



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 22ND DAY OF JULY 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P. No. 321 of 2021

and

A.Nos. 1656 and 2396 of 2021

In the matter of Arbitration &
conciliation Act 1996.

and

In the matter of disputes between
M/s. Three C Visuals

and

M/s. Hatsun Agro Product Limited.

And

In the matter of Arbitral Award
dated 12.11.2019 passed by the
Micro and Small Enterprises
Facilitation Council, Chennai
Region.

M/s. Hatsun Agro Product Limited,
Domaine, 1/20A, Rajiv Gandhi Salai (OMR),
Karapakkam, Chennai 600097.

And Also at

Old No.AD-83/New No.AD13,
Anna Nagar, Opp.:IOB Towers Branch,
Chennai 600040.

Rep.by its Authorised Representative.

.. Petitioner / Applicant in
A.No. 1656 of 2021

.Vs.

1. Three C Visuals,

Rep.by its Partner Mr.C.V. Ramesh
HT, 1 and 2, Tiny Sector,



WEB COPY

2

Ekkattuthangal, Chennai 600032.

... Respondent No.1/ Respondent No.1
in A.No. 1656 of 2021

2. The Micro and Small Enterprises Facilitation Council,
Chennai Region at Thiru-vi-ka Industrial Estate,
Guindy, Chennai 600032.

... Respondent No.2/ Respondent No.2
in A.No. 1656 of 2021

O.P. No. 321 of 2021

Original Petition praying that this Hon'ble Court be pleased to:

- i) set aside the Arbitral Award dated 12.11.2019 passed by the Ld. Council to the extent it has awarded against the Petitioner.
- ii) Pass such further other orders remitting the case back to the Ld. council to consider all the facts, pleadings and documents before it to pass a new award.

A.No. 1656 of 2021

Application praying that this Hon'ble Court be pleased to stay the operation of the Arbitral Award dated 12.11.2019 impugned in the present application pending disposal thereof.

A.No. 2396 of 2021

M/s.Three C Visuals,
Rep.by its Partner Mr.C.V. Ramesh
HT, 1 and 2, Tiny Sector,
Ekkattuthangal, Chennai 600032.

... Applicant / Respondent No.1



1.M/s. Hatsun Agro Product Limited,
Domaine, 1/20A, Rajiv Gandhi Salai (OMR),
Karapakkam, Chennai 600097.

And Also at

Old No.AD-83/New No.AD13,
Anna Nagar, Opp.:IOB Towers Branch,
Chennai 600040.
Rep.by its Authorised Representative.

...Respondent No.1 / Petitioner

2. The Micro and Small Enterprises Facilitation Council,
Chennai Region at Thiru-vi-ka Industrial Estate,
Guindy, Chennai 600032.

... Respondent No.2 / Respondent No.2

Application praying that this Hon'ble Court be pleased to pass
order under Section 34(4) of the A and C Act 1996 adjourning the
proceedings by 6 weeks and direct the 2nd Respondent to supply the
reason for the award dated 12.11.2019 within 4 weeks hereof.

This Original Petition along with the applications coming on this
day before this court for hearing in the presence of Mr.P.H.Aravindh
Pandian, Senior Counsel for M/s. Surana & Surana, Advocates for the
petitioner in O.P.No.321 of 2021 and for the applicant in A.No. 1656 of
2021 and for the 1st respondent in A.No.2396 of 2021 and Mr.
R.Subramanian for M/s.G.Rajathi, Advocates for the 1st respondent in
O.P.No. 321 of 2021 and A.No. 1656 of 2021 and for the applicant in
A.No. 2396 of 2021 and Mr.Edwin Prabhakar, Addl. Government



1656 and 2396 of 2021 and upon reading the petition and the award dated 12/11/2019 filed herein and the Judge's Summons and the affidavit of M.Sagadevan filed in A.No. 1656 of 2021 and the Judge's Summons and the affidavit of C.V.Ramesh filed in A.No.2396 of 2021 and this Court having observed that the award not only falls within the ambit of perversity but also violates the provisions of Section 31 of the Arbitration and Conciliation Act, it is ordered as follows:-

That the Arbitral Award dated 12/11/2019 passed by the learned Council to the extent it has awarded against the Petitioner herein, be and is hereby set aside.

