

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.Nos.42388 to 42392 of 2016

&

WMP.Nos.36283 to 36285 of 2016

M/s.Uma Enterprises

60, [Old No.33], Kasturi Rangan
Road, Alwarpet, Chennai-18

rep.by Uma Ashok Kumar ...Petitioner in WP.42388 of 2016

M/s.Alvittas Electricals Pvt

Ltd., 60, [Old No.33], Kasturi Rangan
Road, Alwarpet, Chennai-18

rep.by its Director

Ashok Kumar Kanthilal Modi

S/o.Kanthilal Ochhavlal Modi ...Petitioner in WPs.42389 to 42392
of 2016

Vs

Micro Small Enterprises

Facilitation Council, Chennai Region,
SIDCO Corporate Building, Guindy,
Chennai 600 032,

Rep.by its Chairman.

...R1 in WPS.42388 & 42391 of
2016

Micro Small Enterprises

Facilitation Council, Chennai Region,
Mandaveli, Chennai 600 028,

Rep.by its Chairman.

...R1 in WPS.42389, 42390 &
42392 of 2016

The Chief Engineer

Materials Management

TANGEDCO Ltd., 144,

Anna Salai, Chennai 600 002.

...R2 in all the W.Ps

Writ petitions filed under Article 226 of the Constitution
of India praying for issuance of a writ of certiorarified
Mandamus calling for the records in OP.No.MSEFC/CR/45/2015 ;
OP.No.MSEFC/CR/49/2013 ; OP.No.MSEFC/CR /52/2013 ;
OP.No.MSEFC/CR/41/2015 ; and OP.No.MSEFC/CR/48/2013 and the

orders passed there on by the 1st respondent dated 27.07.2016 ; 10.11.2014 ; 10.11.2014 ; 27.07.2016 ; and 10.11.2014 quash the same and direct the 1st respondent to refer the claim dated 08.07.2015 ; 12.08.2013 ; 29.08.2013 ; 26.06.2015 ; and 12.08.2013 respectively of the petitioner to Arbitration in accordance with the provisions of Sec.18[3] of MSMED Act, 2006.

For Petitioner in : Mr.S.Elamurugan
all the WPs

For R2 in : Mr.V.Viswanathan
all the WPs

For R1 in all the : No appearance
Writ petitions

COMMON ORDER

Heard Mr.S.Elamurugan, learned counsel appearing for the petitioner and Mr.V.Viswanath, learned Government Advocate accepting notice on behalf of the 2nd respondent and with the consent on either side, the writ petitions are taken up for final disposal.

2. Since the 1st respondent is a Facilitation Council, they are not required to be heard in the matter.

3. The petitioner has challenged the orders passed by the 1st respondent dated 27.07.2016 ; 10.11.2014 ; 10.11.2014 ; 27.07.2016 ; and 10.11.2014 respectively, in and by which, their application for payment of interest has been rejected outrightly on the ground that the Council will not be able to consider the interest claim. That apart, on a perusal of the impugned orders, it is evidently clear that the 1st respondent has failed to adhere to the procedure contemplated u/s.18 of the Micro, Small and Medium Enterprises Development Act, 2006, which contemplates the procedure. The above issues have been considered by this Court earlier in a batch of cases in M/s.Ramesh Conductors Private Limited represented by its Director P.Ramkumar, Salem - 636 404 and others Vs. M&SE Facilitation Council [Micro & Small enterprises] rep.by its Chairman, Chennai-28, [WP.Nos.18282 to 18287/2015 order dated 24.11.2015]. In the said case also, the contesting respondent was TANGEDCO. The Court, after taking into consideration the statutory provisions, had issued certain directions to the Council to proceed in accordance with section 18 of the Act. At this stage, it will be beneficial to refer to the operative portion of the said order dated 24.11.2015:-

".....

25.Once the reference is made, it is the duty of the Council to conduct conciliation by itself or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 [26 of 1996] shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

26.Sub-Section 2 of Section 18 clearly says that on receipt of the reference, the Council shall conduct the conciliation proceedings either by itself or by any other institution or centre as stated in the provision applying the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996.

27.A perusal of the order of the first respondent reveals that the Council had not conducted any conciliation proceedings either by itself or as stated in sub-section 2 of Section 18 applying the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996.

28.The provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, deals with, Submission of statements to conciliator, Conciliator not bound by certain enactments, Role of conciliator, Administrative assistance, Communication between conciliator and parties, Disclosure of information, Co-operation of parties with conciliator, Suggestions by parties for settlement of dispute, settlement agreement, Status and effect of settlement agreement, Confidentiality Termination of conciliation proceedings, Resort to arbitral or judicial proceedings, Costs, Deposits, Role of conciliator in other proceedings and Admissibility of evidence in other proceedings, respectively.

29.Nowhere in the order, this Court finds the application of the above provisions for conducting the conciliation proceedings. When sub-Section 2 of Section 18 clearly specifies the application of the provisions of Sections

65 to 81 of the Arbitration and Conciliation Act, for conducting the conciliation proceedings, in the absence of any whisper about the application of the above provisions, the inevitable conclusion is that no conciliation proceedings was conducted by the council and the order was passed by the first respondent in total violation of sub-Section 2 of Section 18 of the MSMED Act.

