



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2022

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THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.5733 of 2022

M/s.Alvittas Electricals Private Limited,
60 (Old No.33) Kasturi Rangan Road,
Alwarpet, Chennai - 18.
rep. Ashok Kumar Kantilal Modi
S/o.Kanthilal Ochhavlal Modi.

...Petitioner

-Vs.-

1. MICRO Small Enterprises Facilitation
Council, Chennai Region,
SIDCO Corporate building,
Guindy, Chennai 600 032.
Rep. by its Chairman.

2. The Chief Engineer,
Materials Management
TANGEDCO Ltd.,
133, Anna Salai,
Chennai 600 002.

...Respondents

Prayer:-Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for records relating to the proceedings of the 1st respondent in MSME/CR/279/2018 dated 20.10.2020, quash the same and direct the 1st and 2nd respondent to record that conciliation proceedings are not successful with provisions of Section 18 (30 of the Micro Small and Medium Enterprises Development Act, 2006 (Act 27 of 2006) within the time stipulated by this Hon'ble Court.

For Petitioner : Mr.Y.Ramanaiah

For Respondents : Mr.R.Kumaravel,

Additional Government Pleader

For R2



O R D E R

In the captioned writ petition Mr.Y.Ramanaiah, learned counsel for petitioner and Mr.R.Kumaravel learned Additional Government Pleader who accepts notice on behalf of second respondent (TANGEDCO) are before this Court. To be noted, first respondent 'MICRO Small Enterprises Facilitation Council' [hereinafter 'said Council' for the sake of convenience and clarity] made an 'order dated 20.10.2020 bearing reference MSEFC/CR/279/2018' [hereinafter 'impugned order' for the sake of brevity, convenience and clarity] which has been assailed in the captioned writ petition.

2. Owing to the short point in the captioned main writ petition and acute angle on which the whole matter turns, main writ petition was taken up with the consent of learned counsel on both sides. To be noted, first respondent is said Council which made the impugned order and therefore, the presence of said Council before this Court is not necessary for disposal of captioned writ petition, more so, when there are no allegations of mala fides.

3. The case of writ petitioner is that it is a company which is engaged in the business of manufacturing certain conductors described as ACSR/AAA conductors. Learned counsel for petitioner submits that these conductors were supplied to Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) but monies qua such supplies remain unpaid and therefore they approached said Council for settlement of principal with interest. Learned counsel submits that the matter turns essentially under Section 18 of 'The Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006)' [hereinafter 'MSME Act' for the sake of convenience and clarity].

4. In and by impugned order, said Council has dismissed petitioner's plea by a terse one line observation recording what according to said Council is 'non maintainability of records' but this Court is informed that records running to several pages have been uploaded. Learned State counsel, advertent to impugned order points out that if records were before said Council, it would have been examined. This Court expresses no view or opinion on this factual disputation and merits of the matter.

5. It is not necessary to dilate further on this, as this Court is informed without any disputation or disagreement that in a similar matter this Court in and by a common order dated



02.12.2016 made in W.P.Nos.42388 to 42392 of 2016 & W.M.P.Nos.36283 to 36285 of 2016 remanded the case back to said Council for consideration afresh and for taking a decision within 90 days from the date of receipt of the order. A careful perusal of the order dated 02.12.2016 made in W.P.Nos.42388 to 42392 of 2016 & W.M.P.Nos.36283 to 36285 of 2016 brings to light that it turns on the point that there should be a reference to arbitration under Section 18 of MSME Act more particularly sub section (3) of Section 18 of MSME Act, if the claim remains unresolved.

6. Order dated 02.12.2016 made by another Hon'ble single Judge of this Court in W.P.Nos.42388 to 42392 of 2016 & W.M.P.Nos.36283 to 36285 of 2016 is as follows:

'Heard Mr.S.Elamurugan, learned counsel appearing for the petitioner and Mr.V.Viswanath, learned Government Advocate accepting notice on behalf of the 2nd respondent and with the consent on either side, the writ petitions are taken up for final disposal.

2 Since the 1st respondent is a Facilitation Council, they are not required to be heard in the matter.

3 The petitioner has challenged the orders passed by the 1st respondent dated 27.07.2016 ; 10.11.2014 ; 10.11.2014 ; 27.07.2016 ; and 10.11.2014 respectively, in and by which, their application for payment of interest has been rejected outrightly on the ground that the Council will not be able to consider the interest claim. That apart, on a perusal of the impugned orders, it is evidently clear that the 1st respondent has failed to adhere to the procedure contemplated u/s.18 of the Micro, Small and Medium Enterprises Development Act, 2006, which contemplates the procedure. The above issues have been considered by this Court earlier in a batch of cases in M/s.Ramesh Conductors Private Limited represented by its Director P.Ramkumar, Salem # 636 404 and others Vs. M&SE Facilitation Council [Micro & Small enterprises] rep.by its Chairman, Chennai-28, [WP.Nos.18282 to 18287/2015 order dated 24.11.2015]. In the said case also, the contesting respondent was TANGEDCO. The Court, after taking into consideration the statutory provisions, had issued certain directions to the Council to proceed in accordance with section 18 of the Act. At this stage, it will be beneficial to refer to the operative portion of the said order dated 24.11.2015:-

"....

