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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2022

C O R A M

THE HON'BLE MS.JUSTICE V.M.VELUMANI

W.P.No.25717 of 2016
and W.M.P.Nos.22066 of 2016, 11103 & 11106 of 2021

The Chief Engineer,
Material Management
Tamil Nadu Generation & Distribution
Corporation Ltd.,
4th Floor, NPKRR Maaligai,
144, Anna Salai, Chennai - 600 002. ...Petitioner

Vs

1. The Chairman
Micro Small Enterprises Facilitation Council and
Industries and Commerce,
Industries and Commerce,
Sidco Corporate Building, Guindy,
Chennai - 600032.
2. M/s.Blue Star Exports,
B, Electrical Industrial Estate,
Kakkalur - 602 003,
Thiruvallur District. ...Respondents

Prayer Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the records of the 1st respondent culminating the order O.P.No.MSEFC/CR/05/2014 dated 24.02.2016 quash the same and direct the 1st respondent to refer the claim dated 31.10.2013 of the 2nd respondent to Arbitration in accordance with the provisions of Section 18(3) of the MSMED Act.

For Petitioner	: Mr.Dhalapathy Vignesh Kumar for Mr.V.Viswanathan
For R1	: Mr.T.K.Saravanan Government Advocate
For R2	: Mr.Venkatesh Mahadevan



ORDER

The petitioner has come out with the present Writ Petition challenging the impugned order issued by the respondent dated 24.02.2016, in O.P.No.MSEFC/CR/05/2014.

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2. According to the petitioner, the 2nd respondent has supplied 100 KVA/11KV/433V three star rated, 50 Cycles, Aluminium wound Dyn11 vector group naturally cooled 3 Phase Distribution Transformers complete with all fittings including first filling of oil. The 2nd respondent did not furnish the necessary bills and hence the petitioner could not make payment on time. Subsequently, the 2nd respondent closed the order and filed claim before the 1st respondent for settlement of amounts due. The petitioner filed objection before the 1st respondent. On various dates conciliation proceedings were conducted by the 1st respondent and no settlement was arrived at in the conciliation and the 1st respondent terminated the conciliation. After termination of conciliation proceedings, the 1st respondent neither conducted arbitration nor referred the dispute to any Institution or Centre providing Alternate Dispute Resolution Services for such arbitration. When the conciliation is terminated, the 1st respondent ought to have referred the matter for arbitration as per Section 18(3) of the MSMED Act. The 1st respondent cannot pass any order on its own without conducting any arbitration proceedings.

3. Mr. Dhalapathy Vignesh Kumar, learned counsel appearing for the petitioner submitted that the impugned order of the 1st respondent is in violation of provisions of MSMED Act and particularly the 1st respondent has not followed the procedure contemplated under Section 18 of the MSMED Act and also the provisions of Arbitration and Conciliation Act and prayed for allowing the Writ Petition.

4. The 2nd respondent filed counter affidavit and denied all the averments made in the affidavit filed by the petitioner. Mr. Venkatesh Mahadevan, learned counsel appearing for the 2nd respondent contended that the Writ Petition is not maintainable as the petitioner has not complied with the provisions under Section 19 of the MSMED Act, as he failed to deposit 75 % of the amount ordered by the 1st respondent and made various submissions on merits in support of the impugned order passed by the 1st respondent. In support of his contention, he relied on the order of the Hon'ble Apex Court in the case of Goodyear India Limited vs. Norton Intech Rubbers Private Limited and Another reported in 2012 6 SCC 345. The relevant portion of the order is extracted hereunder:



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"11. Having considered the submissions made, both on behalf of the petitioner and on behalf of the respondents, we do not see any reason to interfere with the views expressed, both by the learned Single Judge, as also the Division Bench with regard to Section 19 of the 2006 Act. It may not be out of place to mention that the provisions of Section 19 of the 2006 Act, had been challenged before the Kerala High Court in Kerala SRTC v. Union of India, where the same submissions were negated and, subsequently, the matter also came up to this Court, when the special leave petitions were dismissed, with leave to make the predeposit in the cases involved, within an extended period of ten weeks. We may also indicate that the expression "in the manner directed by such court" would, in our view, indicate the discretion given to the court to allow the predeposit to be made, if felt necessary, in instalments."

5. The learned counsel appearing for the 2nd respondent further submitted that whatever the amount suggested by the petitioner was accepted by the 2nd respondent. Hence, the 1st respondent has not conducted further course of arbitration proceedings.

