



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO.775 OF 2023
IN
INTERIM APPLICATION NO.2449 OF 2022
IN
WRIT PETITION NO.2409 OF 2003**

**WITH
INTERIM APPLICATION NO.2449 OF 2022
IN
WRIT PETITION NO.2409 OF 2003**

Maharashtra Conductors Association,
301, Shanta Bhuwan, Jain Temple,
Road Wadala (W), Mumbai – 400 031,
Through its Secretary
Mr. Bharat s/o Amritala Mehta,
for its following Members:

1. M/s. Bombay Wire Products,
2. M/s. Patel Wire Industries,
3. M/s. Galaxy Cable Industries,
4. M/s. Kalpesh Cable Industries Pvt. Ltd.,
5. M/s. K.J.V. Ally Conductors Nagpur,
6. M/s. Kanti Cables,
7. M/s. Lunkad Alluminium Pvt. Ltd.,
8. M/s. Lunkad Cables,
9. M/s. Nagpur Transvel Power Pvt. Ltd.,
10. M/s. Pratik Conductors Pvt. Ltd.,
11. M/s. Reliance Cables and Conductors Pvt. Ltd.,
12. M/s. Shri Tirupati Udyog. **..Applicants**

IN THE MATTER OF:-

M/s. Maharashtra Conductors Association,
Having office at 45, Ratniajyot Industrial Estate,

Irla Lane, Vile Parle (W), Mumbai – 400 056.
Present Address: 301/5, Shanta Bhuwan,
Jain Temple, Road Wadala
(W), Mumbai – 400 031.

..Petitioner

Versus

1. **State of Maharashtra**
Secretary to the Ministry of Industry,
Energy and Labour, Mantralaya,
Mumbai.
2. **Maharashtra State Electricity
Board (Now M.S.E.D.C.L),**
Through its Chairman,
Office at Prakashgad, Bandra
(East) Mumbai – 400 051.
3. **The Technical Director (Stores),
Maharashtra State Electricity Board,**
1st Floor, Prakashgad, Bandra (East),
Mumbai – 400 051.

..Respondents

Mr. Sudhir Voditel with Mr. Sarthak Utangle i/by. M/s. Utangle & Co. for
the Applicants.

Mr. Mohit Jadhav, Addl. G. P for Respondent No.1 (State).

Mr. Anuj Jaiswal i/by M/s. Little & Company for Respondent Nos.2 & 3.

**CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.**

Date on which the Arguments were heard : 25th APRIL 2024

Date on which the Judgment is pronounced : 10th MAY 2024

Judgment :- (Per Jitendra Jain, J.)

1. Brief facts relevant for adjudication of the present Interim

Applications are as under :-

2. The petitioner is an Association of Small Enterprises. The members of the petitioner supplied conductors to the respondents for which the respondents had to make the payment within 30 days of the said supply by the petitioner. However, the respondents failed to make the payment within 30 days and therefore, the petitioner-Association filed the Writ Petition No.2409 of 2003 for seeking relief of interest on delayed payment. When the petition was pending, the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the '2006 Act') was enacted. Therefore, on 31st July 2014, the petitioner Association withdrew the writ petition with liberty to revive the same if in the proceedings under 2006 Act, the same are held to be not maintainable. The writ petition was disposed of granting the said liberty.

3. Interim Application No.2449 of 2022 is filed by the original petitioner in Writ Petition No.2409 of 2003 seeking restoration of the aforesaid writ petition, wherein by order dated 31st July 2014 of this Court the writ petition was permitted to be withdrawn with the following observations :-

“2. We express no opinion regarding the maintainability or otherwise in respect thereof. In the event of the proceedings being held to be not maintainable and not being considered on merits, this petition shall stand revived.”

(emphasis supplied)

4. Pursuant to the above mentioned order, the petitioner initiated proceedings under the 2006 Act by filing an application under

Section 18 on 4th October 2014.

