

**IN THE HIGH COURT OF UTTARAKHAND**  
**AT NAINITAL**

THE HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI  
AND  
THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

**APPEAL FROM ORDER NO. 99 OF 2023**

**5<sup>TH</sup> APRIL, 2023**

Between:

M/s B.S. Polypack  
through its proprietor ..... Appellant

and

M/s Uttaranchal Agro Food Ruler  
Mills and another ..... Respondents

Counsel for the appellant : Mr. Shobhit Saharia, learned  
counsel

Counsel for the respondents : --

**The Court made the following:**

**JUDGMENT:** (per Hon'ble The Chief Justice Sri Vipin Sanghi)

The present appeal, under Section 37 of the Arbitration and Conciliation Act, is directed against the judgment dated 27.09.2022, passed by the court of Additional District Judge, Commercial, Dehradun, in Arbitration Case No. 35 of 2020, C.G. No. 69 of 2020, whereby the objections preferred by the respondent under Section 34 of the Arbitration and Conciliation Act against the Award passed by the Facilitation Council

dated 25.01.2020 have been allowed, and the said Award was set aside.

2) The appellant and the respondent entered into a commercial transaction, where under the appellant - being a micro enterprise, has undertaken the supply of certain goods to the respondent. A dispute arose with regard to the amount payable to the appellant. Since the appellant is a micro enterprise, the appellant invoked the remedy available to it under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act). The Micro, Small and Medium Enterprises Facilitation Council initiated conciliation proceedings. The claim of the appellant was registered as Case No. 271. On 04.11.2019, the said Facilitation Council recorded its minutes. The same reads as follows: -

“वाद सं० 271 – मै० बी०एस०पॉलीपेक 28 आदर्श कालानी, रामनगर रुड़की जिला– हरिद्वार उत्तराखण्ड के प्रतिवादी मै० उत्तराचल एग्रो फूड रूलर मिल्स ग्राम– सुनहरा, माधौपुर रोड़ रुड़की जिला– हरिद्वार वाद सं० 271 के संबन्ध में।

वादी इकाई द्वारा प्रतिवादी इकाई को आपूर्ति किये गये माल के विलम्बित भुगतान मूलधन रू० 4,84,270– तथा इस पर दिनांक 30-09-18 तक आगणित ब्याज 10,67,051 कुल रू० 15,51,321/- का वाद दिनांक 15-10-18 को प्रस्तुत किया गया जिसे 15 दिनांक के भीतर अपना पक्ष रखने हेतु प्रतिवादी को परिषद के पंजीकृत पत्रांक 8030 दिनांक 22-11-2018 द्वारा प्रेषित किया गया। प्रतिवादी द्वारा प्रत्युत्तर उपलब्ध न कराये जाने पर पुनः परिषद के पंजीकृत पत्रांक 8543 दिनांक 18-12-2018 द्वारा 15 दिन के अन्तर्गत प्रत्युत्तर उपलब्ध कराये जाने हेतु नोटिस निर्गत किया गया।

पुनः परिषद के पंजीकृत पत्रांक 9407 दिनांक 29-01-2019 द्वारा 15 दिन के अन्तर्गत प्रत्युत्तर उपलब्ध कराये जाने हेतु नोटिस निर्गत किया गया।

प्रतिवादी द्वारा अपने प्रत्युत्तर दिनांक 2-2-2019 द्वारा अवगत कराया गया कि वाद गलत तथ्यों पर प्रस्तुत किया गया है। इस सम्बन्ध में पूर्व में रू0 484271 के सम्बन्ध में स्पष्ट किया गया था कि रू0 243830 का भुगतान वादी को करना है ना कि प्रतिवादी को। इस सम्बन्ध में दोनों पक्षों में एक हस्त लिखित पत्रा बनाया गया है जो उनके द्वारा प्रत्युत्तर के साथ संलग्न किया गया है। वादी के पक्ष का जानने के लिये परिषद के पत्रांक 9538 दिनांक 05-02-19 को प्रेषित किया गया। वादी द्वारा अपने प्रत्युत्तर दिनांक 22-2-19 में अवगत कराया गया कि प्रतिवादी का कथन असत्य है। प्रतिवादी को कानूनी नोटिस भेजे गये मात्र यही तथ्य स्वीकार्य है। प्रतिवादी द्वारा कभी भी नगद लेन देन नहीं किया गया। वादी की एम0एस0एम0ई0 इकाई होने के कारण वाद परिषद के क्षेत्राधिकार में आता है।