6. The learned counsel appearing for the petitioner, in reply to the arguments of the learned counsel appearing for the 2nd respondent submitted that as per the interim order passed by this Court on 25.07.2016, the petitioner deposited a sum of Rs.21,51,032/- on 09.09.2016 to the credit of The Registrar General, Madras High Court in Indian Bank, High Court Branch, Madras.

7. Heard the learned counsel appearing for the petitioner, learned Government Advocate appearing for the 1st respondent as well as learned counsel appearing for the 2nd respondent and perused the materials on record.

8. From the above materials it is seen that, the 2nd respondent made reference to the 1st respondent with regard to the amounts due by the petitioner to the 2nd respondent for supply made by them. The 1st respondent took up reference and the petitioner filed his objection. From the materials on record, it is seen that conciliation proceedings were held on number of hearings with regard to the settlement of amount due to the 2nd respondent by the petitioner. But, no settlement was



arrived at and hence the 1st respondent terminated the conciliation proceedings. Once no settlement is arrived at in the conciliation and the conciliation is terminated, then the provision of Section 18(3) of the MSMED Act comes into play. As per Section 18(3) of the MSMED Act, if the conciliation is not successful and terminated, the Council should by itself take up the arbitration or refer to any Institution or Centre providing Alternate Dispute Resolution services for such arbitration as though arbitration is in pursuance of an arbitration agreement referred to in sub-section(1) of section 7 of the Arbitration and Conciliation Act. The 1st respondent can itself take up the dispute for arbitration or refer to any Institution or Centre providing Alternate Dispute Resolution services for such arbitration. Once arbitration is taken up, the provisions of Arbitration and Conciliation Act shall apply in conducting proceedings and passing award.

9. In the present case, after the 1st respondent holding that there is no settlement in conciliation proceedings, and terminating the conciliation proceedings without conducting any arbitration proceedings as per Section 18(3) of the MSMED Act, proceeded to pass impugned order. Due to the failure of the 1st respondent to conduct arbitration as per the provisions of Arbitration and Conciliation Act, the impugned order passed is invalid, illegal and liable to be set aside. The contention of the learned counsel appearing for the 2nd respondent that the Writ Petition is not maintainable as the petitioner failed to comply with Section 19 of the MSMED Act is not acceptable. Section 19 of MSMED Act, deals with any decree or award or other order made either by Council itself or refer to any Institution or Centre providing Alternate Dispute Resolution services to which reference made by the Council. The above provisions clearly shows that Section 19 of MSMED Act, relates only to the out come of the arbitration proceedings or Alternate Dispute Resolution Service Centre. In the present case, no arbitration proceedings was conducted by the 1st respondent or the dispute was referred to any Institution or Centre providing Alternate Dispute Resolution services. In view of the same, Section 19 of the MSMED Act, is not applicable to the facts of the present case and judgment relied on by the learned counsel appearing for the petitioner does not advance the case of the petitioner.

10. For the above reasons, the impugned order of the 1st respondent is set aside and the matter is remanded back to the 1st respondent. The 1st respondent can conduct the arbitration by itself or refer it to any Institution or Centre providing Alternate Dispute Resolution services. The learned counsel appearing for the 1st respondent submitted that a direction may be issued to the 1st respondent to conclude the proceedings as expeditiously as possible if the 1st respondent arbitrate by



itself or a direction may be issued to the Alternate Dispute Resolution Service Centre, if any such reference is made by the 1st respondent. Considering the same, this Court directs to conclude the arbitration proceedings as expeditiously as possible, in any event not more than three (3) months from the date of receipt of a copy of this order, either the arbitration proceedings is taken up by the 1st respondent or any other centre providing Alternate Dispute Resolution services.

11. With the above directions, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To:

The Chairman
Micro Small Enterprises Facilitation Council and
Industries and Commerce,
Industries and Commerce,
Sidco Corporate Building, Guindy,
Chennai - 600032.

Copy to:

The Registrar General (for information)
High Court,
Madras.

+1cc to Mr. Venkatesh Mahadevan, Advocate SR. No. 29100
+2ccs to Mr. L. Jai Venkatesh, Advocate SR. No. 29892
+1cc to Government Pleader SR. No. 29665

W.P.No.25717 of 2016

AD (CO)
PR (25/05/2022)