



C.R.P(PD).No.1223 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P.(PD).No.1223 of 2022

and

C.M.P.No.6596 of 2022

Chief Engineer Panipat Thermal Power Station,
Rep by Er.S.L.Sachdeva
Panipet Thermal Power Station,
(A unit of Haryana Power Generation Corporation Ltd)
Panipat 132 105

... Petitioner

..Vs..

M/s Unicon Engineers
Rep by Sri P.Ponram,
Managing Partner
M/s Unicon Engineers
513-A/6, Bharathi Road,
Chinnavedampatty, Coimbatore 641 049.

... Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order of the learned Principal District Judge, Coimbatore passed in I.A.No.1360 of 2017 in AOP No.55 of 2017.



C.R.P(PD).No.1223 of 2022

For Petitioner : Mr.K.Thiruvengadam

For respondent : Mr.B.Manoharan

ORDER

This Civil Revision Petition has been preferred, challenging the order of the learned Principal District Judge, Coimbatore, dated 03.02.2022 made in I.A.No.1360 of 2017 in Arbitration Original Petition No.55 of 2017.

2.The revision petitioner is the defendant in the suit and the respondent/plaintiff has filed a petition in I.A.No.1360 of 2017, to reject the appeal filed by the revision petitioner for non-compliance of Section 19 of MSMED Act, 2006. The same was allowed and a direction was given to the revision petitioner to deposit a sum of Rs.3,25,44,034/- as per Section 19 of the MSMED Act, 2006, on or before 21.03.2022. Aggrieved over that, the revision petitioner/defendant has preferred the present petition.



C.R.P(PD).No.1223 of 2022

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3.The learned counsel for the petitioner submitted that unless the Award amount is calculated and determined by the counsel and filed before the Court, it may not be possible for the revision petitioner to make a deposit in terms of Section 19 of the MSMED Act.

4.In support of his contention, he relied on the judgment of the ***Jharkhand High Court*** in the case of ***M/s.Bharat Cooking Coal Limited, Dhanbad Vs. State of Jharkhand*** reported in ***(2016) 168 AIC 426*** and relevant portion of the judgment reads as under:

22.It would be repetition to say that the Facilitation Council had to satisfy itself on the necessary ingredients of the provisions of Sections 15 and 16 etc and render its finding on each of such claim arising out of such supply orders such as the date of supply orders, the date on which the supplies were made, the date on which bills were raised, the date on which the acceptance of supplies were made or



C.R.P(PD).No.1223 of 2022

refused. In the facts of the case of the applicant, it was required to render a finding as to from which dates the liability of the buyer arose to make payment of outstanding dues. The payments would then became due from those dates against the buyer in favour of supplier. The liability of the buyer to pay interest over, the original amount would then accrue from the due date as adjudicated by the Facilitation Council. Instead, Facilitation Council in a summary manner has straightaway held the opposite party/petitioner herein liable to pay the entire amount claim of Rs.50,231/- towards principal amount with interest at 3 times of Bank rate. Even if the opposite party/petitioner herein had failed to file written statement within time, it was an obligation on the Adjudicatory Body i.e., Facilitation Council to exercise independent application of mind on the claim petition in the light of the provisions of Act, 2006 to satisfy itself whether the ingredients therein are satisfied by



C.R.P(PD).No.1223 of 2022

the claimant to succeed against each of such claims. It is another matter that the Facilitation Council has also chosen to bye-pass the first step of undertaking conciliation on the dispute between the parties.

23.Before parting, therefore, it is felt necessary to reiterate that the Facilitation Council exercising an adjudicatory role in the nature of a arbitration proceeding as conceived under the Arbitration and Conciliation Act, 1996, has an onerous duty to examine such claim petition and render its finding in accordance with law. Failure to do so, would amount to abdication of its adjudicatory role as well as lack of application of mind on its part.

24.In totally of the facts and circumstances and the discussions made herein above, the impugned Award at Annexure-4 cannot be upheld in the eye of law. The matter



C.R.P(PD).No.1223 of 2022

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is remanded to the Facilitation Council to hear the reference afresh and take a decision after due opportunity to the parties within a time frame. Consequently, 75% of the awarded amount deposited by way of a demand draft before learned Registrar General of this Court in pursuance of the interim order dated 15th July, 2013 passed in the instant case shall be returned to the petitioner”

4.By placing reliance on the above cited judgment, it is claimed by the learned counsel for the petitioner that the award amount was not determined. In the case in hand, the Award itself, the award amount has been determined and further a memo also filed by calculating the interest portion also. So, there is no failure on the part of any other stake holders in arriving the award amount as prescribed.

5.Both parties cannot have any disagreement about the mandates of Section 19 of the MSMED Act and the same reads as under:



C.R.P(PD).No.1223 of 2022

WEB COPY

19.Application for setting aside decree, award or order:- No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any Court unless the appellant (not being a supplier) has deposited with it seventy five percent of the amount in terms of the decree, award or, as the case may be the other order in the manner directed by such Court.

Provided that pending disposal of the application to set aside the decree award or order, the Court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose.

The clause seeks to debar any Court or other authority from entertaining an appeal against any decree, award or any other order unless the appellant (not being a supplier) has deposited with it seventy five percent of the



C.R.P(PD).No.1223 of 2022

WEB COPY

amount in terms of the decree, award or other order”.

6.As per the above provisions, after the award was passed, if anyone not being a supplier chooses to file an appeal, 75% of the award amount in terms of the decree should be deposited. Only when the said condition is complied, the appellant will get the right to contest the appeal.

7.In para 17 of the impugned order, the award amount has been determined as Rs.8,30,91,512/-, out of which, the revision petitioner has to deposit 75%, which would come to Rs.6,23,18,634/-. Since the revision petitioner has deposited only Rs.2,97,74,600/- at the time of filing of the appeal, a direction has been given to the petitioner to deposit the balance amount of Rs.3,25,44,034/- within the prescribed time limit. The above order of the learned Special Judge is well within the contours of Section 19 of the MSMED ACT. Since, the compliance of the above condition is mandatory for the purpose of filing any appeal, under Section



C.R.P(PD).No.1223 of 2022

34 of the Arbitration and Conciliation Act, 1996, I do not find any factual or legal infirmity in the impugned order and there is no reason for interference.

7. Accordingly, the Civil Revision Petition is dismissed and the order of the learned Principal District Judge, Coimbatore dated 03.02.2022 made in I.A.No.1360 of 2017 in AOP No.55 of 2017, is hereby confirmed. No Costs. Consequently, connected Miscellaneous Petition is closed.

14.06.2022

vkr

Index:Yes No

Speaking Order:Yes/No

To

1.The Principal District Judge,
Coimbatore.

2.The Section Officer,
VR Section, Madras High Court,

9/10



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Chennai.



C.R.P(PD).No.1223 of 2022

R.N.MANJULA,J.

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C.R.P.(PD).No.1223 of 2022
and C.M.P.No.6596 of 2022

14.06.2022