



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2022

CORAM:

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P. (MD)No.6347 of 2011

and MP(MD)No.1 of 2011

WEB COPY

M/s. V.M. Mills (P) Ltd.,
S.F.No.603/1C, Narasingapuram Village,
Krishnapuram Post, Udumalpet.

... Petitioner

Vs

1. The Micro Small Enterprises Facilitation Council,
Madurai Region,
Madurai.

2. M/s. Universal Paper Conversions,
527/7-A, Elavankulam Road,
Sankarankoil-627 750.

3. M/s. Iswarya Textiles Ltd.,
119, Dhally Road, Udumalpet-642 126 (Old Address)
M/s. Iswarya Textiles Ltd.,
62, Dig Bell Complex, 106 D.B.Road,
R.S.Puram, Coimbatore. (New Address).

... Respondents

PRAYER :-Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records of the impugned order passed by the first Respondent dated 15-04-2011, in O.P.No.5/MSEFC/2007 and quash the same.

For Petitioner	: K. Murali Shankar, Advocate.
For Respondents	: No Appearance

ORDER

The present Writ Petition has been filed challenging the order passed by the first Respondent herein, in which, the writ petitioner has been held jointly liable along with the third respondent to pay the dues of the second respondent to the tune of Rs.1,07,880/-.

2.Admittedly, the second respondent is the supplier of the third respondent Textile Industry. Due to default in repayment of amount for the supply made by the second respondent, the second respondent has initiated proceedings before the first respondent.

3.It is seen from the records the third respondent Textile Mill has alienated its land and buildings in favour of the writ petitioner, by a registered sale deed dated 25.01.2005. Perusal of



sale deed indicates running business was not transferred, but only the land and building was transferred to the writ petitioner.

4.The first respondent has considered the contentions of the supplier viz., the second respondent and found that invoices raised by the second respondent as against the third respondent has not been honoured. While interpreting the sale deed in favour of the writ petitioner, the first respondent has arrived at a finding that the writ petitioner has purchased the business along with the land and building.

5.The first respondent has relied upon Sections 15 and 16 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'the Act') and fixed the joint liability upon the writ petitioner and the third respondent herein. The said order is under challenge in the present writ petition.

6.Though the second respondent has been served as early as on 22.07.2011, they have neither appeared in person nor engaged any counsel.

7.Heard the learned counsel for the petitioner.

8.The learned counsel for the petitioner would contend that they purchased the land and the building alone in the year 2005. The present proceedings has been initiated by the second respondent in the year 2007. When the petitioner has not purchased the running business from the third respondent, the first respondent did not have any jurisdiction to entertain the present claim petition as against the writ petitioner.

9.Sections 15 and 16 of the Act are extracted hereunder.

" 15. Liability of buyer to make payment.—Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day: Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

16. Date from which and rate at which interest is payable.—Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on



that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank."

10. A perusal of the above said provisions will indicate that buyer has to make payment on or before the date agreed between him and the supplier. In case of non-payment, the buyer is liable to pay the amount with interest. The definition of buyer is dealt with under Section 2(d) of the Act.

"2(d) "buyer" means whoever buys any goods or receives any services from a supplier for consideration;"

As per the said definition, the buyer should have received any goods or services for consideration. Admittedly, in the present case, the writ petitioner cannot be considered to be a buyer as per the definition under Section 2(d) of the Act.

11. The writ petitioner has not purchased any goods or any services from the second petitioner for any consideration. In fact, the writ petitioner has purchased only the land and building from the third respondent Textile Mill.

12. Viewing from any angle, the writ petitioner cannot be considered as a buyer and Sections 15 and 16 of the Act cannot be invoked by the first respondent. Considering the fact that the impugned order passed by the first respondent is without jurisdiction it is liable to be quashed. Hence, I am inclined to pass the following order.

- *The impugned order passed by the first respondent dated 15-04-2011 in O.P.No.5/MSEFC/2007 is hereby set aside, with regard to the writ petitioner alone. However, the impugned order is confirmed with regard to the liability on the third respondent in the writ petition, viz., M/s. Iswarya Textiles Limited.*

13. Accordingly, this Writ Petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PNM



To

The Micro Small Enterprises Facilitation Council,
Madurai Region,
Madurai.

+1 CC to M/s.K.MURALI SANKAR, Advocate (SR-24351[F] dated
07/06/2022)

W.P. (MD)No.6347 of 2011
and MP (MD)No.1 of 2011
Date : 06.06.2022

IM(CO)
KB(20.06.2022) 4P 3C