

S.No.144

Supp. List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR

WP(C) 2673/2024 CM(7273/2024)

**UT OF JAMMU AND KASHMIR(P.H.E.)** ...Petitioner(s)/Appellant(s)

**Through:** Mr. A.R. Malik, Sr. AAG with  
Mr. Mohammad Younus, Advocate

Vs.

**MM/S JTL INFRA LIMITED AND ANOTHER** ...Respondent(s)

**Through:**

**CORAM:**

**HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE**

**ORDER**  
**27-11-2024**

1. The petitioner through the medium of the preset writ petition has called in question the award dated 1<sup>st</sup> June, 2023 passed by Chairperson, District Level Micro & Small Enterprises Facilitation Council (MSEFC) SAS Nagar Punjab in case titled "M/S JTL Infra Limited v/s Executive Engineer PHE M & P Division Srinagar, whereby the respondents were held to be entitled for the payment of Rs 2,75,65,355.00/- (Rs. Two crore seventy five lakh sixty five thousand three hundred and fifty five only) as principal along with interest as delayed payment upto 31.05.2023 and the reference of the respondents has been accepted not only for the pending principal amount but also with interest there upon as per provisions of Section 16 of the Micro, Small and Medium Enterprises Development Act, 2006, Act. 2006 and an award of pending principal amount of Rs 2,75.65.355.00/- (Rs. Two crore seventy five lakh sixty five

thousand three hundred and fifty five only) alongwith interest of Rs 8,77,32,279.00/- ( Rs. Eight crore seventy seven lakh thirty two thousand two hundred and seventy nine only) upto 20.04.2023 (Total amounting to Rs 11,52,97,635.00/- (eleven crore fifty two lakh ninety seven thousand six hundred and thirty five only) as per Calculation Sheet attached, was passed in favour of the respondents against the petitioner.

2. Besides, further direction was issued to the petitioner to pay future interest on delayed payments as per provision of the MSMED Act to the respondents on Awarded amount from 01.06.2023 till its realization.
3. Learned counsel has vehemently argued that the award passed by Chairperson, District Level Micro & Small Enterprises Facilitation Council (MSEFC) is liable to be set aside for the reasons that the same is not in accordance with the law holding the field.
4. He further argued that the council has not applied its mind to the provisions of Micro Small & Medium Development Act, 2006 while passing the impugned award.
5. Learned counsel has further drawn the attention of the Court to the statement of the object and reasons of the said enactment, a perusal whereof reveals that the act has been enacted to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected there with or incidental thereto.

6. In the aforesaid backdrop, Mr. Abdul Rashid Malik, learned counsel for the petitioner, has drawn the attention of the Court to section 7 of the aforesaid Act, which prescribes classification of Enterprises, to which the aforesaid Act is applicable. For facility of reference, section 7 is reproduced as under:

**Section 7: Classification of enterprises**

*1) (Notwithstanding anything contained in section 11B of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government may, for the purposes of this Act, by notification and having regard to the provisions of sub-sections (4) and (5), classify any class or classes of enterprises, whether proprietorship, Hindu undivided family, association of persons, co-operative society, partnership firm, company or undertaking, by whatever name called,--*

*a) in the case of the enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), as—*

*I. a micro enterprise, where the investment in plant and machinery does not exceed twenty five lakh rupees;*

*II. a small enterprise, where the investment in plant and machinery is more than twenty-five lakh rupees but does not exceed five crore rupees; or*

*III. a medium enterprise, where the investment in plant and machinery is more than five crore rupees but does not exceed ten crore rupees;*

*b) in the case of the enterprises engaged in providing or rendering of services, as--*

*I. a micro enterprise, where the investment in equipment does not exceed ten lakh rupees;*

*I. a small enterprise, where the investment in equipment is more than ten lakh rupees but does not exceed two crore rupees; or*

*II. a medium enterprise, where the investment in equipment is more than two crore rupees but does not exceed five crore rupees.*

**Explanation 1.--***For the removal of doubts, it is hereby clarified that in calculating the investment in plant and machinery, the cost of pollution control, research and development,*

**industrial safety devices and such other items as may be specified, by notification, shall be excluded.**

**Explanation 2.--It is clarified that the provisions of section 29B of the Industries (Development and Regulation) Act, 1951 (65 of 1951), shall be applicable to the enterprises specified in sub-clauses (i) and (ii) of clause (a) of sub-section (1) of this section.**