वादी के इस उत्तर पर प्रतिवादी का पक्ष रखने हेतु परिषद के पंजीकृत पत्रांक 9970 दिनांक 27-02-19 द्वारा नोटिस निर्गत किया प्रत्युत्तर आतिथि तक आपेक्षित है।

परिषद की बैठक दिनांक 29-05-19 में वादी के प्रतिनिधि श्री जी0एस0 चौहान उपस्थित नहीं थे। जबकि प्रतिवादी के प्रतिनिधि श्री डी.एस.नेगी उपस्थित रहे। परिषद द्वारा अगली बैठक की तिथि में सुनवाई का निर्णय लिया गया।

परिषद की बैठक दिनांक 03-07-19 में प्रतिनिधि श्री जी.एस. चौहान तथा प्रतिवादी के प्रतिनिधि डी.एस.नेगी उपस्थित रहे। प्रतिवादी द्वारा अवगत कराया गया कि उनके द्वारा वादी के साथ एकाउन्ट का मिलान किया गया और उनकी धनराशि वादी पर अवशेष है। परिषद द्वारा उभय पक्षों को सुनने के बाद आगामी बैठक से पूर्व अपनी आडिटेड वेलेन्स सीट परिषद के कार्यालय में प्रस्तुत करने के निर्देश दिये गये।

परिषद की बैठक दिनांक 20-08-19 में वादी के प्रतिनिधि श्री जी.एस. चौहान उपस्थित रहें, जबकि प्रतिवादी अनुपस्थित रहे। परिषद द्वारा प्रतिवादी को निर्देश दिये कि उनके द्वारा वादी का किये गये भुगतान के कोई साक्ष्य हो तो उन्हें 15 दिन के अन्दर प्रस्तुत करें।

वादी के एडवोकेट प्रतिनिधि द्वारा चार्टर्ड एकाउन्टेन्ट से तैयार की गयी बैलेंस सीट दिनांक 21-08-19 को प्रस्तुत की गयी। वादी के एडवोकेट प्रतिनिधि द्वारा आरविट्रेशन एण्ड कॉसिलियेशन एक्ट की धारा 70 के अनुसार सूचना की गोपनीयता बनाये रखने का अनुरोध किया गया।

परिषद की बैठक दिनांक 04-11-19 में वादी के प्रतिनिधि श्री जी0एस0चौहान उपस्थित रहे तथा प्रतिवादी के प्रतिनिधि अनुपस्थित रहे। वादी के प्रतिनिधि द्वारा निवेदन किया गया कि वाद में सुलह की गुंजाइस नहीं है, अतः यथेष्ट निर्णय लेने का कष्ट करें जिस पर परिषद द्वारा आरविट्रेशन नोटिस भेजते हुये दोनों पक्षों को अन्तिम सुनवाई हेतु उपस्थित होने के निर्देश दिये गये।”

3) From the above, it would be seen that during conciliation proceedings, the respondent put in appearance and disputed the claim of the appellant. In fact, the respondent claimed that there was over payment to the appellant to the tune of Rs.2,43,830/-. The respondent placed reliance upon a document purportedly executed by the appellant in that regard. On the other hand, the appellant disputed the document produced by the respondent, by claiming that it had not received any amount in cash. The aforesaid minutes also show that, eventually, on 04.11.2019, the Facilitation Council closed the conciliation proceedings, and it decided to issue notice to the respondent for the "final hearing". In terms of the aforesaid minutes recorded by the Facilitation Council on 04.11.2019, a notice was issued by the Facilitation Council to the parties on 07.11.2019. In the said notice the Facilitation Council recorded that on 04.11.2019, the conciliation

proceedings had been closed, and arbitration had been commenced under Section 18(3) of the MSMED Act.