2. That these A.Nos. 1656 and 2396 of 2021 do stand closed.

3. That it is open to the Council to entertain the Claim petitions afresh and decide the issue afresh once again on merits.

4. That the Registry be and is hereby directed to return the deposit made by the Petitioner while filing the application.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS
THE 22ND DAY OF JULY 2021.

Sd/-

ASSISTANT REGISTRAR (O.S. II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



EVK

06/09/2021

WEB COPY

5

O.P. No. 321 of 2021

and

A.Nos. 1656 and 2396 of 2021

ORDER

DATED : 22.07.2021

THE HON'BLE MR. JUSTICE

N.SATHISH KUMAR

FOR APPROVAL: 06/09/2021

APPROVED ON: 07/09/2021



WEB COPY

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
15~07~2021	22-07~2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.321 of 2021,
A.No.2396 of 2021 and A.No.1656/2021

M/s. Hatsun Agro Products Ltd.,
Domaine, 1/20A, Rajiv Gandhi Salai (OMR),
Karapakkam, Chennai 600097.

And Also at

Old No.AD-83/New No.AD13
Anna Nagar, Opp.:IOB Towers Branch,
Chennai 600040.

Rep.by its Authorised Representative.

.. Petitioner

.Vs.

1. Three C Visuals,
Rep.by its Partner Mr.C.V. Ramesh
HT, 1 and 2, Tiny Sector,
Ekkattuthangal, Chennai 600032.

2. The Micro and Small Enterprises Facilitation Council,
Chennai Region at Thiru-vi-ka Industrial Estate,
Guindy, Chennai 600032.

.. Respondents

Prayer: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Arbitral Award dated 12/11/2019 passed by the learned Council to the extent it has awarded against the Petitioner and remit the case back to the Ld. Council to consider all the facts, pleadings and documents before it to pass new Award.



WEB COPY

For Petitioner : Mr. P.H.Aravindh Pandian
Senior Counsel for
M/s. Surana & Surana

For Respondents : Mr. R. Subramanian for
M/s.G. Rojathi for R1

Mr. Edwin Prabhakar
Addl. Government Pleader for R2

ORDER

Challenge has been made to the Award passed by the Micro and Small Enterprises Facilitation Council dated 12.11.2019.

2. Brief facts leading to the Respondent herein to file the petition is as follows:

2.a. It is the contention of the 1st Respondent that he supplied goods to the Petitioner to the tune of Rs.80,18,273/-. This amount is payable by the Petitioner as against the invoices. The Petitioner herein, who is Respondent before the Micro and Small Enterprises Facilitation Council, Chennai Region (hereinafter referred to as 'Council') took a stand in their counter that the 1st Respondent engaged in certain unfair trade practices touching upon the integrity which worked against the business ethics and flawless reputation that the Petitioner has striven to build and hold for all these years. The Respondent in collusion with the Petitioner employee has escalated the purchase order for a higher rate



than the prevailing, in doing so, unjustly enriched himself at the cost of Petitioner. Having found the conspiracy, the Petitioner herein terminated the services of employees who involved in the above practice. Only after finding the unfair trade practice committed by the Respondent, the payments were withheld. Hence, the matter has been referred to the Micro and Small Enterprises Facilitation Council, Chennai Region. It appears that conciliation meetings have been held on 28.01.2019, 18.02.2019 and 07.06.2019 and finally on 02.07.2019. After hearing both sides and analysed the materials placed before it the Micro and Small Enterprises Facilitation Council, has directed the Petitioner herein to pay the principal amount of Rs.80,18,273/- along with compounded interest with monthly rests, at three times the bank rate, from the appointed due dated for the 53 Nos.of invoices from 29.11.2017 to 28.07.2018 to the Respondent, till the date of settlement.

3. Learned Senior Counsel appearing for the Petitioner mainly contended that the order is bereft of any reasons, no reason has been assigned admittedly the Petitioner has also took a stand that he has also filed a suit as against the Respondent herein, besides he raised the very ground of unfair trade practice against the Respondent in escalating



contention that when the notice was issued by the Council on 23.08.2018 only three invoices were referred dated 06.06.2018, 06.06.2018 and 23.07.2018. Whereas in the Award it is stated that as if 53 Nos. of invoices were referred, but no details were given. The Award do not find any reasons which is nothing but non-speaking order and such Award cannot be sustained in the eye of law. It is his further contention that the person who said to have been conciliator in the matter should not have acted as an Arbitrator as per Section 80 of the Arbitration and Conciliation Act, which also violates the very provision of the Arbitration Act. Hence, to show the bonafideness he has already deposited the entire amount. However, the Award cannot be sustained in the eye of law. Hence prayed for setting aside the Award.

