



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Writ Petition No.11382 of 2020
and W.M.P.No.13879 of 2020

M/s.Agni Micro Tech Pvt. Ltd.
Represented by Mr.D.Ramamoorthy
33, ground floor
Saraswathy Towers, 10th street
Gandhipuram, Coimbatore-641 012.

.. Petitioner

Vs.

1.The Chairman
Micro & Small Enterprises Facilitation Council
Coimbatore Region.

2.M/s.Sunshine IT Services
Door No.2/411-B, Muthiraipikkai
Near Thuneri Village
Kil-Kotagiri Bazaar post
Kotagiri Taluk
Nilgiris-643 217.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records of 1st respondent relating to the passing of impugned order dated 22.01.2020 insofar as dismissing the case No.MSEFC/CBER/222/2018 is concerned, quash the same and consequently, direct the 1st respondent to hear the said case No. MSEFC/CBER/222/2018 de novo.

For Petitioner : Mr.R.D.Ashok Kumar
for Ms.Preethikaa R.

For R1 : Mr.S.Ravikumar
Special Government Pleader

For R2 : No appearance

O R D E R

Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus calling for the entire records of 1st



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respondent relating to the passing of impugned order dated 22.01.2020 insofar as dismissing the case No.MSEFC/CBER/222/2018 is concerned, quash the same and consequently, direct the 1st respondent to hear the said case No. MSEFC/CBER/222/2018 de novo.

2.The petitioner Company is an Enterprise engaged in the business of manufacturing of computer, desktops, sales and services of laptops, UPS, CCTV cameras and all other computer peripherals. The petitioner is doing business from 2003. During the course of business in the month of April 2015, the petitioner Company supplied goods to the 2nd respondent. The 2nd respondent failed to make payment to the petitioner. A sum of Rs.8,57,921/- was due for the goods supplied from April 2015 to June 2015. The petitioner filed application under Section 18(1) of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as "MSMED Act"), before the 1st respondent. The 1st respondent issued notice to the 2nd respondent and application was adjourned on number of days. On 25.06.2019, one Shanmuganathan, representing the 2nd respondent, appeared and informed the 1st respondent that they would pay the entire amount due within three months. Subsequently, either the 2nd respondent or the said Shanmuganathan not appeared. On 08.01.2020, when the 1st respondent contacted the said Shanmuganathan over phone, he informed that the petitioner has already filed suit before the Sub-Court, Nilgiris at Coonoor. The 2nd respondent was called upon to furnish the documents. The 2nd respondent appeared before the 1st respondent on 22.01.2020 and informed that the petitioner has already filed O.S.No.165 of 2019 on the file of the Sub-Court, Nilgiris at Coonoor. The 1st respondent instructed the petitioner Company to furnish the particulars of suit filed by them. The petitioner furnished copy of the plaint and informed the 1st respondent that the said suit is filed against one Ramakrishnan, brother of Shanmuganathan, in respect of mortgage loan and the said suit is nothing to do with the claim made by the petitioner before the 1st respondent.

2(i) The learned counsel appearing for the petitioner contended that the 1st respondent without properly considering the plaint in O.S.No.165 of 2019, which is filed against one Ramakrishnan and not against the 2nd respondent, dismissed the application of the petitioner filed under Section 18(1) of MSMED Act. In the typed set of papers, the petitioner has filed copies of the application filed before the 1st respondent as well as the plaint filed in O.S.No.165 of 2019 on the file of the Sub-Court, Nilgiris at Coonoor and referred to averments made in the application and plaint.

2(ii) The learned counsel appearing for the petitioner after referring the averments made in the application and



plaint, contended that the 1st respondent by the impugned order erroneously dismissed the application filed by the petitioner. As per Section 18 of the MSMED Act, the 1st respondent has to conciliate the matter, if there is no settlement arrived between the parties, they must conduct an arbitration either by itself or refer the dispute to the Centre providing alternate dispute resolution. But in the present case, the 1st respondent failed to take into consideration the provisions of Section 18 and intention of the legislature, before rejecting the application of the petitioner by the impugned order and prayed for setting aside the impugned order.

3. Heard the learned counsel appearing for the petitioner as well as the learned Special Government Pleader appearing for the 1st respondent and perused the entire materials on record.

4. Though notice has been served on the 2nd respondent and their name is printed in the cause list, there is no representation for them either in person or through counsel.

5. From the application filed by the petitioner before the 1st respondent, it is seen that the petitioner has claimed a sum of Rs.8,57,921/- from the 2nd respondent for supply of desktops, sales and services of laptops, UPS, CCTV cameras and all other computer peripherals. According to the petitioner, one Shanmuganathan, representative of the 2nd respondent appeared on 25.06.2019 and agreed to pay the amounts within three months. During the hearing on 22.01.2020, the 2nd respondent contended that the petitioner has already filed O.S.No.165 of 2019 before the Sub-Court, Nilgiris at Coonoor and therefore, the application filed by the petitioner before the 1st respondent is not maintainable. The petitioner has produced copy of the plaint filed in the suit before the 1st respondent. A reading of said plaint filed in the typed set of papers shows that the petitioner has filed the said suit against one Ramakrishnan for recovery of Rs.10,00,000/- based on the mortgage deed dated 29.10.2015 executed by the said Ramakrishnan. The 2nd respondent is not a party in the said suit and claim made in the said suit is entirely different from the claim made by the petitioner before the 1st respondent against the 2nd respondent. The contention of the learned counsel for the petitioner that the 1st respondent without properly appreciating the contents of plaint in O.S.No.165 of 2019 on the file of Sub-Court, Nilgiris at Coonoor, erroneously dismissed the application, has considerable force and is acceptable. The 1st respondent dismissed the application on the ground that already the petitioner has filed suit claiming the very same amount. In view of the error committed by the 1st respondent, the impugned order of the 1st respondent is liable to be set aside and is hereby set aside. The 1st respondent is directed to take the application filed by



the petitioner on file and proceed with the same in accordance with law as per Section 18 of MSMED Act, within three months from the date of receipt of a copy of this order.

6. With the above directions, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The Chairman
Micro & Small Enterprises Facilitation Council
Coimbatore Region.

+1cc to Ms. Preethikaa Ravichandrabaabu, Advocate, S.R.No.13747
+1cc to the Government Pleader, S.R.No.13747

W.P.No.11382 of 2020
and W.M.P.No.13879 of 2020

GJ(CO)
SB(18/03/2022)