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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.5000 of 2022

&

W.M.P. No.5110 of 2022

A & F Overseas Trade Limited
Rep by its Managing Director
Rajagopalan Venkatraman
S/o. Venkatraman
Having its Registered Office at
No.3, 2nd Floor, Malaviya Avenue,
Thiruvanmiyur, Chennai 600 041

...Petitioner

..Vs..

1. The Deputy Director-cum-Member Secretary
Directorate of Industries & Commerce
Micro and Small Enterprises Facilitation Council,
Puduchery, Huzugna Theater, Industrial Estate,
Thattanchavady, Puducherry 605 009.

2. Hindustan Foods Limited
Rep. by its Executive Director Ganesh T. Argekar
No.254/1B, Gorimedu, Poothurai Road,
Poothurai Village, Vanur Taluka,
Villupuram 605 111.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus or any other appropriate writ, order or direction in the nature of Writ to call for the records, relating to the 1st respondent's impugned order No.5117/Ind&Com/Unit-III/B7/2019 dated 07.01.2022 and quash the same as contrary to law, defective and arbitrary on the following among other grounds and consequentially direct the 1st respondent to restore to its file APPLICATION NO. PY03B0000491/S/00001 which has been allotted Claim Petition No/Case No./PY/03/S/PRY/00069 and pass such other necessary and suitable order as this Hon'ble Court may deem fit.

For Petitioner : Mr. S. Satish

For R1 : Mr. C.T. Ramesh,
Additional Government Pleader (Pondy)



ORDER

This Writ Petition has been filed challenging the order of the first respondent dated 07.01.2022 returning the claim petition filed by the petitioner under Section 18 of The Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter called MSMED Act, 2006), seeking reference to conciliation/arbitration under the said Act, on the ground that the petitioner has not obtained consent of the second respondent against whom the claim has been made.

2. The petitioner is a Micro, Small and Medium Enterprises. According to the petitioner, certain amounts are due and payable to them by the second respondent. In such circumstances, they have preferred a claim under Section 18 of the MSMED Act, 2006, seeking for conciliation/arbitration as per the said provision. The first respondent has returned the claim for the reason that the petitioner has not obtained consent for reference from the second respondent.

3. Section 18 of the MSMED Act, 2006, reads as follows:

Section 18: Reference to Micro and Small Enterprises Facilitation Council.

18. (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 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 it to 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.



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(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 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.

Section 18 of the MSMED Act, 2006, does not contemplate the claimant to get the consent of the respondent for initiating a reference for conciliation/arbitration. Section 18 of the MSMED Act, 2006 is a statutory conciliation/Arbitration and there is no necessity for an arbitration agreement in place between the parties. By total non application of mind to Section 18 of the MSMED Act, 2006, the impugned order has been passed by the first respondent.

4. The learned counsel for the second respondent has also not raised any serious objection for the said proposition. His only grievance is with regard to the allegations made by the petitioner against the second respondent in the affidavit filed in support of this Writ Petition.

5. Without going into the merits of the claim and only on the ground that the impugned order has been passed by total non application of mind to the provisions of Section 18 of the MSMED Act, 2006, which does not require any consent from the respondent, the impugned order dated 07.01.2022 passed by the first respondent is quashed and the matter is remanded back to the first respondent to proceed with the matter and pass an award in accordance with law within a period of three months from the date of receipt of a copy of this order.

6. With the aforesaid directions, this Writ Petition is disposed of. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Director-cum-Member Secretary
Directorate of Industries & Commerce
Micro and Small Enterprises Facilitation Council,
Puduchery, Huzugna Theater, Industrial Estate,
Thattanchavady, Puducherry 605 009.

+1cc to Mr.Amrith Bhargav, Advocate SR. No. 33368
+2ccs to Mr.S.Satish, Advocate SR. No. 32462
+1cc to Government Pleader (Puducherry) SR. No. 33219

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GPL (CO)
PR (20/06/2022)