

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2019

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

W.P. 1434 of 2014
and
M.P. 2 of 2014

M/s. Super Steam Boiler Engineers P. Ltd.,
A company registered under the
Companies Act, rep. by its Director
Mr.Naseer A.Kazi,
having office at Plot No.A.402,
T.T.C.Industrial Area,
M. I.D.C. Village, Mahape,
New Mumbai-400 701. ... Petitioner

Vs.

1. The Micro and Small Enterprises
Facilitation Council,
Coimbatore Region,
rep. by its Chairman/Principal Secretary,
Industries Commissioner and Director
of Industries and Commerce,
Mandavelipakkam,
Chennai-600 028.
2. The Zonal Officer,
MSEFC, Coimbatore Region/
General Manager,
District Industries Centre,
Coimbatore-1.
3. M/s.Unicon Engineers,
rep. by its Assistant General Manager,
K.Vasanth Kumar,
Bharathi Street,
Chinnavedampatty,
Ganapathy, Coimbatore-641 006. ... Respondents

PRAYER : Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records on the file of the respondents 1 and 2 and quash the impugned order dated 19.11.2013 in Case No.M&SEFC/CBER/1/2013.

For Petitioner : Mr.R.Bharath Kumar
For Respondents : Mr.K.Venkatasubban,
for M/s.Sarvabhuman Associates
for R3

O R D E R

This Writ Petition has been filed challenging the order passed by the 1st respondent directing the petitioner to pay a sum of Rs. 30,71,386/- to the 3rd respondent.

2. According to the petitioner, the petitioner was engaged in manufacturing of boilers and the 3rd respondent is supplying the equipments for manufacturing the boilers, and during the course of business, according to the 3rd respondent, there is some amount is due from the petitioner. Hence, they have filed an application before the 1st respondent under Sec.18 of the Micro, Small and Medium Enterprises (Development) Act, 2006 (hereinafter called as 'Act'). Now, in the above said application, the impugned order has been passed directing the petitioner to pay a sum of Rs.30,71,386/- together with compound interest to the 3rd respondent from the appointed due date till the date of settlement. Now, challenging the above said order, the present Writ Petition has been filed.

3. Mr.R.Bharath Kumar, learned counsel appearing for the petitioner submitted that the impugned order has been passed in utter violation of the provisions of Sec.18 of the Act. Under Sec.18(2) of the Act, the 1st respondent is expected to conduct a conciliation proceedings either by the 1st respondent 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. If the conciliation fails, under Sec.18(3) of the Act, the 1st respondent has to conduct the arbitration proceedings under the provisions of Arbitration and Conciliation Act. But, without conducting any conciliation and without conducting the arbitration proceedings, the 1st respondent straight away adjudicated the issue between the parties and passed the impugned

order. Hence, the impugned order passed in total violation of Sec.18 of the Act and it is liable to be set aside.

4. Per contra, the counsel appearing for the 3rd respondent submitted that, after filing the application under Sec.18(1) of the Act, the 1st respondent has conducted an enquiry, called the parties and asked the petitioner to file a response to the objection filed by the 3rd respondent. However, the petitioner absented from appearing before the authority. Finally, after considering the materials, the order impugned in the Writ Petition has been passed. Originally, the 1st respondent council only conducted conciliation proceedings, as the Committee, has a right to conciliate the issue between the parties. When the petitioner failed to co-operate with the same, the impugned order has been passed.

5. I have considered the rival submissions made by the learned counsel appearing for the petitioner as well as the 3rd respondent and perused the records carefully.

6. Before going into the merits of the case, it is relevant to refer the provisions of Sec.18 of the 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 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."

As per Sec.18 of the Act, whenever there is a dispute between the parties regarding the payment of any amount due under Sec.17 of the Act, an application should be filed under Sec.18(1) of the Act before the Council. Under Sec.18 (2) of the Act, after receipt of the petition, the Council should conduct the conciliation either by itself or seek the assistance of any institution or centre providing alternate dispute resolution by making a reference to such an institution or centre, for conducting conciliation following the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996. If conciliation is not successful and stands terminated without any settlement between the parties, under Sec.18(3) of the Act, the council shall take up the dispute for arbitration by themselves or it may also refer it to any institution or centre providing alternate resolution services and after the arbitration, suitable award should be passed. But, in the instant case, the 1st respondent without resorting to any of the provisions of Sec.18(2) and 18(3) of the Act, has adjudicated the issues between the parties and passed the impugned order, thereby directed the petitioner to pay the amount. Therefore, the order passed by the 1st respondent cannot be considered as one passed either under Sec.18(2) or under Sec.18(3) of the Act.

7. The learned counsel appearing for the 3rd respondent has relied upon the order passed by this Court in the matter of M/s.Funskool (India) Limited, Chennai Vs. Micro Small Enterprises Facilitation Council, rep. by its Chairman, Chennai and another in W.P.No.1484 of 2013 dated 01.10.2018, contended that against the order passed by the 1st respondent, the only remedy available to the petitioner is to file a petition under Sec.19 of the Act and the petitioner cannot file a Writ Petition.

8. However, in a similar circumstances, this Court in the matter of M/s.Uma Enterprises and another Vs. The Chairman, Micro Small Enterprises, Chennai and another in W.P. Nos.42388 to 42392 of 2016 dated 02.12.2016 has held that the order passed by the 1st respondent cannot be

considered as award, as the order is passed neither under Sec.18(2) nor under Sec.18(3) of the Act, and there is no need for the petitioner challenging the above order under Sec.19 of the Act. The order impugned in the Writ Petition cannot be considered as an order passed under Sec.18(3) of the Act, hence, there is no necessity to file an appeal against that order. However, considering the facts and circumstances of the case, the impugned order passed by the 1st respondent is set aside, and the matter is remanded back to the 1st respondent and the 1st respondent is directed to consider the matter afresh as per Sec.18 of the Act and pass suitable award after providing reasonable opportunity to both the parties. The above exercise should be completed within a period of three months. In the result, the Writ Petition stands disposed of. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/--

Assistant Registrar(CS)

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Sub Assistant Registrar

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To

1. The Chairman/Principal Secretary,
Micro and Small Enterprises
Facilitation Council,
Coimbatore Region,
Industries Commissioner and Director
of Industries and Commerce,
Mandavelipakkam, Chennai-600 028.

2. The Zonal Officer,
MSEFC, Coimbatore Region/
General Manager,
District Industries Centre,
Coimbatore-1.

+1cc to Mr.R.Bharath Kumar , Advocate SR.No. 2596

+1cc to M/s.Sarvabhuman Associates , Advocate SR.No. 2224

W.P. 1434 of 2014
and M.P. 2 of 2014

A.SK(07/03/2019)