

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.141 of 2017

M/s Sunil Hi-Tech Engineers Ltd.,
represented by its Law Officer Mr.Sathish Uttarwar
No.97, East High Court Road
Ramdaspath
Nagpur 440 010
Maharashtra .. Petitioner

-vs-

1. The Micro, Small & Medium Enterprises
Facilitation Council, Chennai Region
represented by its Zonal Officer
Regional Joint Director of Industries & Commerce
Guindy, Chennai 600 032
2. M/s Voltech Infrastructure Pvt.Ltd.,
2/429, Mount Poonamallee Road
Chennai 600 056
3. Mr.Anil Jerome Menezes
Liquidator
(R3 suo motu impleaded as per
order dt.27.9.2019 in WP 141/17) .. Respondents

Petition under Article 226 of the Constitution of India,
praying to issue a Writ of Certiorari, to call for the records
of the impugned order passed by the respondent No.1 in
O.P.NO.MSEFC/CR/64-1/2013 dated 8.6.2016 and quash the same.

For Petitioner	::	Mr.V.S.Senthil Kumar
For Respondents	::	R1-Court Mr.D.S.Rajasekaran for R2 Mr.M.Sudhakar for R3

ORDER

M/s Sunil Hi-Tech Engineers Limited represented by its Law Officer Mr.Satish Uttarwar has filed this writ petition challenging the correctness of the proceedings of the Micro, Small and Medium Enterprises Facilitation Council, Chennai Region dated 8.6.2016, in and by which the Micro, Small and Medium Enterprises Facilitation Council, Chennai Region, the first respondent herein directed the petitioner to pay the principal sum of Rs.3,17,36,907.72p together with interest with monthly rests to the second respondent herein.

2. Learned counsel for the petitioner argued that the first respondent has passed the impugned order in flagrant breach of the principles of natural justice and also arbitrarily flouting the guarantee enshrined under Article 14 of the Constitution, inasmuch as the first respondent failed to follow the mandatory procedures prescribed under the Micro, Small and Medium Enterprises Development Act, 2006 and the Arbitration and Conciliation Act, 1996 and thus, the impugned order passed in breach of the established procedure is liable to be interfered with by this Court. When an objection was raised by the petitioner, the first respondent has successfully managed to evade the said objection, that is a serious breach of the principles of natural justice. When Section 18(4) of the Micro, Small and Medium Enterprises Development Act provides that the first respondent Council shall have jurisdiction to act as an Arbitrator or Conciliator in a dispute, the Council either should conduct the conciliation under Section 18(2) by itself or the arbitration under Section 18(3) of the Act. But in the present case, the first respondent Council took up the process of conciliation and on failure to conciliate the matter, has taken up the arbitration itself. Therefore, there was an overlap between the members present on the panel of both the councils that is constituting a breach of the principles of natural justice. Moreover, the petitioner's application was not even adjudicated. Hence, the impugned order is liable to be quashed.

3. Continuing his arguments, the learned counsel for the petitioner submitted that in similar circumstances, as against the orders passed by the first respondent, Writ Petition Nos.42388 to 42392 of 2016 were filed on the ground that the first respondent has failed to look into the conditions mentioned under Section 18(2) and 18(3) of the Act and this Court, by order dated 2.12.2016, setting aside the order impugned therein, remanded the matters back to the first respondent to decide 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 Micro, Small and Medium Enterprises Development Act by following the provisions under the Arbitration and Conciliation Act, 1996 as has been stated in the provisions of Section 18 itself, after affording opportunity to both the parties, within a period of ninety days from the date of receipt of a copy of the order. Concluding his arguments, he has stated that when the second respondent made a claim of Rs.3,34,28,787/-, without even considering the claim supported with any reliable document, the first respondent Council summarily allowed the claim and no opportunity whatsoever was given to the petitioner. Therefore, the impugned order is liable to go.

