IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.03.2021
PRONOUNCED ON : 16.03.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.2001 and 5452 of 2017
and W.M.P.Nos.16122,16123,
5779, 2006 and 8905 of 2017

M/s.Subaya Constructions Co., Ltd.,
Rep.by its Director S.Meenakshi
No.21, Soundarapandian Street,
Ashok Nagar, Chennai 600 083. .. Petitioner in both W.Ps.

Vs

1.The Chairman
The Micro and Small Enterprises Facilitation Council,
Chennai Region, Guindy,
Chennai.

2.M/s.Dee-Tech Projects Pvt.Ltd.,
(Earlier Known as M/s.Dee-tech Engineers)
Represented by its Director S.Sivaraman
129, Aani Street, Chinmaya Nagar,
Chennai 600 092. .. Respondents in both W.Ps.

Prayer in W.P.No.2001 of 2017 : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus to direct the first respondent to refer the claim of the second respondent in MSEFC/CR/27/2015 on the file of the first respondent to alternate dispute resolution by Arbitrators under Section 18 of Micro, Small and Medium Enterprises Development Act, 2006.

Prayer in W.P.No.5452 of 2017 : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records in MSEFC/CR/27/2015 on the file of the first respondent and quash the order dated 14.02.2017 and refer the claim of the second respondent in MSEFC/CR/27/2015 on the file of first respondent to alternate dispute resolution by Arbitrators in terms of Section 18 of Micro, Small and Medium Enterprises Development Act, 2006.

For Petitioner	:	Mr.N.L.Rajah, Senior Counsel for Mr.B.Natarajan (in both W.Ps.)
For R2	:	Mr.M.S.Krishnan, Senior Counsel for Mr.N.Umapathi (in both W.Ps.)

C O M M O N O R D E R

By this common order, both the writ petitions are being disposed. W.P.No.2001 of 2017 has been filed by the petitioner for a writ of mandamus to direct the first respondent to refer the claim of the second respondent in MSEFC/CR/27/2015 on the file of the first respondent to an alternate dispute resolution by arbitrators in terms of Section 18 of the Micro, Small and Enterprises Development Act, 2006 and for incidental relief. This writ petition was filed by the petitioner on 25.01.2017.

2. By the time, when W.P.No.2001 of 2017 came up for admission before this Court on 20.02.2017, the first respondent had already passed order impugned in W.P.No.5452 of 2017 on 14.02.2017 in MSEFC/CR/27/2015. This Court had also recorded the submission of the 2^{nd} respondent's counsel stating that W.P.No.2001 of 2017 has been rendered infractuous in the light of the order dated 14.02.2017 in MSEFC/CR/27/2015 of the First Respondent. However, no orders were passed in W.P.No.2001 of 2017.

3. In W.P.No.5452 of 2017, the petitioner has prayed for a writ of Certiorari to quash the order dated 14.02.2017 in MSEFC/CR/27/2015 of the first respondent and to refer the dispute to an alternate dispute resolution by arbitrators in terms of Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006.

4. The impugned order and the proceedings before the first respondent at the behest of the second respondent under the provisions of the aforesaid Act were challenged primarily on the ground that once the first respondent undertook conciliation, it was not entitled to proceed with the arbitration under the said Act.

5. It is further submitted that the impugned communication/order dated 14.02.2017 in MSEFC/CR/27/2015 of the first respondent was passed in a hurried and peremptory manner with a view to defeat the rights of the petitioner in W.P.No.2001 of 2017.

6. It is submitted that the aforesaid order was not a speaking order and cannot be termed as "an award, order or decree" within the meaning of Arbitration and Conciliation Act, 1996 as made applicable for resolution of disputes under the

provisions of the Micro, Small and Medium Enterprises Development Act, 2006.

7. It is submitted that the impugned communication/order was not an " award" within the meaning of Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 inasmuch as it is neither stamped nor bears any reasoning and there is no recording of fact that the conciliation had failed be for the first respondent and that thereafter the 1st respondent had taken upon itself to arbitrate the dispute.

8. It is submitted that the minutes of the meeting of the 1st respondent also do not show that conciliation proceedings undertaken by the first respondent had terminated before taking up the case for resolution of disputes by arbitration by the first respondent or by referring the dispute for arbitration to any institution or centre providing alternate dispute resolution services.