5. On 25th September 2017, an order came to be passed by the Facilitation Council, Konkan Region, Thane ordering initiation of arbitration proceedings under Section 18(3) of the 2006 Act since the conciliation proceedings did not fructify into an amicable settlement between the petitioner and the respondents. The arbitration proceeding was numbered as Reference Petition No.46 of 2015. The petitioner and the respondents filed their respective pleadings and evidence before the Facilitation Council. On 5th January 2022, the Council disposed of the Referral Petition No.46 of 2015 by passing an order and the relevant operative portion of the order reads thus:-

“4. The Tender were accepted by the MSEDCL independently and the claim is filed by the M/s Maharashtra Conductor Association on the behalf of individual unit which is not maintainable as per MSMED act 2006, Section 2(n).”

6. The petitioner, thereafter, filed an application under Section 33(4) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 1996 Act), as made applicable to the 2006 Act for correction and interpretation of the award dated 5th January 2022 referred to hereinabove.

7. On 31st March 2022, the aforesaid application filed by the petitioner under Section 33(4) came to be rejected on the ground that since the petitioner is not a supplier as per Section 2(n) of 2006 Act,

provisions of Section 33(4) of 1996 Act are not applicable. It was held that Section 33(4) was applicable only if a claim was made in arbitration proceedings, which the Council omitted and since the petitioner did not qualify as supplier, the question of omitting any claim by the Council did not arise.

8. It is on the above backdrop, that the present Interim Application No.2449 of 2022 is filed for restoration of the Writ Petition No.2409 of 2003.

9. The petitioner submitted that as per the order dated 31st July 2014 passed in Writ Petition No.2409 of 2003, it was observed that the said writ petition would revive in the event of the proceedings which are sought to be adopted by the petitioner are held to be not maintainable and not being considered on merits. The petitioner submits that the Facilitation Council by its order dated 5th January 2022 and 31st March 2022 has held that the petitioner is not a supplier under Section 2(n) of 2006 Act, and therefore, the provisions of the MSMED Act, 2006 are not applicable. The petitioner, therefore, submitted that in the light of the order passed by the Facilitation Council and the order passed in Writ Petition No.2409 of 2003 by this Court, Writ Petition No.2409 of 2003 be restored. Further prayer made is that the said writ petition/Interim Application No.2499 of 2022 be converted into an application under

Section 34 of 1996 Act. The petitioner relied upon the decision of the Supreme Court in the case of *Bhaven Construction Through Authorised Signatory Premjibhai K. Shah vs. Executive Engineer, Sardar Sarovar Narmada Nigam Limited & Another*¹.

10. Per contra, the respondents opposed the restoration and contended that the application is barred by limitation as the same is not within the prescribed period under Section 34(3) of 1996 Act. The respondents further submitted that the petitioner having filed a writ petition cannot now seek conversion of the same as an application under Section 34 of 1996 Act. The respondents have further submitted that the petitioner has not given any justifiable reason for seeking such a prayer. The respondents, therefore, opposed the restoration of the Writ Petition No.2409 of 2003 and also its conversion into an application under Section 34 of 1996 Act.

11. We have heard the learned counsel for the petitioner and learned counsel for the respondents and with their assistance have perused the documents brought to our notice in the course of hearing.

12. The first issue which requires to be adjudicated is whether Writ Petition No.2409 of 2003 can be restored and revived.

