



W.A.No.1751 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

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

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M/s.Deer-Tech Projects Pvt. Ltd.,
(Earlier Known as M/s.Deer-tech Engineers)
rep. by its Director S.Sivaraman
129, Aani Street, Chinmaya Nagar,
Chennai-600 092.

.. Appellant

Vs

1.M/s.Subaya Constructions Co. Ltd.,
rep. by its Director S.Meenukshi
No.21, Soundarapandian Street,
Ashok Nagar, Chennai-600 083.

2.The Chairman,
The Micro and Small Enterprises Facilitation Council,
Chennai Region, Guindy,
Chennai.

.. Respondents

Prayer: Appeal under Clause 15 of the Letters Patent against the order dated 16.3.2021 passed by the learned Single Judge in W.P.No.5452 of 2017.



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For the Appellant : Mr.R.Parthasarathy
Senior Counsel
for M/s.Tanushree Arvind

For the Respondents : Mr.N.L.Rajah
Senior Counsel
for Mr.B.Natarajan
for respondent No.1

: R2 – No Appearance

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

Heard Mr.R.Parthasarathy, learned Senior Counsel for the appellant and Mr.N.L.Rajah, learned Senior Counsel for the first respondent.

2. The appellant assails the order passed by the learned Single Judge, thereby setting aside the impugned order/award passed by the Micro Small Enterprises Facilitation (MSEF) Council.

3. Learned Senior Counsel for the appellant submits that the matter was referred to the MSEF Council. The conciliation



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proceedings were taken up. The conciliation proceedings failed. The matter had come up before this Court in an earlier writ petition. The first respondent filed an affidavit that they are ready to go for arbitration before the Council and it is in that manner, the proceedings for arbitration were taken up by the Council. These aspects have not been considered by the learned Single Judge while passing the order. Before the Council, the appellant had filed its claim. The first respondent had filed its counter. The documents were also filed and taken on record. In view of that, the Council had passed the award. The award could only have been challenged under Section 34 of the Arbitration and Conciliation Act, 1996.

4. Learned Senior Counsel for the first respondent submits that, in fact, after the conciliation proceedings failed, arbitration proceedings can be taken up. From the judgment, nor from the record of the MSEF Council, it can be concluded that the conciliation proceedings has failed and the arbitration proceedings were taken up by the Council. It is in the same proceedings, the order is passed by the MSEF Council. The learned Single Judge has



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considered the said aspect.

5. We have considered the submissions made by learned respective Senior Counsels.

6. From perusal of the order/award passed by the MSEF Council, it is manifest that major part of the order deals with the conciliation proceedings and only in two paragraphs, the award seems to have been passed. The impugned order, in a strict sense, is not an award. No discussion has been made in the said award. No reasons are given. Up to paragraph 16, the discussion is about the documents placed on record. In paragraph 17, the observation is about the presence of the petitioner and the respondent with their counsel and the petitioner producing evidence and the respondent being unable to produce evidence. It was further observed that TWAD Board has confirmed that all payments have been made to the respondent, including retention amount. In paragraph 18, it is stated that one more opportunity is given to the respondent for producing proof of evidence. In paragraph 19, it is



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stated that the respondent neither appeared nor gave any further documents/details. Thereafter, extracting the provisions of Section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short, "*the MSMED Act, 2006*"), the order has been passed. The learned Single Judge has rightly observed that the award has been passed without discussion and the same cannot be termed as an award and has exercised his jurisdiction. We cannot find any fault with the order passed by the learned Single Judge on that count.

7. The learned Single Judge has referred the matter for arbitration to the Madras High Court Arbitration Centre.

8. We asked learned Senior Counsels for the appellant and the first respondent as to whether the matter can be referred to the MSEF Council for arbitration as contemplated under Section 18 of the MSMED Act, 2006. Both learned Senior Counsels for the appellant and the first respondent accede to the same.



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9. In the light of that, the order of the learned Single Judge is modified to the extent that the matter is referred back for arbitration to the MSEF Council. The appellant and the first respondent shall appear before the MSEF Council on 11.09.2023. The MSEF Council shall thereafter take up arbitration proceedings in accordance with the procedure. The parties shall co-operate for expeditious disposal of the proceedings before the MSEF Council.

10. With these observations, the appeal stands disposed of.
There will be no order as to costs.

(S.V.G., CJ.)

(P.D.A., J.)

24.08.2023

Index : Yes/No
Neutral Citation : Yes/No
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To

The Chairman,
The Micro and Small Enterprises Facilitation Council,
Chennai Region, Guindy,
Chennai.



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THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKE SAVALU, J.

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