

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 4876 of 2024**

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M/S GHANKUN STEELS PVT. LTD.

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR HARSHAD O JOSHI(11428) for the Petitioner(s) No. 1

for the Respondent(s) No. 2,3

MR AYAAN PATEL, AGP for the Respondent(s) No. 1

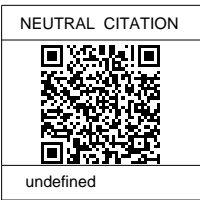
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CORAM:**HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI****Date : 02/04/2024****ORAL ORDER**

1. By way of present writ-application filed under Article 226 of the Constitution of India, the writ-applicant herein has prayed for the following reliefs :-

“(A) YOUR LORDSHIPS be pleased to admit and allow the present petition;

(B) YOUR LORDSHIPS be please to issue writ of Mandamus and or, or writ in the nature of Mandamus or any other appropriate writ, order or direction, quashing and setting aside the impugned order dated 23/02/2023 an passed by the respondent no 2 whereby the respondent no.2 passed the impugned arbitral award without taking present petitioner's



reply on record without following the principles of natural justice and also without properly following the Rules, 2016;

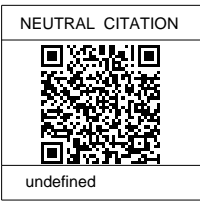
(C) YOUR LORDSHIPS be please to remand the case to the Respondent No. 2 and issue writ of Mandamus and or, or writ in the nature of Mandamus or any other appropriate writ, order or direction, to the Respondent No. 2 directing it to take the Petitioner's reply dated 24/02/2023, on record and to pass the Arbitral Award afresh on merits of the case providing a fair opportunity of hearing to the parties;

(D) Pending admission, hearing and final disposal of the captioned petition, YOUR LORDSHIPS be pleased to stay the operation, implementation and execution of the impugned order dated 23/02/2023 passed by the respondent no 2, which is pending in Case No. Exe.26/2023 before the Learned Commercial Court (District Level), Naya Raipur, Chhattisgarh;

(E) Your Lordships may be pleased to call for records and proceedings from the respondent no. 2 for verifying averments made by the petitioner in the interest of justice;

(F) Your Lordships may be pleased to grant ex-parte ad interim relief in terms of Para-8(C) above in the interest of justice;

(G) Any other and further relief, as this Hon'ble Court deems

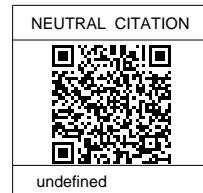


fit and proper in the interest of justice.”

2. Heard Mr. Abhinav Kardekar, the learned advocate appearing for Mr. Harshad O. Joshi, the learned advocate appearing for the writ-applicant.

3. The writ-applicant herein is a Company registered under the Companies Act, 1956 having its registered office at Blue Apartment, BL-A, 1st Floor, FI-1A, 121 BT Road, LP-1/84/3. Kolkata, West Bengal-700108. The writ-applicant herein seeks to challenge the legality and validity of the impugned Arbitral Award dated 23.2.2023 issued by the office of the respondent No.2. The respondent No.2 has passed the Award dated 23.2.2023 without granting opportunity of hearing to the writ-applicant herein and without taking on record the reply filed by the writ-applicant herein.

4. The learned advocate appearing for the writ-applicant herein submitted that the impugned Award be interfered with, quash and set aside and the writ-applicant be granted an

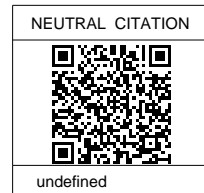


opportunity of hearing and the Tribunal be directed to decide the same in accordance with law.

5. Mr. Ayaan Patel, the learned AGP appearing for the respondent No.1 – State submitted that the remedy lies by filing an application under 34 of the Arbitration Act, if the writ-applicant herein have challenged the arbitral award passed by the Facilitation Council under Section 34 of the Act.

6. Having heard the learned advocates appearing for the respective parties, this Court deems it fit to refer to the ratio as laid down by the Hon'ble Apex Court in the case of **M/s. India Glycols Ltd., Vs. Micro and Small Enterprises Facilitation Council**, reported in AIR 2024 SC 285, paragraphs 14 to 17 read thus :-

“14 Mr Parag P Tripathi, senior counsel appearing on behalf of the appellant sought to urge that the view of the Facilitation Council to the effect that the provisions of the Limitation Act 1963 have no application, which has been affirmed by the Division Bench in the impugned judgment,



suffers from a perversity, and hence a petition under Article 226 of the Constitution ought to have been entertained. We cannot accept this submission for the simple reason that Section 18 of the MSMED Act 2006 provides for recourse to a statutory remedy for challenging an award under the Act of 1996. However, recourse to the remedy is subject to the discipline of complying with the provisions of Section 19. The entertaining of a petition under Articles 226/227 of the Constitution, in order to obviate compliance with the requirement of pre-deposit under Section 19, would defeat the object and purpose of the special enactment which has been legislated upon by Parliament.

15 For the above reasons, we affirm the decision of the Division Bench by holding that it was justified in coming to the conclusion that the petition under Articles 226/227 of the Constitution instituted by the appellant was not maintainable. Hence, it was unnecessary for the High Court, having come to the conclusion that the petition was not maintainable, to enter upon the merits of the controversy which arose before the Facilitation Council.

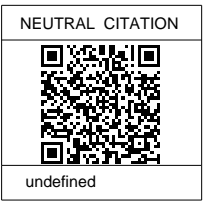
16 Mr Parag P Tripathi, senior counsel then submitted that the appellant would move proceedings under Section 34 of the Act of 1996 and this Court may direct that they may be disposed of expeditiously. Having come to the conclusion that the remedy which was adopted by the appellant was thoroughly misconceived, it is not necessary for this Court to make any observation on what course of action should be adopted by



the appellant. Were the appellant at this stage to take recourse to the proceedings under Section 34 of the Act of 1996, it would be open to the second respondent to object on all counts which are available in law.

17 For the above reasons, we affirm the impugned judgment of the High Court of Telangana dated 21 March 2023 by affirming the finding that the petition which was instituted by the appellant to challenge the award of the Facilitation Council was not maintainable, in view of the provisions of Section 34 of the Act of 1996.”

7. In the facts of the present case, the writ-applicant herein has challenged the arbitral award passed by the respondent No.2 dated 23.2.2023 under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006. The proceedings under Section 18(3) of the MSME Act would be governed by the Arbitration and Conciliation Act, 1996. The remedy lies by challenging the said award under Section 34 of the Act and also in light of the settled position of law as laid down by the Hon'ble Apex Court in AIR 2024 SC 285 as referred above.



8. For the foregoing reasons, the present writ-application is rejected summarily.

K.K. SAIYED

(VAIBHAVI D. NANAVATI,J)