



CWP-26373-2023 (O&amp;M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

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(I) **CWP-26373-2023 (O&M)**

Date of Decision : July 18, 2025

**M/S AMBUJA CEMENTS LTD.****-PETITIONER**

V/S

**STATE OF PUNJAB AND OTHERS****-RESPONDENTS**(II) **CWP-1356-2024 (O&M)****M/S AMBUJA CEMENTS LTD.****-PETITIONER**

V/S

**STATE OF PUNJAB AND OTHERS****-RESPONDENTS**(III) **CWP-1358-2024 (O&M)****M/S AMBUJA CEMENTS LTD.****-PETITIONER**

V/S

**STATE OF PUNJAB AND OTHERS****-RESPONDENTS****CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Rajiv Atma Ram, Sr. Advocate with  
 Mr. Rajat Khanna, Advocate  
 Mr. Vijay Pratap Singh, Advocate and  
 Mr. Vishal Saini, Advocate  
 for the petitioner(s).

Mr. Saurav Verma, Addl. A.G., Punjab.

Mr. Amit Jhanji, Sr. Advocate with  
 Mr. Rajbir Singh, Advocate and  
 Mr. Shashank Shekhar Verma, Advocate  
 for the respondent No.5.

Ms. Geetika Sharma, Advocate for  
 Mr. Sourabh Goel, Sr. Standing Counsel, C.G.S.T.,  
 for the respondent No.9.

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**KULDEEP TIWARI, J. (ORAL)**

1. All these writ petitions are amenable for being decided through a common verdict, on account of theirs enveloping a similar issue for adjudication. For the sake of brevity and convenience, the facts are being extracted from CWP-26373-2023.

2. The prayer wrapped in this writ petition appertains to setting aside the award dated 18.10.2023, as passed by the Micro and Small Enterprises Facilitation Council, S.A.S. Nagar (hereinafter referred to as the 'M.S.E.F.C.').

3. Although the grounds canvassed in this writ petition are tantamount to assailing the impugned award on merits, during the course of arguments, the merits have not at all been touched by the learned senior counsel for the petitioner. Rather he addressed arguments primarily on these two grounds:- (i) the final arguments were heard by an authority/respondent No.4, who was never appointed as a Member of the M.S.E.F.C. by the competent authority, whereas, the impugned award has been drawn by an authority/respondent No.3-Chairman, M.S.E.F.C., who was never a part of the final hearing; (ii) the provisions of Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the 'M.S.M.E.D. Act') and Sections 65 to 81 of The Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996') were never adhered to inasmuch as the proceedings, as prescribed under Section 76 of the Act of 1996, were not at all undertaken. Therefore, these causes alone render the impugned award

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illegal.

4. Since the course of arguments has led the impugned award to be challenged merely on the *supra* grounds, rather than on merits, therefore, this Court is not dealing with merits of this writ petition, rather is adjudicating the *supra* grounds only.

### **FACTUAL MATRIX**

5. The respondent No.5 filed a reference/claim petition dated 31.08.2022, under Section 18 of the M.S.M.E.D. Act. The proceedings of this claim petition commenced before the M.S.E.F.C. on 17.11.2022. The petitioner-Company served a legal notice dated 03.05.2023, under Clause 24 of the 'Standard Terms Conditions' of the apposite purchaser orders, thus invoking arbitration for the claim of Rs. 26,18,15,576/-, under the Act of 1996. The respondent No.5 filed its reply to the legal notice on 18.05.2023. Thereafter, the petitioner-Company moved an application dated 04.05.2023, under Section 16 of the Act of 1996, thereby raising preliminary issue with regard to maintainability of the reference made under the M.S.M.E.D. Act, besides raising submissions on merits. This application received the reply of the respondent No.5 on 03.08.2023, whereupon, the petitioner-Company also filed a rejoinder thereto on 18.08.2023.

6. The preliminary hearing took place before the M.S.E.F.C. on 17.08.2023 and the matter was adjourned to 31.08.2023 for arguments on the application moved by the petitioner-Company. Worthwhile to record here that, only the respondent No.6, a member of the M.S.E.F.C., was



present during this hearing. Thereafter, since the zimni orders were neither uploaded on the official web portal, nor were supplied to the petitioner-Company, it made correspondences with the M.S.E.F.C. seeking supply thereof. However, the zimni orders were not supplied. Moreover, after the hearing held on 12.10.2023, no next date of hearing was informed to the petitioner-Company. Consequently, the petitioner-Company sent an e-mail dated 19.10.2023, thereby requesting information regarding the next date of hearing and also for supplying the copy of zimni orders. Finally, on 02.11.2023, the petitioner-Company received, through post, a copy of the impugned award dated 18.10.2023 passed by the M.S.E.F.C., which was signed by the respondent No.3/Chairman only.