9. It is submitted that it was mandatory on the part of the first respondent to pass an award under the provisions of the Arbitration and Conciliation Act, 1996. It is further submitted that the so-called conciliation was by different members of the first respondent on different dates and therefore it cannot be said that there was a proper conciliation proceeding.

10. It is further submitted that in any event, the impugned order cannot be called as an award as it is also not signed by all the members who purportedly constituted by Arbitral Tribunal which passed the impugned order dated 14.02.2017 in MSEFC/CR/27/2015. It is further submitted that under Section 18(2) of the Micro, Small and Medium Enterprises Development Act, 2006 and Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply to such dispute as if the conciliation was initiated under Part III of the said Act and therefore once there was conciliation by the first respondent, on its failure, the first respondent could not arrogate upon itself the task of an Arbitral Tribunal as there is a specific embargo under Section 80 of the Arbitration and Conciliation Act, 1996 on the first respondent from acting as an Arbitrator/Arbitral Tribunal.

11. It is submitted that under Section 80 (a) of the Arbitration and Conciliation Act, 1986 the conciliator cannot act as an Arbitrator or as represent as a Counsel of the party in any arbitral or judicial proceeding in respect of a dispute that was the subject of the conciliation proceedings. It is therefore submitted that since under Section 18 (2) of the Micro, Small and Medium Enterprises Development Act, 2006, the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 have been specifically made applicable,

the so-called arbitration undertaken by the 2nd respondent was without jurisdiction.

12. It is submitted that it is for this very purpose an application was filed before the first respondent by the petitioner for referring the case for arbitration before an independent institution providing such services. Instead of referring the dispute for arbitration, the first respondent took upon itself to pass an order which is neither "a decree", "order" or "an award" for the purpose of Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006.

13. In this connection, the learned Senior counsel for the petitioner drew my attention to the following decisions:-

i) Remesh Conductors P.Limited, represented by its Director P.Ramkumar, Salem and Others vs. M & SE Facilitation Council (Micro & Small Enterprises), represented by its Chairman, Chennai-28 and Others, (2016) 1 MLJ 457

ii) M/s.Sunil Hitech Engineers Ltd., Rep.by its Officer Legal - Devendra Ranade, No.97, East High Court Road, Ramdaspeth, Nagpur 440 010 vs. The Micro, Small & Medium Enterprises, Facilitation Council, Chennai Region, Rep.by its Zonal Officer, Regional Joint Director of Industries & Commerce, Guindy, Chennai 600 032 and Other, W.P.No.24314 of 2014

iii) The Superintending Engineer, General Construction, TANTRANSCO Ltd., Tatabad, Coimbatore 641 012 vs. The Micro Small Enterprises Facilitation Council and Director of Industries and Commerce, Represented by its Chairman, Sidco Corporate Building, Guindy, Chennai 600 032 and Other, W.P.Nos.6454 & 12062 of 2017

iv) Principal Chief Engineer vs. Manibal & Brothers (Sleeper) & another, 2012 SCC Online Guj 2422

v) Modern Petrofils Dty Division and Others vs. Micro Small Enterprises Facilitation Council and Others, 2019 SCC Online Guj 5245

vi) Indo Farm Tractors and Motors Limited vs. Castings and Castings, 2019 SCC Online Guj 5594

vii) Harbanslal Sahnia and Another vs. Indian Oil Corporation Ltd.,and Others, (2003) 2 SCC 107

viii) State of H.P. and Others vs. Gujarat Ambuja Cement Ltd and Another, (2005) 6 SCc 499

ix) Balkrishna Ram vs. Union of India and another, (2020) 2 SCC 442

14. Defending the impugned order passed by the first respondent, learned Senior counsel for the second respondent submits that the writ petition was not maintainable. It is submitted that the petitioner has to file a petition/application under Section 34 of the Arbitration and Conciliation Act, 1996 and even if a writ petition was maintainable, the petitioner was required to deposit at least 75% of the amount determined by the first respondent Facilitation Council under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006.

