

In the High Court of Judicature at Madras

Dated : 28.2.2020
Coram

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.13360 of 2015 &
MP.No.1 of 2015 & WMP.No.5362 of 2020

M/s.BMM Ispat Ltd., rep.by
its Chief General Manager
Sri.K.G.Vijapur

...Petitioner in
WP & R1 in WMP
No.5362/2020

Vs

1.The Chairman, Regional Micro &
Small Enterprises Facilitation
Council, Coimbatore.

...R1 in WP & R2 in WMP No.
5362/2020

2.M/s.Unicon Engineers, Rep.by
Assistant General Manager,
K.Vasanatha Kumar

...R2 in WP & Petitioner in WMP
No.5362/2020

PETITION under Article 226 of The Constitution of India
praying for issuance of a Writ of Certiorari to call for the
records of the 1st respondent vide proceedings dated 17.2.2015
under Case No.M&SEFC/CBER/32/2015 on the file of Regional Micro
& Small Enterprises Facilitation Council, Coimbatore and quash
the same.

For Petitioner in WP &
R1 in WMP.No.5362 of 2020

: Mr.Babu Rangasamy

For Respondent-2 in WP &
Petitioner in WMP.No.5362 of 2020 :

Mr.B.Manoharan

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ORDER

I have heard Mr.Babu Rangasamy, learned counsel appearing
for the writ petitioner and Mr.B.Manoharan, learned counsel for
the second respondent in the writ petition.

2. WMP.No.5362 of 2020 has been filed by the second
respondent in W.P.No.13360 of 2015 seeking to modify the order

dated 05.2.2020 and permit them to withdraw the amount deposited into court as per the interim order in M.P.No.1 of 2015 in W.P.No.13360 of 2015 dated 30.4.2015.

3. The learned counsel for the writ petitioner would submit that though he had withdrawn the above writ petition, his client raised an objection stating that they had not given any instructions to withdraw the above writ petition. Therefore, the learned counsel requests that the same may be clarified by this Court so that the interest of the counsel is protected.

4. It is true that an endorsement was made by the learned counsel for the writ petitioner after this Court put it to the learned counsel that the writ petition was not maintainable in the light of the decision of the Hon'ble First Bench of this Court in the case of Prime Technologies Vs. Hamsa Watch Glass Pvt. Ltd. [reported in 2015 SCC Online Mad 13741]. Eschewing the endorsement made by the learned counsel for the writ petitioner, if the matter is considered on its merits, this Court has got no hesitation to hold that the writ petition is not maintainable challenging an award passed by the Micro & Small Enterprises Council. This is more so because if a person is aggrieved by an award passed by a Council, the remedy provided under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (for brevity, the MSMED Act) and the procedure under Section 34 of the Arbitration and Conciliation Act, 1996 have to be followed.

5. One more condition, which the writ petitioner has to comply with, is that in the event of a challenge under Section 19 of the MSMED Act, the writ petitioner has to mandatorily make a pre-deposit of 75% of the award amount. Therefore, necessarily, a person, who is aggrieved by an award passed by the Micro & Small Enterprises Facilitation Council, has to avail the statutory remedy provided under Section 19 of the MSMED Act and there is no justifiable reason to bypass such a remedy.

6. For the above reasons, the order dated 05.2.2020 made in W.P.No.13360 of 2015 is recalled. The writ petition is dismissed as not maintainable. No costs. Consequently, MP.No.1 of 2015 is also dismissed.

7. The learned counsel for the petitioner herein/second respondent in the writ petition, who has filed the above miscellaneous petition for modification, seeks permission to withdraw the amount, which was directed to be deposited by the writ petitioner to the credit of the above writ petition pursuant to the interim orders granted by this Court on 30.4.2015.

8. This direction cannot be granted since this Court dismissed the writ petition as not maintainable. Accordingly, WMP.No.5362 of 2020 is dismissed.

9. However, it goes without saying that the writ petitioner and the second respondent in the writ petition have to work out their remedies in accordance with the provisions of the Statute as and when the writ petitioner challenges the award by resorting to the remedy provided under Section 19 of the MSMED Act. Since the writ petition was pending before this Court from 28.4.2015, the period from the said date till the date of receipt of the certified copy of this order shall be excluded while computing the period of limitation for filing an application under Section 34 of the Arbitration and Conciliation Act, 1996 read with Section 19 of the MSMED Act, 2006. The writ petitioner is permitted to withdraw the sum of Rs.25,00,000/- (Rupees twenty five lakhs only), which was deposited into this Court to the credit of the above writ petition together with the interest accrued pursuant to the interim order dated 30.4.2015 so as to enable them to utilize the same for complying with the mandatory pre-deposit condition under Section 19 of the MSMED Act, 2006.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

RS

To

The Chairman,
Regional Micro & Small Enterprises Facilitation Council,
Coimbatore.

+1cc to Mr.Babu Rangasamy, Advocate, S.R.No. 17710

+1cc to Mr.B.Manoharan, Advocate, S.R.No. 17580 (04/03/2020)

WP.No.13360 of 2015
& M.P.No.1 of 2015 &
WMP.No.5362 of 2020

SSI (CO)
GN (03/03/2020)