7. Fetching grievance from the impugned award, the petitioner-Company has instituted this writ petition.

**SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE PETITIONER**

8. The thrust of the arguments advanced by the learned senior counsel for the petitioner is that, although the impugned award is shown to have been passed under the signatures of the respondent No.3-Chairman, M.S.E.F.C., she was never a part of the apposite proceedings, much less the final hearing. Rather it was the respondent No.4, who was then posted as Additional Deputy Commissioner, S.A.S. Nagar, who along with the respondent No.6 (Member Secretary, M.S.E.F.C.) heard the final arguments, whereas, he was never appointed as a Member of the M.S.E.F.C. by the competent authority. Consequently, the impugned

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award suffers from gross perversity and illegality.

9. By referring to paragraph No.12 of the writ petition, wherein becomes embodied the complete description of the proceedings carried out by the M.S.E.F.C., the learned senior counsel submits that, there was no occasion for the respondent No.3- Chairman to append her signatures on the impugned award by showing herself present on the date of final hearing, when she was not at all present there and rather the final arguments were heard by an authority/respondent No.4, who was not even empowered to do so.

10. Continuing his arguments, the learned senior counsel submits that, despite there being a clear mandate enclosed in Rule 10 of the Punjab Micro and Small Enterprises Facilitation Council Rules, 2021 (hereinafter referred to as the 'Rules of 2021') for uploading zimni orders on the official web portal, the same were never uploaded. He further submits that, it can be deciphered from the impugned award and the reply that, the mandatory proceedings envisaged under Sections 65 to 81 of the Act of 1996 were never adhered to and even the conciliation proceedings were not terminated and declared as per Section 76 of the *ibid* Act.

**SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE RESPONDENT NO.5**

11. The preliminary issue raised by the learned senior counsel for the respondent No.5 appertains to maintainability of this writ petition. He submits that, since the award has already been passed, hence the only remedy available with the petitioner is to assail the validity thereof by

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filings objections, through making application under Section 34 of the Act of 1996. The petitioner cannot sidetrack the statutory remedy and invoke the inherent jurisdiction of this Court. Therefore, the invocation of writ jurisdiction in matters where a statutory remedy exists is impermissible unless exceptional circumstances are demonstrated.

12. The learned senior counsel further submits that, the impugned award has been passed after giving due opportunity of hearing to the parties, hence there is no violation of the principles of natural justice. Moreover, the impugned award has been passed after considering the entire facts and circumstances produced before the M.S.E.F.C., therefore, there is no illegality in the impugned award even on merits also.

13. It is apt to record here that, the learned senior counsel for the respondent No.5 is unable to refute the factual aspects regarding the proceedings occurred before the M.S.E.F.C. However, he submits that, it is for the respondents No.1 and 2 to answer as to under what authority the respondent No.4 acted as a Member of the M.S.E.F.C.

### **SUBMISSIONS OF THE LEARNED STATE COUNSEL**

14. The arguments advanced by the learned senior counsel for the petitioner have been vociferously opposed by the learned State Counsel. Alike the learned senior counsel for the respondent No.5, he also opens his argument with regard to maintainability of this writ petition. He submits that, the M.S.E.F.C. is a quasi judicial authority operating under the M.S.M.E.D. Act and this Act is a special statute that holds overriding effect over any general law. He places reliance upon **CWP-12338-2019**,

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titeld as "*Indian Oil Corporation Ltd. Vs. Haryana Micro Small Enterprises Facilitation Council and Ors.*", to lend vigour to his argument that this writ petition is not maintainable.

15. The learned State counsel further submits that, the impugned award is fully compliant with the provisions set forth in the M.S.M.E.D. Act. Both the parties were granted multiple opportunities to present their respective arguments and evidence throughout the proceedings. By laying emphasis upon the record, he submits that, the M.S.E.F.C. engaged in a comprehensive hearing process, thus ensuring that, both the parties were afforded ample time and opportunity to articulate their positions. Hence, the impugned award has been drawn after ensuring compliance of the principles of natural justice.

16. Insofar as the substitution of respondent No.4 in place of the respondent No.3/Chairman, M.S.E.F.C., is concerned, the learned State counsels submits that, owing to some administrative exigencies, the respondent No.3 appointed the respondent No.4 as a Member of the District Level Micro and Small Enterprises Facilitation Council, S.A.S. Nagar. Therefore, in that capacity, the respondent No.4 was designated to act as Chairman in the absence of the respondent No.3, as communicated in the official correspondence dated 20.09.2023. This appointment was made to ensure the continuity of operations and effective functioning of the M.S.E.F.C., thereby upholding the procedural integrity of the facilitation process under the M.S.M.E.D. Act.