4. The second respondent has filed a counter affidavit through vacate stay petition. The learned counsel for the second respondent submitted that when the petitioner company was liquidated, Mr. Anil Jerome Menezes, the third respondent herein has been appointed as a liquidator, who has stepped into the shoes of the writ petitioner, without challenging the order appointing the liquidator, this writ petition is not legally maintainable and thus, the petitioner has no legs to stand before this Court. If at all the writ petitioner has got any grievance, they shall approach the liquidator, who will look into the matter, as the liquidator has stepped into the shoes of the writ petitioner.

5. Even on merits, repelling the argument advanced by the learned counsel for the petitioner that the procedures adumbrated under Section 18(2) and 18(3) of the Act have not been followed, it was argued that when Section 18(2) of the Micro, Small and Medium Enterprises Development Act, 2006 contemplates that 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 and 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 shall apply to such a dispute as if the conciliation was initiated under Part III of that Act, the first respondent Council, while holding the meeting on 8.6.2015, in the present case, found both the representatives of the petitioner and the second respondent present who had represented their respective case before the first respondent. But since the conciliation process had not been responsive, the first respondent observed to have the process of arbitration from next hearing. Therefore, on the

next date of hearing on 26.4.2015, both the representatives of the petitioner and the second respondent were again present and represented their case. Although the petitioner's counsel initially objected to the Council's jurisdiction for this case, the first respondent Council mentioned the order of the High Court dated 29.1.2015 passed in W.P.No.24314 of 2014 directing the Council to hear both the parties by receiving documents and pass a speaking order on merits and since the petitioner's counsel took time to place some documents, the case was adjourned for next hearing.

6. Again when the Council held its meeting on 24.2.2016, the representatives of both the petitioner and the second respondent were present and the petitioner's counsel was directed to submit their supporting documents before the Council within fifteen days time and the case was thus posted for the next final hearing after a month's time. Finally, when the first respondent Council held its meeting on 8.6.2016, both the representatives of the petitioner and the second respondent were present and represented their respective case and the first respondent, after finding that enough opportunity was given to the writ petitioner to counter and explain for the non payment of the supply of the equipment by the second respondent, observed that the petitioner's counsel was not in a position to defend the claim of the second respondent firm in spite of numerous opportunities given in the council hearings. Therefore, the contention made by the learned counsel for the petitioner before me that the first respondent has miserably failed to follow the procedures mentioned in Section 18(2) and 18(3) of the Act is without any substance, since in the present case, there was already an order passed by this Court on 29.1.2015 in W.P.No.24314 of 2014 directing the first respondent Council to hear the parties and when the first respondent, in deference to the direction, held the arbitration proceedings, the petitioner was not able to make use of such an opportunity granted by this Court. Since Mr.Anil Jerome Menezes, the third respondent herein has been appointed as liquidator on 25.6.2019, who has stepped into the shoes of the petitioner, the petitioner has to agitate their case in the claim petition filed by the second respondent before the third respondent/liquidator and not before this Court. Hence, the writ petition fails and it is dismissed.

7. However, since the third respondent was appointed as liquidator on 25.6.2019 and the second respondent ought to have filed the claim petition before the third respondent within one week from the date of appointment of the liquidator, in view of the pendency of the writ petition with an order of stay granted

by this Court on 4.1.2017, Two weeks time is granted to the second respondent to make their claim before the third respondent, who shall consider the claim, without reference to the delay, after hearing the parties. Consequently, interim order stands vacated and the W.M.P.Nos.132, 7009 of 2017 and 27663 of 2019 are also dismissed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Zonal Officer
Regional Joint Director of Industries & Commerce
Micro, Small & Medium Enterprises
Facilitation Council, Chennai Region
Guindy
Chennai 600 032.

+lcc to Mr.D.S.Rajasekaran, Advocate SR.91368

W.P.No.141 of 2017

VSNII (CO)
CB(11/12/2019)