- 2) **The Central Government shall, by notification, constitute an Advisory Committee consisting of the following members, namely:--**
  - a) **the Secretary to the Government of India in the Ministry or Department of the Central Government having administrative control of the small and medium enterprises who shall be the Chairperson, ex officio;**
  - b) **not more than five officers of the Central Government possessing necessary expertise in matters relating to micro, small and medium enterprises, members, ex officio;**
  - c) **not more than three representatives of the State Governments, members, ex officio; and**
  - d) **one representative each of the associations of micro, small and medium enterprises, members, ex officio.**
- 3) **The Member-Secretary of the Board shall also be the ex officio Member-Secretary of the Advisory Committee.**
- 4) **The Central Government shall, prior to classifying any class or classes of enterprises under sub-section (1), obtain the recommendations of the Advisory Committee.**
- 5) **The Advisory Committee shall examine the matter referred to it by the Board in connection with any subject referred to in section 5 and furnish its recommendations to the Board.**
- 6) **The Central Government may seek the advice of the Advisory Committee on any of the matters specified in section 9, 10, 11, 12 or 14 of Chapter IV.**
- 7) **The State Government may seek advice of the Advisory Committee on any of the matters specified in the rules made under section 30.**
- 8) **The Advisory Committee shall, after considering the following matters, communicate its recommendations or advice to the Central Government or, as the case may be, State Government or the Board, namely:--**
  - a) **the level of employment in a class or classes of enterprises;**
  - b) **the level of investments in plant and machinery or equipment in a class or classes of enterprises;**
  - c) **the need of higher investment in plant and machinery or equipment**

*for technological upgradation, employment generation and enhanced competitiveness of the class or classes of enterprises;*

*d) the possibility of promoting and diffusing entrepreneurship in micro, small or medium enterprises; and*

*e) the international standards for classification of small and medium enterprises.*

*9) Notwithstanding anything contained in section 11B of the Industries (Development and Regulation) Act, 1951 (65 of 1951) and clause (h) of section 2 of the Khadi and Village Industries Commission Act, 1956 (61 of 1956), the Central Government may, while classifying any class or classes of enterprises under sub-section (1), vary, from time to time, the criterion of investment and also consider criteria or standards in respect of employment or turnover of the enterprises and include in such classification the micro or tiny enterprises or the village enterprises, as part of small enterprises.*

7. Relying upon the aforesaid statutory provisions, learned counsel submits that the award passed by the said council has violated the aforesaid statutory provision of the Act as the respondents does not fall within the definition of “Micro, Small and Medium Enterprises” as defined under the aforesaid statutory provision.

8. Learned counsel for the petitioner has made an endeavor to distinguish between the three enterprises i.e. Micro Enterprises, Small Enterprises and Medium Enterprises. In so far as the Micro Enterprises is concerned, as per the aforesaid statutory provision, the investment in the plant and machinery should not exceed twenty-five lakh rupees, and in case of the small enterprise, the investment in plant and machinery is to be more

than twenty-five lakh rupees, but does not exceed five crore rupees and in so far as the medium enterprise is concerned the investment in equipment is more than five crore rupees, but does not exceed ten crore rupees. However, in case of the enterprises engaged in providing or rendering of service, the following slabs are provided as under:

1. For micro enterprise, where the investment in equipment does not exceed **ten lakh rupees**.
  2. For small enterprise, where the investment in equipment is more than **ten lakh rupees rupees** but does not exceed **two crore rupees**.
  3. For medium enterprise, where the investment in equipment is more than **two crores rupees** but does not exceed **five crores rupees**.
9. It is the further case of the petitioner, that it is incumbent on part of the council before passing the impugned award to have recorded a finding whether, the respondents falls within the ambit of Micro, Small and Medium Enterprises but admittedly, the council has not called for any record nor has recorded any finding as to whether the respondents fall within the definition of Micro, Small and Medium Enterprises. On the other hand, the said council proceeded to pass the aforesaid award and that too, *ex-parte* without providing an opportunity of being heard to the petitioner herein (respondents therein).
10. The petitioner with a view to substantiate their claim has placed on record the annual turnover by way of Income Tax Return. A perusal of the same reveals that the annual turn over details of the respondents for the year 2015-16, 2016-17, 2017-

18, 2018-19 is Rs. 94,86,54, 512; Rs. 112,74,67,380; Rs. 169,73,85, 606; Rs. 321,53,03,094 respectively.

