IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 6766 of 2020
and
W.M.P. No. 8048 of 2020

Women's Centre and Hospitals (P) Ltd.,
Rep.by its Authorised Officer,
Mr. G.Ramesh Ram,
146-B, Mettupalayam Road,
Coimbatore – 600043. … Petitioner

-vs-

1. Micro and Small Enterprises Facilitation Council,
   Thiruvika Industrial Estate,
   Guindy,
   Chennai.

2. M/s. Ibuilding Automation (P) Ltd.,
   Plot No. 144, (Door No. 26)
   4th Street, Raghava Reddy Colony,
   Ashok Nagar,
   Chennai – 600083. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records relating to the proceedings of the First Respondent in MSEFC/CR/43/2017, dated 12.12.2019 and quash the same as illegal and arbitrary.

For Petitioner	:	Mrs. S.P.Arthi
For Respondents	:	Mr. T.Arun Kumar, Additional Government Pleader (for R1) Mr. R.Anish Kumar (for R2)

O R D E R

Heard Mrs. S.P.Arthi, Learned Counsel for the Petitioner, Mr. T.Arun Kumar, Learned Additional Government Pleader appearing for the First Respondent and Mr. R.Anish Kumar, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent made a claim in Case No. MSEFC/CR/43/2017 before the First Respondent under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'the MSMED Act' for short), claiming payment of Rs. 56,04,189/- from the Petitioner towards the value of goods supplied with interest calculated in terms of that Act, in which an order dated 12.12.2019 was passed holding that the Petitioner was liable to pay the sum of Rs. 56,04,189/- together with compounded interest with monthly rests at three times of the Bank rate notified by the Reserve Bank of India as stipulated in MSMED Act from the invoices dated from 03.02.2011 to 07.03.2012 till the date of settlement, which assailed in this Writ Petition.

3. In response to the contentions raised by Learned Counsel for the Second Respondent that if the Petitioner is aggrieved by the impugned order, it has to only resort to filing of the application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the A & C Act' for short), to have it set aside as an arbitral award as held by this Court in the decision in ***M/s. Reliance Infrastructure Ltd. -vs- Mictro Small Enterprises Facilitation Council*** (Order dated 13.06.2022 in W.P. No. 8220 of 2017), Learned Counsel for the Petitioner submits that before commencement of arbitration, the prescribed procedure for conciliation had not been terminated in the manner provided in Section 76 of the A & C Act, which would vitiate the impugned order as having been passed without jurisdiction.

4. At this juncture, it must be noticed that conciliation proceedings had taken place before the impugned order was passed as reflected from paras 8, 9 and 10 thereof, which are extracted below:-

> *“8. The representatives of both the Petitioner and the Respondent attended the joint sitting held on 20.06.2018 at the office of the Regional Joint Director, Chennai.*
>
> *The Petitioner produced proof of liabilities of Rs. 56 lakhs due from the Respondent for the supplies made and invoices*

during the sitting, the Respondent's Counsel informed that the supply was not disputed and requested for 2 days time to come to a conclusion after mutual consultation between the parties. Both the Petitioner and the Respondent were advices to go ahead with the discussion and to file a memo of settlement if matter is settled.

9. Subsequently, the Petitioner submitted a letter dated 26.06.2018 stating that though the Respondent's representative admitted to dues of Rs. 56 lakhs during the joint sitting, they had asked for an interest waiver as well as a reduction in the principal amount. The Petitioner categorically informed that the did not want to compromise on the principal outstanding.

10. In the council meeting held on 11.07.2018, the council took an unanimous decision to pass order in accordance with Section 16 of the MSMED Act, 2006 and issued final orders.

The Respondent then filed W.P. No. 17255 of 2018 in the Hon'ble High Court of Judicature at Madras against the Secretary/Regional Joint Director of Industries and Commerce and M/s. I Building Automation Private Limited. Based on the

Writ Petitioner, the Hon'ble High Court of Madras in the order dated 13.07.2018, granted an order of stay of all further proceedings in CR/43/2017 pending on the file of the First Respondent of the Regional Joint director of Industries and Commerce."

It would assume significance that the Writ Petition in W.P. No. 17255 of 2018 was filed by the Petitioner on 09.07.2018 challenging the proceedings initiated in the Notice in RC. No. 2376/A3/2017 MSEFC/CR/43/2017 dated 30.08.2017 by the First Respondent therein, viz., Zonal Officer, Micro and Small Enterprises Facilitation Council, Chennai, at the time when conciliation was taking place, and though an interim order was granted on 13.07.2018 staying the proceedings, this Court by order dated 14.11.2019 dismissed that Writ Petition taking note of the fact that the impugned order therein was only a notice to participate in the proceedings under the MSMED Act before the First Respondent. On a bare reading of the impugned order, as noticed earlier, it is clear that the Petitioner and the Second Respondent could not arrive at any amicable settlement on the dispute relating to payment of the price for the goods supplied by the Second Respondent to the Petitioner during conciliation. It is the specific case of the Petitioner that it is not liable for the claim made by the Second Respondent as it is barred by limitation and a suit has been filed by the Petitioner against the Second Respondent in O.S. No. 412 of 2013 in the Sub-Court, Coimbatore for damages for defective supply of goods with interest, which has admittedly been dismissed for default, but has not been restored to file till date. In that scenario, the only possible inference that can be drawn is that no useful purpose would be served to take any further efforts for conciliation between the parties, which would imply that the parties themselves have terminated the conciliation proceedings. Section 76 of the A & C Act merely illustrates certain situations where conciliation proceedings would get terminated, but it cannot be construed as if there cannot be termination of conciliation proceedings in any other manner. As such, it cannot be accepted that the conduct of the arbitration proceedings has taken place without prior termination of the conciliation proceedings so as to nullify the impugned order in this case.

