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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 16TH DAY OF JULY 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P. No.506 of 2013

In the matter of Arbitration before the
Micro Small Enterprises, Facilitation
Council, Chennai Region and the
Award dated 4.12.2012 made in
relation to disputes arising out of
Agreement No.J/51, dated 15.3.2011

The Divisional Railway Manager/Works, Palghat,
Works Branch, Divisional Office,
Southern Railway,
Palghat,
Kerala State – 678 002.

: Petitioner

/Vs/

1. M/s. S.J. Equipments,
No.1, Shakthi Flats,
No.65, Kamaraj Salai,
Virugambakkam,
Chennai – 600 092.

2. Thiru. Harmander Singh I.A.S,
Chairman, Micro Small Enterprises,
Facilitation Council, Chennai.

3. Thiru. S. Ashok Jt. Secretary,
TANSTIA Chennai, Member,
MSEF Council, Chennai Region.



4. Thiru. D. Gandhikumar,
Vice President, FISMI,
Member, MSEF Council, Chennai Region.

5. Thiru. M. Periyasamy, Chief Manager,
Indian Overseas Bank/Land Bank,
Chennai, Member, MSEF Council, Chennai Region.

6. Thiru. S. Muralitharan, Regional Manager,
Tamilnadu Industrial Investment Corporation,
Chennai, Member, MSEF Council, Chennai Region.

... Respondents

Original Petition praying that this Hon'ble Court be pleased to SET
ASIDE the award of the 2nd Respondent dated 4.12.2012 made in relation to
disputes arising out of Agreement No.J/51, dated 15.3.2011.

This Original Petition coming on this day before this court for hearing
in the presence of Mr. P.T. Ramkumar, Standing Counsel for Railways,
appearing for the petitioner herein and Mr. A. Srisarann, the 1st respondent
herein appearing in person and upon reading the petition and the award
dated 04/12/2012 filed herein and this court having observed that the
Council taking note of all these facts, passed the award, which does not
require any interference, though Section 31(3) of the Act stipulate that every
award has to contain reasons, on a perusal of the entire award, the learned
Council observed that all the request made by the respondent herein to



HDHMPE/PVC, which has not been replied, similarly, it has also considered that the railways have not raised any objection with regard to the performance of the plant, and the council has in fact considered all the factual aspects, therefore, it cannot be said that there is no reason in the award directing the railways to pay the amount. And it is to be noted that the nature of the work done by the respondent is not in dispute, similarly the nature of the amount spent towards supply is also not in dispute, in such view of the matter, directing the railways to pay the admitted amount, which has not been disputed, cannot be said that the Order is without any reason. And with regard to the reduction of the interest to 6% interest, the award has been passed under the provisions of Special Act, namely MSMED Act, the dispute has been referred under the provisions of the MSMED Act, which is a special Act, which provides for specific interest to be payable, section 16 of the Act has over riding effect to any law or agreement between the parties, as far as interest is concerned, the interest shall be at 3 times of the Bank rate besides compound interest with monthly rests, when there is a specific provision in the Special Act overriding ordinary law and agreement between the parties, this Court while exercising jurisdiction under section 34 of the Arbitration and Conciliation Act, cannot reduce the statutory interest provided under the Special Act, hence, this court do not find any



dismissed. **It is ordered:**

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That the O.P. No. 506 of 2013 be and is hereby dismissed.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
16th 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.)

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24/08/2021

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O.P. No.506 of 2013

ORDER

DATED: 16/07/2021

THE HON'BLE MR. JUSTICE

N.SATHISH KUMAR

FOR APPROVAL: 25/08/2021

APPROVED ON : 25/08/2021



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THE HIGH COURT OF JUDICATURE AT MADRAS

Date 16.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.506 of 2013

The Divisional Railway Manager/Works, Palghat,
Works Branch, Divisional Office,
Southern Railway, Palghat, Kerala State – 678 002.
Petitioner

...

Versus

1. M/s.S.J.Equipments,
No.I, Shakthi Flats, No.65, Kamaraj Salai,
Virugambakkam, Chennai – 600 092.
 2. Mr.Harmander Singh, I.A.S., Chairman,
Micro Small Enterprises Facilitation Council, Chennai.
 3. Mr.S.Ashok, Jt. Secretary,
TANSTIA, Chennai,
Member, MSEF Council, Chennai Region.
 4. Mr.D.Gandhikumar, Vice President,
FISMI, Member, MSEF Council, Chennai Region.
 5. Mr.M.Periyasamy, Chief Manager,
Indian Overseas Bank/Lead Bank Chennai,
Member, MSEF Council, Chennai Region.
 6. Mr.S.Muralidharan, Regional Manager,
Tamilnadu Industrial Investment Corporation,
Chennai, Member, MSEF Council, Chennai Region.
- Respondents

...



PRAYER : Petition filed under Section 34 of Arbitration and Conciliation Act, 1996 to set aside the award of the second respondent dated 04.12.2012 made in relation to disputes arising out of agreement No.J/51, dated 15.03.2011.

For petitioner : Mr.P.T.Ramkumar

For respondents : Mr.A.Sri Sarann – R1
party-in-person

ORDER

Challenging the award passed by the Micro Small Enterprises Facilitation Council, dated 04.12.2012, the present Original Petition has been filed.