13. On 31st July 2014, the petitioners sought withdrawal of the

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petition with liberty to adopt appropriate proceedings under the 2006 Act. The said liberty was granted by this Court and further the Court observed in paragraph 2 that in the event of the proceedings being held to be not maintainable and not being considered on merits, the writ petition would stand revived. The petitioners pursued their remedy under the MSMED Act, 2006 by filing Petition No.46 of 2015 which came to be disposed of on 5th January 2022 by holding that the petitioner is not a supplier under Section 2(n) of 2006 Act, and therefore, the claim under the said 2006 Act is not maintainable. The Facilitation Council did not express any opinion on the merits of the application made either in order dated 5th January 2022 or in order for correction of the said award. It was also dismissed on the same ground vide order dated 31st March 2022. Therefore, the two conditions specified in the order dated 31st July 2014 in Writ Petition No.2409 of 2003 for revival namely, if the proceedings proposed to be undertaken by the petitioners are held to be not maintainable and such proceedings not being considered on merits stand satisfied. Therefore, in our view, Writ Petition No.2409 of 2003 would stand revived and restored.

14. The second issue which requires to be considered and raised in Interim Application No.775 of 2023 is whether the aforesaid writ petition which stands restored and/or Interim Application No.2449 of

2022 can be converted into an application under Section 34 of 1996 Act. The petitioner has prayed for conversion of Interim Application No.2449 of 2022 into an application under Section 34 of the 1996 Act and further seeks liberty to amend the same as required by Section 34 of the 1996 Act.

15. The issue which arises is whether this Court can allow above prayer to convert Interim Application No.2449 of 2022 which is for restoration of the Writ Petition No.2409 of 2003 into an application under Section 34 of the 1996 Act. We have already observed above that since the condition prescribed by the order dated 31st July 2014 in Writ Petition No.2409 of 2003 has been satisfied, the said writ petition stands revived. However, the applicant now in Interim Application No.775 of 2023 seeks that Interim Application No.2449 of 2022 itself be converted into a Section 34 application of the 1996 Act. The effect of this chain of applications is that the petitioner wants to convert the Writ Petition No.2409 of 2003 into a Section 34 application under the 1996 Act. In our view, this cannot be done. The order of 31st July 2014 states that if the proceedings adopted by the petitioner are held to be not maintainable or not decided on merits, then the said writ petition would revive. For conversion of the said writ petition into Section 34 application, there has to be an award on 31st July 2014 against which an

application under Section 34 would lie. In the instant case, there is no award passed by the Facilitation Council inasmuch as the order passed by the Facilitation Council on 5th January 2022 holds that the petition itself is not maintainable since the petitioner does not fall within the definition 'supplier' under Section 2(n) of the 2006 Act. Therefore, on the date when the Writ Petition No.2409 of 2003 was disposed of, there was no award and consequently, the same cannot be converted into a Section 34 application.

16. Even otherwise, the order dated 5th January 2022 is not an award under Section 34 whereby the Facilitation Council has decided the issue on merits. Therefore, even on this count, the prayer made by the petitioner cannot be accepted.

17. Insofar as the contention that this Court has the power to convert a writ petition/Interim Application into Section 34 application is concerned, we are not going into the same since there is no arbitral award which was the subject matter of the Writ Petition No.2409 of 2003 on the date when the said writ petition was disposed of. Hence the writ petition cannot be converted into a Section 34 application. The subsequent order of Facilitation Council dated 5th January 2022 is a fresh order passed and the same cannot be given a retrospective effect by treating the same as in existence on 31st July 2014 when Writ Petition

No.2409 of 2003 was disposed of. Therefore, in our view, the prayer made for converting the Writ Petition No.2409 of 2003 or to convert Interim Application No.2449 of 2022 into a Section 34 application of the 1996 Act cannot be accepted. Consequently, the prayer made in Interim Application No.775 of 2023 to convert Interim Application No.2449 of 2022 into Section 34 application cannot be granted.

18. The Interim Applications are disposed of in above terms by passing following order:-

ORDER

- (i) Writ Petition No.2409 of 2003 is restored as prayed for in Interim Application No.2449 of 2022.
- (ii) However, prayer for converting Interim Application No.2449 of 2022 / Writ Petition No.2409 of 2003 into a Section 34 application under the 1996 Act is rejected.

[JITENDRA JAIN, J.]

[A. S. CHANDURKAR, J.]