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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2022

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THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

W.P. No.14725 of 2017

and

WMP.No. 15960 of 2017

The National Small Industries Corporation Limited,
rep. by its Senior Branch manager,
No.422, Anna Salai,
Chennai 600 006

... Petitioner

Vs

1. The Chairman,
MSE Facilitation Council & Industries,
Commissioner and Director of Industries
and Commerce,
Sidco Corporate Building,
Guindy, Chennai 600 032.
2. M/s. Mohizhi Packing Industries,
No.214/1A1, Katrambakkam Village,
Sriperumbudur Taluk,
Irunkattukottai Post,
Kancheepuram District 602 105.
3. The Controller of stores,
Southern Railway,
Ayanavaram,
Chennai 600 023

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari to call for the records relating to the order dated 04.04.2017 passed in O.P.No.MSEFC/CR/26/2013-1 on the file of the first respondent and quash the same.

For petitioner ... Mr. Mr. Ajoy Kumar Gnanam

For respondents ... No Appearance-for R1
Mr.P.Seshadri - for R2
Mr. P.T.Ramkumar- for R3



ORDER

This writ petition has been filed challenging the order passed by the first respondent under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006.

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2. According to the petitioner, the petitioner is a Government of India Enterprises under the Ministry of Micro Small and Medium Enterprises. The petitioner Company has been formed for promotion and development of Micro, small and Medium Industries, all over India. Earlier, the 3rd respondent Southern Railway called for tenders for supply of corrugated boxes. On behalf of the 2nd respondent Company, which is a manufacturer of the corrugated boxes, the petitioner participated in the tender. Thereafter, tender was awarded in its favour. After supply of corrugated boxes, the 2nd respondent raised various invoices in the name of the petitioner, in turn, petitioner sent the invoices to the 3rd respondent. While so, a sum of Rs.1,47,341/- was not paid by the 3rd respondent to the petitioner with regard to the above said supply on the ground that the petitioner had committed default in respect of a risk purchase transaction involving another Micro, Small and Medium Enterprise, for which, the 2nd respondent filed a petition under Section 17 of the said Act before the first respondent. Based on the same, the first respondent passed the impugned order, thereby, fixing the liability on the petitioner and the petitioner was directed to pay the outstanding due of Rs.1,47,341/- to the 2nd respondent. Now, challenging the same, the petitioner is before this Court with this writ petition.

3. The learned counsel for the petitioner submitted that, with regard to the reference made under Section 17 of the Act, the first respondent is supposed to conduct the Conciliation proceedings, and if the Conciliation proceedings fail, they have to initiate the Arbitration Proceedings, without doing so, the first respondent himself adjudicated the issue and passed the impugned order, which is against the provisions of Section 18 of the Act.

4. The learned counsel appearing for the 3rd respondent submitted that the contract was awarded to the first respondent only, and it is a private agreement between the first and second respondents for supply of goods and the petitioner is no way connected with the 2nd respondent as there is no agreement between them. Since there is a delay in supplying the goods, the 3rd respondent Railway suffered loss. Third respondent withheld some payments due to the petitioner on the ground that there was dispute between the parties in the earlier contract. In those circumstances, the authorities rightly held that it is only the petitioner has to pay the amount to the 3rd respondent



and there is no illegality in it.

5. I have heard the learned counsel appearing for the second respondent.

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6. From the perusal of the impugned order, it could be seen that the first respondent, without following the procedures prescribed under Section 18 of the Act, has passed the impugned order fixing the liability on the petitioner. As rightly contended by the learned counsel for the petitioner, if any complaint is made under Section 17 of the Act, the complaint should be referred to the Micro and Small Enterprises Facilitation Council under Section 18 of the Act. On receipt of such complaint, the Council is supposed to conduct a Conciliation between the parties and if Conciliation fails, then the Council should either take up the dispute for arbitration or refer it to any institution providing alternative dispute resolution service. Recently, the Hon'ble Supreme Court, in the case of M/s. Jharkhand Urja Vikas Nigam Limited /vs/ State of Rajasthan, in Civil Appeal No.2899 of 2021, dated 15.12.2021, has held as follows:-

"11. From a reading of Section 18(2) and 18(3) of the MSMED Act, it is clear that the Council is obliged to conduct conciliation for which the provisions of Sections 65 to 81 of the Arbitration and conciliation Act 1996 would apply, as if the conciliation was initiated under Part III of the said Act. Under Section 18(3), when conciliation fails and stands terminated, the dispute between the parties can be resolved by arbitration. The Council is empowered either to take up arbitration on its own or to refer the arbitration proceedings to any institution as specified in the said section. It is open to the Council to arbitrate and pass an award, after following the procedure under the relevant provisions of the Arbitration and Conciliation Act, 1996, particularly Sections 20, 23, 24, 25.

12/ There is a fundamental difference between conciliation and arbitration. In conciliation, the conciliator assists the parties to arrive at an amicable settlement, in an impartial and independent manner. In arbitration, the Arbitral Tribunal/Arbitrator adjudicates the disputes between the parties. The claim has to be proved before the Arbitrator, if necessary, by adducing evidence, even though the rules of the Civil Procedure Code or the



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Indian Evidence Act, may not apply. Unless otherwise agreed, oral hearings are to be held.

13. If the appellant had not submitted its reply at the conciliation stage, and failed to appear, the Facilitation Council could, at best, have recorded the failure of conciliation and proceeded to initiate arbitration proceedings in accordance with the relevant provisions of the Arbitration and Conciliation Act, 1996 to adjudicate the dispute and make an award. Proceedings for conciliation and arbitration cannot be clubbed.

14. In this case, only on the ground that the appellant had not appeared in the proceedings for conciliation, on the very first date of appearance, that is, 06.08.2012, an order was passed directing the appellant and/or its predecessor/ Jharkhand State Electricity Board to pay Rs.78,74,041/-towards the principal claim and Rs.91,59,705/- odd towards interest. As it is clear from the records of the impugned proceedings that the Facilitation Council did not initiate arbitration proceedings in accordance with the relevant provisions of the Arbitration and Conciliation Act, 1996. "

7. However, the first respondent/Council, without following the procedure contemplated under Section 18 of the Act, passed the impugned order and hence, the impugned order is liable to be set aside.

8. Accordingly, the impugned order is set aside and the first respondent is directed to consider the dispute as per Section 18 of the Act and pass suitable orders as early as possible.

9. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mrp



To

1. The Chairman,
MSE Facilitation Council & Industries,
Commissioner and Director of Industries
and Commerce,
Sidco Corporate Building,
Guindy, Chennai 600 032.

2. The Controller of stores,
Southern Railway,
Ayanavaram,
Chennai 600 023

+1cc to Mr. Ajoy Kumar Gnanam, Advocate, S.R.No.13214
+1cc to Mr. P.T.Ramkumar, Advocate, S.R.No.13571
+1cc to Mr.P.Seshadri, Advocate, S.R.No.14092

W.P. No.14725 of 2017

PM(CO)
CT 11/04/2022