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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.NO.16569 OF 2021

AND

WMP NO.17544 OF 2021

M/s.Enviro Services Pvt.Ltd.,
Rep.by its Managing Director
Mr.V.Balamurugan,
No.125, Velachery Road,
Saidapet, Chennai 600 015.

...Petitioner

.Vs.

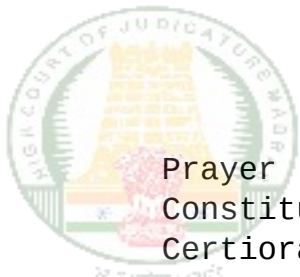
1.Micro and Small Enterprises
M & SE Facilitation Council Chennai Region
Rep by its Chairman
Thiru.Vi.Ka. Industrial Estate
Guindy , Chennai- 600 032.

2.Micro and Small Enterprises
M & SE Facilitation Council,
Chennai Region
Rep. by the Regional Joint Director of Industries
and Commerce
Thiru.Vi.Ka. Industrial Estate, Guindy.

3.M/s.Richardson & Cruddas (1972) Ltd .,
Rep. by its Chairman & Managing Director,
Sir JJ Road, Byculla, Mumbai- 400 008.

4.M/s.Steel Authority of India Ltd.,
Rep.by its Executive Director
Salem Steel Plant,
Salem- 636 013.

...Respondents



Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus Calling for records of the order of the 1st Respondent dated 23.02.2021 passed in the Proceedings numbered as MSEFC/ CR/ 398/ 2019 bearing online Application No.TN02A0020121/ M/00001 and quash the same and consequently, directing the 1st Respondent to refer the disputes between the petitioner company and the Respondents 3 and 4 to any institution or centre providing alternate dispute resolution services or initiating arbitration proceedings among the parties in terms of Section 18 of the MSME Act.

For Petitioner : Mr.N.L.Rajah
Senior Counsel
for Mr.K.R.Arun Shabarai

For Respondents : Mr.A.Selvendran
Government Advocate
for R1, R 2,

Mr.M.Selvam
for R 3

Mr.A.V.Arun
for R 4

O R D E R

This writ petition has been filed challenging the impugned order passed by the first respondent and for a consequential direction to the first respondent to refer the dispute between the petitioner Company and respondents 3 and 4 for arbitration.

2.The case of the petitioner is that they are involved in the business of installing and commissioning of water treatment plants, sewage and effluent treatment plants. The petitioner Company is a registered unit under the Micro Small and Medium Enterprises Development Act, 2006 [hereinafter referred as 'the Act'] and the same is evident from the registration certificate dated 13.02.2019. The further case of the petitioner is that the fourth respondent had engaged the services of the third



therefore submitted that the order passed by the first respondent requires the interference of this Court. The learned Senior Counsel also brought to the notice of this Court various judgments passed by this Court, wherein, this court had repeatedly held that the first respondent is expected to follow the procedure contemplated under Section 18 of the Act. The learned Senior Counsel also brought to the notice of this Court the order passed in W.P.Nos.2001 and 5452 of 2017, dated 16.03.2021, wherein, in a similar case, this Court had referred the parties to the High Court annexed Arbitration Centre and had fixed a time limit for the completion of the arbitration proceedings.

7.Per contra, the learned counsel appearing on behalf of the third respondent submitted that there are absolutely no dues payable to the petitioner and the liability claimed by the petitioner was completely denied.

8.The learned counsel appearing on behalf of the 4th respondent submitted that there is absolutely no privity of contract between the 4th respondent and the petitioner and the 4th respondent cannot be made as a party in a dispute between the petitioner and the third respondent. The learned counsel submitted that even if the first respondent conducts the arbitration, that can only be based on the agreement between the parties and there is no agreement between the petitioner and the 4th respondent. Therefore, the learned counsel submitted that the 4th respondent is an unnecessary party and their name should be deleted and the petitioner has to work out their remedy only as against the third respondent.

9.This Court has carefully considered the submissions made on either side and the materials available on record.

