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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.06.2022

PRONOUNCED ON : 24.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.NO.25759 OF 2013

AND

M.P.NOS.1 AND 2 OF 2013

M/s.Sri Valli Process,
Rep by its Proprietor,
S.Karuppaiah,
No.241/3, Sri Valli Garden,
Angeri Palayam,
Tiruppur - 641 603.

.. Petitioner

Vs.

1. The Micro Small Enterprises Facilitation Council,
Chennai Region,
Rep. By its Chairman/Principal Secretary,
Industries Commissioner and Director of
Industries and Commerce,
Mandavelipakkam,
Chennai - 600 028.

2. M/s.Shri Meera Labs Private Limited,
New No.13, Old No.12,
1st Main Road,
Ekambaram Industrial Estate,
Alapakkam, Chennai - 600 089.

...Respondents

Prayer:

Writ Petition filed under Article 226 of the
Constitution of India, praying to issue a writ of certiorari,
calling for the records on the file of the first respondent and
quash the impugned order dated 07.05.2013 made in
O.P.No.MSEFC/CR/62/2011.

For Petitioner : Mr.R.Bharathkumar

For Respondents :P.Sanjay Gandhi for R1
Mr.T.V.Lakshmanan for R2



O R D E R

The petitioner has filed this writ petition, challenging the order passed by the first respondent in O.P.No.MSEFC/CR/62/2011, dated 07.05.2013, whereunder it was directed to pay a sum of Rs.2,23,338/- together with compound interest with monthly rest at three times of the bank rate notified by the Reserve Bank of India as stipulated in Micro, Small and Medium Enterprises Development Act, 2006 (herein after mentioned as MSMED Act).

2. In his affidavit filed in support of the writ petition, petitioner submitted that the second respondent filed a petition before the first respondent alleging that a sum of Rs.2,23,338/- (Two lakhs twenty three thousand and three hundred and thirty eight only) was due to him from petitioner. According to the petitioner, the second respondent claimed that it was engaged in the activity of "Manufacturing of Speciality Chemicals for Wet Procession Applications in Textile Leather and other allied Industries only" and supplied the same to the petitioner from 12.03.2007 till 05.05.2007 and the petitioner failed to make payment of the above said amount towards the cost of the material supplied and hence the second respondent moved the first respondent for recovery of the same. It was further averred in the affidavit that on receipt of the notice from the first respondent, the petitioner filed his objections and in spite of the fact the second respondent failed to place any reliable materials, the first respondent passed an order directing the petitioner to pay the abovesaid sum. It was also averred that under the provisions of MSMED Act, both the parties appeared before the first respondent on several occasions to explore the possibility of the settlement and after hearing the parties, the first respondent adjourned the matter on several occasions. When the petitioner was expecting the conciliation under the provisions under Sections 8(2) of MSMED Act, the first respondent passed the impugned order and hence the writ petition.

3. The contesting second respondent has not filed any counter, however, made his submissions based on the records available.

4. Heard, the arguments of Mr.R.Bharath Kumar, learned counsel appearing for the petitioner and Mr.T.V.Lakshmanan, learned counsel appearing for the second respondent and there was no representation for the first respondent.

5. The learned counsel for the petitioner submitted that under Section 18(2) of MSMED Act, when the claim is made to



the first respondent council, the parties must be referred to the conciliation proceedings and such reference to conciliation proceedings is mandatory in nature. The question of referring the parties to the arbitral proceedings will arise only on termination of the conciliation proceedings and in the instant case, the first respondent has not complied with the mandate of Section 18(2) of MSMED Act, by conducting conciliation proceedings. It was submitted by the learned counsel for the petitioner that an award passed by the first respondent without conducting conciliation proceedings under Section 18(2) of the Act is without jurisdiction and hence the same is liable to be set aside. It was also submitted by the learned counsel for the petitioner that the provisions of Arbitration Act has also not been followed by the first respondent and hence the award passed by the first respondent cannot be termed as an arbitral award in the eye of law. Therefore it is his submission that both Sections 18(2) and 18(3) of MSMED Act had not been complied with while passing impugned order.

