

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 22nd OF JULY, 2024

WRIT PETITION No. 10767 of 2024

GANGOTRI WIRES ROPES PVT. LTD.

Versus

***MICRO AND SMALL ENTERPRISES FACILITATION
COUNCIL AND OTHERS***

Appearance:

Shri Rishabh Gupta – Advocate for petitioner.

Shri Rajat Shriram Sondhi – Advocate for respondent Nos.2 to 4.

WITH

WRIT PETITION No. 11621 of 2024

GANGOTRI WIRES ROPES PVT. LTD.

Versus

***MICRO AND SMALL ENTERPRISES FACILITATION
COUNCIL AND OTHERS***

Appearance:

Shri Rishabh Gupta – Advocate for petitioner.

Shri Rajat Shriram Sondhi – Advocate for respondent Nos.2 to 4.

WRIT PETITION No. 11623 of 2024

GANGOTRI WIRES ROPES PVT. LTD.

Versus

***MICRO AND SMALL ENTERPRISES FACILITATION
COUNCIL AND OTHERS***

Appearance:

Shri Rishabh Gupta – Advocate for petitioner.

Shri Rajat Shriram Sondhi – Advocate for respondent Nos.2 to 4.

WRIT PETITION No. 11624 of 2024
GANGOTRI WIRES ROPES PVT. LTD.

Versus

***MICRO AND SMALL ENTERPRISES FACILITATION
COUNCIL AND OTHERS***

Appearance:

Shri Rishabh Gupta – Advocate for petitioner.

Shri Rajat Shriram Sondhi – Advocate for respondent Nos.2 to 4.

WRIT PETITION No. 11631 of 2024
GANGOTRI WIRES ROPES PVT. LTD.

Versus

***MICRO AND SMALL ENTERPRISES FACILITATION
COUNCIL AND OTHERS***

Appearance:

Shri Rishabh Gupta – Advocate for petitioner.

Shri Rajat Shriram Sondhi – Advocate for respondent Nos.2 to 4.

WRIT PETITION No. 11633 of 2024
GANGOTRI WIRES ROPES PVT. LTD.

Versus

***MICRO AND SMALL ENTERPRISES FACILITATION
COUNCIL AND OTHERS***

Appearance:

Shri Rishabh Gupta – Advocate for petitioner.

Shri Rajat Shriram Sondhi – Advocate for respondent Nos.2 to 4.

WRIT PETITION No. 11637 of 2024
GANGOTRI WIRES ROPES PVT. LTD.

Versus

***MICRO AND SMALL ENTERPRISES FACILITATION
COUNCIL AND OTHERS***

Appearance:

Shri Rishabh Gupta – Advocate for petitioner.

Shri Rajat Shriram Sondhi – Advocate for respondent Nos.2 to 4.

WRIT PETITION No. 11652 of 2024
GANGOTRI WIRES ROPES PVT. LTD.

Versus

**MICRO AND SMALL ENTERPRISES FACILITATION
COUNCIL AND OTHERS**

Appearance:

Shri Rishabh Gupta – Advocate for petitioner.

Shri Rajat Shriram Sondhi – Advocate for respondent Nos.2 to 4.

WRIT PETITION No. 12203 of 2024
GANGOTRI WIRES ROPES PVT. LTD.

Versus

**MICRO AND SMALL ENTERPRISES FACILITATION
COUNCIL AND OTHERS**

Appearance:

Shri Rishabh Gupta – Advocate for petitioner.

Shri Rajat Shriram Sondhi – Advocate for respondent Nos.2 to 4.

WRIT PETITION No. 12328 of 2024
GANGOTRI WIRES ROPES PVT. LTD.

Versus

**MICRO AND SMALL ENTERPRISES FACILITATION
COUNCIL AND OTHERS**

Appearance:

Shri Rishabh Gupta – Advocate for petitioner.

Shri Rajat Shriram Sondhi – Advocate for respondent Nos.2 to 4.

WRIT PETITION No. 12329 of 2024
GANGOTRI WIRES ROPES PVT. LTD.

Versus

**MICRO AND SMALL ENTERPRISES FACILITATION
COUNCIL AND OTHERS**

Appearance:

Shri Rishabh Gupta – Advocate for petitioner.

Shri Rajat Shriram Sondhi – Advocate for respondent Nos.2 to 4.

WRIT PETITION No. 12330 of 2024
GANGOTRI WRIES ROPES PVT. LTD.

