

**Court No. - 6**

**Case :-** WRIT - C No. - 3774 of 2023

**Petitioner :-** M/S Sahbhav Engineering Ltd. Ahmadabad Thru.  
Authorised Representative Mr. Pramod Dave

**Respondent :-** U.P. State Micro Small And Medium Enterprises  
Facilitation Council, Kanpur Thru. Chairman And Others

**Counsel for Petitioner :-** Mohit Sharma, Rakesh Kumar  
Srivastava

**Hon'ble Alok Mathur, J.**

1. Heard Sri Mohit Sharma, learned counsel for petitioner as well as Sri G.P. Mishra, learned counsel for respondent No. 3.
2. By means of present writ petition, the petitioner has challenged the award dated 23.03.2021.
3. It has been submitted by learned counsel for petitioner that petitioner is a construction company having its office at Sadbhav House, Law Gardena Police Chowki, Elis Bridge - Ahmedabad and is primarily engaged in the business of construction of highway and toll plaza across the country.
4. It is stated that respondent No. 3/M/s. Hightech Concrete Ltd. is manufacturer of other non-metallic, mineral products, articles and concrete, cement and plaster, Hume pipes and other pre-fabricated structural components of cement and concrete for building or civil engineering and the petitioner has entered into contract with respondent No. 3 for supply of RCC pipes. There were certain disputes between petitioner and respondent No. 3 and the matter was referred to conciliation. It is stated that the conciliation proceedings had failed and consequently the matter was referred for arbitration as per Section 18 of Micro, Small and Medium Enterprises Development Act, 2006.
5. It is further stated that petitioner and respondent No. 3 are registered under the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the MSME Act) and accordingly the dispute was referred for arbitration under Section 18 of MSME Act, 2006.
6. The petitioner had appeared in the arbitration proceedings and filed his objections to the claim preferred by respondent No. 2. It is stated that subsequently due to onset of Covid -19

pandemic, the petitioner did not appear in the arbitration proceedings and the award was passed on 23.03.2021.

7. It is further stated that petitioner only came to know about the said award when recovery notice dated 17.11.2022 was received by them. Subsequently present writ petition was filed challenging the said award.

8. Learned counsel for respondents on the other hand has submitted that present writ petition would not be maintainable inasmuch as the petitioner has an equally efficacious remedy under Section 19 of MSME Act of 2006 for challenging the award. The said challenge has to be made under Section 34 of the Arbitration and Conciliation Act, 1996. He has further submitted that the dispute between petitioner and the respondent is a private dispute and the matter was referred to arbitration and further submitted that an award passed by the Arbitrator would not be amenable to writ jurisdiction under Article 227 of the Constitution of India.

9. In this context, Hon'ble the Supreme Court in the case of **Bhaven Construction Vs. Sardar Sarovar narmada Nigam Ltd, 2022 (1) SCC 75** has categorically observed :-

*16. Thereafter, Respondent No. 1 chose to impugn the order passed by the arbitrator under Section 16(2) of the Arbitration Act through a petition under Article 226/227 of the Indian Constitution. In the usual course, the Arbitration Act provides for a mechanism of challenge under Section 34. The opening phase of Section 34 reads as 'Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3)'. The use of term 'only' as occurring under the provision serves two purposes of making the enactment a complete code and lay down the procedure.*

*17. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a Constitutional right. In Nivedita Sharma v. Cellular Operators Association of India, (2011) 14 SCC 337, this Court referred to several judgments and held:*

*"11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, andamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation - L. Chandra Kumar v. Union of*

*India, (1997) 3 SCC 261. However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/ instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.*

*(emphasis supplied)*

***It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear 'bad faith' shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient."***

10. Considering the rival submissions, this court is of the considered view that the petitioner has an equally efficacious remedy for raising all the grievances which have been raised by him in the present case in proceeding for challenging the said award as per Section 34 of the Arbitration and Conciliation Act read with Section 19 of the MSME Act, 2006. For ready reference, Section 19 of MSME Act, 2006 is reproduced hereunder:-

*"19. Application for setting aside decree, award or order.—No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court: Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case subject to such conditions as it deems necessary to impose."*

11. It is noticed that even as per Section 36, it is provided that where time for making an application to set aside the award under Section 34 of Arbitration and Conciliation Act, 1996 has expired, then, subject to provisions of Sub-section 2 such award shall be enforced in accordance with the provision of the CPC in the same manner as if it were a decree of the Court.

12. It is noticed that the consequences not assailing the award within the time prescribed have been provided under Section 36 and the award has to be challenged as per the provisions of Section 36(3) of Arbitration and Conciliation Act, 1996 and the time period, accordingly is mandatory within which the award has to be assailed undoubtedly the time for challenge of award has expired.

13. Accordingly, this Court is of the considered view that where statutory prescription has already been provided for challenging the award and the dispute in between private parties a writ petition in this regard would not be maintainable. Further, it has been informed that execution proceedings are pending where the petitioner, if so advised, can take objections in accordance with law.

14. Subject to the aforesaid, this Court has not find any merit in the present writ petition, accordingly, the writ petition being devoid of merits and is dismissed.

**(Alok Mathur, J.)**

**Order Date :- 9.1.2024**

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