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HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 01.03.2021

Order Passed on : 12/04/2021

W.P.(227) No. 22 of 2021

SEW INFRASTRUCTURE LIMITED, 6-3-871, Snehlata, Greenlands Road, Begumpet, Hyderabad (Telangana)-500016.

---- Petitioner

Versus

1. State of Chhattisgarh, Through : Principal Secretary, Department of Commerce and Industries, Udyog Bhavan, Ring Road No.01, Telibandha, Raipur, Chhattisgarh.
2. The Director, Department of Industries, Udyog Bhavan, Ring Road No. 01, Telibandha, Raipur, Chhattisgarh.
3. The Micro and Small Industries Facilitation Council, Through : Its Chairman, Udyog Bhavan, Ring Road No.01, Telibandha, Raipur, Chhattisgarh.
4. CORE FAB PROJECTS PVT. LTD., 141/21, 2nd Floor, Maatoshree Complex, in front of Steel City Hospital, Maharaja Chowk, Durg, Chhattisgarh.

---- Respondents

For Petitioner	: Mr. Amit Soni, Advocate
For Respondent No.1	: Mr. B.P. Banjare, Dy. Govt. Advocate
For Respondent No.4.	: Mr. P.R. Patankar, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

12/04/2021

1. This petition has been brought under Article 227 of the Constitution of India praying to quash the proceeding on application for reference dated 18.09.2018, before the respondent No.3.
2. The facts of the case in brief is this, that the respondent No.4 moved an application under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (in short 'the Act, 2006'), before the Facilitation Council i.e. respondent No.3 on 18.09.2018. This application has been entertained by the respondent No.3. and the same is being proceeded with and notice has been issued to the petitioner for appearance in that proceeding.
3. It is submitted that the proceeding so initiated is against the provisions of Section 18 of the Act, 2006. Section 18 (2) of the Act provides that 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 center, for conducting conciliation and the provisions of Section 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 petitioner has not given any notice for such conciliation.
4. Reliance has been placed on the judgment of Supreme Court in case of **Haresh Dayaram Thakur Vs. State of Maharashtra &**

Ors, reported in **(2000) 6 SCC 179**, judgment of High Court of Gauhati in **Oil & Natural Gas Corporation Ltd. & Anr. Vs. Government of Assam & Ors.** reported in **2009 SCC OnLine Gau – 7**, judgment of Madras High Court in **M/s. Ramesh Conductors P. Ltd. Vs. M & SE Facilitation Council & Ors.**, reported in **2015 SCC OnLine Mad 13110** and on the judgment of High Court of Judicature at Patna in **Civil Writ Jurisdiction Case No. 14884 of 2016** between **Reliance Communications Ltd. Vs. The State of Bihar & Ors.**, dated 11.04.2017. It is submitted that in all these judgments there is clear finding, that the conciliation proceeding under Section 18 (2) of the Act, 2006 is a must, therefore, it is prayed that the respondent No.3 be directed to comply the Section 18 (2) of the Act, 2006, before proceeding to decide the reference.

5. Counsel for the respondent No.4 opposes the petition and the submission made in this respect. It is submitted that the respondent No.3 has followed the procedure as provided under the Act, 2006. Section 18 (5) of the Act, 2006 provides time within which the matter has to be decided and that time limit has already crossed. It is submitted that the case law cited by the petitioner are not applicable in this case. Relying on the judgment of Gujrat High Court in **Principal Chief Engineer Vs. Manibhai & Brothers (Sleeper) and Anr.**, reported in **AIR 2012 GUJRAT 44**, the judgment of Bombay High Court in **M/s. Steel Authority of India Ltd. & Anr. Vs. Micro, Small Enterprise Facilitation Council**, reported in **AIR 2012 BOMBAY 178** and the judgment of High

Court of Madras in **Prime Technologies & Ors. Vs. Hamsa Watch Glass Pvt. Ltd.** in O.S.A. No. 246 of 2015 and M.P. No.1 of 2015, decided on 25th November, 2015, it is submitted that the matter is pending before the Facilitation Council, therefore, the present petition can not be entertained, which may be dismissed.

