



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 31.01.2018

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THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.(MD).No.17183 of 2017

and

W.M.P.(MD).Nos.13754 and 13755 of 2017

M/s. Wind World (India) Limited,
(Formerly Enercon India Limited),
Wind World Tower,
A9 CTS 700 Veera Industrial Estate,
Veera Desai Road,
Andheri West,
Mumbai 400 053
represented by authorised signatory.

... Petitioner

-Vs-

1. The Zonal Officer,
Micro and Small Enterprises Facilitation Council,
Tiruchirapalli Region,
District Industries Centre,
Tiruchirapalli 620 001.
2. M/s. Contech Engineers Private Limited,
Plot No.1E & 2E SIPCOT Industrial Complex,
Pudukottai 622 002.
3. The Chairman,
Micro and Small Enterprises Facilitation Council,
Additional Chief Secretary/Industries Commissioner
and Director of Industries and Commerce,
Department of Industries and Commerce,
SIDCO Corporate Office Building,
2nd Floor,
Thiru V.K.A.Industrial Estate,
Guindy,
Chennai.

R3 is suo motu impleaded vide
Court order dated 08.01.2018 in
W.P.(MD).No.17183 of 2017.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records in relation to the order bearing R.C.No.2928/A4/2016 dated 25.02.2017 passed by the first respondent and quash the same as illegal and arbitrary.



For Petitioner : Mr.N.L.Rajesh, Senior counsel for
Mr.G.Vanjinathan
For R1 : Mr.B.Pugalendhi,
Additional Advocate General assisted by
Mrs.J.Padmavathy Devi
For R2 : Mr.P.Ganapathi Subramanian

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O R D E R

Challenging the order passed by the first respondent under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006, directing the petitioner to pay the pending principal amount along with interest, the present writ petition has been filed.

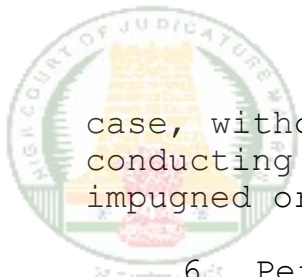
2. The brief facts which are leading to the filing of the writ petition are as follows:

The petitioner Company is a Private Limited Company engaged in wind power projects for generation of electricity by means of Wind Energy Converters. In the year 2012, the petitioner engaged the service of the second respondent to erect steel section for concrete towers to install wind energy generators. After the completion of the work, a sum of Rs.1,26,00,000/- is due to the second respondent. Hence, the second respondent approached the first respondent Council under Section 17 of the Micro and Small Enterprises Facilitation Council seeking recovery of the amount due from the petitioner. On the above application, the first respondent Council, without following the procedure contemplated under Section 18 of the Act, straight away passed an order directing the petitioner to pay the principal amount along with interest. Hence, the petitioner has come forward to file the present writ petition.

3. The second respondent filed a counter stating that earlier, after receipt of the application filed under Section 17 of the Act, a summon has been issued to the petitioner, and the petitioner's representative also appeared for enquiry and has expressed his inability to submit the correct fact. In the above circumstances, the first respondent Council passed the impugned order.

4. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents 1 and 2.

5. The learned Senior counsel appearing for the petitioner would submit that when an application is filed under Section 17 of the Act, as per Section 18(2) of the Act, the Council should conduct conciliation by itself or seek the assistance of any institution or centre providing alternative dispute resolution services by making a reference to such an institution or centre, and if the conciliation is not successful and stands terminated without any settlement between the parties, then the Council should either take up the dispute for arbitration by itself or refer the dispute to any other institution or centre to conduct arbitration. But, in the instant



case, without even recording any failure of conciliation and without conducting any arbitration, the first respondent has passed the impugned order.

6. Per contra, the learned counsel appearing for the second respondent would contend that after receipt of the application under Section 17 of the Act, a notice has been issued to the petitioner. The petitioner's representative also present for enquiry, but he did not submit any explanation enabling the Council passed an award. In such circumstances, the impugned order has been passed.

7. I have considered the rival submissions.

8. Before considering the merits of the case, it is useful to extract the relevant provisions of the Act.

Section 17 of the Act reads as follows:

17. Recovery of amount due.- For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under Section 16.

9. Section 18 of the Act which provides for conciliation and arbitration 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 referred to in sub-section(1) of section 7 of that Act.

<https://hcservices.ecourts.gov.in/hcservices/> 4. Notwithstanding anything contained in any other law for the time being in force, the Micro and Small



Enterprises Facilitation Council or the center 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.

10. A perusal of the above provisions, it is clear that whenever the buyer is liable to pay any amount for the goods supplied or service rendered by the supplier and if any dispute arises, regarding the payment and any party to the dispute can make a Reference to the Micro and Small Enterprises Facilitation Council.

11. On receipt of such reference, the Council shall either conduct a conciliation on their own, or they can seek assistance of any institution or any centre providing alternative dispute resolution service by making a reference to such institution and centre for conducting conciliation. In the event of the conciliation is not successful and stands terminated without any settlement between the parties, thereafter the Council should take up the dispute for arbitration by themselves or it may refer the arbitration to any institution or centre providing alternative dispute resolution services for such arbitration. In the conciliation proceedings as well as the arbitration proceedings, the provision of Arbitration and Conciliation Act will apply.

12. But in the instant case, the first respondent council without conducting any conciliation as per the provisions of Sections 65 to 81 of Arbitration and Conciliation Act and without recording any failure of conciliation and thereafter, without conducting any arbitration as per Section 18(2) of the Act, passed the impugned order, directing the petitioner to pay the principal amount along with interest which is in total violation of the provision of Section 18 of the Act.

13. In the above circumstances, without going into the merits of the case, since the conciliation and arbitration proceedings were not properly conducted by the first respondent council, this Court is inclined to set aside the impugned order and remanded the matter back to the first respondent for a fresh consideration of the matter, as per the procedure contemplated under Section 18 of the Act.

14. The first respondent is directed to conduct a conciliation and complete the conciliation proceedings within a period of three weeks from the date of receipt of a copy of this order and if the conciliation is not successful, then the first respondent is directed to proceed as per Section 18(3) of the Act for conducting arbitration.



15. With the above direction, the writ petition stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(AD-II)

Sub Assistant Registrar

To

1. The Zonal Officer,
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Thiru V.K.A.Industrial Estate,
Guindy,
Chennai.

+1CC to Mr.P.Ganapathi Subramanian, Advocate, SR.No. 45396
+1CC to Mr.G.Vanjinathan, Advocate, SR.No. 45399
+1CC to the Special Government Pleader SR.No.45546

W.P. (MD).No.17183 of 2017
31.01.2018

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