30. Then, Sub-Section 3 of Section 18 says that 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 to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement, referred to in Sub-Section (1) of Section 7 of that Act.

31. A plain reading of sub-Section 3 of Section 18 shows that if the conciliation proceedings is not successful and stands terminated without any settlement between the parties, then the Council either itself take up the dispute for arbitration or refer it to any institution or centre for arbitration.

32. As already discussed above, a perusal of the order of the first respondent would show that neither conciliation proceedings had been conducted nor recorded the settlement between the parties or termination of the conciliation proceedings.

33. In the event of termination of conciliation proceedings without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration

agreement referred to in Sub-Section (1) of Section 7 of that Act.

34. At this juncture, it is pertinent to refer to the provisions relating to Arbitration as there is a clear mandate in Sub-Section 3 of Section 18 of the Act to conduct the arbitration proceedings as per the provisions of the Arbitration and Conciliation Act, 1996.

35. Chapter II to VII in the Arbitration and Conciliation Act, deals with, Arbitration Agreement, Composition of Arbitral Tribunal, Jurisdiction of Arbitral Tribunals, Conduct of Arbitral Proceedings, Making of Arbitral Award and Termination of Proceedings and Recourse against Arbitral Award, respectively.

36. The provisions of Sections 7 to 34 deals with Arbitration Agreement, Power to refer parties to arbitration where there is an arbitration agreement, Interim measures etc. by Court, number of arbitrators, Appointment of arbitrators, Grounds of challenge, Challenge procedure, Failure of impossibility to act, Termination of mandate and substitution of arbitrator, Competence of arbitral Tribunal to rule on its jurisdiction, interim measures ordered by arbitral Tribunal. Equal treatment of parties, Determination of rules of procedure, place of arbitration. Commencement of arbitral proceedings, Language, Statements of claim and defence. Hearings and written proceedings, Default of a party, Expert appointed by arbitral Tribunal, Court assistance in taking evidence, Rules applicable to substance of dispute, Decision making by panel of arbitrators, settlement, Form and contents of arbitral award, Termination of proceedings, Correction and interpretation of award; additional award and Application for setting aside arbitral award, respectively.

37. A scrutiny of the order passed by the first respondent would reveal that no provisions of the above sections of the Arbitration and Conciliation Act, 1996 have been applied for conducting the arbitration, even though the Sub-Section 3 of Section 18 has specifically stated that the provisions of the Arbitration and

Conciliation Act, Shall be applied for conducting the arbitration.

38.A the perusal of the order in the light of the above provisions would clearly reveal that the order was passed in total negation of Sub-Sections 2 and 3 of Section 18 and therefore, it cannot be construed that either an order was passed under Sub-Section 2 of Section 18 or an award was passed under Sub-Section 3 of Section 18 of the Act.

39.That apart, even if the order is speaking itself, then the petitioner could not have any grievance over the order, whereas, since the order is totally a non-speaking order, the petitioner has come forward with this writ petition.

40.Under these circumstances, this Court is of firm view that, as rightly contended by the learned counsel for the petitioner, since the order passed by the first respondent cannot be construed as the order passed under Sub-Section 2 of Section 18 of an award passed under Section 3 of Section 18 of the MSMED Act, the matter has to be remitted back to the first respondent for fresh consideration.

Accordingly, the writ petitions are allowed setting aside the orders of the first respondent. The matters are remitted back to the first respondent to decide the matters afresh, first, as per Sub-Section 2 of Section 18 and in the event of termination of conciliation proceedings, then as per Sub-Section 3 of Section 18 of the MSMED Act by following the provisions of the Arbitration and Conciliation Act, 1996 as has been stated in the provisions of Section 18 itself, after affording reasonable opportunities to both the parties, within a period of ninety days from the date of receipt of a copy of this order. However, there will be no order as to costs. Connected M.Ps. are closed."

4. The learned counsel appearing for the 2nd respondent pointed out that only two cases have been decided in the year 2016 and the other cases have been decided much earlier. This may not be a very relevant factor, especially, when the procedure contemplated under the Act has not been adhered to.

5. For the above reasons, the writ petitions are allowed and the impugned orders are set aside and the matters are remanded back to the 1st respondent for fresh consideration and the 1st respondent shall take note of the directions issued in the above referred order and proceed accordingly, after affording reasonable opportunity to the petitioner as well as to the 2nd respondent and the proceedings may be concluded within a period of ninety days from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Chairman
Micro Small Enterprises
Facilitation Council, Chennai Region,
SIDCO Corporate Building, Guindy
Chennai 600 032.
2. The Chief Engineer
Materials Management
TANGEDCO Ltd., 144,
Anna Salai,
Chennai 600 002.
3. The Chief Engineer
Micro Small Enterprises
Facilitation Council, Chennai Region,
Mandaveli, Chennai 600 028.

+5cc's to Mr.V.Viswanathan, Advocate, S.R.No.71319 to 71323

+5cc's to Mr.S.Elamurugan, Advocate, S.R.No.71221

W.P.Nos.42388 to 42392 of 2016

VD(CO)
CA(30/12/2016)