17. Finally, he submits that, on 12.10.2023, out of the five



members of M.S.E.F.C., four members were present namely Sh. Viraj S. Tidke, IAS, Additional Deputy Commissioner (General), S.A.S. Nagar; Sh. Arashjit Singh, General Manager, M.S.E.F.C.; Sh. M.K. Bhardwaj (Lead District Manager) and Sh. Manpreet Singh Dhatt (Industrial Member). The presence of these four members satisfied the necessary conditions for holding a valid meeting, thereby ensuring that the M.S.E.F.C. could effectively conduct its meeting and make binding decisions in accordance with the provisions of the M.S.M.E.D. Act. Consequently, the requisite quorum for holding a meeting on 12.10.2023 was there and the impugned award has been validly drawn.

**ANALYSIS OF SOME SIGNIFICANT LEGAL PROVISIONS  
GERMANE TO DISPOSAL OF THIS MATTER**

18. Before this Court proceeds to address the issues raised by the learned senior counsel for the petitioner, it is deemed imperative to initially capture a bird's-eye view of some of the significant legal provisions in order to understand the composition of the M.S.E.F.C. and the procedure for the appointment of its members.

19. The composition of the M.S.E.F.C. is prescribed in Section 21 of the M.S.M.E.D. Act. According to this Section, the M.S.E.F.C. shall consist of not less than three but not more than five members to be appointed from amongst the categories enumerated under its sub-section (1). Sub-section (2) declares that, the Director of Industries, by whatever name called, or any other officer not below the rank of such Director, in the Department of the State Government having administrative control of



the small scale industries or as the case may be, micro, small and medium enterprises, shall be the Chairperson of the M.S.E.F.C. Sub-section (3) stipulates that, composition of the M.S.E.F.C., the manner of filling vacancies of the members and the procedure to be followed in the discharge of their functions by the members shall be such as may be prescribed by the State Government. Section 21 is reproduced hereunder:-

**“21. Composition of Micro and Small Enterprises Facilitation Council.—(1) The Micro and Small Enterprise Facilitation Council shall consist of not less than three but not more than five members to be appointed from amongst the following categories, namely:—**

*(i) Director of Industries, by whatever name called, or any other officer not below the rank of such Director, in the Department of the State Government having administrative control of the small scale industries or, as the case may be, micro, small and medium enterprises; and*

*(ii) one or more office-bearers or representatives of associations of micro or small industry or enterprises in the State; and*

*(iii) one or more representatives of banks and financial institutions lending to micro or small enterprises; or*

*(iv) one or more persons having special knowledge in the field of industry, finance, law, trade or commerce.*

*(2) The person appointed under clause (i) of sub-section (1) shall be the Chairperson of the Micro and Small Enterprises Facilitation Council.*

*(3) The composition of the Micro and Small Enterprises Facilitation Council, the manner of filling vacancies of its members and the procedure to be followed in the discharge of their functions by the members shall be such as may be prescribed by the State Government.”*

20. The word “prescribed” is specifically defined in Section 2(k)



of the M.S.M.E.D. Act. “Prescribed” means prescribed by rules made under this Act. Therefore, it is imperative at this stage to have a glance upon the Rules of 2021, which embodies the composition of the Council, manner of the meetings of the Council and Quorum etc.

21. Rules 2(1)(iii) defines “Chairperson”. Rule 3 encapsulates the composition of the Council and Rule 9 prescribes the procedure for meetings of the Council and its Quorum. These Rules are extracted hereinafter:-

## “2. *Definition*

(1) In these rules, unless the context otherwise requires;

(iii) "Chairperson" means the Chairperson of the Council appointed under clause (i) of sub-section (1) of section 21;

**3. Composition of the Council.**—(1) For the purposes of section 21, the respective Deputy Commissioner of the district shall exercise the powers of the Director Industries and Commerce, Punjab and shall be the Chairperson of the Council with the following other members namely:

(i) Lead District Bank manager of the concerned District :

### *Member*

(ii) Two members from the associations of micro or small industry or enterprises in the state MSMEs (non official) :  
*Members*

(iii) General Manager of District Industries Centre :  
Member-Secretary

*(2) The office of the General Manager, District Industries Centre of the respective district shall act as the Secretariat office for the Council and shall be empowered to issue notices or orders on behalf of the Council.*

(3) The Government may provide a legal expert to assist the Council.