11. Further, the petitioner has also placed on record another certificate issued by Suresh K Aggarwal & Co, Chartered Accountants dated 6<sup>th</sup> April, 2019. Both the documents which have been placed on record, leads to an irresistible conclusion that the respondents does not fall within the definition of Micro, Small and Medium Enterprises and is not a supplier under the aforesaid Act and thus, according to Mr. Malik, the award passed by the said council is without jurisdiction and liable to be quashed as the same is in flagrant violation of section 7 of the aforesaid Act.

12. Additionally, it has also been pleaded by the petitioner that the respondents as per section 8 of the aforesaid Act has to register itself under the Act and has to submit the memorandum in detail to the competent authority with copy to the petitioner making the petitioner aware at the time of transaction that the supplier is covered under the aforesaid act and falls within the definition as envisaged under the aforesaid act.

13. Learned counsel for the petitioner has drawn the attention of section 8 of the aforesaid act which provides for filing of Memorandum before the competent authority to claim the benefit under the said Act. For facility of reference section 8 is reproduced is under:

**8. Memorandum of micro, small and medium enterprises-**

**1. Any person who intends to establish,--**

- a) a micro or small enterprise, may, at his discretion; or
- b) a medium enterprise engaged in providing or rendering of services may, at his discretion; or
- c) a medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), shall file the memorandum of micro, small or, as the case may be, of medium enterprise with such authority as may be specified by the State Government under sub-section (4) or the Central Government under sub-section (3):

Provided that any person who, before commencement of this Act, established--

- a) a small scale industry and obtained a registration certificate, may, at his discretion; and
  - b) an industry engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), having investment in plant and machinery of more than one crore rupees but not exceeding ten crore rupees and, in pursuance of the notification of the Government of India in the erstwhile Ministry of Industry (Department of Industrial Development) number S.O. 477(E), dated the 25th July, 1991 filed an Industrial Entrepreneur's Memorandum shall within one hundred and eighty days from the commencement of this Act, file the memorandum, in accordance with the provisions of this Act.
2. The form of the memorandum, the procedure of its filing and other matters incidental thereto shall be such as may be notified by the Central Government after obtaining the recommendations of the Advisory Committee in this behalf.
  3. The authority with which the memorandum shall be filed by a medium enterprise shall be such as may be specified, by notification, by the Central Govt.
  4. The State Government shall, by notification, specify the authority with which a micro or small enterprise may file the memorandum.
  5. The authorities specified under sub-sections (3) and (4) shall follow, for the purposes of this section, the procedure notified by the Central Government under sub-section (2).

14. Thus, in terms of the aforesaid statutory provision, Mr. Malik, submits that the council while passing the impugned award has not called the record with regard to the Memorandum and registration record of the respondents and on the other hand, the council has passed the award in a hush-hush manner without



application of mind and that too without framing any issue as to whether the respondents falls within the definition of the supplier and fulfills the requirement of the Act. The award as such is nullity as the investment and turnover of the respondents makes it clear that it does not fall within the definition of micro, small or medium enterprises and is not a supplier under the said Act.

15. Lastly, learned counsel for the petitioner submits that council while passing the aforesaid award has not recorded the presence of the learned Additional Advocate General, Punjab and Haryana High Court, who appeared before the said council. It is further submitted, although, the objection was raised with respect to the inherent jurisdiction of the said council to pass the award, but said objection was not dealt by the council in the said order. Even, the written arguments which have been supplied to the said council has not been taken on record or considered.

16. Heard learned counsel for the petitioner at length and perused the material on record.

17. *Prima facie* a case for indulgence and interim relief is made out at this stage.

18. Issue notice to the respondents, returnable within a period of four weeks. Requisite steps for service within one week.

19. List on 17<sup>th</sup> February, 2025.

20. In the meantime, subject to objections from other side and till next date of hearing before the Bench, impugned award dated 1<sup>st</sup> June, 2023 passed by Chairperson, District Level Micro & Small

Enterprises Facilitation Council (MSEFC) SAS Nagar Punjab in case titled “M/S JTL Infra Limited v/s Executive Engineer, PHE M & P Division, Srinagar, Jammu and Kashmir, shall remain stayed.

21.Alteration/vacation and modification on motion.

(WASIM SADIQ NARGAL)  
JUDGE

**SRINAGAR:**  
**27-11-2024**  
Mubashir