6. The learned counsel for the second respondent submitted that the mandate under Section 18(2) of MSMED Act, to refer the parties to conciliation proceedings is only directory in nature but not mandatory. Hence, non compliance of Section 18(2) of MSMED Act would not vitiate arbitral proceedings that had taken place as per Section 18(3) of the MSMED Act. He further submitted that the petitioner participated in the proceedings before the first respondent without raising his little finger about the violation of Section 18(2) or 18(3) of the MSMED Act and hence it is too late for him to raise the issue of non compliance of Section 18(2) or 18(3) of MSMED Act. The learned counsel for the second respondent also submitted that the parties were given adequate opportunities to put forth their respective cases. The petitioner, who was respondent therein, was given opportunity to file his statement of the defence (counter), reply to the re-joinder of the petitioner etc. A reading of the impugned order makes it clear that the matter was adjourned from time to time; the parties were given adequate opportunities to put forth their case and hence there is no violation of natural justice of principles. It was further submitted that the writ petition is not maintainable, in view of the effective alternative remedy available to the petitioner to challenge the award passed by the first respondent under Section 19 of MSMED Act. He also submitted in order to challenge the impugned award passed by the 1st respondent, the petitioner has to deposit 75% of award amount and without complying the statutory condition writ petition is not maintainable.

7. Heard the arguments of both the parties and perused the records. On contention of counsel for both the sides,



following points arise for consideration in his writ petition.

(i) Whether the conciliation proceedings contemplated under Section 18(2) of MSMED Act is mandatory or directory?;

WEB COPY (ii) Whether the provisions of arbitration Act r/w Section 18(3) of MSMED Act was complied with by the first respondent while passing the impugned order and whether the impugned order can be treated as an arbitral award?;

(iii) Whether in the light of Section 19 of MSMED Act, the writ petition is maintainable without deposit of 75% of the amount ordered to be paid by the impugned order?.

WHETHER THE CONCILIATION PROCEEDINGS CONTEMPLATED UNDER SECTION 18(2) OF MSMED ACT IS MANDATORY:

8.1. The learned counsel for the petitioner submitted that on receipt of a claim from any of the parties, the first respondent council under the mandatory obligation to conduct conciliation proceedings either by itself or by referring the parties to the conciliation proceedings before any other institution providing alternative dispute resolution. He further stated that the mandatory nature of Section 18(2) can be gathered from the employment of the word "shall" in Section 18 (2);

In support of his contentions, he relied on the following decisions:

(i) 2016(1) CTC 403 reported in (Ramesh Conductors Private Limited Vs. M and SE Facilitation Council (Micro and Small Enterprises));

(ii) Un-reported order in W.P.Nos.42388 to 42392 of 2016, dated 02.12.2016;

(iii) Un-reported order in W.P.No.1434 of 2014, dated 09.01.2019;

(iv) The order passed by Apex Court in C.A.No.2899 of 2021, reported in Jharkhand Urja Vikas Nigam Limited Vs. The State of Rajasthan and others.

8.2. The learned counsel for the respondent submitted that though the word "shall" is employed under Section 18 (2) of MSMED Act, the same will not make conciliation proceedings under Section 18(2) as a mandatory one, in the absence of any provisions declaring consequences of non compliance. In support



of his contention that the procedure contemplated under Section 18(2) of MSMED Act, is not mandatory, he relied on judgments reported in 2015 8 MLJ page 795 in (Prime Technologies, A Division of Hindustan Ferro and Industries Ltd., represented by its Director Mr.A.K.Dalmia, Kanpur 208002 and others Vs. Hamsa Watch Glass Pvt. Ltd, Chennai - 84).

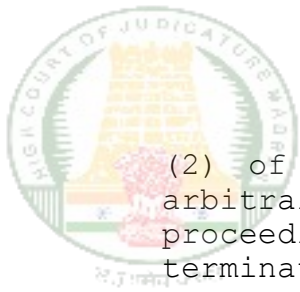
8.3. Section 18 of MSMED Act, reads as follows:

"18. Reference to Micro and Small Enterprises Facilitation Council:- (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 center 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 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 disputes as if the arbitration was in pursuance of an arbitration agreement referred to in sub section (1) of Section 7 of that Act."

A cursory look at the above said provision makes it clear that on receipt of reference under Section 18(1) by any one of the parties to the first respondent council, it shall either conduct conciliation itself or send the parties to conciliation by any other institution providing alternative dispute resolution. The compulsory nature of the procedure contemplated under Section 18(2) of MSMED Act is fortified by the word 'shall' employed in Section 18(2). If the conciliation resorted to under Section 18(2) of MSMED Act, is not successful and terminated without any settlement between the parties, then the council shall either take up the dispute for arbitration, or shall refer the parties to any other institution for such arbitration. The arbitral proceedings can be initiated only on failure of conciliation proceedings initiated under Section 18 (2) of the Act. The conciliation proceedings under Section 18



(2) of the Act is a condition precedent for initiation of arbitral proceedings. Therefore, the constitution of arbitral proceedings under Section 18(3) cannot take place without termination of conciliation proceedings under Section 18(2).

