



WEB COPY



W.P. No. 17358 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM

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

W.P. No. 17358 of 2021

and

W.M.P. No. 18395 of 2021

M/s. Rama Enterprises
Rep. By its Partner Mr. Rajesh.B
Old No.146, New No. 196
East Coast Road
Injambakkam, Chennai – 600041.

... Petitioner

-VS-

1. Micro Small Enterprises Facilitation Council
Rep. By its Chairperson
Industries Commissioner and Director
of Industries and Commerce
Guindy, Chennai – 600 032.

2. M/s.Swastik Associates
“Swastick Enclave”
Plot No.5, Pleasant Avenue
Sakthi Nagar, Porur
Chennai – 600041.

... 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 on the file of the First Respondent and quash the impugned order dated 29.01.2021 made in MSEFC/CR/136/2019 and directing the First Respondent refer the matter for arbitration in accordance with Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006.



W.P. No. 17358 of 2021

WEB COPY

For Petitioner : Mr. M.Vijayan
for M/s. King and Partridge

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

Mr. V.Arunagiri (for R2)

ORDER

Heard Mr. M.Vijayan, Learned Counsel appearing for the Petitioner, Mr. S.Yashwanth, Learned Additional Government Pleader appearing for the First Respondent and Mr. V.Arunagiri, 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/136/2019 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 payment of Rs. 9,23,053/- from the Petitioner towards remaining amount due for goods supplied with interest calculated in terms of that Act, in which an order dated 29.01.2021 was passed holding that the Petitioner was liable to pay the principal amount of



W.P. No. 17358 of 2021

Rs. 4,94,103/- together with 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 assailed 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.



WEB COPY

4. In this context, it would be necessary to refer to paras 3 to 11 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. B.Ramachandran and the Respondent was absent. The Council directed the Petitioner to check and give the correct address of the Respondent to enable serving of the summon and adjourned the case to the next hearing.

4. In the Council meeting held on 04.02.2020, the Petitioner was present and represented by Thiru. B.Ramachandran and the Respondent was present and represented by Thiru. R.B.Rajesh, The Council observed that trading activities do not come under the purview of this forum. After hearing both sides, the Council directed the Respondent to file a counter affidavit and adjourned the case to the next hearing.

5. In the Council meeting held on 03.03.2020, the Petitioner was present and represented by Thiru. B.Ramachandran and the Respondent was present and represented by Thiru R.B.Rajesh. The Council directed the Respondent to produce counter affidavit to Council office under copy marked to the Respondent and decided to



W.P. No. 17358 of 2021

give one more opportunity and adjourned the case to the next hearing.

6. In the Council meeting held on 02.09.2020 through Video Conference, the Petitioner was present and represented by Thiru. B.Ramachandran and the Respondent was present and represented by Ms. Smiruthi, Advocate. The Council instructed the Respondent to file the counter affidavit before 18th of September 2020 and adjourned the case to the next hearing.

7. In the Council meeting held on 05.10.2020 through Video Conference, the Petitioner was present and represented by Thiru. B.Ramachandran and the Respondent was present and represented by Thiru Rajesh. The Respondent claimed that the petition copy was not received. The Council directed Regional Joint Director to serve the petition copy and the Respondent to file the counter affidavit. The Council adjourned the case to the next hearing. Accordingly, the petition copy was served to the Respondent through mail.

8. In the Council meeting held on 06.11.2020 through Video Conference, the Petitioner was present and represented by Thiru. B.Ramachandran and the Respondent was present and represented by Ms. Smirithi, Advocate. The Council directed the Respondent to



W.P. No. 17358 of 2021

file the Counter-Affidavit and also directed the Respondent to file a rejoinder and adjourned the case to the next hearing.

9. *In the Council meeting held on 07.12.2020 through Video Conference, the Petitioner was present and represented by Thiru. B.Ramachandran and the Respondent was present and represented by Ms. Smirithi, Advocate. The Council directed the Respondent to file the Counter-Affidavit within 3 days and adjourned the case to 17 December 2020 hearing.*

10. *In the Council meeting held on 17.12.2020 through Video Conference, the Petitioner was present and represented by Thiru. B.Ramachandran and the Respondent was absent. The Council directed the Petitioner to file the rejoinder and adjourned the case to the next hearing.*

The Petitioner had submitted their copy of rejoinder along with evidence documents (3 exhibits) and copy of the counter statement filed by the Respondent by e-mail on 03.01.2021.

The Counter statement of the Respondent in original was filed to the Council office on 04.01.2021.

11. *In the Council meeting held on 29.01.2021 through Video Conference, the Petitioner was present and represented by Thiru.*



W.P. No. 17358 of 2021

WEB COPY

B.Ramachandran and the Respondent was present and represented by Ms. Smrithi. Based on the arguments and exhibits furnished in the previous hearings and on a detailed and critical examination of the claims made by the Petitioner along with available material son record and on merits of the case, the Council decided that the Respondent is liable to pay the Principal amount of Rs. 4,94,103/- 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 in detail.”

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.

5. In such circumstances, the impugned order dated 29.01.2021 in Case No. MSEFC/CR/136/2019 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



W.P. No. 17358 of 2021

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 (Judicial) of the Court.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

30.10.2023

Maya

NCS : Yes/No

Index: Yes/No

Note: Issue order copy by 08.01.2024.



W.P. No. 17358 of 2021

To

WEB COPY

1. The Chairperson
Micro Small Enterprises Facilitation Council
Industries Commissioner and Director
of Industries and Commerce
Guindy, Chennai – 600 032.

2. M/s.Swastik Associates
“Swastick Enclave”
Plot No.5, Pleasant Avenue
Sakthi Nagar, Porur
Chennai – 600041.

Copy to

1. The Registrar (Judicial),
Madras High Court,
Chennai – 600 104.
2. Rajesh.B,
Partner, M/s. Rama Enterprises,
Old No.146, New No. 196
East Coast Road, Injambakkam,
Chennai – 600041.



WEB COPY



W.P. No. 17358 of 2021

P.D. AUDIKESAVALU, J.

Maya

W.P. No. 17358 of 2021

30.10.2023