

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2015

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.NO.24314 OF 2014
and M.P.NOS.2 and 3 OF 2014

M/s.Sunil Hitech Engineers Ltd.

Rep.by its Officer Legal - Devendra Ranade,
No.97, East High Court Road,
Ramdaspath,
Nagpur - 440 010.

.. Petitioner

Vs

1. The Micro, Small & Medium Enterprises
Facilitation Council, Chennai Region,
Rep. by its Zonal Officer,
Regional Joint Director of Industries & Commerce,
Guindy, Chennai - 600 032.

2. M/s.Voltech Infrastructure Pvt. Ltd.,
Voltech Eco Tower,
2/429, Mount Poonamallee Road,
Iyappanthangal,
Chennai - 600 056.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent dated 27.06.2014 passed in MSEFC/CR/64/2013 and quash the same and direct the first respondent to permit the petitioner to file the counter statement and decide the matter on merits.

For Petitioner : Mr.M.K.Kabir, Senior Counsel
for M/s.V.S.Senthilkumar

For Respondents : Mr.V.Jayachandran
for M/s.V.Jayachandran & Associates

O R D E R

Heard Mr.M.K.Kabir, learned Senior Counsel appearing for Mr.V.S.Senthil Kumar, learned counsel for the petitioner and Mr.V.Jayachandran, learned counsel appearing for the second respondent and perused the materials placed on record.

2. This writ petition has been filed by M/s.Sunil Hitech Engineers Limited challenging the order dated 27.06.2014 passed by the first respondent, namely, Micro, Small & Medium Enterprises Facilitation Council, Chennai Region.

3. The Micro, Small and Medium Enterprises Development Act, 2006, (hereinafter referred to as "the Act") is a Central Act enacted for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental connected thereto.

4. There is an agreement entered into between the petitioner and the second respondent and the letter of award of contract was issued by the petitioner to the second respondent on 01.12.2010. In the course of implementation of the contract, serious disputes have arisen between the parties. Since this Court is not adjudicating all those issues, those facts are not referred to in this order.

5. The short issue arises for consideration in this writ petition is as to whether the impugned order passed by the Facilitation Council/the first respondent dated 27.06.2014 is sustainable in law and whether it satisfies the requirements under the Act and also whether the principles of natural justice have been complied with, while passing the impugned order.

6(i). Section 18 of the Act provides for a reference to the Facilitation Council.

6(ii). Sub-section (1) of Section starts with a non-obstante clause giving liberty to any party to the dispute with regard to any amount due under Section 17 of the Act to make a reference to the Council. Section 17, which deals with recovery of amount due, states that for any goods or services rendered by the supplier, the buyer shall be liable to pay amount with interest thereon as per Section 16 of the Act.

6(iii). The procedure to be followed by the Council is stipulated under Sub-Section (2) to (5) of Section 18.

6(iv). Sub-Section (2) of Section 18 states the procedure to be adopted by the Council on receipt of the reference application under Section 18(1) of the Act.

6(v). Sub-section (3) of the Act would be relevant for the purpose of this case and the same is quoted hereunder :

"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 service for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996, shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (2) of Section 7 of that Act."

6(vi). In the event that the Council is unable to conciliate the matter between the parties and the conciliation has become unsuccessful, then it stands terminated without any settlement between the parties and the Council is entitled to take it up either itself 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 shall apply to the dispute.

6(vii). Sub-section (4) of Section 18 also starts with a non-obstante clause, which states that notwithstanding anything contained in any other law for the time being in force, the Council or the centre providing alternate dispute resolution services shall have the jurisdiction to act as an Arbitrator or Conciliator under the said provision in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

6(viii). Sub-section (5) of Section 18 provides that every reference made under the said provision shall be decided within 90 days from the date of making such reference.

7. In the instant case, the reference was made under Section 18(1) of the Act by the second respondent. On receipt of the reference, the Council issued notice to the petitioner under Section 18(2) of the Act initiating conciliation proceedings. Admittedly, the conciliation failed. Then the procedure under Section 18(3) of the Act has to be followed, by which, two options are available to the Council, namely, (i) to take up the dispute for arbitration itself or (ii) to refer it to any institution or centre providing alternate dispute resolution services. The Council has chosen the first option and it appears to have taken up the dispute for conciliation. After various communications and notices sent to the writ petitioner, who was the respondent before the Council, the Council opined that they could not conciliate the matter and therefore, a direction was issued to the writ petitioner to pay the principal sum of Rs.3,17,36,907.72 together with compounded interest with monthly rests, at three times the Bank rate.

8. This Court is of the view that if the Council was not successful in the conciliation proceedings initiated under Section 18 (2) of the Act and it stands terminated, as per the procedure

contemplated under Section 18(3) of the Act, the Council should have taken the dispute for arbitration by itself or should have referred it to any institution or centre providing alternate dispute resolution services to proceed with the matter, for which the provisions of the Arbitration and Conciliation Act, 1996 is applicable. Therefore, the impugned order directing the writ petitioner to pay the entire principal amount with compounded interest is incorrect, owing to serious procedural error in the matter.

9. Accordingly, this writ petition is allowed and the impugned order dated 27.06.2014 is set aside and the matter is remanded back to the first respondent for fresh consideration. If in the opinion of the first respondent, the Council itself is proposed to exercise the power under Section 18(3) of the Act, then the first respondent shall bear the procedure required to be followed under the Arbitration and Conciliation Act, 1996, issue notice to the writ petitioner and the second respondent, hear the parties, receive the documents and pass a speaking order on merits and in accordance with law. The first respondent shall comply with the above directions within a period of two months from the date of receipt of a copy of this order.

10. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
The Zonal Officer/
Regional Joint Director of Industries & Commerce,
Micro, Small & Medium Enterprises
Facilitation Council,
Chennai Region,
Guindy, Chennai - 600 032.

1 cc to M/s.V.S.Senthilkumar ,Advocate, SR.No.5342

W.P.NO.24314 OF 2014

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