



WEB COPY



W.P. No. 10186 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

CORAM

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

W.P. No. 10186 of 2017

and

W.M.P. No. 11157 of 2017

M/s. Hi Tex Creations,
No. 16, Durga Nagar,
Ponniamanmedu,
Chennai - 600 110
by its Proprietor R.Mahesh

... Petitioner

-VS-

1. Micro & Small Enterprises Facilitation Council,
Coimbatore Region,
Ministry of Commerce & Industries,
Govt. of India,
Coimbatore.

2. M/s. Mithul Creation,
No. 8/1784, Ponnammal Nagar,
Tiruppur - 641 602,
by its Proprietor V.N.Ramesh
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 pertaining to impugned order passed in Case No. M&SEFC/CBER/6/2016 dated 21.12.2016 by the First Respondent and quash the same insofar as the same has been passed in total violation of the principles of natural justice and without jurisdiction.



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For Petitioner : Mr. N.Viswanathan
For Respondents : Mr. L.S.M.Hasan Fizal,
Additional Government Pleader (for R1)
Mr. K.Myilsamy (for R2)

ORDER

Heard Mr. N.Viswanathan, Learned Counsel for the Petitioner, Mr. L.S.M.Hasan Fizal, Learned Additional Government Pleader appearing for the First Respondent and Mr. K.Myilsamy, Learned Counsel for the Second Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent had made a claim in Case No. M&SEFC/CBER/6/2016 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. 34,00,000/- from the Petitioner towards remaining amount due for goods supplied with interest calculated in terms of that Act, in which an order dated 21.12.2016 was passed holding that the Petitioner was liable to pay the principal



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sum of Rs. 28,15,000/- 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, 2006 from the appointed due dates respectively till payment, which assailed in this Writ Petition.

3. In response to the contentions raised by the Second Respondent that if the Petitioner is aggrieved by the impugned order, he has to only resort to filing of an 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, Learned Counsel for the Petitioner has placed reliance on the decision of the Hon'ble Supreme Court of India in *M/s. Vijeta Construction -vs- M/s. Indus Smelters Ltd.* (Order dated 23.09.2021 in Civil Appeal No. 5934 of 2021), where after referring to the relevant provisions of the MSMED Act and A & C Act, it has been held that the discretionary powers of the High Court under Article 226 of the Constitution could be invoked when the prescribed procedure for conciliation has not taken place before passing the arbitral award in such matters. It has been highlighted that though there is reference in the impugned order to the joint meeting of the Petitioner and the Second Respondent before the General Manager, District Industries Centre,



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Tiruppur, there is nothing to show that the prescribed procedure for conciliation as required under the MSMED Act had been followed before proceeding to pass the arbitral award, which would vitiate the impugned order in this case.

4. Having regard to the aforesaid submissions made, Learned Counsel for the Second Respondent, in order to expedite the recovery of dues from the Petitioner, agrees that the impugned order may be set aside and the matter remanded back to the First Respondent from the stage of conciliation, and also makes fervent plea that the entire proceedings may be completed within a time frame that may be fixed by the Court.

5. In such circumstances, the impugned order dated 21.12.2016 in Case No. M&SEFC/CBER/6/2016 passed by the First Respondent is set aside and the claim made by the Second Respondent is restored to file of the First Respondent, who shall list the matter for next hearing on 07.12.2022 for conducting the conciliation proceedings after issuing due notice to the Petitioner and the Second Respondent in that regard and if the First Respondent is not able then to take up the matter, the date to which it is adjourned shall be informed to the parties under written acknowledgment. It shall be ensured by the First Respondent that there



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are atleast two effective hearings every week showing progress of the case, that full opportunity of hearing is afforded to all parties concerned following the prescribed procedure in consonance with the principles of natural justice, that reasoned orders are passed dealing with each of the contentions raised with reference to the evidence lead by the parties on merits and in accordance with law, uninfluenced and uninhibited by the impugned order, which has been set aside and that the decision taken shall be communicated to the concerned parties under written acknowledgment and the report of such compliance is filed before the Registrar (Judicial) of the Court.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

12.10.2022

vjt

Index: Yes/No

Note: Issue order copy by 24.11.2022.

To

The Secretary,
Micro & Small Enterprises Facilitation Council,
Coimbatore Region,
Ministry of Commerce & Industries,
Govt. of India,
Coimbatore.



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2. V.N.Ramesh,
Proprietor,
M/s. Mithul Creation,
No. 8/1784, Ponnammal Nagar,
Tiruppur - 641 602.
3. The Registrar (Judicial)
High Court of Madras
Chennai – 600 104.



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P.D. AUDIKESAVALU, J.

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