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W.P. No. 13451 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM

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

W.P. No. 13451 of 2020

and

W.M.P. No. 16620 and 16621 of 2020

AVL India Private Limited
Represented by Mr. Mukul Ghanekar,
having office at 376-77, Phase-IV,
Gurgaon, Haryana – 122015.

... Petitioner

-VS-

1. Micro and Small Enterprises Facilitation Council
Chennai Region,
Having its Office at:
Regional Joint Director of Industries and Commerce
Thiru-vi-ka Industrial Estate, Guindy,
Chennai – 600032.

2. Metec Design and Construction Engineers
India Private Limited,
Having its Office at:
No. 1/460, Multi Industrial Estate
Gerugambakkam, Porur,
Chennai – 600128.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of certiorari, quashing the impugned order dated 25.02.2020 passed by the First Respondent in Case No. MSEFC/CR/319/2018 and received by the Petitioner on 09.06.2020.

For Petitioner

: Mr. P.Vinod Kumar



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For Respondents

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

Dr. P.Vasudevan (for R2)

ORDER

Heard Mr. P.Vinod Kumar, Learned Counsel for the Petitioner, Mr. S.Yashwanth, Learned Additional Government Pleader appearing for the First Respondent and Dr. P.Vasudevan, 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/319/2018 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. 5,81,54,393/- from the Petitioner towards remaining amount due for goods supplied with interest calculated in terms of that Act, in which an order dated 25.02.2020 was passed holding that the Petitioner was liable to pay the principal sum of Rs. 4,62,27,836/- 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 from the appointed due dates respectively till



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payment, which is assailed in this Writ Petition.

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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.

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



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“3. In the Council meeting held on 07.06.2019, the Petitioner was present and represented by Thiru D. Sairam Kumar and the Respondent was present and represented by Thiru Tarun Verma. The Council directed the Petitioner to give a copy of the petition to the Respondent and also directed the Respondent to file a counter affidavit by 30.06.2019 and adjourned the case to the next hearing.

4. In the Council meeting held on 02.07.2019, the Petitioner was present and represented by Thiru P. Jeyavenkateswaran and the Respondent was present and represented by Thiru B. Prashanth. As the Respondent had filed a Counter, the Council directed the Petitioner to give reply by 15th July 2019 and adjourned the case to the next hearing.

5. In the Council meeting held on 20.08.2019, the Petitioner was present and represented by Thiru. S.Kamalakaran and the Respondent was present and represented by Ms.Hemangini. A rejoinder was filed by the Petitioner. The Council decided to give one more opportunity



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to both the Petitioner and the Respondent and adjourned the case to the next hearing.

6. *In the Council meeting held on 23.09.2019, the Petitioner was present, represented by Thiru.P.Jaayavenkatesh and the Respondent was present, represented by Thiru.B. Prashanth. A rejoinder was filed by the Petitioner. The Council decided to give one more opportunity to both the Petitioner and the Respondent and adjourned the case to the next hearing.*

7. *In the Council meeting held on 12.11.2019, the Petitioner was present and represented by Thiru P.Jaayavenkatesh and the Respondent was present and represented by Thiru Tarun Verma. The Council directed both the Petitioner and the Respondent to appear before the Secretary, MSEF Council/Regional Joint Director, Chennai on 27.11.2019 @ 12.00 p.m, for a joint sitting for verification of records with full statement of accounts and adjourned the case to the next hearing.*

8. *In the joint sitting held on 27.11.2019 @ RJD Office, Guindy, both the Petitioner and Respondent were present.*



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9. *It is reported by the Petitioner that they have done work for Rs.10.12 crores under six purchase orders for which 40 invoices were raised (statement enclosed) and that out of this, an amount of Rs.5.46 crores was paid against 25 invoices (Sl.No.1 to 25), But the total value of said 25 invoices works out to Rs.6.97 crores of which 80% of the invoice amount is Rs.5.46 crores which is alone has been received by them. The Respondent is deliberately evading payments for the remaining 15 invoice. Further, the contention of the petitioner is that the Respondent has arbitrarily returned invoices with Sl.Nos.30 to 40 under letter dated 5.11.2018 immediately after receiving the conciliation notice sent by the Council on 29.10.2018 which is felt by the Secretary as this act of the Respondent is an afterthought. The Petitioner in para 5 told that Respondent is not ready to verify the documents to avoid the payment of Rs.4.62 crores. Petitioner informs the Council in para 6 that 99% of the vendors are promptly making payment to them except this Respondent which is an Austrian based MNC company. Finally, in para 7 Petitioner informs Council that if,*



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Respondent agrees for reconciliation of invoices, then they will be liable to pay the claim of Rs.4.62 crores and hence, they are refusing for reconciliation.

10. Respondent in their letter to Secretary informed that they do not agree for the claim made by Petitioner for Rs.5.81 crores as Petitioner did not completely perform their operations as per P.Os and contracts and hence, the Respondent had placed a fresh orders to third parties which had resulted in paying Rs.3.46 crores which was payable to the Petitioner of Rs.2.94 crores thus resulting in a loss approximately of Rs.52 lakhs to the Respondent. Further, they also reported that they do not agree for joint verification as the entire project was done by the Petitioner along with other sub contractors too. Further, the Respondent's without prejudice agree to the physical verification of the invoices provided the Petitioner's can send a copy of the invoices along with the delivery proof to the Respondent's Office. The Respondent would send a copy of the Purchase Orders placed with other third party contractors for the work that the



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Petitioner should have done, by that way the petitioner could verify the same.

11. In the Council meeting held on 12.12.2019, the Petitioner was present and represented by Thiru. P. Jaayavenkatesh and the Respondent was present and represented by Ms.Hemangini. The Council directed the Petitioner to reconcile at Respondent's place for physical verification of the invoices on 02.01.2020 and brief note to be submitted to Council and adjourned the case to the next hearing.

12. In the Council meeting held on 27.01.2020, the Petitioner was present and represented by Thiru. S. Kamalakannan and the Respondent was present and represented by Ms.Hemangini. The Council directed the Respondent to check all the documents and work completion certificate. The Council directed the Petitioner to give 'C' form within 7 days and adjourned the case to the next final hearing.

13. The Petitioner gave a copy of 'C' form as directed by the Council.



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14. *In the Council meeting held on 25.02.2020, the Petitioner was present and represented by Thiru. P.Jaayavenkateshwaran and the Respondent was present and represented by Ms.Hemangini. The Petitioner was found to have given the copy of C form to Respondent as directed by the Council. However, the Council found both Petitioner and Respondent were not willing to reach a common ground and decided to go by the records available. Based on the merits of the case, the Council directed the Respondent to pay the principal amount along with the interest in accordance with Section 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 order has to be set aside and the matter remitted to the First Respondent from the stage of conciliation.



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5. In such circumstances, the impugned order dated 25.02.2020 in Case No. MSEFC/CR/319/2018 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 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 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.

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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.

30.10.2023

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Index: Yes/No

Note: Issue order copy by 31.01.2024.

To

The Micro and Small Enterprises Facilitation Council
Chennai Region,
Having its Office at:
Regional Joint Director of Industries and Commerce
Thiru-vi-ka Industrial Estate, Guindy,
Chennai – 600032.

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P.D. AUDIKESAVALU, J.

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