15. It is further submitted that the reference before the first respondent was filed as early as 22.4.2015. Under Section 18 (5) of the Micro, Small and Medium Enterprises Development Act, 2006, the first respondent is required to decide the reference within a period of 90 days from the date of making of such reference before it. Instead, the petitioner dragged on the proceeding by disputing its liability and therefore the first respondent was compelled to pass the impugned order. It is further submitted that the writ court is really not concerned with the merits of the dispute under Article 226 of the Constitution of India.

16. It is submitted that the court has to merely see whether there was any procedural irregularity or perversity in the impugned proceedings. It is submitted that the impugned order cannot be set aside unless the petitioner deposits 75% of the amount under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006. It is submitted that the petitioner resorted to dilatory tactics before the first respondent and attempted to frustrate the proceedings before the first respondent under the Micro, Small and Medium Enterprises Development Act, 2006.

17. It is further submitted that the first respondent Facilitation Council consists of a distinguished member headed by an IAS officer and leaders from industry and therefore they are not expected to follow strict rules of evidence and procedure. They understand the nuances of commercial disputes and the difficulties faced by Micro, Small and Medium Enterprises and therefore beneficial legislation and the scheme for early resolution of disputes cannot be allowed to be frustrated in the hands of the petitioner by filing the present writ petition.

18. In any event, unless the petitioner deposits 75% of the amount determined by the first respondent Facilitation Council, the present petition is liable to be dismissed. In this

connection, a reference was made to the following decisions of the Hon'ble Supreme Court and that of this Court:-

i) AVR Enterprises vs. Union of India, 2020 SCC Online Del 624

ii) Gujarat Water Supply and Sewerage Board vs. Saryu Plastics Pvt.Ltd and Another, 2017 SCC Online SC 1965

iii) Hindustan Construction Company Limited and Another vs. Union of India and Others, 2019 SCC Online SC 1520

iv) Gujarat Urja Vikas Nigam Ltd., vs. Essar Power Ltd., (2008) 4 SCC 755

v) Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department and Others (2008) 7 SCC 169

vi) National Projects Construction Corporation Limited and Another vs. West Bengal State Micro Small Enterprises Facilitation Council and Ors., 2017 SCC Online Cal 263

vii) Goodyear India Limited vs. Norton Intech Rubbers Private Limited and Another, (2012) 6 SCC 345

viii) M/s.Steel Authority of India and Anr. Vs. Micro, Small Enterprises Facilitation Council through Joint Director of Industries, Nagpur Region, Nagpur, 2010 SCC Online Bom 2208

ix) M/s. Ramky Infrastructure Private Limited vs. Micro and Small Enterprises Facilitation Council and Anr. , 2018 SCC Online Del 9671

x) Bharat Heavy Electricals Limited vs. The Micro and Small Enterprises Facilitations Centre and Anr., 2017 SCC Online Del 10604

xi) The Managing Director, KSRTC vs. Union of India and Another, 2009 SCC Online Ker 6621

xii) United Bank of India vs. Satyyawati Tondon and Others , (2010) 8 SCc 110

xiii) Nivedita Sharma vs. Cellular Operators Association of India and Others, (2011) 14 SCC 337

xiv) Commissioner of Income Tax and Others vs. Chhabil Dass Agarwal, (2014) 1 SCC 603

xv) Modern Industries vs. Steel Authority of India Limited, (2010) 5 SCC 44

xvi) Empire Jute Company Limited and Others vs. Jute Corporation of India Limited and Another, (2007) 14 SCC 680

xvii) Ballapur Industries Limited, Chanderpur District, Maharashtra State rep.by its Authorised Person D.Mohan Gandhi vs. Andhra Pradesh Micro, Small Enterprises Facilitation Council , Hyderabad, rep.by its Chairman, the Commissioner of Industries and another, 2014 SCC Online AP 1295

xviii) United Electrical Industries Ltd., vs. Micor and Small Enterprises and Ors., 2017 SCC Online Del 6887

xix) M/s.Sugesan Transport Pvt. Ltd. Vs. Represented by its Authorized Signatory Rakesh P Sheth No.7, Second Canal Cross Road, Gandhi Nagar, Adyar, Chennai 600 020 vs. Micro Small and Medium Enterprises Facilitation Council, Chennai Region, SIDCO Corporate Building, Guindy, Chennai 600 032 and another, W.P.No.23252 of 2018

19. It is therefore submitted that the present writ petition was liable to be dismissed with heavy cost on the petitioner. It is submitted that the dispensation under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 cannot be allowed to be frustrated.