5. It is next canvassed by Learned Counsel for the Petitioner relying on Section 80 of the A & C Act that the First Respondent having acted as the 'Conciliator' under Section 18(2) of the MSMED Act could not have been the 'Arbitrator' for deciding the arbitral dispute under Section 18(3) of the MSMED Act. It is borne out from the impugned order that the joint sitting for conciliation had taken place on 20.06.2018 before the Regional Joint Director

of Industries and Commerce, who was not one of the five members constituting Facilitation Council, which has passed the arbitral award. That apart, when it has been statutorily provided that the 'Facilitation Council' established in terms of Section 20 of the MSMED Act would function both as 'Conciliator' and 'Arbitrator' in a reference under Section 18 of the MSMED Act or may delegate any of those powers to an institution or centre providing alternate dispute resolution services, it would fall under the exception of 'unless otherwise agreed by the parties' mentioned in Section 80 of the A & C Act. The Hon'ble Supreme Court of India in ***Gujarat State Civil Supplies Corporation Limited -vs- Mahakali Foods Private Limited*** (Order dated 31.10.2022 in S.L.P. (C) No. 12884 of 2020) has dealt with this aspect of the matter in the following words:-

> *“29. The aforesaid legal position also dispels the arguments advanced on behalf of the counsel for the buyers that the Facilitation Council having acted as a Conciliator under Section 18(2) of the MSMED Act, 2006 itself cannot take up the dispute for arbitration and act as an Arbitrator. Though it is true that Section 80 of the Arbitration Act, 1996 contains a bar that the Conciliator shall not act as an Arbitrator in any arbitral proceedings in respect of a dispute that is subject of conciliation*

proceedings, the said bar stands superseded by the provisions contained in Section 18 read with Section 24 of the MSMED Act, 2006. As held earlier, the provisions contained in Chapter-V of the MSMED Act, 2006 have an effect overriding the provisions of the Arbitration Act, 1996. The provisions of Arbitration Act, 1996 would apply to the proceedings conducted by the Facilitation Council only after the process of conciliation initiated by the council under Section 18(2) fails and the council either itself takes up the dispute for arbitration or refers to it to any institute or centre for such arbitration as contemplated under Section 18(3) of the MSMED Act, 2006.

30. When the Facilitation Council or the institution or the centre acts as an Arbitrator, it shall have all powers to decide the disputes referred to it as if such arbitration was in pursuance of the arbitration agreement referred to in subsection (1) of Section 7 of the Arbitration Act, 1996 and then all the trappings of the Arbitration Act, 1996 would apply to such arbitration. It is needless to say that such Facilitation Council/institution/centre acting as an arbitral tribunal would also be competent to rule on *its own jurisdiction like any other arbitral tribunal appointed under the Arbitration Act, 1996 would have, as contemplated in Section 16 thereof.”*

Viewed from this perspective, the contentions raised by the Petitioner impeaching the validity of the impugned order cannot be countenanced.

6. Lastly, a vain attempt is made to portray that the impugned order is an unreasoned one without containing any discussion on the rival contentions of the Petitioner and the Second Respondent. It must, at once, be remembered that Sections 15 to 25 of the MSMED Act provides for an expeditious mechanism for recovery of delayed payments to micro and small industries arising out of goods supplied, in which a claim would have to be supported by invoices with proof of delivery. Once such claim is made by the supplier with that requisite evidence, the burden shifts on the buyer to plead and prove to the defences, such as, non-supply of the goods, payment already having been made, limitation, defective supply, etc., The First Respondent has given details of the claim made by the Second Respondent specifying twenty invoices with amount due aggregating to Rs. 1,33,84,164/- for goods supplied and after deducting Rs. 77,89,975/- towards payment received, has mentioned the amount of Rs. 56,04,189/- as remaining to be recovered in para 2 of the impugned order.

The mandate for granting interest for delayed payment has been stipulated in the MSMED Act itself for which there is no discretion either to reduce or waive the same. If it is the case of the Petitioner that it was not liable for that amount claimed, in view of the aforesaid legal position, it ought to have established the same with relevant proof and examined witnesses before the First Respondent. Having failed to avail such opportunity afforded, there is no justification for the Petitioner to find fault on the First Respondent in having arrived at the conclusion based on the materials placed on record by the parties. In any event, there is no acceptable explanation from the Petitioner for not having resorted to the effective remedy of seeking to set aside the arbitral award under Section 34 read with Section 2(4) of the A & C Act by fulfilling the conditions mentioned in Section 19 of the MSMED Act.

In the upshot, the Writ Petition, which is devoid of merits, is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

02.11.2022

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Index: Yes/No

Note: Issue order copy by 25.11.2022.

To

The Micro and Small Enterprises Facilitation Council,
Thiruvika Industrial Estate,
Guindy,
Chennai.

P.D. AUDIKESAVALU, J.

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W.P. No. 6766 of 2022

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