made by any party to the dispute. Sub-section (2) of Section 18 empowers the Facilitation Council, on receipt of such reference made under sub-section (1), to conduct Conciliation in the matter or

seek assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting Conciliation, as contemplated in Section 65 to 81 of the Arbitration Act, 1996. If the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council is further empowered under sub-section (3) to either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration. The provisions of Arbitration Act, 1996 are then made applicable to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996. Sub-section (4) of Section 18 again starts with a non obstante clause i.e., 'notwithstanding anything contained in any other law for the time being in force', and confers jurisdiction upon the Facilitation Council to act as an arbitrator or a conciliator in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India. Sub-section (5) of Section 18 fixes the time limit of ninety days to decide such reference. Section 19 prescribes the procedure to be followed when any application is made in the court for setting aside any decree, award or other order made either by the Council itself or by any institution or centre to which reference is made by the Council. Section 24 of the MSMED Act, 2006 states that the provisions of Section 15 to 23 shall have an effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

10. In the light of the aforesaid clear and categorical position of law which was supposed to have been known to the petitioners themselves also without taxing or hazarding even a reminder, the very act of institution of the present petition under article 227 of the Constitution of India on the part of the petitioners can be said to be an exhibit of the very time frozen mindset of acting mechanically/ritualistically in the matter of discharge of administrative duties for unshackling which the Union Parliament was led to go for the enactment of MSMED Act, 2006 so as to instill

and activate a due sense of an urgency and efficiency at the end of the Public/Govt., Authorities/Departments/Officials to act with due dispatch and drive in the matter of timely releasing/clearing of due payments in favour of goods/service suppliers and providers to the Public/Govt., Department/Establishment more particularly when the goods/service providers happen to be Micro, Small & Medium Enterprises, for whom the timely inflow of money demands/dues is as important for keeping their business cycle in motion as is essential for a water stream to have the inflow of water so as to save the stream from going dry and extinct.

11. Mr. Abdul Rashid Malik learned Sr. AAG has come up with submissions placing heavy reliance upon the fact that in the case of **“Jharkhand Urja Vikas Nigam Limited Vs State of Rajasthan and others” 2021(9) SCR 497** the Hon’ble Supreme Court of India had come to recognize the scope for intervention in the matter under MSMED Act, 2006 against an award passed there-under for the writ jurisdiction under article 226 of the Constitution of India.

12. Mr. Abdul Rashid Malik learned Sr. AAG further draws reliance from Single Bench judgment of this Court in the case of **“Union Territory of J&K and others Vs Aibak Electric Industries” bearing CM(M) No. 287/2023** read with judgment in the case of **“UT of J&K and others Vs Northern Transformers,” 2024 AIR J&K 22.**

13. On the strength of said three judgments, Mr. Abdul Rashid Malik, learned Sr. AAG has beseeched this Court to hear the cause

on merits that since the impugned award, both on substantive side as well as procedural side, is misconceived and, as such, this Court should not be reluctant in coming to exercise supervisory jurisdiction under article 227 of the Constitution of India as solicited through the medium of the present petition.

14. Mr. Karman Singh Johal, Advocate, learned counsel for the respondent, on the other hand makes a very pertinent observation to deflate Mr. Abdul Rashid Malik, learned Sr. AAG's reliance upon said three judgments, to be taken note of by this Court that the Hon'ble Supreme Court's judgment in the case of **Jharkhand Urja Vikas Nigam Ltd.** (supra), so cited is all prior to the passing of three Judges' judgment dated **06.11.2023** of the Hon'ble Supreme Court of India in the case of M/s India Glycols Limited and another Vs Micro and Small Enterprises Facilitation Council, Medchal – Malkajgiri and others" (2024 AIR SC 285).

15. In this behalf, Mr. Karman Singh Johal, Advocate refers to the date of judgment of the Hon'ble Supreme Court of India by its two Judge Bench in the case of "Jharkhand Urja Vikas Nigam Limited Vs State of Rajasthan and Others" to be of **15.12.2021**, judgment of the learned Single Bench of this Court in the case of Union Territory of J&K and others Vs Aibak Electric Industries to be dated **14.12.2023** and in the case of UT of J&K and others Vs Northern Transformers also dated **14.12.2023**.

16. Mr. Karman Singh Johal, Advocate by exploit of his preparedness to meet this petition head on draws the attention of

this Court that a Co-ordinate bench of this Court in the case of “UT of J&K and Others Vs AL Karam Barzulla, Srinagar” CM(M) No. 326/2023 dated 22.11.2023 refused to entertain a petition under article 227 of the Constitution of India against an award passed under MSMED Act, 2006.

17. Thus, it is being pleaded and for very apt right reason that the judgment of the learned Single Bench of this Court in the case of UT of J&K and Others Vs Aibak Electric Industries Limited and UT of J&K and others Vs Northern Transformers are to be read in alignment with the three Judge Bench judgment of the Hon’ble Supreme Court of India in the case of M/s India Glycols Limited and another (supra).

18. A comparative reading of two judgments of the Hon’ble Supreme Court of India first in the case of **‘Jharkhand Urja Vikas Nigam Limited Vs State of Rajasthan and Others’** and second in the case of **‘M/s India Glycols Limited and Another Vs Micro and Small Enterprises Facilitation Council, Medchal – Malkajgiri and Others’** would show an apparent contrasting position but given the fact that the judgment in the case of ‘M/s India Glycols Limited and another’ (supra) being of a larger bench of three Judge and later in point of time is to have a binding effect as against the judgment of two Judge Bench in the case of ‘Jharkhand Urja Vikas Nigam Limited (supra) which being prior in time.

19. In this regard the observations of the Hon’ble Supreme Court of India in the case of **“Dashrath Rupsingh Rathod Vs. State**

of Maharashtra & Anr., 2014(9) SCC 129, comes to guide this Court wherein in paragraph-5 it has been held that once a decision of a larger Bench has been delivered it is that decision which mandatory has to be applied.

20. In the light of the aforesaid fact and circumstances, this Court holds that the present petition so filed by the petitioners is nothing but a misconceived exercise may be intended to bypass the mandate of deposit of 75% in case the appellate side remedy under the Arbitration & Conciliation Act, 1996 would have been resorted to by the petitioners, but then this Court is nobody to advice or lend any prudence to the petitioners in the matter of figuring out appropriate legal course of action which ought to have been self-attended by them, therefore, this Court **dismisses** the present petition. However, in case the petitioners would come up with a statutory appeal against the impugned award then the time spent in the institution and pendency of this writ petition till its disposal will not be reckoned against the petitioners.

(RAHUL BHARTI)
JUDGE

SRINAGAR

10.02.2025

Muneesh

Whether the judgment is speaking:	Yes / No
Whether the judgment is reportable :	Yes / No