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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

C O R A M

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

W.P.NO.14917 OF 2021

AND

W.M.P.NOS.15787 & 15789 OF 2021

M.V.Power Consultants and Engineers (P) Ltd.,
Rep. by its Managing Director,
Mr.Murugan,
No.14/35, MV Power Complex,
Alandur, Chennai - 600 015.

... Petitioner

.Vs.

1. Delight Switchgears (P) Ltd.,
Rep Managing Director,
No.266 (191), Thambu Chetty Street,
Chennai - 600 001.

2. The Chairperson,
Micro and Small Enterprises
Facilitation Council, Chennai,
Guindy Industrial Estate,
Chennai - 600 032.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records in MSEFC/CR/110/2019 on the file of the 2nd respondent, Chairperson MSE Facilitation Council, Chennai-Region and to quash the Award dated 06.11.2020 passed in the same.

For Petitioner : Mr.V.Ezhilan
For Mr.B.Mohan

For R1 : Mr.Raghavendra Ross Divakar
For Mr.V.V.Sivakumar

For R2 : Mr.U.Baranidharan
Additional Government Pleader



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ORDER

The petitioner has come out with the present Writ Petition challenging the impugned order passed by the 2nd respondent in MSEFC/CR/110/2019, dated 06.11.2020 and to quash the same.

2. The petitioner is an ESA Grade Contractor and Panel Board Fabricator in Tamil Nadu as well as other states. The petitioner in the course of its business had been purchasing switch gears, panel parts, cables etc., since the year 2014 till 2018 as a running account from the 1st respondent and had duly paid all amounts due to the 1st respondent towards the supplies made by the 1st respondent to the petitioner. The 1st respondent produced certain back dated invoices which were not part of any purchases made or ordered for by the petitioner and claimed payment against those invoices. The said invoices did not form part of the running account between the petitioner and the 1st respondent and such invoices were also not accompanied by any supporting documents including delivery challans etc. When the petitioner protested these suspect invoices, the 1st respondent filed a petition under Section 18(1) of the Micro Small and Medium Enterprises Development Act, 2006, (hereinafter referred as 'the MSMED Act') before the 2nd respondent. The petitioner appeared before the 2nd respondent through Advocate and contested the claim. In the conciliation proceedings conducted by the 2nd respondent, no settlement was arrived at. The 2nd respondent instead of closing conciliation proceedings and arbitrate the matter by itself or by any other Agency referred by it, mechanically passed the impugned order directing the petitioner to pay the claim amount along with the interest to the 1st respondent.

3. Mr.V.Ezhilan representing Mr.B.Mohan, learned counsel appearing for the petitioner submitted that the impugned order is illegal as the 2nd respondent failed to follow the procedure contemplated under Sections 18(2) and 18(3) of the MSMED Act and prayed for setting aside the impugned order of the 2nd respondent.

4. Mr.Raghavendra Ross Divakar, learned counsel appearing for the 1st respondent submitted that the petitioner agreed to settle the claim of the 1st respondent during conciliation proceedings and subsequently gone back on their promise to settle the claim. In view of the same, the 2nd respondent passed the impugned order which is valid and legal. The Writ Petition challenging the order passed by the 2nd respondent is not maintainable. In order to avoid pre-deposit of 75% as per Section 90 of the MSMED Act, the petitioner has come out with the present Writ Petition and prayed for dismissal of the Writ Petition.



6. From the materials on record, it is seen that the petitioner is challenging the impugned order of the 2nd respondent on the ground that the 2nd respondent failed to follow the provisions of Sections 18(2) and 18(3) of the MSMED Act. Section 18 of the MSMED Act is extracted hereunder for better appreciation of the contention of the parties herein:

18. (1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section(1) of section 7 of that Act."

<https://hcservices.ecourts.gov.in/hcservices/>



If settlement is arrived at during the conciliation, the 2nd respondent can pass orders based on such settlement. If no settlement is arrived at in conciliation conducted under Section 18(2) of the MSMED Act, the course open to the 2nd respondent is to close the conciliation proceedings and as per Section 18(3) of the MSMED Act, arbitrate the matter either by itself or refer it to any institution or centre providing Alternate Dispute Resolution services for such arbitration and the provisions of Arbitration and Conciliation Act, 1996 will apply to the said proceedings and the orders passed in the said arbitration proceedings is an award as per the Act. In the present case, on receipt of the claim made by the 1st respondent, the 2nd respondent initiated conciliation proceedings, in which both the petitioner and the 1st respondent participated. From the impugned order, it is seen that no settlement has been arrived at in the conciliation proceedings. When the petitioner has not agreed to pay any amount in the conciliation proceedings, the only course open to the 2nd respondent is to close the conciliation proceedings and initiate arbitration proceedings under Section 18(3) of the MSMED Act. The 2nd respondent failed to follow the statutory procedure contemplated under Sections 18(2) and 18(3) of the MSMED Act and has passed the impugned order. The impugned order is neither an order passed under conciliation proceedings nor an award passed under arbitration proceedings, as contemplated under Sections 18(2) and 18(3) of the MSMED Act. In view of the statutory violation of procedure by the 2nd respondent, the impugned order is liable to be set aside and the same is hereby set aside. The matter is remanded back to the 2nd respondent and the 2nd respondent is directed to initiate arbitration proceedings as per Section 18(3) of the MSMED Act and conduct arbitration proceedings by itself or refer to any Institution or Centre providing Alternate Dispute Resolution services.

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

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Chairperson,
Micro and Small Enterprises
Facilitation Council, Chennai,
Guindy Industrial Estate,
Chennai - 600 032.

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+1cc to Mr.B.Mohan, Advocate, S.R.No.24973
+1cc to Mr.Chethan Sagar, Advocate, S.R.No.25019
+1cc to the Government Pleader, S.R.No.25492

W.P.NO.14917 OF 2021

GPL (CO)
PBS/02/05/2022