



W.P. No. 12936 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

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

W.P. No. 12936 of 2021

and

W.M.P. No. 13736 of 2021

M/s. M.M.Educational and Charitable Trust,
Rep. by its Chairman and Managing Trustee, M.Ramki,
NH-44, Thottilovanpatti,
Nalli Post, Sathur Taluk,
Virudhunagar District,
Tamil Nadu – 626 205.

... Petitioner

-VS-

1. The Micro and Small Enterprises Facilitation Council,
Chennai Region,
Rep. by its Chairman,
Guindy, Chennai – 600 032.

2. M/s. Corporate Concepts Infra Pvt. Ltd.,
Rep. by its K.Durai Kandasamy,
Flat No. 18A, Vese Kay Manoor,
Door No. 8/28, Gopalakrishna Road,
T. Nagar, Chennai – 600 017.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 2050, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 05.10.2020 made in MSEFC/CR/115/2019 passed by the First Respondent and quash the same and to direct the First Respondent to refer the claims of the Second Respondent respectively, to



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Arbitration in accordance with the provisions of Section 18 (3) of the Micro Small and Medium Enterprise Development Act, 2006.

For Petitioner : Mr. V.R.Kamalanathan

For Respondents : Mr. S.Yashwath (for R1)

Mr. Naveen Kumar Murthi (for R2)

ORDER

Heard Mr. V.R.Kamalanathan, Learned Counsel for the Petitioner, Mr. S.Yashwath, Learned Counsel for the First Respondent and Mr. Naveen Kumar Murthi, 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/115/2019 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 the principal amount of Rs. 15,68,300/- from the Petitioner towards value of goods supplied with interest calculated in terms of that Act, in which an order dated 05.10.2020 was passed holding that the Petitioner was liable to that sum together with



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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 challenged 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 9 of the impugned order, which is extracted below:-

“3. In the Council meeting held on 06.01.2020, the Petitioner was present and represented by Thiru. K.Anbalagan and the Respondent was absent. The Council directed the Petitioner to send a copy of the petition to the Respondent and also to produce the GSTR1 copy to the Council and adjourned the case to the next hearing.

4. In the Council held on 04.02.2020, the Petitioner was present and represented by Thiru. Hariharan and the Respondent was absent. The Council directed for serving of the summon for the next hearing through General Manager, District Industries Centre, Virudhunagar. The Council directed the Petitioner to produce the GSTR1 copy to the Council and adjourned the case to the next hearing.

5. The Petitioner has subsequently submitted the documents to the Council for the transactions made with the Respondent on 06.02.2020.

6. In the Council meeting held on 03.03.2020, the Petitioner was present and represented by Thiru. K.Anbalagan and the Respondent was present and represented by Thiru. R.Chidambaram. The Respondent admitted the liability. The Petitioner had agreed to rectify the defects of the materials supplied, on condition of receiving 50% payment from the



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Respondent. The Council adjourned the case to the next hearing.

7. *In the Council meeting held on 02.09.2020 through Video Conference, the Petitioner was present and represented by Thiru. Durai Kandasamy and the Respondent was present and represented by Thiru. Raghupathi, Counsel. The Council directed both the Petitioner and the Respondent to appear before the General Manager, Virudhunagar for a joint sitting for conciliation of the issues and adjourned the case to the next hearing.*

8. *The Petitioner has furnished the copy of the request letter for making the payment of 50% outstanding amount addressed to the Respondent dated 04.09.2020.*

9. *In the Council meeting held on 05.10.2020 though Video Conference, the Petitioner was present and represented by Thiru. Durai Kandasamy and the Respondent was present and represented by Thiru. Raghupathi, Counsel. Based on the 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 directed the Respondent to pay the Principal amount along with the 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 and issued final orders.”*

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



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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 05.10.2020 in Case No. MSEFC/CR/115/2019 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 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



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(Judicial) of the Court.

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In the result, the Writ Petition is disposed on the aforesaid terms.

Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No

Note: Issue order copy by 08.01.2024.

To

1. The Chairman,
The Micro and Small Enterprises Facilitation Council,
Chennai Region,
Guindy, Chennai – 600 032.

2. K.Durai Kandasamy,
M/s. Corporate Concepts Infra Pvt. Ltd.,
Flat No. 18A, Vese Kay Manoor,
Door No. 8/28, Gopalakrishna Road,
T. Nagar, Chennai – 600 017.

Copy to

1. The Chairman and Managing Trustee,
M/s. M.M.Educational and Charitable Trust,
NH-44, Thottilovanpatti,
Nalli Post, Sathur Taluk,
Virudhunagar District,
Tamil Nadu – 626 205.

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



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P.D. AUDIKESAVALU, J.

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