Versus

***MICRO AND SMALL ENTERPRISES FACILITATION
COUNCIL AND OTHERS***

Appearance:

Shri Rishabh Gupta – Advocate for petitioner.

Shri Rajat Shriram Sondhi – Advocate for respondent Nos.2 to 4.

WRIT PETITION No. 12331 of 2024
GANGOTRI WIRES ROPES PVT. LTD.

Versus

***MICRO AND SMALL ENTERPRISES FACILITATION
COUNCIL AND OTHERS***

Appearance:

Shri Rishabh Gupta – Advocate for petitioner.

Shri Rajat Shriram Sondhi – Advocate for respondent Nos.2 to 4.

ORDER

1] Heard finally, with the consent of the parties. The issue involved in these petition is that whether the Facilitation Council has the jurisdiction and can enter into a dispute between the directors inter se of the petitioner Company.

2] This order shall also govern the disposal of W.P. Nos.11621, 11623, 11624, 11631, 11633, 11637, 11652, 12203, 12328, 12329, 12330 and 12331 of 2024, regard being had to the commonality of the issue involved. For the sake of convenience, the facts as narrated in

W.P. No.10767 of 2024 are being taken into consideration.

3] This petition has been filed under Article 226 of the Constitution of India against the order dated 15.03.2024 passed by the M.P., Micro, Small and Medium Enterprises, Facilitation Council (in short 'Facilitation Council') whereby petitioner's application filed under Section 18(1) of the Micro, Small and Medium Enterprises Development Act, 2006 (in short 'the Act of 2006') has been rejected.

4] **Shorn of details**, in brief, the facts of the case are that the aforesaid application has been rejected by the Facilitation Council predominantly on the ground that the other Directors of the petitioner Gangotri Wires Ropes Private Limited have not assented to the filing of the application under Section 18 of the Act of 2006.

5] The petitioner is a Private Limited Company, registered under the Companies Act, 1956, having its registered office at 32/33, Industrial Area, Rau, Indore (M.P.) 453331. The Company had sold certain goods to M/s. Parakh Polymers, respondent No.2 herein, and the payment of which was not made by the said firm, which led the petitioner to file the claim before the Facilitation Council wherein a sum of Rs.42,64,724/- was sought to be recovered from the respondent No.2 M/s. Parakh Polymer along with interest, in accordance with law.

6] The aforesaid case was filed on behalf of the Company by Shri Anil Sharma, the authorized signatory of the petitioner company one of the Directors of the petitioner company, who was authorized through a Resolution dated 04.01.2020. In the aforesaid case, which was registered as Case No.MSEFC/1908/2023, objections were filed

by the other Directors of the petitioner/company, who are the respondent No.3 Mr. Antim Parekh and Mrs. Sapna Antim Parekh, the respondent no.4, contending before the Facilitation Council not to proceed further as the claim has been made after suppressing the material facts, on the ground that they are also the Directors of the petitioner/company and various notices have been issued by the other Director Anil Shrama to various businessmen, but before issuing such notices, their permission has not been taken, hence, it was prayed that no further proceedings be initiated against the respondent no.2 at the instance of the complaint filed by the other Director Anil Sharma. The aforesaid applications/objections were objected to by the present petitioner through its Director Anil Sharma, and after considering the objections raised by the intervenors, the Facilitation Council has passed the final order on 15.03.2024, and being aggrieved, the present petition has been filed.

7] Counsel for the petitioner has submitted that the Facilitation Council has entered into the inter se dispute between the directors of the petitioner company, which was not the subject matter of the application filed under Section 18 of the Act of 2006 and thus, the Council has exceeded in its jurisdiction in entertaining the objection raised by the respondent Nos.3 and 4 and holding that the application is not maintainable on account of lack of *locus standi* of the petitioner to file the claim application. It is submitted that the impugned order deserves to be set aside and the matter needs to be remanded back to the Facilitation Council for its decision on merits.

8] Counsel for the petitioner has also submitted that the respondent

No.2, the purchaser of the goods had never objected to the quality of the goods supplied to it by the petitioner company, and in such circumstances, it was not open for the Facilitation Council to come to a conclusion only on the basis of the admission made by the other Directors of the petitioner company that the goods were not up to the mark. Counsel has also referred to the FAQs of the Government's website regarding the MSME in which the question No.22 reads as under:-

“Q.22 Whether Council should decide on breach of contract between buyer and supplier, such as rejection of goods for quality deficiencies by buyer as a ground for refusal of dues to supplier?”

Ans: Breach of contract is not within scope of MSMED Act, 2006. Rejection of goods should be genuine within 15 days of the receipt of goods and its immediate communication to supplier.”