4) The last paragraph of the said notice reads as follows :-

“अतः अनुरोध है कि वादी प्रतिवादी दोनों पक्ष परिषद की आगामी बैठक में अपने अधिकृत प्रतिनिधि के साथ **अन्तिम सुनवाई** हेतु उपस्थित होंगे। किसी एक पक्ष के बैठक में उपस्थित न होने की दशा में सुकरता परिषद एक पक्षीय निर्णय लेने हेतु स्वतन्त्र होगी।”

*(emphasis supplied)*

5) From the above it would be seen that a notice for “final hearing” in the arbitration matter was given to the parties. Pertinently, no date was fixed by the notice dated 07.11.2019, and neither of the parties were required to file their statement of claim / defence. Thereafter, the Facilitation Council passed the impugned Award dated 25.01.2020. As aforesaid, the said Award was challenged by the respondent under Section 34 of the Arbitration and Conciliation Act read with Section 19 of the MSMED Act. The Commercial Court has allowed these objections on the basis that no statement of claim or defence was called by the Arbitral Tribunal, and consequently, there is a breach of Section 23 of the Arbitration and Conciliation Act.

6) The submission of Mr. Saharia, learned counsel for the appellant is that, ample opportunity had been granted to the respondent to place its defence. In this regard he has drawn the attention of this Court to the minutes drawn by the Facilitation Council on 04.11.2019, which noticed the defence set up by the respondent. He submits that the provisions of the MSMED Act override the provisions of the Arbitration and Conciliation Act, and in this regard he has placed reliance on the judgment of the Supreme Court in *Gujarat State Civil Supplies Corporation Ltd. Vs Mahakali Foods Pvt. Ltd. (Unit 2) and another, Civil Appeal No. .... of 2022 (Arising out of SLP (C) No. 12884 of 2020)*, decided on 31.10.2022, reported in **2022 LiveLaw (SC) 893**.

7) Mr. Saharia has argued that the respondent had challenged the Award primarily on the ground that, since the Facilitation Council had acted as a Conciliator, it could not act as the Arbitrator - by placing reliance on Section 80 of the Arbitration and Conciliation Act. Mr. Saharia submits that this aspect is covered by the judgment of the Supreme Court in ***Gujarat State Civil Supplies Corporation Ltd.*** (supra) in favour of the appellant. He submits that the Commercial Court has,

however, set aside the Award on other grounds, namely, violation of Section 23 and 34 of the Arbitration and Conciliation Act.

8) We have considered the submissions of Mr. Saharia and perused the record.

9) The aforesaid judgment was rendered by the Supreme Court in the context that: where the contract between the parties - one of whom is covered by the MSMED Act, contains an arbitration agreement, whether the micro, small and medium enterprises supplier, could invoke the remedy available under Section 18 of the MSMED Act, or not? The Supreme Court observed that the MSMED Act is a special statute, and the Arbitration and Conciliation Act is the general law of Arbitration, and that the provisions contained in Section 18 would have overriding effect as it begins with a *non obstante* clause, which reads – "*notwithstanding anything contained in any other law for the time being in force...*" . Thus, there can be no quarrel with the appellant invoking Section 18 of the MSMED Act, and the Facilitation Council acting as the Arbitral Tribunal after failure of the conciliation proceedings.

10) A perusal of the proceedings recorded by the Facilitation Council on 04.11.2019 show that the respondent had appeared before the Council during the stage of conciliation, and put forth its stand, to the effect, that the appellant had been over paid, and Rs.2,43,830/- was recoverable from the appellant. In that regard the respondent had also produced a written document. The appellant had, however, denied having received any amount in cash, or executing the said document.