20. A reference was also made to Section 2 (4) of the Arbitration and Conciliation Act, 1996 wherein it is stated that all the provisions of Part-I except Sections 40, 41 and 43 applies to every arbitration under any other enactment for the time being in force, as if such arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except insofar as the provisions of Part-I were inconsistent with the provisions of the other enactment or the rules made thereunder. It is therefore submitted that the legislature has specifically intended to deviate while enacting Micro, Small and Medium Enterprises Development Act, 2006 by not only conferring the 1st respondent to conciliate but also arbitrate and/ or refer the dispute to any centre providing such service. He therefore, submits that there was no irregularity in the proceedings conducted by the 1st respondent Facilitation Council.

21. I have considered the arguments advanced by the learned Senior counsel for the petitioner and the respondents. I have also perused the impugned order passed by the first respondent purportedly in the exercise of the powers vested with it under Section 18 of the Micro, Small and Medium Enterprises Development Act, 1996. I have also perused the documents filed

in support of the present writ petitions and in support of the impugned order. I have also perused the case laws filed by the learned Senior counsels on behalf of the petitioner and the second respondent.

22. While considering the correctness or otherwise of the impugned order passed by the first respondent, this Court is not really concerned with the ultimate decision. The court is merely concerned with the decision-making process and not with the decision. If such decision is either perverse or suffers from vices of arbitrariness or was arrived in violation of principle of natural justice, it can be interfered. Otherwise, the Court has to merely see whether there was any irregularity in the procedure adopted while passing the impugned order.

23. In this case, a claim petition was filed on 22.4.2015 by the second respondent against the petitioner before the first respondent Facilitation Council. The petitioner filed its counter on 21.5.2015. As per Section 18 (5) of the Micro, Small and Medium Enterprises Development Act, 2006, the first respondent Facilitation Council was required to decide the reference of the second respondent within 90 days from the date of such reference on 22.4.2015. This period would have expired on 21.07.2015. Thus, the resolution of the dispute is speed tracked under the Micro, Small and Medium Enterprises Development Act, 1996. This was not followed by the 1st respondent Facilitation Council.

24. It was incumbent on the part of the first respondent to have kept object of the Micro, Small and Medium Enterprises Development Act, 1996 while taking up the case. Micro, Small and Medium Enterprises Development Act, 1996 was also intended to make further improvement in the interest payable under Delayed Payments to Small Scale and Ancillary Industrial Undertaking Act, 1993 and to make that enactment as a part of it.

25. The first respondent Facilitation Council took long time for conciliation between the parties. The Constitution of its members also kept changing from time to time though it was headed by the same Chairman. Records indicate that the first respondent, Facilitation Council has not kept the deadlines and sat over the reference for over a period of almost one year and 10 months since the reference was made.

26. Once it was clear that the parties were unable to arrive at mutual settlement, it was incumbent on the part of the first respondent Facilitation Council to refer the dispute for arbitration either by nominating one of its member who was not party to the conciliation proceedings to arbitrate the dispute or in the alternative refer the case to a specialised institution or centre providing such services as is contemplated under Section 18 (3) of the Micro, Small and Medium Enterprises Development Act, 2006.

27. The petitioner also appears to have filed an application before the first respondent on 19.01.2017 to refer the case to an centre providing such service for arbitration. Prior to that the petitioner filed an application and raised a preliminary objection and questioned the jurisdiction of the first respondent to entertain the reference on behalf of the second respondent on 29.12.2016. Though these applications were also belated, nevertheless the decision to take upon itself the task of passing an order dated 14.02.2017 awarding the amount to the second respondent appears to have been arrived without any proper discussion. The impugned order dated 14.02.2017 was passed, despite the petitioner had filed W.P.No.2001 of 2017 on 25.1.2017. By the time, the said writ petition came up for admission before this Court on 20.02.2014, the impugned order dated 14.02.2007 had been passed by the 1st respondent Facilitation Council though a Memo was also filed before the first respondent Facilitation Council on 13.02.2017 stating that the writ petition was likely to be listed for admission on 20.02.2017. The first respondent Facilitation council ought to have awaited and adjourned the case by a week or two before passing the said order. In the said impugned order, it has been merely observed as under:-