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8.4. In the judgment reported in 2016 1 CTC page 403 in (Ramesh Conductors Private Limited Vs. M & SE Facilitation Council (Micro and Small Enterprises)).

The learned Judge of this Court has taken a view that the order passed by MSMED council without strict compliance of Sections 18(2) and 18(3) of MSMED Act cannot be termed as an award and consequently, set aside the order and remanded the matter back to the file for fresh consideration by firstly referring the matter for conciliation and in the event of termination of conciliation proceedings without settlement to follow the procedure under 18(3) of MSMED Act. The relevant observations of this Court, in this regard is as follows:

"26. Sub-Section (2) of Section 18, clearly says that on receipt of the reference the Council shall conduct the conciliation proceedings either by itself or by any other institution or centre as stated in the provision applying the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996.

27. A perusal of the Order of the first respondent reveals that the council had not conducted any conciliation proceedings either by itself or as stated in sub-section (2) of Section 18, applying the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996.

28. The provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, deals with, Submission of statements to conciliator, conciliator not bound by certain enactments, Role of Conciliator, Administrative assistance, Communication between conciliator and parties, disclosure of information, cooperation of parties with conciliator, suggestions by parties for settlement of dispute, settlement agreement, status and effect of settlement agreement, confidentiality, termination of conciliation proceedings, resort to arbitral or judicial proceedings, costs, deposits, role of conciliator in other proceedings and admissibility of evidence in other proceedings, respectively.

29. Nowhere in the Order, this Court finds



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the application of the above provisions for conducting the conciliation proceedings. When sub-section (2) of Section 18, clearly specifies the application of the provisions of Sections 65 to 81 of the Arbitration and conciliation Act, for conducting the conciliation proceedings, in the absence of any whisper about the application of the above provisions, the inevitable conclusion is that no conciliation proceedings was conducted by the council and the Order was passed by the First respondent in total violation of sub-section (2) of Section 18 of the MSMED Act.".

8.5. The same view was followed by two other learned Judges of this Court in W.P.Nos.42388 to 42392 of 2016, dated 02.12.2016 and W.P.No.1434 of 2014, dated 09.01.2019. The Honourable First Bench of this Court has taken a view in its judgment dated 07.03.2022 made in W.A.No.2655 of 2021 that MSMED council gets jurisdiction to take up the matter for arbitration only on failure of the conciliation proceedings and hence the procedure contemplated under Section 18 of MSMED Act is mandatory one. The relevant observation of the First Bench reads as follows:

"The procedure aforesaid was not followed and in view of the judgment of the Apex Court in the case of Jharkhand Urja Vikas Nigam Limited, it becomes clear that the procedure given under Section 18 of the Act of 2006 is mandatory in nature and when conciliation fails, the Council is empowered either to take up arbitration on its own or to refer it to any institution providing alternative dispute resolution services and the provisions of the Arbitration and Conciliation Act, 1996 to apply therein."

8.6. It is also relevant to refer the observations of the Apex Court in its recent judgment dated 29.06.2021 made in C.A.Nos1570 to 1578 of 2021 (M/s. Silpi Industries etc. Versus Kerala State Road Transport Corporation & Anr. Etc.), wherein, it has been held that conciliation proceedings contemplated under Section 18(2) of MSMED Act is mandatory in nature. The relevant observations of the Apex Court is extracted hereunder;

" The Arbitration and Conciliation Act, 1996 is a general law whereas the Micro, Small and Medium Enterprises Development Act, 2006 is a special beneficial legislation which is intended to benefit micro, small and medium enterprises covered by the said Act. The Act of 2006 contemplates a statutory arbitration when conciliation fails. A party which is



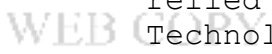
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covered by the provisions of 2006 Act allows a party to apply to the Council constituted under the Act to first conciliate and then arbitrate on the dispute between it and other parties. There are fundamental differences in the settlement mechanism under the 2006 Act and the 1996 Act. The first difference is, the Council constituted under the 2006 Act to undertake mandatory conciliation before the arbitration which is not so under the 1996 Act. The first itself is the council constituted under 2006 to undertook mandatory conciliation before the arbitration it is not in 1996 Act.