9] Thus, it is submitted that since no objection was ever raised by the respondent No.2 regarding the quality of the goods, it was not open for the Facilitation Council to decide upon the quality of the goods, which was not even objected to by the respondent No.2.

10] Shri Rajat Sondhi, leaned counsel appearing for the respondents has vehemently opposed the prayer and it is submitted that no case for interference is made out as the Facilitation Council has not only rejected the claim of the petitioner on the ground of locus of the authorized Director Anil Sharma to file the same, but also on merits, and in such circumstances, since an alternative remedy under Section 19 of the Act of 2006 is also available to the petitioner. Hence, no case for interference is made out.

11] Heard. Having considered the rival submissions and on perusal of the documents filed on record, this Court finds that so far as the

conclusions arrived at by the Facilitation Council are concerned, the same read as under:-

“विक्षेपण एवं निर्णय”

10. आवेदक कंपनी के संबंध में भारत सरकार, कंपनी कार्य मंत्रालय की वेबसाईट में उपलब्धन जानकारी अनुसार यह अविवादित है कि श्री अंतिम पारेख दिनांक 01/05/2014 से आवेदक कंपनी में डायरेक्टर नियुक्त हैं। वाद उत्पाति दिनांक को कंपनी में मात्र (1) श्री अनिल शर्मा एवं (2) श्री अंतिम पारेख ही डायरेक्टर की हैसियत में नियुक्त थे। यह भी अविवादित है कि दोनों डायरेक्टर लगभग 90 शेरर होल्डु करते थे।

11. पक्षकारों द्वारा वर्णित कथन अनुसार दिनांक परिषद में वाद प्रस्तुतति दिनांक 30/06/2023 को श्रीमती सपना पारेख भी कंपनी में एडिशनल डायरेक्टर नियुक्त थीं।

12. ऐसी स्थिति जब कंपनी के अन्य डायरेक्टर परिषद के समक्ष स्वशयं उपस्थित होकर यह कथन कर रहे हैं कि आवेदक कंपनी द्वारा परिषद में प्रकरण संस्थित किए जाने में उनके सहमति नहीं थी, तथा वे प्रकरण को खारिज किया जाना चाहते हैं; परिषद को इस निष्कर्ष पर पहुँचने के पर्याप्त योग्य बनाती है कि परिषद में संदर्भ प्रस्तुत करने की दिनांक 30/06/2023 को श्री अनिल शर्मा द्वारा अन्य डायरेक्टर श्री अंतिम पारेख एवं एडिशनल डायरेक्टर श्रीमती सपना पारेख की सहमति नहीं की गई थी शर्मा द्वारा फाइल किए जाने तक ही सीमित किया जाना मान्यह किया जाता है। चूँकि कंपनी एक कृत्रिम व्यक्तित्वज है तथा डायरेक्टर व्यक्तित्व क्षमता में वाद प्रस्तुत करने योग्य नहीं है; अतएव क्षमता (Locus standi) के अभाव में वाद परिषद में पोषणीय नहीं है।

13. विधि का सुस्थाहपित सिद्धांत है कि किसी कंपनी में कंपनी एवं डायरेक्टर का संबंध ‘मालिक एवं एजेंट’ का होता है। संविदा विधि अनुसार कंपनी के कामकाज में एजेंट द्वारा किया गया संव्यवहार मालिक पर बाध्यकारी होगा। यदि गुणदोष के आधार पर भी वाद का विक्षेपण किया जाए तो आवेदक कंपनी के एक डायरेक्टर द्वारा अनवेदक को सामग्री की संतुष्टिपूर्ण आपूर्ति का समर्थन नहीं किया जाकर यह स्वीदकारोक्ति की गई है कि माल की गुणवत्ता खराब थी, तथा कंपनी द्वारा माल वापिस नहीं उठाया गया था। कंपनी की ओर से अन्यर डायरेक्टर के उक्तक कथन को कंपनी के विरुद्ध वैध स्वी कारोक्ति के रूप में लिया जाना उचित होगा। अतः क्रेता को माल की संतुष्टिपूर्ण आपूर्ति प्रमाणित नहीं होने से गुणदोष के आधार पर भी वाद खारिज किए जाने योग्यम है।

