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W.P. No. 12274 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

CORAM

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

W.P. No. 12274 of 2023

and

W.M.P. Nos. 12120 and 12121 of 2023

M/s. Climax Overseas Private Ltd.
Represented by its Authorized Person
Plot No.152, Sector-3
IMT Manesar
Gurgaon-120050.

... Petitioner

-VS-

1. The Chairperson
MSE Facilitation Council
Chennai/Industries Commissioner
and Director of Industries and Commerce
Guindy, Chennai – 600032.

2. M/s. M+R Logistics (India) Pvt Ltd
No.56/57, III Floor, Rajaji Salai
Chennai – 600001.

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 of the case relating to the impugned order in MSEFC/CR/213/2021 dated 11.08.2022 passed by the First Respondent and to quash the same.

For Petitioner : Mr. T.Ramesh

For Respondents : Mr. S.Yashwanth, AGP (R1)



W.P. No. 12274 of 2023

R2 – No appearance
ORDER

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Heard Mr. T.Ramesh, Learned Counsel for the Petitioner and Mr. S.Yashwanth, Learned Additional Government Pleader appearing for the First Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. Though notice had been served on the Second Respondent, they have not entered appearance in person or through Counsel.

3. The Second Respondent had made a claim in Case MSEFC/CR/213/2021 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. 22,49,810/- towards service rendered with interest in terms of the MSMED Act, in which an order dated 11.08.2022 was passed holding that the Petitioner was liable to pay the principal sum of Rs. 17,22,434/- 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 from the appointed due dates respectively till payment, which is



W.P. No. 12274 of 2023

assailed in this Writ Petition.

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4. 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.

5. In this context, it would be necessary to refer to paras 3 to 5 of the impugned order, which is extracted below:-

“3. In the Council meeting held on 13.09.2021 through



W.P. No. 12274 of 2023

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Video Conference, only Petitioner was present. Petitioner submitted that no payment has been received after receiving summons. Also there is no contract with Respondent Company after filing case in the Council and no conciliation talks. Petition copies have been sent through registered post and email. Respondent company is a functioning unit. The Council adjourned the case to the next hearing.

4. *In the Council meeting held on 28.04.2022 through Video Conference, only the petitioner was present. Petitioner stated that there was no response from the Respondent and no quality issues were raised. Respondent company is functioning. The Council decided to give one more opportunity to Respondent and adjourned the case.*

5. *In the Council meeting held on 28.07.2022 through Video Conference, only the Petitioner was present. The Petitioner stated that there was no response from the Respondent. Upon contacted by the RJD Office, Chennai, the Respondent could not be reached. The Council instructed the petitioner to submit the GSTR 1 B2B copies*



W.P. No. 12274 of 2023

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and posted the case for conciliation at a Joint Session to be held on 04.08.2022 for conciliation at the RJD Office, Chennai, at 4 p.m, and posted the case on 11.08.2022.

6. *During the joint sitting for conciliation held on 04.08.2022 at the RJD office, the petitioner was represented by Thiru.S.Velukumar, G.M. (Finance) and the Respondent remained absent. Upon contacted by the RJD office over phone, the Respondent could not be reached. Conciliation efforts failed. Therefore, the conciliation proceedings are closed and it is decided to post the case on 11.08.2022 before the Council for conducting arbitration proceedings under S.18 (3) of the MSMED Act.*

7. *In the Council meeting held on 11.08.2022 through Video Conference, only the petitioner was present. Petitioner was represented by Thiru.Velkumar Subramani. Petitioner stated that there was no response from the Respondent. The Respondent did not attend the Joint session held on 04.08.2022. Conciliation efforts failed and therefore conciliation proceedings closed. The case is taken*



W.P. No. 12274 of 2023

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At this juncture, it would assume significance from the contention of the Petitioner that except for the intimation dated 09.07.2021 advising the Petitioner to pay the due amount to the Second Respondent within 15 days, failing which the case would be registered, the First Respondent has not produced any material to demonstrate that notice of hearing in the conciliation proceedings had been actually served on the Petitioner. This would necessarily give rise to the inference that the impugned order is vitiated as it has been passed without properly serving notice to the Petitioner to participate in the conciliation proceedings, which is mandatory under the MSMED Act.

6. In such circumstances, the impugned order dated 11.08.2022 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 28.02.2024 for conducting the conciliation proceedings after issuing due notice to the Petitioner and the 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



W.P. No. 12274 of 2023

ensured by the First Respondent that there are atleast two effective hearings every week 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 Petitions are closed. No costs.

31.10.2023

Maya

NCS : Yes/No

Index: Yes/No

Note: Issue order copy by 31.01.2024.

To

The Chairperson



W.P. No. 12274 of 2023

**MSE Facilitation Council
Chennai/Industries Commissioner
and Director of Industries and Commerce
Guindy, Chennai – 600032.**



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W.P. No. 12274 of 2023

P.D. AUDIKESAVALU, J.

Maya

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