

01.03.2022.  
Item No. 22.  
Court No.13  
ap

**W.P.A. No. 3239 of 2020  
(Through Video Conference)**

**M/s. Ankit Metal & Power Limited & Anr.  
Versus  
West Bengal State Micro Small Enterprise  
Facilitation Council (WBMSEFC) & Ors.**

Mr. Ratnanko Banerji, ld. Sr. Advocate,  
Mr. Suddhasatva Banerjee,  
Mr. Shashwat Nayak,  
Mr. Anirudhya Dutta.

..For the petitioners.

Md. T. M. Siddiqui,  
Mr. Nilotpal Chatterjee.

...For the State.

Mr. Mohit Gupta,  
Mr. A. Chakraborty.

...For the respondent no.7.

The writ petitioners are aggrieved by an Award dated 25<sup>th</sup> September, 2019 under Article 226 of the Constitution of India. The principal grounds urged for approaching the Writ Court, as opposed to carrying the Award under Section 34 of the Arbitration and Conciliation Act, 1996 is that there is no violation of natural justice and statutory provisions.

It is submitted that the Arbitration which is conducted under the Micro, Small and Medium Enterprises Development Act, 2006 (in short MSME Act, 2006), was in violation of the principles of the said Act, as interpreted by the Hon'ble Supreme Court of India in various judgments.

The sum and substance of the petitioners' grievance is that they had a substantial counterclaim

against the private respondent, which is the supplier unit (seller) of the goods purchased by the writ petitioners/buyers. The award is bad since the petition was not called upon to file written statement and therefore could not file counter claim.

The Award indicates that the Authorities under the MSME Act, 2006 launched into action, pursuant to an application filed by the private respondent for a claim of a sum of Rs.17,02,838/- from the petitioner towards price of goods sold and delivered. The defence urged against such non-payment is the counterclaim and other contracts between the parties.

This Court is first concerned as to whether the need of approaching the Writ Court, as opposed to invoking alternative remedy, exists.

It appears from the records and the Award itself and the mandatory conciliation between the parties in terms of the MSME Act, went on from June, 2016 upto July, 2018. The writ petitioner/buyer were present on most occasions except one. Failure of the termination process was duly notified to the parties.

Upon failure of the conciliation, the Council commenced the arbitration proceedings. On 5<sup>th</sup> July, 2018, both the parties were represented and statement of facts supporting the claim before the Council, was invited from the respondent no.7. The defence to such

statement was also required to be submitted thereafter.

The respondent no.7 submitted all the documents regarding supply of materials, copies of the purchase order issued by the writ petitioners including invoices and challans etc. The buyers/writ petitioners did not file any written statement of defence. The question of any counterclaim or against the respondent no.7 before the Council, therefore, did not and cannot arise. On 20<sup>th</sup> March, 2019, both the parties were once again represented by their Advocates.

Counsel for the Buyer Unit questioned the jurisdiction of the Council and also submitted that there was no scope of raising any claim before the Council. Except for a bald statement to that effect, even in the writ petition, there was no document or communication addressed to the Council or the respondent no.7 suggesting any figure towards such counterclaim.

This Court is, therefore, of the view that the repeated assertion and challenge to the jurisdiction of the Council by the writ petitioners, was just a ruse to escape the rigours of MSME Act, 2006 and the Arbitration process thereunder.

On the very same day i.e. 28<sup>th</sup> March, 2019 a second opportunity was given to the writ petitioners to

file a written statement of defence which was not availed. The writ petitioners, should at least have filed a statement and indicated a counterclaim therein. The writ petitioners did not even bother to attend the hearing before the Council thereafter.

It is now settled law that the arbitration process under the MSME Act, 2006, would have precedence and prevail over the general law which is the Arbitration and Conciliation Act, 1996 (refer to the decision of the Hon'ble Supreme Court of India in the case of ***Silpi Industries Etc. -Vs. - Kerala State Road Transport Corporation & Another*** reported in ***2021 SCC OnLine SC 439***).

There can therefore be no private Arbitration in a contract cover and under the MSME Act. Counter claims are however permitted even under an Arbitration under the MSME Act in terms of the Silpi decision (supra). Far from a counter claim the petitioner has not even filed a written statement of defense before the MSME Authorities.

In the above facts and circumstances, the dicta of the Hon'ble Supreme Court of India, in the case of ***Jharkhand Urja Vikas Nigam Limited - Vs. - State of Rajasthan & Ors.*** reported in ***2021 SCC OnLine SC 1257*** cited by the Counsel for the writ petitioners, would have little or no application.

Indeed, there is a procedure required to be followed for the purpose of a dispute resolution even under an ADR process. The Arbitration and Conciliation Act, 1996, specifies the procedure therefor. The MSME Act, 2006 while not stipulating distinct and water tight procedure, follows the principles of natural justice, in the process of adjudication.

The writ petitioners had been given two opportunities before the Council to demonstrate their defence and to raise counterclaim which was not done. Not having filed the written statement or raised any counterclaim before the Council, a mere bald assertion of any lacuna in the Statute is but mere a ruse to assail the award.

This Court is, therefore, of the view that there is no procedural irregularity or violation of principles of natural justice, in the proceedings conducted by the MSME Council in arriving at the impugned award.

In the facts and circumstances of the present case, the writ petition must therefore fail and is hereby dismissed.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

***(Rajasekhar Mantha, J.)***