4. Learned counsel appearing for the Petitioner is relied upon the following Judgments:

1. *Swift Tech Engineers (India) Pvt. Ltd., vs. Bindhu Techflow Solutions Pvt. Ltd., [2021(2) CTC 566]*
2. *Leitwing Shriram Manufacturing Private Limited vs. GR Green Life Energy Pvt. Ltd., [O.P.No.300 of 2019 order dated 16.09.2020 High Court Madras]*



WEB COPY

3. *Ved Prakash (Authorised Rep.) Karmic Energy Pvt. Ltd., Vs. P.Ponram Managing Director [2017 SCC Online Mad 33008]*
4. *Director General of Police Vs. A.R.Polymers Pvt. Ltd., [2019 SCC Online Mad 15817]*
5. *Wind World (India) Limited vs. Zonal Officer, Micro and Small Enterprises Facilitation Council [2018 (1) CWC 718]*
6. *Express Infrastructure P. Ltd., vs. Hubert Enviro Care Systems P. Ltd., [O.P.No.316 of 2017 dated 14.02.2018 Madras High Court]*
7. *Kansai Neolac Paints Ltd., Vs. Prateesh Engineering Enterprises [2017 SCC Online Madras 9011]*
8. *Ramesh Conductors Pvt. Ltd., and Ors. vs. M&SE Facilitation Council (Micro & Small Enterprises) and Others [2015 SCC Online Mad 13110]*
9. *Radha Krishna Films Ltd., vs. Jyothi Film Distributors Pvt. Ltd., [2011 SCC Online Bom 589]*



5. Learned Counsel appearing for the first Respondent mainly submitted that when no reason is properly given, the same cannot be a ground to set aside the entire Award. Hence, his contention is that under Section 34(4) of the Arbitration Act, the Court can direct the Arbitrator to pass a reasoned order. Further it is his contention that the MSME Act is a special Act which permit the conciliator to act as an Arbitrator since the provisions of the Arbitration and Conciliation Act are imported into Section 18(2) and 18(3) of the MSME Act, the same cannot be the basis to over ride them. Hence it is his contention that the provisions of Section 34(4) of the Arbitration and Conciliation Act are bound to be invoked in the facts of the case as the only tenable ground is that the Award of the Tribunal is non reasoned, whereas such reasons are not a mandatory one. Hence prayed that the proceedings in the Original Petition be adjourned as per Section 34(4) of the Arbitration and Conciliation Act and the 2nd Respondent be directed to resume the proceedings and supply the reasons for the order.

6. In support of his contention, he relied upon the following Judgments:

1. *Shaikh Salim Haji Abdul Khayumsab vs. Kumar and Others [(2006) 1 SCC 46]*



WEB COPY

2. *Dyna Technologies Pvt. Ltd., vs. Crompton Creaves Ltd., [(2019) 20 SCC 1]*

3. *May George vs. Special Tahsildar and Others [(2010) 13 SCC 98]*

4. *M/s. Refex Energy Limited vs. Union of India and Another [2016-3-L.W.711]*

5. *M/s. Eden Exports Company vs. Union of India and Others [2012 SCC Online Mad 4570]*

7. It is to be noted that any adjudication process the reasons are *sino quo non* unless the parties agree that no reasons are necessary as per Section 31(3) of the Arbitration and Conciliation Act. Admittedly in this case, it is not the case of the parties that they have agreed for no reasons to be assigned in the Award. The learned Arbitrator despite the fact that serious defence has raised as to the unfair trade practices and escalation of the invoices, no discussion whatsoever made in this regard. No issues were also framed. Admittedly, the suit was also filed against the Respondent herein. It is to be noted that when the Award is contained no



sanctity, when the very Award violates the procedure of the Arbitration and Conciliation Act. Section 31 of the Act shows that every Award should contain reasons unless the parties agreed that no reasons are to be given. In this regard, it is useful to refer the judgment of this Court reported in ***Swift Tech Engineers (India) Pvt. Ltd., vs. Bindhu Techflow Solutions Pvt. Ltd., [2021 (2) CTC 566]***. In para 21 of the judgment it is held as follows:

“21. Infraction of such an all too sacrosanct provision of A and C Act sounds the death knell of an arbitral award. Hon'ble Supreme Court has declared in no uncertain terms that if an AT contravenes section 31(3) of the A and C Act, that would certainly amount to a patent O.P.No.254 of 2020 illegality on the face of the impugned award. In this regard, paragraph 42.2 of the celebrated Associate Builders case being Associate Builders Vs. Delhi Development Authority reported in (2015) 3 SCC 49 is relevant and the same reads as follows:

'42.2.(b) A contravention of the [Arbitration Act](#) itself would be regarded as a patent illegality — for example if an arbitrator gives no reasons for an award in contravention of [Section 31\(3\)](#) of the Act, such award will be liable to be set aside.'

Be that as it may, Supreme Court has reiterated the above principle subsequently in Ssangyong case law being [Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India \[\(2019\) 15 SCC](#)



WEB COPY

131]. In *Ssangyong*, Supreme Court has made it clear that this aspect of challenge to an arbitral award, i.e., contravention of [section 31\(3\)](#) is available in the post 23.10.2015 regime qua A and C Act also.”

8. In the above judgement this court has set aside the Award of the similar nature. In the above Award except the dates and events all other proceedings recorded in the above Award and the present Award are almost similar. It indicate that the Award has been passed without application of mind or any discussion etc., In addition to the above, the notice dated 23.08.2018 issued by the MSME Council indicate that the claim was made only in respect of invoices under 79G, 80G and 142G dated 06.06.2018, 06.06.2018 and 23.07.2018 respectively. In the Application also the same have been referred. Whereas the Award indicates as if there are 53 invoices. What was the nature of the invoices, how three invoices have converted into 53 invoices, the Award is silent about the same. **Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006** 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



WEB COPY

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 to it 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 dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre 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



WEB COPY

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.”

9. The above section makes it clear 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 and it is also to be noted that while conducting the conciliation the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act shall be applied to such a dispute as if the conciliation was initiated under Part-III of the Act. The above provisions make it very clear that while conducting conciliation either by the Council or by some other Institution the proviso of Sections 65 to 81 has to be strictly followed. Section 80 of the Arbitration Act bars the Conciliator to act as Arbitrator in the same matter. Section 81 of the Act bars relying on any evidence and suggestions in conciliation proceedings. In any dispute which is subject matter of conciliation later referred to the Arbitration. Section 18(2)

MSME Act makes it very clear that the provisions of Arbitration and Conciliation Act shall apply to Conciliation on perusal of the Award



itself makes it very clear that the meetings was conducted only by the same person/Council and final award was also passed, which in fact contrary to the provisions of both MSME and Arbitration and Conciliation Act. In fact the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act are imported into Section 18(2) of the MSME Act. Though such provision does not bar the Conciliator himself to act as Arbitrator. However, it cannot be said that the provision i.e., Section 81 of the Arbitration and Conciliation Act could be violated. If the Conciliator before whom some materials or suggestions or admissions came during conciliation meeting, it cannot be used as evidence while passing Award, using materials unearthed during Conciliation Proceeding while passing Award is contrary to Section 81 of the Arbitration and Conciliation Act. Therefore, this also one of the grounds which the award cannot be sustained in the eye of law.

10. In *Director General of Police Vs. A.R. Polymers Pvt. Ltd.*, [2019 SCC Online Mad 15817] this Court held that if Council act as Conciliator or as Arbitrator which is in contravention of Section 80 of the Arbitration and Conciliation Act.



Small Enterprises Facilitation Council [2018 (1) CWC 718] this Court has also held that without conducting any Conciliation as per the provisions of Sections 65 to 81 of Arbitration and Conciliation Act and without recording any failure of the conciliation the Award is not according to law.

12. In ***M/s. Ramesh Conductors P. Ltd., vs. M & SE Facilitation Council [2015 SCC Online Mad 13110]*** this Court has held as follows:

“34. At this juncture, it is pertinent to refer to the provisions relating to Arbitration Agreement, Composition of Arbitral Tribunal, Jurisdiction of Arbitral Tribunals, Conduct of Arbitral Proceedings, Making of Arbitral Award and Termination of Proceedings as per the provisions of the Arbitration and Conciliation Act 1996.

35. Chapter II to VII in the Arbitration and Conciliation Act, deals with, Arbitration Agreement, Composition of Arbitral Tribunal, Jurisdiction of Arbitral Tribunals, Conduct of Arbitral proceedings, Making of Arbitral Award and Termination of Proceedings and recourse against Arbitral Award, respectively.

36. The provisions of Sections 7 to 34 deals with, Arbitration Agreement, Power to refer parties to



arbitration where there is an arbitration agreement, Interim measures etc., by Court, Number of arbitrators, Appointment of arbitrators, Grounds of challenge, Challenge Procedure, Failure or impossibility to act, Termination of mandate and substitution of arbitrator, Competence of arbitral Tribunal, to rule on its jurisdiction, Interim measures ordered by arbitral Tribunal, Equal treatment of parties, Determination of rules of procedure, place of arbitration, Commencement of arbitral proceedings, Language, statements of claim and defence, Hearings and written proceedings, Default of a party, Expert appointed by arbitral Tribunal, Court assistance in taking evidence, Rules applicable to substance of dispute, decision making by panel of arbitrators, correction and interpretation of Award; additional award and Application for setting aside arbitral award, respectively.

37. A scrutiny of the order passed by the first respondent would reveal that no provisions of the above sections of the Arbitration and Conciliation Act, 1996 have been applied for conducting the arbitration, even though the sub-Section 3 of the Section 18 has specifically stated that the provisions of the Arbitration and Conciliation Act, shall be applied for conduction the arbitration.”

13. In *M/s. Refex Energy Limited vs. Union of India and Another*

<https://hcservices.ecourts.gov.in/hcservices/>

[2016-3-L.W.711] the Honourable Apex Court has held that Section 65



to 81 of the Arbitration and Conciliation Act are imported into Section 18(2) of the MSME Act. Therefore, Section 80 of the Arbitration and Conciliation Act would not be a bar for the facilitation Council to conciliate the matter and thereafter arbitrate on the matter. The procedural law should not be ordinarily construed as mandatory.

14. In *Dyna Technologies Pvt. Ltd., vs. Crompton Greaves Ltd*, [2019(20) SCC 1] the Honourable Supreme Court held that only when there is complete perversity in the reasoning the Award can be set aside and the power vested u/s 34 (4) of the Arbitration and Conciliation Act, to cure defects can be utilised when cases where the arbitral Award does not provide any reasoning or it Award some gap in the reasoning or otherwise that can be cured so as to avoid challenge. The award has some gap in the reasoning, the Court can utilise power under Section 34(4) of the Arbitration and Conciliation Act.

15. However, when the Award itself contain no reasoning further the award is the result of ignoring the vital documents and defence set up by the respondent, such award cannot be sustained in the eye of law.



16. The reasoning in the present Award is bereft of details further relevant materials have never been considered. There are contradictions with regard to number of invoices that apart how such conclusions arrived by the Council without any discussion also go to the root of the matter, which is nothing but clear case of ignoring vital documents and pleadings, which also falls within the ambit of perversity. Hence, the contention of the learned counsel for the Respondent that the matter can be remitted back to the 2nd Respondent/MSEF Council to give a proper reason thereafter decide the Petition under Section 34 of the Arbitration and Conciliation Act cannot be countenanced. When the Council has already passed an order directing the petitioner to pay the amount with interest, if the matter is remitted under Section 34(4) of the Arbitration and Conciliation Act, the counsel has no other option except to give some reasons to substantiate final verdict. Such reasons will be result of bias and partiality. Considering the above aspects, this Court is of the view that the Award not only falls within the ambit of perversity but also violates the provisions of Section 31 of the Arbitration and Conciliation Act, hence the same is liable to be set aside. Accordingly the Award is set aside.

17. The Original Petition is allowed. Consequently, connected



applications are closed. It is open to the Council to entertain the Claim petitions afresh and decide the issue afresh once again on merits. The Registry is directed to return the deposit made by the Petitioner while filing the application.

Sd./-N.S.K.J.
22.07.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.