

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

CORAM

The Honourable MR. JUSTICE T.S.SIVAGNANAM

Original Petition No.953 of 2016 and
A.Nos.743 to 745 of 2017 and 6830 of 2016

M/s.Kansai Neolac Paints Limited,
Nerolac House, Ganpatrao Kadam Marg,
Lower Parel, Mumbai-13
rep. by Mr.Pravin D. Chaudhari,
Executive Director ... Petitioner

vs.

1. M/s.Prateesh Engineering Enterprises,
R.S.No.223,
Chidambaram Road,
SIPCOT, Cuddalore-607 005.
2. The Zonal Officer,
MSE Facilitation Council,
Regional Joint Director of Industries and
Commerce, SIDCO Corporate Building,
Chennai-32.
3. The Chairman,
MSE Facilitation Council,
Regional Joint Director of Industries and
Commerce, SIDCO Corporate Building,
Chennai-32.
4. Thiru R.Srinivasan,
Regional Manager,
Tamil Nadu Industrial Investment Corporation,
692, Anna Salai, Nandanam,
Chennai-35.
5. Thiru D.Gandhikumar,
Vice President,
Federation of Indian Micro and Small and

Medium Enterprises,
B-4/161 Safdarjung Enclave,
New Delhi-110 029.

6. Thiru C.K.Mohan,
Vice President,
Tamil Nadu Small and Tiny Industries
Association, No.10, G.S.T.Road,
Guindy, Chennai-32.

7. Thiru A.Arunkumar,
Lead District Manager,
Indian Overseas Bank,
15, Hunters Road, Doveton,
Chennai-600 112. ... Respondents

Original Petition is filed under Section 34 of the
Arbitration and Conciliation Act, 1996 to set aside the
award passed by the 2nd respondent, namely, the Zonal
Officer, MSE Facilitation Council, Regional Joint
Director of Industries and Commerce, SIDCO Corporate
Building, Chennai-32, dated 27.07.2016..

For Petitioner : Mr.Allwin Godwin

For 1st Respondent : Mr.R.Parthasarathy

ORDER

Heard Mr.Allwin Godwin, the learned Counsel for the
petitioner and Mr.R.Parthasarathy, learned Counsel for
the 1st respondent.

2. This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the award passed by the 2nd respondent, namely, the Zonal Officer, MSE Facilitation Council, Regional Joint Director of Industries and Commerce, SIDCO Corporate Building, Chennai-32, dated 27.07.2016.

2. For the purpose of disposal of this petition, it would be relevant to take note of the following facts:

(i) The 1st respondent herein filed a reference under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'MSME Act' before the MSE Facilitation Council on 21.12.2014. In the said application, the 1st respondent stated that their services were engaged by the petitioner for fabrication and erection work and in spite of the repeated reminders and personal requests, the petitioner has not paid the amount due and payable to the 1st respondent and therefore, they laid a claim before the Council for payment of a sum of Rs.1,19,91,031/- together with interest. The Council in its meeting held on 19.08.2014 wherein the 1st respondent was represented by their Managing Director and the petitioner herein was

represented by one Mr.Gangadharan, an Executive of the petitioner company. The Council directed the petitioner herein to file their counter affidavit within 10 days. Subsequently, a Counsel was engaged by the petitioner who has given his letter to the Council on 22.08.2014. Thereafter, the Council held a meeting on 10.12.2014 wherein the 1st respondent was represented by its Managing Director and the petitioner herein was represented by their Counsel. Once again, the matter was adjourned to 12.01.2015 wherein the parties appeared and there was a direction to the petitioner herein to submit an affidavit to decide on the issue and directed the Zonal Officer of the MSEF Council to meet the Head of the Department of Mechanical Engineering, IIT, Chennai-36, who is an independent authority to inspect the plant and to verify the aspects as per the specification given in the drawings and to submit a report. The cost of inspection was to be borne by the petitioner herein.

(ii) In the meantime, the Chairman of the MSEF Council instructed to depute a Mechanical Engineer, who can visit the erected site at Hosur and submit an inspection report. Accordingly, a note was put up and a

reply was received from the General Manager, District Industries Centre, Krishnagiri on 13.02.2015 mentioning that certain measurements could not be done as there were hot pipelines and if the measurements have to be done fully, the plants need to be shut down, scaffolding at elevation up to 20 metres to be provided, insulations need to be removed and only then, number of welding joints could be counted. Thereafter, the Council held a meeting on 19.02.2015 in which the 1st respondent was represented by their Managing Director and the petitioner by their Counsel. The matter was adjourned to 22.06.2015. After hearing the Technical Representative, once again further proceedings took place and ultimately, the 1st respondent submitted the certified measurement sheets by Nerolac Execution Engineers of the Project consisting of 455 pages on 04.03.2015 to the Council. Subsequently, a meeting was held on 22.06.2015 and the 1st respondent requested for arbitration. The Council in its meeting held on 09.06.2015 in the presence of Managing Director of the 1st respondent and the Counsel for the petitioner, appears to have conducted a conciliation process and recorded that the conciliation process is over. However, the impugned award does not

clearly state as to what is the outcome of the conciliation process. But this Court can infer that conciliation failed because the Council had directed the petitioner herein to file their counter. But, no counter has been filed and ultimately, the impugned award came to be passed by referring to Sections 15 and 16 of the MSMED Act and awarding a sum of Rs.1,19,91,031/- as principal and Rs.27,57,868/- as interest.