"
.....

Thus, we hold that MSMED Act, being a special Statute, will have an overriding effect vis-a-vis Arbitration and Conciliation Act, 1996, which is a general Act. Even if there is an agreement between the parties for resolution of disputes by arbitration, if a seller is covered by Micro, Small and Medium Enterprises Development Act, 2006, the seller can certainly approach the competent authority to make its claim. If any agreement between the parties is there, same is to be ignored in view of the statutory obligations and mechanism provided under the 2006 Act."

8.7. Though the question whether conciliation proceedings contemplated under Section 18(2) is mandatory or not did not arise for consideration substantially and directly in the case law referred above, while explaining the various differences between the Arbitration Act and MSMED Act, the Apex Court has held that the first difference is mandatory nature of the conciliation proceedings before taking up arbitration. Further in the above said judgment, the Apex Court also held that even if there was an arbitration agreement between the parties to refer the dispute to arbitral Tribunal, in view of the overriding effect of the MSMED Act, the same shall be ignored and the statutory obligation and mechanism provided under MSMED Act had to be followed. Therefore, it is very clear that the Apex Court emphasized the mandatory nature of procedure contemplated under Section 18(2) of MSMED Act. In the light of various decisions of this Court and also that of the Apex Court, I hold the conciliation proceedings contemplated under Section 18(2) of MSMED Act is mandatory in nature. The first respondent council, after receiving a claim from any of the party shall compulsorily refer the parties to the conciliation proceedings as contemplated under Section 18(2) and only in case of failure of conciliation proceedings, the first respondent shall record termination of the conciliation



8.8. The learned counsel for the second respondent relied on a judgment reported in 2015 8 MLJ Page 795 in (Prime Technologies, A Division of Hindustan Ferro and industries Ltd., represented by its Director Mr.A.K.Dalmia, Kanpur 208002 and others) for the proposition that conciliation proceedings under Section 18(2) is not mandatory. In that case, the award passed by council under Section 18 had become final and left unchallenged. When the award was sought to be executed, the execution proceedings was challenged on the ground that the mandatory procedure contemplated under Section 18(2) was not followed and hence the award is a nullity. Some of the decisions of other High courts were relied on to support the arguments that the procedure under Section 18(2) was mandatory. The First Bench of this Court refused to entertain the plea mainly on the ground that the award had become final and the executing Court cannot go beyond the terms of the decree. The relevant observations of the First Bench is extracted below:

6. In our view, to entertain the objections of the appellant at the stage of execution of the decree would amount to going behind the decree in execution proceedings, a course of action not permissible. We are fortified in our view by a catena of judgments of the Hon'ble Supreme Court as well as High Courts to the effect that the executing court cannot examine the validity or otherwise, or go behind the terms of a decree passed by a Court of competent jurisdiction unless of course it is shown to be void ab initio or without jurisdiction.



Therefore the said judgment is not useful to support the contention of the learned counsel for the second respondent.

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8.9. In view of categorical pronouncement by Apex Court in Silpi Industries case cited supra and view expressed by First Bench of this Court and three learned Judges of this Court as discussed earlier, I hold on receipt of claim under Section 18(1) of MSMED Act, it is incumbent on the 1st respondent council to refer the parties to conciliation proceedings under Section 18(2) of the Act and said procedure is mandatory in nature.

WHETHER THE PROVISIONS OF ARBITRATION ACT R/W SECTION 18(3) OF MSMED ACT WAS COMPLIED WITH BY THE FIRST RESPONDENT WHILE PASSING THE IMPUGNED ORDER AND WHETHER THE IMPUGNED ORDER CAN BE TREATED AS ARBITRAL AWARD?

9.1. The reading of the impugned order shows that the parties were given opportunities to file their pleadings, but it is not clear whether such exercise was done in an arbitration proceedings under Section 18(3) or conciliation proceedings under Section 18(2) or in an ordinary reference stage under Section 18(1) of MSMED Act. Nowhere in the impugned order it was recorded that arbitration proceedings commenced and the parties have participated in the arbitration proceedings. There is no reference as to whether the parties were referred to conciliation proceedings and the same ended in a failure. The parties were given opportunity to put forth pleadings and straightway the arguments of the parties were heard and there is nothing available in the impugned order suggesting that the parties were afforded with an opportunity to lead evidence. The impugned order does not appear to be an order passed in an adjudicatory process as per the provisions of arbitration.