10.Insofar as the main issue that has been raised by the learned Senior Counsel appearing on behalf of the petitioner, this Court has time and again issued directions to the Council to follow the mandate provided under Section 18 of the Act and unfortunately it has fell into deaf ear and every other order that is passed by the Council is challenged before this Court for non compliance of the mandatory procedure under Section 18 of the Act. The Council does not seem to understand that Section 18 mandates the parties to be referred for conciliation



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which can be conducted by the Council or the Council can seek for the assistance of any other institution or centre. When the conciliation is not successful, the Council should take up the dispute for arbitration or it should refer the same to any other institution or centre providing for such alternate dispute resolution. The fact that the Council has not even understood these rudimentary principles contained under Section 18 of the Act is evident from the impugned order passed by the 1st respondent where the Council has directed the petitioner to approach any suitable arbitration tribunal for redressal of the grievance. This direction has been issued in complete ignorance of what has been mandated under Section 18 of the Act. This Court is forced to make such an observation since so many orders passed by the Council is challenged before this Court for non compliance of Section 18 of the Act. Every time this Court disposes of such writ petitions by giving directions to the Council and the Council does not seem to follow those directions and continues to commit the same mistake. Even, in the order that was brought to the notice of this Court passed in W.P.Nos.2001 and 5452 of 2017, dated 16.03.2021, the same issue was raised and this Court once again went through the process of explaining the scope of Section 18. Ultimately, this Court thought it fit to refer the parties to the Arbitration Centre annexed to High Court by fixing a time limit to resolve the dispute.

11.In view of the above discussion, this Court does not have any hesitation to interfere with the order passed by the first respondent on 23..02.2021.

12.The only other issue that arises for consideration is with regard to the objections that have been raised by the learned counsel appearing on behalf of the 4th respondent to the effect that the 4th respondent cannot be made to undergo the arbitration proceedings since the 4th respondent was not a party to the agreement and they did not have any privity of contract with the petitioner.

13.This Court carefully went through the claim statement filed by the petitioner before the first respondent. In the claim statement, the 4th respondent has been shown as the 2nd respondent. However, ultimately when the order was passed by the first respondent, the name of the 4th respondent is not



shown in the array of parties. In the claim that was filed by the petitioner, the petitioner has specifically taken a stand by referring to the work order and stated that the 4th respondent will be an integral part of the work and it will be binding upon them also. In fact, even during the proceedings before the first respondent, there was a representative on behalf of the 4th respondent.

14. In the present case, this Court is more concerned about the impugned order passed by the first respondent and it has been held to be illegal since it did not comply with the mandate under Section 18 of the Act. The issue as to whether the 4th respondent should also be made to undergo the arbitration proceedings is a matter which can be decided by the arbitrator based on the provisions of the MSME Act. This Court does not want to render any finding on the same.

15. It is clear from the stand taken by the third and fourth respondents that there is no possibility of any conciliation in this case and therefore the parties will have to be necessarily referred for arbitration. This Court does not want to waste any more time by once again remanding the matter back to the first respondent. Rather this Court wants to follow the very same procedure that was followed in the earlier order passed in W.P.Nos.2001 and 5452 of 2017, dated 16.03.2021.

16. In view of the above discussion, the impugned order passed by the first respondent dated 23.02.2021, is hereby quashed. The dispute is referred to the Arbitration Centre annexed to High Court. The Arbitration Centre shall nominate an arbitrator to arbitrate the dispute between the petitioner and the third and fourth respondents. The fees payable to the arbitrator shall be in accordance with the fees charged in the Arbitration Centre. The Arbitrator shall arbitrate the dispute between the parties and award shall be passed within a period of 90 days from the date on which the reference is taken up by the arbitrator. The Arbitration Centre shall appoint the Arbitrator within a period of one week from the date of receipt of copy of this order. It is left open to the 4th respondent to raise the preliminary objection that was raised before this Court and the Arbitrator will have the jurisdiction to decide on this issue also.



17. In the result, this writ petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

KP

To

1. The Chairman,
Micro and Small Enterprises,
M & SE Facilitation Council Chennai Region,
Thiru.Vi.Ka. Industrial Estate,
Guindy, Chennai- 600 032.

2. The Regional Joint Director of Industries
and Commerce,
Micro and Small Enterprises,
M & SE Facilitation Council,
Chennai Region,
Thiru.Vi.Ka. Industrial Estate,
Guindy.

Copy To

1. The Director cum
Exofficio Member,
Madras High Court
Arbitration Centre,
High Court, Madras.

2. The Assistant Registrar,
Arbitration Centre,
High Court, Madras.

+1cc to Mr.M.Selvam, Advocate SR.No.49702
+1cc to Mr.K.R.Arun Shabari, Advocate SR.No.49354
+1cc to Mr.A.V.Arun, Advocate SR.No.49708

W.P.No.16569 of 2021

GPL(CO)
RVM(05/10/2021)