

S/L 19
03.12.2025
Court. No. 25
sourav

WPA 26463 of 2025

**The Board of Major Port Authority for the
Syama Prasad Mookerjee Port, Kolkata & Anr.
Vs.
Haryana Micro and Small Enterprises
Facilitation Council (HMSEFC) & Ors.**

*Mr. Kishore Datta, Sr. Adv.
Mr. Ashok Kumar Jena*

...for the petitioner.

1. The petitioner has filed the present writ application challenging the communication issued by the Director General of MSME, Haryana – cum – Chairman, of Haryana Micro and Small Enterprises Facilitation Council (HMSEFC) wherein the respondent no. 3 has informed the petitioners that the private respondent no. 4 has filed claim application and reference has been made under Section 18(1) of MSMED Act to the Council and petitioners are called upon by the respondents to furnish response to the reference council.
2. The learned counsel for the petitioners submits that the work orders were issued to the private respondent and the work orders do not come under the purview of MSME Act. There is no buyer and seller relationship as private respondent was to execute the work as per the scope of work. He further submits that as the private respondent has not completed the work, the petitioner had issued the show-cause notice and after receipt of the show-cause notice, it is found that the reply submitted by the private respondent was not

satisfactory. Accordingly, the work orders were terminated.

3. Respondent no. 4 has not raised any bill and no liability of the petitioners to pay any amount under Section 17 of the Act. He submits that the private respondent has not challenged the order of termination. He further submits that the private respondent has not completed the work as such the private respondent is not entitled to get any payment from the petitioner. He further submits that the Council has no jurisdiction to decide the issue raised by the private respondent. He prays for interim order staying the operation of the impugned communication dated July 3, 2025.
4. The petitioners have filed the affidavit-of-service showing that notice has been served upon the respondents by email but in spite of receipt of notice, none appears on behalf of the respondents. The petitioners have also handed over two communications wherein the petitioners have informed the date to the respondents but in spite of said communication also, the respondents failed to appear before this Court.
5. By a letter dated 10.04.2024, the petitioners indicated the respondent no. 4 that in the drawings and designs submitted by respondent no. 4, there were many discrepancies and requested to incorporate some changes communicated by the petitioners. On 16.10.2024, the respondent no. 4 agreed to revise deliverables and submit estimate within 40 to 60 days.

The petitioners accepted the scheme and payment of 1st part was released.

6. The petitioners again asked the respondent no. 4 to submit detailed estimate and other deliverables as per tender documents within four months but the respondent no. 4 submitted only estimate of lock area that was also defective. The respondent denied to revise the estimate and rejected to address the issues raised by the petitioners.
7. Subsequently, a show-cause notice was issued to the private respondent on February 17, 2025. The private respondent has submitted the reply to the show-cause notice and on receipt of the show-cause notice, the authority found that the justification given by the private respondent in the show-cause reply is not satisfactory, accordingly, the work order was terminated by an order dated March 25, 2025.
8. The respondent no. 4 failed to execute the work and has not challenged the order of termination but had approached before the Micro and Small Enterprises Facilitation Council by filing claim before the Council. It is the specific case of the petitioners that the respondent no. 4 has not submitted R.A. bill prior to receiving show cause notice.
9. The dispute referred to the council arises out of works contracts. The petitioners have already terminated the work contract, the respondent no. 4 has not raised any bill prior to show cause, thus this Court *prima facie* found that the respondent no. 4 does not qualify to the

supplier within the meaning of Section 2(m) of the MSME Act, 2006.

10. In the case of ***NBCC (India) Ltd. Vs. The State of West Bengal & Ors.***, in ***APO No. 11 of 2022*** dated May 18, 2022 the Hon'ble Division Bench is of the view that even the work order has been issued, the same can be taken by the MSME Council but subsequently, the said order was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court has passed an interim order not to proceed with the settlement proceeding by the Facilitation Council. Now the Hon'ble Supreme Court referred the matter to the Three Judges' Bench and the same is pending for adjudication.
11. Considering the above, this Court finds that in the present case also the work order was given to the private respondent and subsequently, the petitioners have terminated work order. After the termination of the work order, the private respondent has initiated a conciliation proceeding and the respondents have referred the matter to the MSME Council for the purpose of arbitration proceeding.
12. This Court finds that the petitioners have made out a *prima facie* case and balance of convenience and inconvenience in favour of the petitioners. The respondent nos. 1, 2 and 3 are restrained from giving any effect or further effect to the impugned communication dated July 3, 2025 till January 6, 2026.

13. List this matter on January 6, 2026 under the same heading.

(Krishna Rao, J.)