9.2. It is useful to refer to the observations of this Court in a case law cited above in 2016 1 CTC page 403 in (Ramesh Conductors Private Limited Vs. M & SE Facilitation Council (Micro and Small Enterprises), which reads as follows:

"30. Then, sub-section (3) of Section 18, says that where the conciliation initiated under Sub Section (2) if not successful and stands terminated without any settlement between the parties, the council shall either itself take up the dispute for arbitration or refer to it 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



31. A plain reading of sub section (3) of Section 18, shows that if the conciliation proceedings is not successful and stands terminated without any settlement between the parties, then the council either itself take up the dispute for arbitration or refer it to any institution or centre for arbitration.

33. In the event of termination of conciliation proceedings without any settlement between the parties, the council shall either itself take up the dispute for arbitration or refer to it 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.

35. Chapter II to VII in the arbitration and conciliation Act, deals with, arbitration agreement, composition of arbitral tribunal, jurisdiction of arbitral tribunals, conduct of arbitral proceedings, making of arbitral award and termination of proceedings and recourse against arbitral award, respectively.

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impossibility to act, Termination of mandate and substitution of arbitrator, competence of Arbitral Tribunal to rule on its jurisdiction, interim measures ordered by arbitral tribunal. Equal treatment of parties, determination of rules of procedure, place of arbitration, commencement of arbitral proceedings, language, statements of claim and defence, hearings and written proceedings, default of a party, expert appointed by arbitral tribunal Court assistance in taking evidence, Rules applicable to substance of dispute, decision making by panel of Arbitrators, settlement, Form and contents of arbitral award, termination of proceedings, correction and interpretation of award; additional award and application for setting aside arbitral award, respectively

37. A scrutiny of the Order passed by the first respondent would reveal that no provisions of the above sections of the arbitration and conciliation Act, 1996 have been applied for conducting the arbitration, even though the sub-section (3) of Section 18 has specifically stated that the provisions of the arbitration and conciliation act, shall be applied for conducting the arbitration.

38. A perusal of the Order in the light of the above provisions would clearly reveal that the order was passed in total negation of sub-section (2) & (3) of Section 18, and therefore, it cannot be construed that either an Order was passed under sub-section (2) of Section 18, or an award was passed under Sub-section (3) of Section 18 of the Act. "

9.3. The complexion or character of MSMED council changes from one capacity to other while following the step by step procedure contemplated under Section 18 of MSMED Act. While exercising power under Section 18(1) of the Act, MSMED council acts as an ordinary authority to receive respective representations of the parties. On the other hand, while acting under Section 18(2) the complexion of the council would change from that of an ordinary authority to that of a conciliator acting under relevant provision of arbitration and conciliation Act. While exercising power under Section 18(3), the complexion of MSMED council changes from that of conciliator to that of an Arbitrator. Therefore, it is incumbent upon the first respondent council to inform the parties by express notice under what capacity, they receive the pleadings of the parties. At least while commencing the arbitration under Section 18(3) of



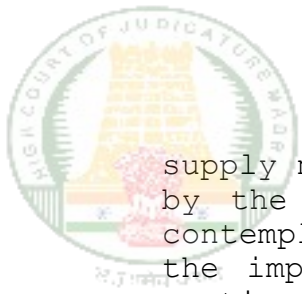
MSMED Act, the first respondent is obliged to record the failure of conciliation proceedings and initiation of an adjudicatory procedure as an Arbitrator. It is obligatory on the part of the first respondent council to inform the parties about the change of its face from that of conciliator to that of an Arbitrator, so that the parties will be made to understand that they are participating in an adjudicatory process, which will result in a binding order having impact on their rights. There is nothing available in the impugned order to show that at what point of time, the first respondent council acquired the character of arbitrator from that of conciliator. The parties appeared to have participated in the proceedings without knowledge whether they are participating in an ordinary reference stage under Section 18(1) or conciliation stage under Section 18(2) or in an adjudicatory stage under Section 18(3). There is nothing available in the impugned order to show valid constitution of arbitral Tribunal and beginning of adjudicatory process with express notice to the parties. Hence, I hold the impugned order cannot be termed as an award and hence liable to be set aside.