25.Once the reference is made, it is the duty of the Council to conduct conciliation by itself or



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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.

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, Co-operation 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 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.



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



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Proceedings and Recourse against Arbitral Award, respectively.

36. The provisions of Sections 7 to 34 deal with Arbitration Agreement, Power to refer parties to arbitration where there is an arbitration agreement, Interim measures etc. by Court, number of arbitrators, Appointment of arbitrators, Grounds of challenge, Challenge procedure, Failure of 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-Sections 2 and 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.

39. That apart, even if the order is speaking itself, then the petitioner could not have any grievance over the order, whereas, since the order is totally a non-speaking order, the petitioner has come forward with this writ petition.

40. Under these circumstances, this Court is of firm view that, as rightly contended by the learned counsel for the petitioner, since the order



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passed by the first respondent cannot be construed as the order passed under Sub-Section 2 of Section 18 of an award passed under Section 3 of Section 18 of the MSMED Act, the matter has to be remitted back to the first respondent for fresh consideration.

Accordingly, the writ petitions are allowed setting aside the orders of the first respondent. The matters are remitted back to the first respondent to decide the matters afresh, first, as per Sub-Section 2 of Section 18 and in the event of termination of conciliation proceedings, then as per Sub-Section 3 of Section 18 of the MSMED Act by following the provisions of the Arbitration and Conciliation Act, 1996 as has been stated in the provisions of Section 18 itself, after affording reasonable opportunities to both the parties, within a period of ninety days from the date of receipt of a copy of this order. However, there will be no order as to costs. Connected M.Ps. are closed."

4 The learned counsel appearing for the 2nd respondent pointed out that only two cases have been decided in the year 2016 and the other cases have been decided much earlier. This may not be a very relevant factor, especially, when the procedure contemplated under the Act has not been adhered to.

5 For the above reasons, the writ petitions are allowed and the impugned orders are set aside and the matters are remanded back to the 1st respondent for fresh consideration and the 1st respondent shall take note of the directions issued in the above referred order and proceed accordingly, after affording reasonable opportunity to the petitioner as well as to the 2nd respondent and the proceedings may be concluded within a period of ninety days from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.'

7. To be noted, the operative portion qua aforementioned order is paragraph No.5.

8. As there is no dispute or disagreement that the case on hand is covered vide the aforementioned order, captioned Writ Petition is also disposed of with similar directives as in the earlier matter and the directives are as follows:

(a) Impugned order is set aside;



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(b) Matter is remanded back to the first respondent-Chairman, MICRO Small Enterprises Facilitation Council, Chennai Region, SIDCO Corporate building, Guindy, Chennai 600 032 for fresh consideration;

(c) First respondent-said Council shall take note of the observations made by this Court in earlier order dated 02.12.2016 made in W.P.Nos.42388 to 42392 of 2016 & W.M.P.Nos.36283 to 36285 of 2016 while hearing the matter afresh;

(d) First respondent shall give reasonable opportunity to both sides i.e., petitioner and TANGEDCO before making orders afresh i.e., post remand;

(e) The aforementioned exercise of making orders afresh i.e., post remand shall be completed as expeditiously as the official business of the first respondent would permit and in any event within 90 days from the date of receipt of a copy of this order;

(f) Though obvious, it is made clear that this Court has not expressed any view or opinion on the merits of the matter (except saying that observations made in the earlier order of this Court shall be kept in mind) and all questions are left open to first respondent-said Council to decide the case afresh;

9. Captioned Writ Petition is disposed of with the aforementioned directives. There shall be no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mk/nsa
To

1. The Chairman
MICRO Small Enterprises Facilitation
Council, Chennai Region,
SIDCO Corporate building,
Guindy, Chennai 600 032.



2.The Chief Engineer,
Materials Management
TANGEDCO Ltd.,
133, Anna Salai,
Chennai 600 002.

+1 CC to Mr.S.Elamurugan, Advocate sr 17295
+1 CC to The Government Pleader sr 17460.

W.P.No.5733 of 2022

GPL(CO)
SP(25/03/2022)