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W.P. No. 525 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

CORAM

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

W.P. No. 525 of 2022

and

W.M.P. No. 563 of 2022

M/s.Megashield Protective Coats
Rep. by its Proprietor, T.Giridharan
11-A, Engineering College Road
Thirupparankundram, Madurai – 625 003.

... Petitioner

-VS-

1. The Chair Person
Micro and Small Enterprises Facilitation Council
Chennai Region, Tamil Nadu
Guindy, Chennai – 600 032.

2. M/s. Rotopolymers & Chemicals
No.125, S.No. 8/1 & 10/2B
Orakkadu Village
Sholavaram
Chennai – 600 067.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 2050, praying to issue a Writ of Certiorari, calling for the records relating to the order dated 19.07.2021 in MSEFC/CR/356/2019, Online Application No.TN24B0021328/-S/00003, passed by the First Respondent herein and to quash the same.



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For Petitioner : Mr. S.Subbiah, Senior Counsel
assisted by A.V.Arun
for M/s. Elizebth Ravi

For Respondents : Mr. S.Yashwanth,
Additional Government Pleader
(for R1)

Mr. M.Desingu (for R2)

ORDER

Heard Mr.S.Subbiah, Learned Senior Counsel appearing for the Petitioner, Mr. S.Yashwath, Learned Additional Government Pleader appearing for the First Respondent and Mr. M.Desingu, Learned Counsel for the Second Respondent 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. MSEFC/CR/356/2019 before the First Respondent under Section 18(1) of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'the MSMED Act' for short), claiming payment of the principal amount of Rs. 9,51,474/- from the Petitioner towards value of goods supplied with interest calculated in terms of that Act, in which an order dated 19.07.2021 was passed holding that the Petitioner was liable to pay the principal amount of



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Rs. 9,51,474/- together with compounded interest with monthly rests at three times of the Bank rate notified by the Reserve Bank of India as stipulated in Sections 15 and 16 of the MSMED Act, 2006 from the appointed due dates respectively till payment, which is 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 from the impugned order that there is nothing to show that the prescribed procedure for conciliation as required under the MSMED Act has been followed which would vitiate the impugned order in this case.



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4. In this context, it would be necessary to refer to paras 3 to 12 of the impugned order, which is extracted below:-

“3. In the Council meeting held on 27.07.2020 through Video Conference, the Petitioner was present and represented by Thiru. M.Brijesh, Partner and the Respondent was absent. The Respondent had admitted the liability as per records. The Council decided to give one more opportunity to the Respondent and adjourned the case to the next hearing.

4. In the Council meeting held on 06.11.2020, the Petitioner was present and represented by Thiru. M.Brijesh, Partner and the Respondent was absent. The Council directed to serve the summon to the Respondent through the General Manager, District Industries Centre, Madurai for the next hearing. The Council decided to give one more opportunity to the Respondent and adjourned the case to the next hearing.

5. The Petitioner submitted a copy of the letter addressed to the Respondent through e-mail that the outstanding amount pending as on 31.01.21016 is Rs. 9,51,474/-.

6. In the Council meeting held on 07.12.2020, the Petitioner was present and represented by Thiru. M. Brijesh, Partner and the Respondent was absent. The summon sent was returned. The Council directed the Petitioner to give the correct address of the Respondent and adjourned the case to the next hearing.



7. *The Petitioner M/s. Roto Polymers's mail dated 10.12.2020 has submitted that the residence address of the Respondent is furnished to serve the summons and has also stated that the Respondent's unit is currently operating in the name of M/s. Shenbagam Chemicals, 11 Engineering College Road, Thirupparankundram, Madurai – 625 003 for which proof of GST copy has been produced.*

8. *The summons was served to the new address.*

9. *In the Council meeting held on 11.01.2021, the Petitioner was present and represented by Thiru. M.Brijesh, Partner and the Respondent was absent. The Council decided to give one more opportunity to the Respondent and adjourned the case to the next hearing.*

10. *In the Council meeting held on 10.02.2021, the Petitioner was present and represented by Thiru. M.Brijesh, Partner and the Respondent was absent. The Council decided to give one last opportunity to the Respondent and directed the RJD to serve the summons for the next hearing to the Respondent through General Manager, District Industries Centre, Madurai and adjourned the case to the next hearing.*

11. *In the Council meeting held on 10.03.2021, the Petitioner was present and represented by Thiru. Seshadhri and the Respondent was absent. The Council directed the Petitioner to give a Newspaper advertisement, 10 days in advance for summoning the Respondent to appear before the Council for the next hearing and adjourned the case to the next hearing.*



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12. *In the Council meeting held on 19.07.2021 through Video Conference, the Petitioner was present and represented by Thiru. S.Mani Brijesh, Parnter and the Respondent was absent. News paper advertisement was given. Based on a detailed and critical examination of the claims made by the Petitioner along with available materials on record and on merits of the case, the Council has come to the considered conclusion that the Petitioner is entitled to recover the principal amount of Rs. 9,51,474/- along with compound interest with monthly rests at three times the Bank rate notified by the RBI in accordance with Sections 15 & 16 of the MSMED Act, 2006.”*

On a perusal of the same, it becomes evident that the aforesaid submissions made by the Petitioner that the arbitral award has been passed without properly conducting conciliation proceedings deserves acceptance and the impugned order has to be set aside and the matter remitted to the First Respondent from the stage of conciliation.

5. In such circumstances, the impugned order dated 19.07.2021 in Case No. MSEFC/CR/356/2019 passed by the First Respondent is set aside and the claim made by the Second Respondent is restored to the file of the First Respondent, who shall list the matter for next hearing on 07.02.2024 for conducting the conciliation proceedings after issuing due notice to the Petitioner and the



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Second Respondent in that regard and if the First Respondent is not able to take up the matter on the said date, 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 are atleast two effective hearings every month 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 is 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.

31.10.2023

Maya

NCS : Yes/No

Index: Yes/No

Note: Issue order copy by 08.01.2024.



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1. The Chair Person,
Micro and Small Enterprises Facilitation Council,
Chennai Region, Tamil Nadu
Guindy, Chennai – 600 032.

2. M/s. Rotopolymers & Chemicals
No.125, S.No. 8/1 & 10/2B
Orakkadu Village
Sholavaram
Chennai – 600 067.

Copy to

1. The Registrar (Judicial),
Madras High Court,
Chennai – 600 104.

2. The Proprietor,
M/s.Megashield Protective Coats
11-A, Engineering College Road
Thirupparankundram,
Madurai – 625 003.



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P.D. AUDIKESAVALU, J.

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