2. The respondent is a Micro Small Enterprises engaged in turnkey operations for chlorination of drinking water and they had entered into an agreement vide J/51, dated 15.03.20211 for providing purified drinking water to the stations through water treatment system in Palakkad division. They started work on the basis of Letter of Acceptance. The respondent/petitioner has to make payment immediately after the supply of goods and the respondent has to pay Rs.10,96,250/- including interest towards the supply made by the petitioner/respondent herein. Despite request made by



the applicant, namely the respondent herein, the petitioner has not taken any action to appoint an arbitrator. Therefore, the matter has been referred to the Council.

3. It is the case of the respondent that as per the contract, the respondent ought to have approached the General Manager, Railways for appointment of an arbitrator as per Clause 6 of General Conditions of the Contract. The petitioner has taken up the work and installed PVC chemical tanks instead of HMHDPE chemical tanks. Despite request made by the railways, the claimant has not signed the measurement for the work done at CLT, CAN and MAQ and hence, any payments to the above works cannot be made due to the failure of the petitioner to provide HMHDPE chemical tank as stipulated in the agreement.

4. Rejoinder has also been filed by the claimant.

5. The council, following the procedures under MSMED Act and considering the rival submissions, passed an award directing the respondent namely, the railways to pay a sum of Rs.10,96,250/- together with compound interest with monthly rests, at three times of the Bank rate



notified by the Reserve Bank of India as stipulated in MSMED Act, 2006.

Challenging the same, the present petition has been filed.

6. The main contention of the petitioner is that the award suffers from want of reasoning and further the award goes beyond the contract. The learned arbitrator has taken note of that the fact supply has not been made as per the contract. This aspect has not been considered by the learned arbitrator. Hence, submits that the award is not maintainable in the eye of law. Besides, he has also submitted that as the payment was withheld due to supply other than agreed terms, interest charged by the Council has to be reduced. Hence, it is his contention that compounding interest may be reduced to simple interest.

7. Whereas, the respondent submitted that this petition itself has been filed with a delay and the amount has not been deposited as per the mandate under section 19 of the MSMED Act. The learned arbitrator has considered the entire evidence and finally passed the award. Hence, prayed for dismissal of this petition.

8. It is not in dispute that an agreement was entered between the petitioner and the first respondent on 15.03.2011 for supply of materials for



provision of purified drinking water to stations through water treatment systems as per the contract and clause 4 of the Contract reads as follows :

“4.0 The materials that are to be supplied and used for the work by the contractor should be as per the relevant IRS specifications/IS Codes [if no IRS specification are available] and should be approved before use/procurement by the Engineer in charge.”

9. The main contention of the Railways before the Tribunal is that instead of HMHDPE chemical tank of required capacity, PVC tank has been supplied. Hence, it is their contention that there is violation of contractual terms. Therefore, the amount has been withheld.

10. It is to be noted that clause 4 of the contract makes it very clear that before the materials are supplied and used for the work, it should be approved by the Engineer incharge of the railways. It is not the case of the railways that they have not utilized the supplied and installed water purifiers. Infact, the supplied and installed water purifiers have been utilised without any objection at the earlier point of time. In the above contract, clause 4 of the agreement makes it clear that without approval of the railways, PVC tank would not have been installed. However, there is no



as required under the contract, there was any loss or damages caused to the railways. Infact, the learned Tribunal has considered the letter dated 22.03.2011 addressed to the railways by the petitioner to get the LOA from HDHMPE/PVC instead of chemical one. The above request was also not replied and no objection, whatsoever, has been raised by the railways.

11. Similarly, the railways have also never raised any objections with regard to the performance of the plant and no grievance has been raised till the expiry of the maintenance period. Only when the payment was claimed and legal notice was sent, railways took a stand that there is violation of contractual conditions. Till that date, there is no objections to the plant or materials supplied. In such view of the matter, this Court is of the view that the Council taking note of all these facts, passed the award, which does not require any interference. Though Section 31(3) of the Act stipulate that every award has to contain reasons, on a perusal of the entire award, the learned Council observed that all the request made by the respondent herein to correct the LOA in the place HDHME Chemical tank instead of HDHMPE/PVC, which has not been replied. Similarly, it has also considered that the railways have not raised any objection with regard to the performance of the plant. The Council has in fact considered all the factual



directing the railways to pay the amount.

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12. It is to be noted that the nature of the work done by the respondent is not in dispute. Similarly the nature of the amount spent towards supply is also not in dispute. In such view of the matter, directing the railways to pay the admitted amount, which has not been disputed, cannot be said that the Order is without any reason.

13. With regard to the reduction of the interest to 6% interest, the award has been passed under the provisions of Special Act, namely MSMED Act. The dispute has been referred under the provisions of the MSMED Act, which is a special Act, which provides for specific interest to be payable. Section 16 of the Act has over riding effect to any law or agreement between the parties, as far as interest is concerned. The interest shall be at 3 times of the Bank rate besides compound interest with monthly rests. When there is a specific provision in the Special Act overriding ordinary law and agreement between the parties, this Court while exercising jurisdiction under section 34 of the Arbitration and Conciliation Act, cannot reduce the statutory interest provided under the Special Act. Hence, I do not find any infirmity in the award passed by the Council and this petition is liable to be dismissed.



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14. Accordingly, this Original Petition is dismissed.

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

16/07/2021

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Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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