6. In reply, it is submitted by the learned counsel for the petitioner that so far the petitioner has no information about any conciliation proceeding. Hence, it is prayed that the petitioner be allowed and relief be granted to the petitioner.
7. I have heard the learned counsel for the parties and perused the documents placed on record.
8. Respondent No.4 has filed the copy of minutes of meeting (Annexure R-4/1). In Sr. No. 20 of the minutes, there is mention of present case between the respondent and the petitioner. It is mentioned that the petitioner was served with notice on 13.01.2020, who gave appearance on 20.01.2020 and subsequent to which, he has filed his written statement on 06.04.2019. It is mentioned, that both the parties were given opportunity to compromise the dispute under Section 18 (2) of the Act, 2006. The parties negotiated, but could not come to any terms, therefore, the Council has then ordered on 15.12.2020 that both the parties could not come to terms, hence, the proceeding under Section 18 (2) of the Act, 2006 is closed and the proceeding under Section 18 (3) of the Act is initiated.

9. The words in Section 18 (2) of the Act, 2006 give a mandate that the Council shall itself conduct conciliation in the matter or may seek assistance of any institution or center providing alternative dispute resolution services. The only word used in this provision is 'conciliation'. The word 'conciliation' is though found mentioned in the Arbitration and Conciliation Act, 1996, in Section 89 of Code of Civil Procedure and in the Act, 2006 and also in other enactments, but the word has not been specifically defined in any of these acts. Conciliation is procedure adopted for alternate dispute resolution in which neutral person proposes the parties in dispute to come to agreement for resolving the dispute between them, further there are specific provisions for conciliation in Arbitration and Conciliation Act, 1996. Therefore, the term 'compromise' has different meaning than term 'conciliation'. In a compromise, both the parties in dispute strictly negotiate with each other, whereas, in conciliation proceeding one neutral person is engaged in confidential manner to bring about the settlement of dispute between the parties and granted opportunity for compromise itself would not be sufficient.
10. In case of **Haresh Dayaram Thakur (supra)**, case law cited by the petitioner side, it is clearly held that the conciliation is must, before the Facilitation Council proceeds under Section 18 (3) of the Act, 2006 and further. In case of **M/s. Steel Authority of India Ltd. (supra)**, the High Court of Bombay has held, that as there was separate arbitration proceeding present between the parties, therefore, the Council was required to proceed under Section 18

(3) of the Act, 2006. Here in this case circumstances are different as the order sheets and minutes of the proceeding do not mention that any conciliation proceeding has been taken up by the respondent No.3. In **Prime Technology (supra)**, the Madras High Court has given decision that on proceeding at this stage of execution, which is not a case at present in this matter.

11. The supervisory jurisdiction of the High Court is available in such cases under Article 227 of the Constitution of India. In case of **Shalini Shyam Shetty & Another Vs. Rajendra Shankar Patil**, reported in **(2010) 8 SCC 329** and various other pronouncement, the Apex Court has settled that the supervisory jurisdiction can be exercised by the High Court for the purpose of ensuring that the Courts and tribunals act within the bounds of their authority. In the present case minutes of meeting, regarding which, there is mention herein above, shows that the parties were given opportunity to compromise and negotiate for terms and parties failed in that, subsequent to which, the proceeding under Section 18 (2) of the Act, 2006 has been closed and Facilitation Council has ordered for proceeding under Section 18 (3) of the Act. In my view that the proceeding under Section 18 (2) of the Act, 2006 is still not over as the conciliation proceeding has not taken place, therefore, it is held that the respondent No.3 has failed to exercise its authority under Section 18 (2) of the Act, either by involving itself or by handing over the matter to any other institutions or centers providing alternate dispute resolution services.

12. Hence, the order of the respondent No.3 for proceeding under Section 18 (3) of the Act is erroneous and illegal regarding, in which interference is required for by this petition. Hence, this petition is allowed. The respondent No.3 is directed to take up the proceeding for conciliation under Section 18 (2) of the Act, 2006, which should be strictly a conciliation process as mentioned herein above in this matter, which may be by the Facilitation Council itself or by any institution providing alternate dispute resolution services, before taking up the proceeding under Section 18 (3) of the Act, 2006 and any further.
13. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge