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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.13059 of 2023

M/s.Raster Images Pvt. Ltd.,
Represented by its Director,
No.50/3, Brindavan Road,
Alagapuram,
Salem.

Petitioners

vs.

1.The Micro Small Enterprises Facilitation Council,
Coimbatore Region,
Rep. by its Chairperson.
No.2, Raja Street,
Coimbatore – 641 001.

2.M/s.Jai Prakash Narain Apex Trauma Centre,
AIIMS, Ring Road, Raj Nagar,
New Delhi – 110 059.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent culminating in the impugned dismissal order MSEFC/CBER/82/2020-online application No.TN020E0045478/S/00002 dated 07.09.2021 and quash the same and consequently direct the 1st respondent to refer the parties to arbitration in terms of section 18 of the Mirco, Small and medium enterprises Development Act, 2006 (MSMED Act), 2006.



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For Petitioner : Mr.M.Santhanaraman

For Respondents : Mr.C.Selvaraj
Additional Government Pleader for R1

ORDER

This writ petition has been filed challenging the impugned order passed by the 1st respondent dated 07.09.2021 and for a consequential direction to the 1st respondent to comply with the mandatory requirements under Section 18 of the Micro, Small & Medium Enterprises Development Act, 2006 (hereinafter referred to as “MSMED Act”).

2.The case of the petitioner is that they are Micro Manufacturing enterprises registered with the MSME and they are in the business of software and hardware service. They entered into an agreement with All India Institute of Medical Sciences (AIIMS), New Delhi for hardware and software service through Agreement dated 25.05.2015. Pursuant to this agreement, they had also rendered services to the 2nd respondent. The 2nd respondent did not make the payments in spite of the petitioner raising several invoices between the year 2017 to 2019. Thereby, the petitioner is claiming that the total of amount of Rs.86,45,861/- is due and payable to the petitioner.



3.The petitioner filed a petition before the 1st respondent under Section 18 of the MSMED Act seeking for a direction to the 2nd respondent to make the payments with interest.

4.The grievance of the petitioner is that the 1st respondent without following any of the procedure under Section 18 of the MSMED Act, straight away proceeded to dismiss the petition on a ground which is unsustainable in law. Aggrieved by the same, the present writ petition has been filed before this Court.

5.Heard Mr.M.Santhanaraman, learned counsel appearing on behalf of the petitioner and Mr.C.Selvaraj, learned Additional Government Pleader appearing on behalf of the 1st respondent. There is no requirement to issue any notice to the 2nd respondent in this case, since the 1st respondent did not dismiss the petition on merits and this Court finds that the very dismissal itself is in gross violation of the procedure contemplated under Section 18 of the MSMED Act.

6.This Court has carefully considered the submissions made on either side and also the materials available on record.

7.The Apex Court in *Silpi Industries etc., vs. Kerala State Road Transport*

Corporation and Another reported in **2021 SCC Online SC 439** has succinctly



extracted the procedure to be followed by the Council when a petition is made and the same is extracted hereunder:

20. From a reading of Section 18(3) of the 2006 Act it is clear that when the conciliation initiated under sub-section (2) of Section 18 of the said Act is not successful, the Council shall either itself take up the dispute for arbitration or refer to any institution for arbitration. Further Section 18(3) of the said Act also makes it clear that the provisions of 1996 Act are made applicable as if there is an agreement between the parties under sub-section (1) of Section 7 of the 1996 Act. Section 23 of the 1996 Act deals with the statement of claim and defence. Section 23(2A), which gives a right to respondent to submit a counter claim or plead set-off with regard to claims within the scope of the arbitration agreement, is brought into Statute by Amending Act 3 of 2016. If we look at the Statement of Objects and Reasons of the Amending Act, same is also enacted to provide for speedy disposal of cases relating to arbitration with least court intervention. Clause 11 of the Bill, by which sub-section (2A) was proposed to be inserted, states that sub-section (2A) was intended to give an opportunity to the respondent, in support of his case, to submit counter-claim or a set-off if such counter-claim or set-off falls within the scope of arbitration agreement. When Section 18(3) makes it clear that in the event of failure by the Council under Section 18(2) if proceedings are initiated under Section 18(3) of the 1996 Act, the provisions of 1996 Act are not only made applicable but specific mention is made to the effect as if the arbitration was in pursuance to an



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arbitration agreement referred to in sub-section (1) of Section 7 of the 1996 Act. When there is a provision for filing counter-claim and set-off which is expressly inserted in Section 23 of the 1996 Act, there is no reason for curtailing the right of the respondent for making counter-claim or set-off in proceedings before the Facilitation Council.

8. The Division Bench of this Court in ***M/s. Super Steam Boilers Engineers Pvt. Ltd, Rep. by its Director Nazeer A. Kazi, Navi Mumbai vs. The Micro, Small Enterprises Facilitation Council Coimbatore Region, Rep. by its Chairperson, Guindy, Chennai 600 032*** in W.A.No.2655 of 2021 dated 07.03.2022 also had an occasion to deal with the procedure to be followed by the Council when a petition is filed under Section 18 of the MSMED Act and the relevant portions are extracted hereunder:

8. A perusal of the order passed by the Council shows that initially the matter was taken up for conciliation and was deferred from time to time to settle the disputes in the interest of the parties. When the conciliation failed, an order was passed to take up the matter for arbitration invoking Section 18(3) of the Act of 2006. While taking a decision to arbitrate the matter, the procedure required for it has not been followed. The matter was ordered to be posted directly for arguments and for that, to lead evidence by the parties. Without realising that, after the failure of conciliation proceedings, the matter was to be taken up for arbitration as per the procedure.



9. The Council could have taken up the matter for arbitration or send it for independent arbitration as given under Section 18 of the Act of 2006. If at all the matter is taken up for arbitration, it should have been after calling for the claim and thereupon written statement from the side opposite with counter claim, if any. The procedure aforesaid was not followed and in view of the judgment of the Apex Court in the case of Jharkhand Urja Vikas Nigam Limited, it becomes clear that the procedure given under Section 18 of the Act of 2006 is mandatory in nature and when conciliation fails, the Council is empowered either to take up arbitration on its own or to refer it to any institution providing alternative dispute resolution services and the provisions of the Arbitration and Conciliation Act, 1996 to apply therein.

9. In the present case, on carefully going through the orders passed by the 1st respondent, it is seen that the 1st respondent has not followed the procedure under Section 18 of the Act and has dismissed the petition in a hasty manner. The order passed by the 1st respondent suffers from patent illegality. This is not the first occasion where the Court is encountering such illegal orders and it has become a regular feature for the Council to pass such hasty orders in almost all cases where a petition is filed seeking for a claim.

10. A plain reading of Section 18 of MSMED Act shows that the Council is



for which Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 will apply and it will be construed as if the conciliation was initiated under Part III of the 1996 Act. When the conciliation fails under Section 18(3), the dispute between the parties must thereafter be resolved by arbitration. At that juncture, the Council is empowered either to take up arbitration on its own or to refer the arbitration proceedings to any other institution as specified in the very same provision. If the Council decides to conduct the arbitration, it has to enquire the parties and deal with the materials placed before them and thereafter, pass an Award. It goes without saying that while undertaking this exercise, the relevant provisions under the Arbitration and Conciliation Act, 1996 will apply and the procedure contemplated under Section 20, 23, 24 and 25 must be followed.

11. It is quite unfortunate that the Council is not following this procedure strictly in spite of a series of orders being passed by the Apex Court and also this Court. This Court finds that in many of the cases, the Council does not even initiate the Conciliation proceedings. If in case, any conciliation proceedings are initiated and it ends in a failure, the Council straight away passes an order on merits without conducting the arbitration proceedings by dealing with the case on merits. The Council must bear in mind that it is a creature of a statute and they are bound to comply with the procedure mandated by the statute and they cannot evolve their own procedure. In view of the hastiness that is shown by the Micro Small Enterprises



Facilitation Council, this Court is unnecessarily burdened with writ petitions on a daily basis. In every other case, this Court also interferes with such orders passed by the Council. If the Council takes conscious effort to follow the procedure, there is no occasion for the parties to approach this Court by filing a writ petition and they have to necessarily challenge the final Award before the appropriate forum and workout their remedy in the manner known to law. The non-compliance of the mandate prescribed under Section 18 of the MSMED Act makes every other order illegal and hence, the parties straight away approach this Court and file writ petitions. Repeated orders passed in the writ petitions pinpointing the procedure to be followed, seems to be falling in deaf ears and the Council is not willing to consciously rectify themselves and follow the proper procedure. In view of this attitude of the Council, this Court is constrained to write this order with the fond hope that in future the Council does not adopt such illegal procedure and they strictly follow the mandate of Section 18 of the MSMED Act and the judgments of the Apex Court and this Court without fail. It is made clear that if in spite of this order, if such illegal orders are passed by the Council by not following the mandate under Section 18 of the MSMED Act, this Court will be constrained to impose cost against the concerned Ministry, who are expected to immediately bring in correctional measures. If required, the concerned Ministry can make the Council Members undergo training to understand the purport of the provisions under the MSMED Act. In view of the same,

a copy of this order is also marked to the Secretary, Ministry of Micro, Small and



Medium Enterprises, Guindy Industrial Estate Complex, Guindy, Chennai – 600 004.

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12.In the light of the above discussion, the impugned order passed in MSEFC/CBER/82/202-online application No.TN020E0045478/S/00002 dated 07.09.2021, is hereby set aside. The matter is remanded back to the file of the 1st respondent and the 1st respondent is directed to strictly comply with the mandate under Section 18 of the MSMED Act. All efforts shall be taken to complete the entire process including the passing of the Award, within a period of three months from the date of receipt of copy of this order.

13.In the result, this writ petition is allowed with the above directions. No Costs.

27.04.2023

Index : Yes
Internet : Yes
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes
ssr

To

The Chairperson.
Micro Small Enterprises Facilitation Council Coimbatore Region,
No.2, Raja Street,
Coimbatore – 641 001.



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N. ANAND VENKATESH, J.

SSR

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