



W.P.(MD)No.17654 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.17654 of 2022

and

W.M.P.(MD)Nos.12861 and 12862 of 2022

Rupa and Company Limited,
Represented by its Executive Director,
Niraj Kabra,
S/o.Sri Om Prakash Kabra,
Metro Tower,
1, Ho Chi Minh Sarani,
Kolkata – 700 071.

... Petitioner

Vs.

1. The State of Tamil Nadu,
Department of Micro, Small and Medium
Enterprises Department,
Guindy,
Chennai – 600 032.
2. The Chairperson,
Micro Small Enterprises Facilitation Council,
Madurai Region / Industries Commissioner and
Director of Industries and Commerce,
Guindy,
Chennai – 600 032.
3. The General Manager,



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District Industries Centre,
Alagarkoil Road,
Madurai – 625 002.

4. Balamurugan Maruthupandiyar,
M.s,Fe Nerve Building,
SF.No.32/1B & 1E,
Cholampatti, Karaiyur Post,
Tiruppathur Taluk,
Sivagangai – 620 211.

....Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records in pertaining to the impugned award passed by the 2nd Respondent in case No.MSEFC/MDU/27/2021 dated 15.03.2022 and quash the same.

For Petitioner	:	Mr.K.K.Ramakrishnan
For Respondents	:	Mr.T.Amjadkhan Government Advocate for R1 to R3 Mr.S.C.Herold Singh for Mr.A.P.Athithan for R4

ORDER

This Writ Petition has been filed challenging the order of the Chairperson of Micro, Small Enterprises Facilitation Council established under Section 20 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'the Act').



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2. The Petitioner Company is engaged in the business of manufacturing and supplies of garments. With the view / intention to expand its manufacturing unit at Domjur, the Petitioner's Company proposed construction of a pre-engineered steel building. The 4th Respondent approached the Petitioner representing to have the requisite know-how and wherewithal to undertake construction of a pre-engineered steel building. Pursuant thereto, three orders were placed on the 4th Respondent on 16.11.2019 for the following:

“a. Work Order for design with detailing, supply and installation of pre-engineered steel building system at Old Godown, being P.O.No.RDJ/EX/004 dated 16th November, 2019.

b. Work Order for design with detailing, supply and installation of Pre-engineered steel building system at Godown Road Top and Loading unloading Area cover, being P.O.No.RDJ/EX/005 dated 16th November, 2019.

c. Purchase Order for design with detailing, supply and installation of Pre-engineered steel building system at Finishing Shed, being P.O.No.RDJ/005 dated 16th November, 2019.”



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3. It is submitted by the learned counsel for the Petitioner that the agreement was in the nature of works contract for construction of pre-engineered steel building valued at Rs.2,26,44,248/-. The 4th Respondent has not completed the work, even after receipt of payment of Rs.1,50,44,248/- by the 4th Respondent. In view of the delay in progress and as the project being one which was time bound, the Petitioner's Company engaged another person to complete the project. He further submitted that the Petitioner Company incurred additional expenditure to the tune of Rs.77,13,186/- in view thereof apart from the loss of opportunity in view of the delay.

4. While so, the Petitioner Company received a notice from the 2nd Respondent in the reference filed by the 4th Respondent under Section 18(1) of the Act claiming a sum of Rs.76,00,000/- together with compound interest with monthly rests, at three times of the Bank rate notified by the Reserve Bank of India as stipulated in the Act. He further submitted that after receipt of the said notice, the Petitioner appeared via video conference before the 2nd Respondent Council. The 2nd Respondent directed the



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Petitioner to appear before the 3rd Respondent for conducting the conciliation under Section 18(2) of the Act. The 2nd Respondent has nevertheless proceeded to pass orders based on the merits of the case, though the parties to the dispute were unable to enter into any settlement.

The relevant portion of the order reads as under:

“9. The Respondent raised counter claim citing liquidated damages clause for delay, excess payment and resultant production loss due to delay caused by the Petitioner. The counter claim amounts to Rs.8.15 Crores. The Petitioner contended that the design changes by the Respondent and excess supply made towards that design change were the causes for delay. The Council instructed the Petitioner's to submit proof of their claim and send a copy of the same to the Respondent. Hence the Council decided to adjourn the case to the next hearing.

10. The Respondent reiterated their contentions in the previous hearings. The Petitioner stated that the Respondent has filed a suit for damages in the Commercial Court, Howrah in the month of February, 2022. The Respondent has not proved their counter claim. It is established by way of documents that



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delay was caused due to reasons attributed to the Respondent. The revisions and design changes proposed by the Respondent are the main causes for the alleged delay in the completion of the work. Even the commencement of the works was delayed due to the revisions and design changes suggested by the Respondent. The Council decided to pass orders based on the merits of the case.

.....

13. The Council directs the Respondent to pay the principal amount for Rs.76,00,000/- (Rupees Seventy Six Lakhs only) together with compounded interest with monthly rests at three times of the Bank rate notified by the Reserve Bank of India as stipulated in the MSMED Act, 2006 from the appointed due date as above to the Petitioner, till the date of realisation of the due.”

5. To the contrary, it is submitted by the learned Government Advocate that challenge to the order of the 2nd Respondent cannot be maintained under Article 226 of the Constitution of India and thus, the Writ Petition is liable to be dismissed.



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6. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

7. Before proceeding further, it may be relevant to refer to Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006, the relevant portions of which reads as under:

"18. Reference to Micro and Small Enterprises Facilitation Council.—

(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.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(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



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arbitration or refer to it 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.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

....."

8. This Court is of the view that the impugned order is contrary to the mandate contained under Section 18 of the Act inasmuch as a reading of Section 18 of the Act would reveal that once conciliation fails / not successful, without any settlement between the parties, the procedure, i.e., contemplated is that 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 under Section 18(3) of the Act.



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9. In this case, admittedly the conciliation did not turn out to be successful, therefore, it was incumbent on the 2nd Respondent to have either taken up the matter for arbitration or refer to any institution following the procedure under Section 18(3) of the Act and it is not open to the 2nd Respondent to pass orders on merits. Failure to comply with the procedure set out under Section 18(3) of the Act, would vitiate the proceedings.

10. In view of the same, this Writ Petition is disposed of and the impugned order passed by the 2nd Respondent in Case No.MSEFC/MDU/27/2021, dated 15.03.2022 is hereby set aside and the matter is remanded back to the 2nd Respondent to proceed further in terms of Section 18 of the Act. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes / No

Speaking Order : Yes / No

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