3. The petitioner has challenged this award and according to the petitioner, 75% of the award amount has been deposited before the Registrar General of this Court and to prove the same, a letter addressed to the Registrar General dated 22.11.2016 has been produced.

4. The impugned award has been challenged by the petitioner by referring to Section 18 of the MSMDE Act which reads as follows:

18. Reference to Micro and Small Enterprises Facilitation Council :

(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any

amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter 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.

(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 services for such arbitration and the provisions of the

Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the disputes as if the arbitration was in pursuance of an arbitration agreement sub-section (1) of Section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.''

5. In terms of the award passed, the procedure that has to be followed by the Council has been adumbrated.

Sub-Section 2 of Section 18 of the MSMED Act provides that the Council shall either itself conduct conciliation in the matter 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 shall apply to such a dispute as if the conciliation was initiated under Part III of that Act. The Sub-Section 3 of Section 18 of the MSMED Act provides that where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, then, the Council shall either itself take up the dispute 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 then apply to the disputes, as if, the arbitration was in pursuance of an arbitration agreement sub-section (1) of Section 7 of that Act. Sub-Section 4 commences with a non-obstante clause. It provides that the Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator

or Conciliator. Sub Section (5) provides that reference made under Section 18 of the MSMED Act shall be decided within the period of 90 days from the date of such reference.

6. In the impugned award, the Council has recorded that the conciliation proceedings are over. In other words, the conciliation has not been successful and stands terminated. Having made such an observation, there was a direction to the petitioner herein who was the respondent before the Council to file their counter.

7. In response to that, the petitioner herein through their Counsel sent a letter to the Facilitation Council on 15.06.2016 stating that they are unable to file any counter because there is no statement of claim filed by the 1st respondent herein. This appears to have been reiterated in the subsequent communications dated 14.07.2016 and 27.07.2016. While so, the petitioner received a letter from the 1st respondent dated 05.10.2016 enclosing a copy of the award. In the preceding paragraph, this Court has referred to Section 18 of the MSMED Act which states that there are two

options available to the Council under Sub-Section 18(3) of the MSMED Act, when Conciliation is not successful.

8. In the instant case, the Council exercised its first option to take up the dispute for arbitration by itself. In any event, the arbitration proceedings are required to be conducted in accordance with the procedure under the Arbitration and Conciliation Act, 1996. Assuming that the Council wanted to proceed ex-parte and pass an award, even the ex-parte should be a reasoned award considering the materials which are available before the Council. On a reading of the impugned order shows that there are no reasons assigned except referring to Sections 15 and 16 of the MSME Act. There is no other reasons assigned as to how the Council was convinced to pass the award based on the demand made by the 1st respondent. This is sufficient to interfere with the impugned award, as, it fulfills the parametres stipulated under Section 34(2) of the Arbitration and Conciliation Act, 1996.

9. That apart, the award does not record the documents which were placed by the 1st respondent nor refers to the report which was called for by the Council, which is a technical report. Thus, this Court is fully

convinced that the impugned award calls for interference as it is in contravention of the Section 34 of the Arbitration and Conciliation Act.

10. In the result, the Original Petition is allowed and the impugned award is set aside and the matter is remanded to the Facilitation Council for fresh consideration. Consequently, connected applications are closed.

11. According to the 1st respondent, the petition dated 12.03.2015 is their statement of claim. However, the learned Counsel for the 1st respondent submits that the 1st respondent will file a supplementary affidavit in support of the petition dated 12.03.2015.

12. The 1st respondent is granted one week time from the date of receipt of a copy of this Order to file such a supplementary affidavit. On receipt of the copy of the Supplementary Affidavit, the petitioner herein is granted two weeks time to file their reply and both the parties shall place whatever documents they seek to rely upon before the Council. On receipt of the documents and after completion of the pleadings, the Council shall proceed to adjudicate the claim by following the

procedure under the Arbitration and Conciliation Act and pass an award not later than 90 days from the date on which the pleadings are complete and the documents are filed.

13. Since the petitioner has already deposited a sum of Rs.1,91,44,378/- before the Registrar General along with the letter dated 22.11.2016, the Registrar General is directed to retain the said amount in an interest bearing account in Indian Bank, High Court Branch till the award is passed and in the said award, the Facilitation Council shall issue appropriate directions with reference to the disbursement of the said amount. On a copy of such award being produced before the Registrar General, the Registrar General shall act in accordance with the direction issued therein.

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Sd/ T.S.S.J

08.02.2017

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//Certified to be a true copy//

Dated this the day of 2017

R.s/22.02.2017

COURT OFFICER

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