14. जहाँ तक आवेदक द्वारा कंपनी के अन्य डायरेक्टर के कंपनी के हित के विरुद्ध कार्य किए जाने के कारण कंपनी एक्ट, 2013 की धारा 166 के तहत कार्यवाही किए जाने के तर्क का संबंध है, आवेदक इस हेतु अन्य डायरेक्टर के विरुद्ध सक्षम न्यायालय में आवश्यक वाद संस्थित करने हेतु संक्षम हैं। किन्तु चूँकि वाद आज दिनांक की स्थिति में भी श्री अंतिम पारेख कंपनी में डायरेक्टर की भूमिका में है, अतः आवेदक द्वारा उनके विरुद्ध कार्यवाही की मंशा मात्र, श्री पारेख को उनके द्वारा परिषद में प्रस्तुत अभिवचन करने के अयोग्य नहीं बनाती है।

15. अतः उक्त वर्णित बिंदुओं में उल्लेखित निष्कर्ष के आधार पर परिषद् सूक्ष्म लघु एवं मध्यम उद्यम विकास 2006 की धारा 18(3) के अंतर्गत प्रदत्त शक्तियों का प्रयोग करते हुए आवेदक मेसर्स गंगोत्री वायर रोपिंग प्राइवेट लिमिटेड द्वारा परिषद में प्रस्तुत प्रकरण खारिज किया जाना निर्णीत करती है।

16. प्रकरण में पारित आदेश की प्रति उभयपक्षों को निःशुल्क प्रदान की जायेगी। अभिप्रमाणित प्रति के लिए नियमानुसार सचिव म.प्र. सूक्ष्म और लघु उद्यम फैसिलिटेशन काउंसिल भोपाल को आवेदन कर प्रति पृष्ठ हेतु रुपये 2/- के मान से लेखा शाखा में राशि जमा करना आवश्यक होगा। उभयपक्ष अपना अपना वाद व्यय स्वयं वहन करेंगे।

(Emphasis supplied)

12] A perusal of the same clearly reveals that the Facilitation Council has held that Anil Sharma, the Director of the company is not competent to file the claim. It is also found that even on merits of the case, which is reflected in para 13 of the aforesaid order, the Facilitation Council has referred to the fact that one of the Directors of the petitioner company has admitted that the goods supplied by them were not up to the standard, and also that the company did not take the goods back, and the statement given by one of the Directors of the company has to be considered as an admission on the part of the company. Hence, it has been held that since the goods supplied to the respondent no.2/purchaser were not to his satisfaction, hence, also the claim is liable to be rejected.

13] So far as the aforesaid finding is concerned, this Court finds that although the objections have been raised by the respondent No.2 to whom the goods were supplied that they were of inferior quality, and also that the respondent no.2's director Shr Avi Parekh happens to be the son of one of the directors of the petitioner company viz., Antim Parekh and whose permission was also required to file the application before the Facilitation Council, but this court finds that the Facilitation Council has only taken into account the admissions made by the other directors of the petitioner Company and has not reflected upon the issue of inferior quality of goods.

14] In such circumstances, in the absence of any tangible material on record to support such contention regarding the inferior quality of goods supplied by the petitioner company, it cannot be held that merely because the other Directors of the petitioner company have admitted that the goods were of inferior quality, they can be presumed to be of inferior quality. Apart from that, this Court also finds that the learned Members of the Facilitation Council have also lost sight of the provisions of Section 2(b)(ii) of the Act of 2006, which defines the day of deemed acceptance, which reads as under:-

“XXXXXXXX

(ii) “the day of deemed acceptance” means, where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services.”

15] In the considered opinion of this Court, the *inter se* dispute between the Directors of the petitioner company cannot be decided by the Facilitation Council in its jurisdiction as conferred under the Act

of 2006, and such disputes between the owners of such enterprise cannot have any bearing on decision of the Facilitation Council u/s.18 of the Act of 2006. Thus, the Facilitation Council has apparently exceeded in its jurisdiction in dwelling upon the said dispute of the directors of the petitioner company, and to reject the claim of the petitioner company which has been filed by one of the authorized directors.

16] On merits also, the decision of the Facilitation Council appears to have been influenced by the bare admissions made by the other directors of the petitioner company rather than the pleadings of the respondent no.2. In view of the same, **the order dated 15.03.2024 is hereby set aside** and the matter is remanded back to the Facilitation Council for its decision on merits of the case, without being influenced by the admissions made by the other directors of the petitioner Company, in accordance with law.

17] With the aforesaid, petition stand **allowed** and **disposed of**.

18] It is made clear that this Court has not reflected upon the merits of the case.

19] Let a copy of this order be placed in the record of other connected matters.

(SUBODH ABHYANKAR)
JUDGE

Pankaj