*(4) The Secretariat for the Council may have its own seal.*

**9. Meetings of the Council and Quorum:-** (1) *The meeting of the Council shall be ordinarily held after giving seven days notice. However, an urgent meeting can be called at such short notice as the Chairperson may consider.*

*(2) The notices/communication for the meeting shall be sent/given to the petitioner and respondent through registered post or SMS or email.*

*(3) The Council shall hold regular meetings, at least twice a month.*

*(4) The presence of three members of Council shall form a quorum."*

22. A conjoint reading of the *supra* Section and the Rules makes it amply clear that, for the purposes of Section 21, the Deputy Commissioner of the district shall exercise the powers of the Director Industries and Commerce, Punjab and shall be the Chairperson of the Council with the other members prescribed under sub-rule (1) of Rule 3. However, the Deputy Commissioner has no power to sub-delegate its quasi judicial power to any other officer. The Chairperson, as defined in Rule 2(1)(iii), means the Chairperson of the Council appointed under clause (i) of sub-section (1) of Section 21.

### **REASONS FOR SETTING ASIDE THE IMPUGNED AWARD AND REMANDING THE MATTER**

23. There is no dispute that, the respondent No.4 was never appointed as the Chairperson of the Council by the State Government, yet he acted as Chairperson of the Council and heard the final arguments in place of the respondent No.3-Chairperson. Although the learned State counsel places reliance upon some official correspondence to claim that

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the respondent No.4 was delegated powers on account of administrative exigencies, he is unable to substantiate that the respondent No.3-Deputy Commissioner/Chairperson of the Council has power to sub-delegate its quasi judicial powers and functions.

24. What is further not under dispute is that, despite the respondent No.3-Chairperson not being a part of the quorum hearing the final arguments, yet she has appended her signatures on the impugned award. The entire process undertaken to pass the impugned award does not have any legal backing.

25. Insofar as the respondents' argument with regard to maintainability of these writ petitions is concerned, especially when the petitioner is seized of the statutory remedy of filing objections under Section 34 of the Act of 1996, this Court would like to make it clear that, once the award suffers from the vice of gross illegality and perversity, this Court cannot shy away to invoke its inherent jurisdiction and is well within its jurisdiction to interfere in setting aside such an illegal award. The availability of statutory right does not, in every case, becomes a rule of exclusion of writ jurisdiction.

26. Consequently, this Court is of the view that, neither the respondent No.4 had any authority to act as Chairperson of the Council during final hearing, nor the respondent No.3- Chairperson, who did not hear the final arguments, had any authority to draw the impugned award. The impugned award suffers from gross illegality merely on these grounds itself, hence requires interference by this Court. Resultantly, **the**



**impugned award is set aside and the matter is remanded to the respondent No.2- M.S.E.F.C. for making a fresh award by strictly adhering to the provisions of the M.S.M.E.D. Act and the Act of 1996.**

27. The issue now arising for consideration is as to from which stage the proceedings shall commence before the respondent No.2- M.S.E.F.C.

28. The petitioner's claim is that, the mandate enclosed in Section 18 of the M.S.M.E.D. Act was not adhered to. Section 18, which lays down in detail the steps and procedures for conducting conciliation, is reproduced hereunder:-

***“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 it to 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.”*

29. Sub-section (2) of Section 18 makes it abundantly clear that, 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 reference to such an institution or centre and the provisions of Sections 65 to 81 of the Act of 1996 shall apply for conducting conciliation.

30. Section 76 of the Act of 1996 prescribes the procedure for termination of the conciliation proceedings. Section 76 is reproduced hereunder:-

***“76. Termination of conciliation proceedings.—The conciliation proceedings shall be terminated—***

- (a) by the signing of the settlement agreement by the parties, on the date of the agreement; or*
- (b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or*
- (c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are*



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*terminated, on the date of the declaration; or*

*(d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration."*

31. Neither the learned senior counsel for the respondent No.5, nor the learned State counsel is able to point out that, at any point of time, compliance of Section 76 was made while terminating the conciliation proceedings and/or any declaration was made in consonance therewith. Consequently, **the proceedings before the respondent No.2-M.S.E.F.C. shall commence from the stage of conciliation. The respondent No.2-M.S.E.F.C. shall draw a fresh award by strictly adhering to the provisions of the M.S.M.E.D. Act and the Act of 1996.**

32. Registry is directed to forthwith send back the record(s) of the lower court.

33. Before parting, this Court also deems it imperative, in order to ensure transparency in the functioning of the respondent No.2-M.S.E.F.C., to direct the latter to make meticulous compliance of Rule 10 of the Rules of 2021 and to upload all the zimni orders on their web portal within three working days.

34. **Disposed of accordingly.**

(KULDEEP TIWARI)  
JUDGE

July 18, 2025  
devinder

Whether speaking/reasoned : Yes/No  
Whether Reportable : Yes/No