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W.P.No.14849 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.14849 of 2023
and W.M.P.No.14423 of 2023

M/s. Shintech Engineering India Pvt Ltd.,
No.124/2, First Floor,
Poonamalle High Road,
Velappanchavadi, Chennai – 600 077.

... Petitioner

VS.

1.Micro and Small Enterprises Facilitation Council,
Chennai Region,
Guindy, Chennai 600 032.
Represented by its Chairperson.

2.M/s. PKM Metal Buildings Company Pvt Ltd.,
No. 34-97/1, F Block,
4th Street, Anna Nagar East,
Chennai – 600 102.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 1st Respondent relating to the Impugned Order passed in MSEFC/CR/146/2021 dated 28.10.2022 received by the Petitioner on 15.02.2023 passed by the 1st Respondent against the Petitioner, quash the same as illegal, arbitrary and devoid of merit.



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For Petitioner : Mr.R.Prithviraj Pandian
For R1 : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader
For R2 : Mr.R.Arumugam

ORDER

The writ petition is filed challenging the order passed by the 1st respondent-Micro and Small Enterprises Facilitation Council directing the petitioner herein to pay a sum of Rs.4,58,072/- with interest thereon.

2. The 2nd respondent herein is engaged in the business of Catering and they filed a claim petition under Section 18(1) of Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'MSMED Act, 2006') against the petitioner herein for recovery of Rs.4,58,072/- (Rupees Four Lakhs Fifty Eight Thousand and Seventy Two only) together with interest. It is the specific case of the 2nd respondent that above said sum was due from the petitioner. The 1st respondent-Micro and Small Enterprises Facilitation Council by the impugned order held that the 2nd respondent is entitled to the said amount as prayed for. Aggrieved by the



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same, the petitioner is before this Court.

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3. The learned counsel appearing for the petitioner assails the impugned order mainly on the ground that the 1st respondent failed to follow the step by step procedure contemplated under Section 18 of MSMED Act, 2006. The learned counsel elaborated it by saying that after recording the failure of the conciliation proceedings, the 1st respondent proceeded to hear the arguments of the parties and passed the impugned order, without following the procedure under Arbitration Act. Therefore, the impugned order is liable to be set aside.

4. The learned counsel appearing for the 2nd respondent submitted that before the 1st respondent, the petitioner failed to advance arguments on merits, they filed a memo confining their argument to the maintainability of the claim petition before 1st respondent. Therefore, even assuming that there is any infirmity in the proceedings passed by the 1st respondent, the petitioner is not entitled to challenge the same by way of writ petition.

5. I had an occasion to consider the step by step procedure to be



followed under Section 18 by the MSMED Council in ***Sri Valli Process Vs***

Mirco, Small Enterprises Facilitation Council reported in ***2022 SCC***

OnLine Mad 3537. The relevant observation in the above said decision

reads as follows:-

“23.The complexion or character of MSMED council changes from one capacity to other while following the step by step procedure contemplated under Section 18 of MSMED Act. While exercising power under Section 18(1) of the Act, MSMED council acts as an ordinary authority to receive respective representations of the parties. On the other hand, while acting under Section 18(2) the complexion of the council would change from that of an ordinary authority to that of a conciliator acting under relevant provision of arbitration and conciliation Act. While exercising power under Section 18(3) the complexion of MSMED council changes from that of conciliator to that of an Arbitrator. Therefore, it is incumbent upon the first respondent council to inform the parties by express notice under what capacity, they receive the pleadings of the parties. At least while commencing the arbitration under Section 18(3) of MSMED Act, the first respondent is obliged to record the failure of conciliation proceedings and initiation of an adjudicatory procedure as an Arbitrator. It is obligatory on the part of the first respondent council to inform the parties



about the change of its face from that of conciliator to that of an Arbitrator, so that the parties will be made to understand that they are participating in an adjudicatory process, which will result in a binding order having impact on their rights. There is nothing available in the impugned order to show that at what point of time, the first respondent council acquired the character of arbitrator from that of conciliator. The parties appeared to have participated in the proceedings without knowledge whether they are participating in an ordinary reference stage under Section 18(1) or conciliation stage under Section 18(2) or in an adjudicatory stage under Section 18(3) There is nothing available in the impugned order to show valid constitution of arbitral Tribunal and beginning of adjudicatory process with express notice to the parties. Hence, I hold the impugned order cannot be termed as an award and hence liable to be set aside.”

6. Section 18 of Micro, Small and Medium Enterprises Development

Act, 2006 reads as follows:-

“18. Reference to Micro and small Enterprises Facilitation Council. (1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises



Facilitation Council.

(2) On receipt of a reference under sub-section(1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section(2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section(1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer



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located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.”

7. A reading of the above said provision would make it clear that as soon as the 1st respondent received a claim petition under Section 18 (1) of MSMED Act, 2006, after issuing notice to the parties, the 1st respondent should attempt conciliation proceedings. In case, there is a failure of conciliation proceedings, the same shall be terminated. After terminating the conciliation proceedings, the 1st respondent should go for arbitration proceedings as per the provisions of the Arbitration Act. This Court in the above mentioned case law held that after recording the termination of the conciliation proceedings, there shall be an express notice to the parties regarding initiation of adjudicatory process.

8. In the case on hand, there is nothing available on record to suggest that after termination of conciliation proceedings, the parties were issued with express notice for initiation of arbitration proceedings. Likewise, there is no material available on record to suggest that the parties were granted an



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opportunity to file their pleadings by following the procedure contemplated under Arbitration Act.

9. Based on the claim petition filed by the 2nd respondent, prior to conciliation proceedings, the impugned order came to be passed without following the procedure contemplated under the Arbitration Act. In such circumstances, the impugned order cannot be treated as an award passed under the provisions of Arbitration Act.

10. When it is held that the impugned order cannot be treated as an award under the Arbitration Act, the petitioner cannot challenge it as per the provisions of Section 34 of the Arbitration Act. In these circumstances, the writ petition is clearly maintainable before this Court for the reasons stated above and the impugned order is liable to be set aside.

11. Now, it is clear from the submission made by the learned counsel appearing for the petitioner and 2nd respondent, there is no possibility for conciliation. Therefore, the impugned order is set aside and the matter is remanded back to the 1st respondent for initiation of arbitration proceedings.



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The 1st respondent can either take up the arbitration proceedings itself or send it to any other institution or centre offering alternative dispute resolution services. The arbitration proceedings shall be completed within a period of ninety (90) days from the date of making such a reference as per Section 18(5) of MSMED Act, 2006.

12. With the above observations, the writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

04.09.2023

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
dm

To

The Chairperson.
Micro and Small Enterprises Facilitation Council,
Chennai Region,
Guindy, Chennai 600 032.



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S.SOUNTHAR, J.

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