IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2022

CORAM

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

W.P. No. 8754 of 2017
and
W.M.P. No. 9601 of 2017
and
W.M.P. No. 566 of 2018

Gammon India Ltd.,
Gammon House,
Veer Savarkar Marg,
Prabhadevi,
Bombay – 400 025. … Petitioner

-vs-

1. Micro Small Enterprises Facilitation Council,
   Represented by its Chairman,
   SIDCO Corporate Building,
   Guindy,
   Chennai – 600 032.

2. The Zonal Officer,
   MSE Facilitation Council,
   Guindy,
   Chennai – 600 032.

3. Samay Project Services Pvt. Ltd.,
   1218, 17th Street,
   West End Colony,
   Mogappair,
   Chennai – 600 050. ...
Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the First Respondent dated 30.12.2016 in O.P. No. MSEFC/CR/56/2016 on his filed, quash the same and direct the First Respondent to refer the Third Respondent's claim dated 09.08.2016 to arbitration in accordance with the provisions of Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006.

For Petitioner	:	Mrs. Hema Sampath, Senior Counsel for M/s. R.Meenal
For Respondents	:	Mr. T.Arun Kumar, Additional Government Pleader (for R1 & R2) Mr. R.Natarajan (for R3)

O R D E R

Heard Mrs. Hema Sampath, Learned Senior Counsel appearing for the Petitioner, Mr. T.Arun Kumar, Learned Additional Government Pleader appearing for the First and Second Respondents and Mr. R.Natarajan, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Third Respondent made a claim in O.P. No. MSEFC/CR/56/2016 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. 21,98,837/- from the Petitioner towards the value of goods supplied with interest calculated in terms of that Act, in which an order dated 30.12.2016 was passed holding that the Petitioner was liable to pay the sum of Rs. 21,98,837/- along with interest with monthly rests at three times the Bank rate notified by the Reserve Bank of India as stipulated in the MSMED Act from the appointed due dates till the date of settlement.

3. Though it is vehemently contended that the impugned order is vitiated as no conciliation proceedings had taken place before passing the final arbitral award in terms of the MSMED Act, it is borne out from the record that despite service of summons, the Petitioner did not attend the hearings on 23.11.2016 and 30.12.2016 before the First Respondent. It is only in the event of the Petitioner contesting the proceedings by filing counter along with supporting documents, the question of referring the matter for conciliation would arise and the Petitioner cannot now find fault with the First Respondent taking advantage of its failure to participate in the proceedings. A vain attempt is made by the Petitioner to contend that its Advocate had filed vakalat in the office of the First Respondent on 28.12.2016 and made a request for furnishing the copy of the Claim Petitioner, which is reflected in the notice dated 10.02.2017 sent by the

Advocate for the Petitioner to the First Respondent. However, when the Petitioner has not able to explain the reasons for not appearing on the subsequent hearing on 30.12.2016 before the First Respondent, it is not possible to countenance the same.

4. Having regard to the determination of the liability of the Petitioner on the merits of the controversy by the First Respondent in the impugned order, 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., It is the specific case of the Third Respondent in its Claim Petition before the First Respondent that 35 invoices aggregating to Rs. 1,52,19,578/- had been raised against the Petitioner and after deducting Rs. 1,30,20,741/- towards payment received, the balance sum of Rs. 21,98,837/- was remaining to be recovered, but the Petitioner has not raised any dispute in that regard in the affidavit filed in support of the Writ Petition. 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. Inasmuch as the Petitioner has failed to avail the opportunity afforded to it contest the proceedings, the First Respondent cannot be found fault for having arrived at the conclusion that the said amount claimed by the Third Respondent was due based on the available evidence in the case.

5. There is also 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 Arbitration and Conciliation Act, 1996. Further, inspite of the order dated 16.11.2022 passed by this Court requiring the Petitioner to invest the principal sum of Rs. 21,98,837/- payable to the Third Respondent in an interest fetching fixed deposit in the name of the First Respondent in a nationalized Bank as a condition for continuance of the interim order staying the arbitral award, the Petitioner has not complied with it. In any event, the Division Bench of this Court in ***M/s.Eden Exports Company -vs- Union of India*** [(2013) 1 MLJ 445] has categorically held that a Writ Petition impeaching an arbitral award passed under the MSMED Act cannot be entertained without complying with the pre-deposit of 75% of the amount awarded as per the mandatory requirement of Section 19 of that Act.

6. In such circumstances, the Writ Petition, which is devoid of merits, is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

28.11.2022

vjt

Index: Yes/No

Note: Issue order copy by 06.01.2023.

To

1. The Chairman,
   Micro Small Enterprises Facilitation Council,
   SIDCO Corporate Building,
   Guindy,
   Chennai – 600 032.

2. The Zonal Officer,
   MSE Facilitation Council,
   Guindy,
   Chennai – 600 032.

P.D. AUDIKESAVALU, J.

vjt

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