9.4. In the impugned order, there is no reference about conciliation proceedings or initiation of arbitration. The impugned order starts with the words "'proceedings of the Micro Small Enterprises Facilitation Council, Chennai Region held on 07.05.2013". It does not say, it is an arbitral award. However, the impugned order is styled as a judgment of first respondent council. The first paragraph of impugned order starts as follows:

" The reference under the provisions of Micro, Small and Medium Enterprises Development Act, 2006, was made to this council by M/s.Shri Meera Labs Private Limited,..... referred to as the petitioner against "M/s.Sri Valli Process,..... herein after referred to as the respondent. "

Then the first respondent council proceeded to receive pleadings of the parties, heard the arguments and passed the impugned order. Therefore, it is very clear that neither the parties were subjected to conciliation proceedings as required under Section 18(2) nor arbitration proceeding was initiated under Section 18(3) of MSMED Act, 2006.

9.5. I have already held that procedure contemplated under Section 18(2) is mandatory one and first respondent acquire jurisdiction to initiate arbitral proceedings only on failure of conciliation proceedings and termination of the same. When there is nothing in the impugned order to show that the conciliation proceedings failed and the same was terminated, the impugned order directing the petitioner to pay cost of



supply made to him gets vitiated. Further as rightly contended by the learned counsel for the writ petitioner the procedure contemplated under Section 18(3) was also not complied and hence the impugned order cannot be treated either as an order under section 18(2) or an order under Section 18(3) of MSMED Act. Consequently, the impugned order cannot be termed as an award passed under Section 18(3) of MSMED Act.

WHETHER IN THE LIGHT OF SECTION 19 OF MSMED ACT, THE WRIT PETITION IS MAINTAINABLE WITHOUT DEPOSIT OF 75% OF THE AMOUNT ORDERED TO BE PAID BY THE IMPUGNED ORDER.

10.1. The learned counsel for the second respondent contended that as per Section 19 of MSMED Act, no Court shall entertain an application to set aside any decree or award or order passed by the first respondent counsel and therefore, the writ petition is not maintainable, when the petitioner failed to deposit 75% of the amount ordered to be paid by the first respondent. The said contention of the learned counsel for the second respondent cannot be countenanced because as discussed earlier, I held that the impugned order cannot be termed as an award passed under Section 18(3) of MSMED Act and the same is vitiated by the failure to follow mandatory procedure contemplated under Sections 18(2) and 18(3) of MSMED Act. When the impugned order is not an award under Section 18(3), the petitioner can very well maintain a writ petition and it is not necessary for him to challenge the same under Section 19 of MSMED Act r/w Section 34 of Arbitration Act by depositing 75% of the amount ordered to be paid. Further, the power to issue prerogative writs available to High Courts under Article 226 of Constitution of India is a plenary power and the same cannot be curtailed by any condition imposed in a statute. In other words, the condition precedent mentioned under Section 19 of MSMED Act cannot control or restrict the power available to the High Courts under Article 226 of the Constitution of India. It is settled law (as held in AIR 1997 SC 1125, L.Chandrakumar Vs. Union of India) the power available to High Courts under Article 226/227 of Constitution of India can not be excluded. Therefore, a statute cannot restrict the said power available to High Courts by imposing additional condition which are not available in Art 226 itself. It is obvious that the word expression "any Court" used under Section 19 of MSMED Act only refers to the Courts created and exercising power under ordinary statutes. It does not refer to constitutional Courts exercising powers under Article 226 and 32 of Constitution of India. Therefore, I hold that the writ petition is maintainable without depositing 75% of the amount ordered to be paid by the petitioner to the second respondent.



11. In view of the discussions made above, the writ petition is allowed and the impugned order is set aside. The matter is remanded back to the file of the first respondent and the first respondent is directed to decide the matter afresh first by referring the matter to the conciliation proceedings as contemplated under Section 18(2) of MSMED Act and in case of failure of conciliation, to initiate arbitration proceedings as per Section 18(3) of said Act by following the provisions of Arbitration and conciliation Act as indicated above. It is made clear in case of failure of conciliation, the same shall be recorded and the conciliation proceedings shall be terminated. Thereafter, the parties shall be put on notice about the Constitution of arbitral Tribunal and commencement of adjudicatory process. In the facts and circumstances of the case, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman/Principal Secretary,
Micro Small Enterprises Facilitation Council,
Chennai Region,
Industries Commissioner and Director of
Industries and Commerce,
Mandavelipakkam,
Chennai - 600 028.
2. M/s.Shri Meera Labs Private Limited,
New No.13, Old No.12,
1st Main Road,
Ekambaram Industrial Estate,
Alapakkam, Chennai - 600 089.

+1cc to Mr.R.Bharathkumar, Advocate, S.R.No.39920

W.P.No.25759 of 2013

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PM/06/07/2022