> 17. In the council meeting held on 13.02.2017. The petitioner was present and represented by Thiru.N.Jayapal, Manager- Accounts and Respondent was present and represented by Thiru.B.Natarajan, Advocate.
>
> (1) Petitioner has produced all evidences in support of his claim but respondent counsel was unable to produce any evidence whatsoever regarding his contention of certain work having been done by other agency.
>
> (2) TWAD Board has confirmed that all payments have been made to the respondent including Retention amount.
>
> (3) Respondent has not produced even an iota of proof against the petitioner to justify withholding the payment.
>
> 18. The council decided that as a measure of ample opportunity, one last and final opportunity to be given to respondent for producing proof of evidence about his contention by 14.02.2017.
>
> 19. Further, on 14.02.2017 the respondent neither appeared nor gave any further documents/details on his part in the hearing held on 14.02.2017. Hence, the respondent does not seem to be interested in resolving the dispute and his no

appearance on 14.02.2017 has to be construed as non interest in the proceedings on his part. The two parties had failed to resolved the matter both during conciliation and arbitration phase. Accordingly, based on a proper evaluation of all past hearings, facts produced by both parties etc, the Council ordered the respondent to pay the due amount with interest.

20. Section 15 of the MSMED Act 2006 is extracted hereunder:-

" Where any supplies any goods or renders any services to any buyer, the buyer shall make payment there for on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day. Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty five days from the day of acceptance or the day of deemed acceptance.

Section 16 of the MSMED Act 2006 is extracted hereunder:-

" Where any buyer fails to make payment of the amount to the supplier, as required under Section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

21. That the petitioner is entitled to recover the principal due amount of Rs.3,53,37,803/- along with interest amount for pending bills from the due dates from 23.02.2013 to 05.06.2015.

22.Therefore, the council directs the respondent shall be liable to pay the principal amount of Rs.3,53,37,803/- along with interest with monthly rests, at three times the Bank rate, notified by the Reserve Bank of India as stipulated in MSMED Act, 2006 from the appointed due dates respectively as above to the petitioner, till the date of settlement.

23. With this order, the petition filed before the council on 22.04.2015 by petitioner stands disposed.

28. A reading of the above portion of the impugned order makes it clear that it cannot be said to be an award, degree or an order. It bears no discussion. It ignores the fact that the provisions of the Arbitration and Conciliation Act, 1996 has been made applicable to under Section 18(2) of the Micro, Small and Medium Enterprises Development Act, 2006. The first respondent Facilitation Council was therefore required to comply with the requirements of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996. No issues were framed. The final order resolving the dispute has to satisfy the requirements of an award, order or a decree. The award should satisfy the requirements of the said Arbitration and Conciliation Act, 1996. Such awards should before one which can be entrusted to the Execution Court for being executed or challenged under Section 34 of the Arbitration and Conciliation Act, 1996.

29. As the impugned order bears no discussion except recording that ample opportunity was granted to the petitioner and that one final opportunity was being granted on 14.2.2017 and since none appeared on 14.02.2017 the amount was to be awarded to the 2nd respondent. It merely states that based on a proper evaluation of all the past hearings, fax produced by both the parties etcetera, the Council orders the respondent (the petitioner herein) to pay the amount due with interest.

30. There is no discussion on merits except a conclusion which cannot be sustained. The first respondent has been conferred with the power of a quasi-judicial authority and therefore it was required to pass orders which will pass the test of an order of a quasi-judicial authority or an award of an Arbitral Tribunal or a decree of a Court. The impugned order cannot be said to an order, decree or award.

31. Further, Sub-section (2) of Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 specifically states that on receipt of a reference under subsection (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any Institution or a Centre providing alternate dispute resolution services by making a reference to such an Institution or Centre, 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. Therefore, the impugned order passed by the first respondent in a hurried manner without framing the issues and taking upon itself the task of passing an order without properly terminating Conciliation was contrary to law and was without jurisdiction. The first respondent cannot take upon

itself the dual task of both the Conciliator and Arbitrator. It is merely a Conciliator.