11) The Facilitation Council having initiated the arbitration vide its decision taken on 04.11.2019, was bound to undertake the arbitral proceedings in accordance with the Arbitration and Conciliation Act. The judgment of the Supreme Court relied upon by Mr. Saharia nowhere states that the arbitration proceedings shall be conducted by the Facilitation Council, or by any other institution or centre, to which the dispute is referred by the Council, *de hors* the provisions of the Arbitration and Conciliation Act, and contrary to it. On the contrary, it is very clear from a reading of Section 13(3) of the MSMED Act that, the arbitration proceedings have to be conducted by the Tribunal in accordance with the provisions of the Arbitration and Conciliation Act.



12) Section 18 of the MSMED Act reads as follows:

***“18. Reference to Micro and Small Enterprises Facilitation Council.— (1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.***

***(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.***

***(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.***

***(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.***

***(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.”***

(emphasis supplied)

13) From a reading of sub-section (3) of Section 18, it is seen that, once the dispute is referred for

arbitration to be conducted by the Council itself, or by any other institution or centre by the Council - "*the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in subsection (1) of Section 7 of that Act.*" The Parliament has consciously used the words "*shall then apply to the dispute*", and the words "*as if the arbitration was in pursuance of an arbitration agreement referred to in subsection (1) of Section 7 of that Act*" (meaning the Arbitration and Conciliation Act), making it abundantly clear that the arbitration which is conducted – whether by the Council, or by any other institution or centre, has to be in compliance with the provisions of the Arbitration and Conciliation Act.

14) Aforesaid being the position, the decision taken by the Council on 04.11.2019, fixing the matter for 'final hearing' itself was illegal and flawed. The notice issued on 07.11.2019 was equally illegal and flawed. Pertinently, no date was fixed while issuing the notice dated 07.11.2019 to the parties. The impugned Award records that the parties appeared before it on 12.12.2019. However, a perusal of the Award shows that, neither the statement of claim was called for, nor right to file its defence was given to the respondent. Even the issues framed by the

Facilitation Council, as reflected in para 11 of the impugned Award, show that the primary issue – as to whether any payment is due to the appellant, and if so, to what amount the appellant is entitled, was not framed. There is absolutely no discussion in the impugned Award with regard to the stand taken by the respondent during the course of conciliation, that it had over paid the appellant, and amounts were recoverable from the appellant to the tune of Rs. 2,43,830/-. The document produced by the respondent during the course of conciliation in support of its aforesaid plea has been completely ignored while passing the impugned Award. There is no reason disclosed in the Award – as to why the document produced by the respondent has been rejected. The impugned Award was, therefore, certainly passed in breach of Section 18, which provides for grant of equal and full opportunity to each party to present the case; in breach of the principles of natural justice, and; in breach of Section 23 of the Arbitration and Conciliation Act. The impugned Award was liable to be set aside, since the respondent was not given the opportunity to present its case, and such an Award is also in conflict with the basic notion of justice.

15) For the aforesaid reasons, we do not find any merit in the present appeal. The same is, accordingly, dismissed.

16) Since we have examined the appeal on its merits, we do not consider it necessary to go into the aspect of delay in filing the appeal.

17) It pains us to see that the MSME Council has conducted the arbitral proceedings completely unmindful of its obligations - cast under the Arbitration and Conciliation Act. We direct the MSME Council to organize workshops and seminars to educate its officers, who undertake arbitration proceedings, to equip themselves with the law of Arbitration, so that such flagrant violations of the Arbitration and Conciliation Act do not reoccur.

18) A copy of this judgment shall be communicated to the State MSME Council by the Registry for compliance.

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**VIPIN SANGHI, C.J.**

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**ALOK KUMAR VERMA, J.**

Dt: 5<sup>th</sup> APRIL, 2023  
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