IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2018

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THE HONOURABLE MR. **JUSTICE M.M.SUNDRESH**

Original Petition No.501 of 2014

The Director,
Indian Institute of Technology Madras,
Chennai - 36. .. Petitioner

Vs.

1.M/s.Modular Millennium,
Plot No.14, Phase I,
IDA Cherlapally,
Hyderabad - 500 051.

2.Andhra Pradesh Micro and Small Enterprises Facilitation Council,
Department of Industries,
Government of Andhra Pradesh,
Chirag Ali Lane, Hyderabad
rep. by its Chairman

3.Dr.V.Hanumantha Rao,
Arbitrator and Member,
Andhra Pradesh Micro and Small Enterprises Facilitation Council,
Department of Industries,
Government of Andhra Pradesh,
Chirag Ali Lane, Hyderabad. .. Respondents

Petition filed under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 r/w Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 14.05.2014 passed by the third respondent on behalf of the second respondent in Case No.21C/IFC/2013/16375.

For Petitioner	:	Mr.Menon
For Respondents	:	Mr.A.Gunaseelan for R1 No appearance for R2 and R3

ORDER

The petitioner called for tenders for office renovation at first and second floors of Industrial Consultancy and Sponsored Research at its campus in Madras. The first respondent participated in the bidding and secured the work by agreement dated 17.12.2009. Though the contract specifies time limit, it was extended from time to time. Having found that the first respondent did not complete the work in its entirety within the extended time, an order of termination was passed. The first respondent accordingly invoked the arbitration clause.

2.Before the Andhra Pradesh Micro and Small Enterprises Facilitation Council (for short 'the Council'), the petitioner raised a plea both in law and on facts. On the legal issues, the petitioner raised two contentions. One is qua the non compliance of Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006. The other is with respect to jurisdiction of the Council being held at Hyderabad. On facts, it was held that the delay cannot be attributed to the first respondent alone, as it was the petitioner, which was instrumental in changing the design from time to time and accordingly, an award was passed both on the principal and interest amount. Interest was calculated as per the mechanism provided under the Micro, Small and Medium Enterprises Development Act, 2006. Challenging the same, the present original petition has been filed.

3.Learned counsel appearing for the petitioner would submit that conducting a conciliation under Section 18(2) of the Micro, Small and Medium Enterprises Development Act, 2006 is mandatory. The arbitration did not indicate the element of impartiality, which is mandatory, though the notice did refer to it. The Council has committed an error in coming to the aid of the person who committed the breach of the agreement. To buttress his submissions, learned counsel made reliance on the following decisions:

(i)ONGC Ltd., Vs.Western GECO International Ltd., ((2014) 9 SCC 263)

(ii)M/s.Refex Energy Limited Vs. Union of India and Another (2016-3 LW 711)

4.Learned counsel appearing for the first respondent would submit that the findings being factual, no interference is required under Section 34 of the Arbitration and Conciliation Act, 1996. The conciliation was not asked for by the petitioner but only technical plea was raised. Similar technical plea was also raised with respect to the impartiality clause. It is a matter between the Arbitrator and the petitioner. The Arbitrator was appointed by the Council from and out of the panel and he had no personal interest. Hence the petition has to be dismissed.

5.Coming to the legal issues involved, a perusal of Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 would show that before initiating arbitration, an attempt has to be made to conciliate the matter as per Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006. When the conciliation was not successful, the Council can take up the dispute for arbitration. It is not the case of the petitioner that it wanted a conciliation. In fact, the petitioner's contention was on the jurisdiction of the Council. Secondly, we are dealing with the case where the Council itself has undertaken the arbitration. Therefore, from the facts, it is very clear that there would not have been any possibility of going for conciliation as the parties did not want to move from their respective stand. Thus, taking note of that, the Council has proceeded to arbitrate. Hence the contention raised in this regard stands rejected as the petitioner did not want and opt for conciliation. The judgment of the Division Bench of this Court in *M/s.Refex Energy Limited Vs. Union of India and Another (2016-3 LW 711)* has to be seen contextually and the challenge was to the validity of the Act.

6.The Arbitrator was appointed by the Council. Admittedly, the Council is an impartial and independent body. Therefore, the technical plea raised regarding impartiality clause also cannot be countenanced. We are not dealing with the case of bias but the likelihood of bias if any, which is also not available. Thus, the aforesaid contention is also rejected.

7.According to the merits of the case, the Council has given a factual finding that it is not correct to state that the first respondent was alone responsible for the delay as the petitioner was also changing the design from time to time. The various factors relied upon by the first respondent were taken into consideration. The work involved the performance of other contractors. Thus it was a comprehensive work which could only be done in unison with others. The mere fact that the contract was extended itself would show that the mistake cannot be solely put on the first respondent. These findings being factual, no interference is required.

8.On the entitlement also, the Council has awarded non-payment of unpaid portion of the final bill coupled with security deposit and performance guarantee amount was withheld. When once the termination order was found to be not correct, the consequences are to be followed necessarily. The interest has been levied as per the mechanism provided as per the Act.

9.In such view of the matter, this Court does not find any reason to interfere with the award passed. Accordingly, the original petition stands dismissed. No costs.

13.03.2018

Index:Yes/No

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M.M.SUNDRESH,J.

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