32. If it had taken upon itself the task of conciliating the dispute on a reference by one of the party, under Section 18 (1) of the Micro, Small and Medium Enterprises Development Act, 2006, it was incumbent on its part to have referred the dispute to an institution or to an arbitral centre providing alternate dispute resolution services for arbitration after recording the failure in the conciliation. Such reference would have been in accordance with the provisions of Section 18 (3) of the said Act as if the said Arbitration was in pursuance of an arbitration agreement referred to in sub- section (1) of the Arbitration and Conciliation Act, 1996.

33. If the impugned order/award was passed on merits after detailed discussion after examining the rival contentions of the parties, the petitioner could have been put to terms in terms of Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006. The second respondent cannot plead helplessness and state that the impugned order is to be sustained merely because the first respondent Facilitation Council was headed by a Senior Civil Service servant from the Indian Administrative Service holding an exalted position.

34. It should be remembered the first respondent Facilitation Council plays an important role. It is established under Section 20 of the Micro, Small and Medium Enterprises Development Act, 2006. The Constitution of the first respondent Council is as per Section 21 of the said Act. Appointment to the first respondent facilitation Council prescribed by the State Government.

35. As a matter of fact, SRO A-40 (a)/2006 in G.O.Ms No. 63 Small Industries (SIB) eight, 12, 2006 has been issued by the Government of Tamil Nadu in the exercise of power conferred under sub-section (1) of the Micro, Small and Medium Enterprises Development Act, 2006. Under the said Notification, the Tamil Nadu Micro and Small Enterprises Facilitation Council Rules, 2006 has been notified. Though under the Rule 11 (3) of the aforesaid Rules, if the conciliation does not result in a settlement of a dispute, and the Council decides in the meeting to take up the dispute for arbitration itself in terms of sub-section (3) of Section 18 of the Act, it has to issue notices to the supplier and the buyer to appear before it. In my view, rule 18(3) has to be interpreted harmoniously with Section 18 of the Arbitration and Conciliation Act, 1996. Therefore, the 1st respondent Facilitation Council has to refer the dispute to an Institution providing Arbitration service. It has to communicate the decision not only to the Institute concerned, and the Institution is also required to notify the supplier and the buyer concerned to appear before it. The supplier is also

required to simultaneously send a copy of the reference to the buyer or the buyers against whom the reference is directed.

36. Thus, it was incumbent on the part of the first respondent Facilitation Council to have atleast informed the petitioner that it was proceeding with Arbitration before proceeding to pass the impugned order.

37. Since the 1st respondent has shown undue haste and alacrity in passing the impugned order, it is unsustainable and is therefore liable to be quashed. It was incumbent on the part of the first respondent Facilitation Council to have referred the dispute for arbitration to an Institution/ Centre providing such services. Therefore, while quashing the impugned order dated 14.2.2017 of the first respondent and to avoid further delay, I refer the dispute to the High Court annexed Arbitration Centre to arbitrate the dispute between the petitioner and the second respondent as if reference was made by the first respondent under Section 18 (3) of the Micro, Small and Medium Enterprises Development Act, 2006. The fees for such arbitration shall be in accordance with the fees charged by the Arbitration Centre.

38. The High Court Annexed Arbitration Centre shall them nominate an arbitrator to arbitrate the dispute between the second respondent and the petitioner within a period of 30 days from the date of receipt of a copy of this order.

39. The Arbitrator so appointed shall endeavour to pass an award within a period of six months in accordance with the provisions of the Arbitration and Conciliation Act, 1996 keeping in mind the provisions of the Micro, Small and Medium Enterprise Development Act, 2006. Though, Section 18 (5) mandates every reference made under Section 18 (1) shall be decided within a period of 90 days from the date of making such reference before the first respondent's Facilitation Council, it is to be regarded as directory and not mandatory as both conciliation and arbitration proceedings cannot be completed within such a short span of time where several disputed questions of facts are involved.

40. These writ petitions are allowed with the above observation. No cost. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

kkd

To

The Chairman
The Micro and Small Enterprises Facilitation Council,
Chennai Region, Guindy,
Chennai.

+1cc to Mr.N.Umapathi, Advocate, S.R.No. 16517

W.P.Nos.2001 and 5452/2017
and WMP.Nos.16122, 16123, 5779 ,
2006 and 8905/2017

LN(CO)
GN(07/06/2021)