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W.P. No. 23871 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM

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

W.P. No. 23871 of 2018

and

W.M.P. No. 27826 of 2018

M/s. Suraj Precision Engineering Works Pvt. Ltd.,
Flat No. 3-A/26/13, 3rd Floor,
AUM Apartments,
No. 26, Kothari Road,
Nungambakkam,
Chennai – 600 034.

... Petitioner

-VS-

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

2. M/s. Sali Engineers,
No. 13, Raghavendra Street,
Ambattur Industrial Estate,
Chennai – 600 058.

... 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 of the First Respondent pertaining to order dated 09.05.2018 made in proceeding O.P. No. MSEFC/CR/49/2017 and quash the same and to direct the First Respondent to refer the claim dated 11.05.2017 of the claimant to



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arbitration in accordance with the provisions of Section 18(3) of MSMED Act, 2006.

For Petitioner : Mr. K.Kannan

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

Mr. Ramesh Umapathy (for R2)

ORDER

Heard Mr.K.Kannan, Learned Counsel appearing for the Petitioner, Mr. S.Yashwath, Learned Counsel for the First Respondent and Mr. Ramesh Umapathy, 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 O.P. No. MSEFC/CR/49/2017 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. 7,57,689/- from the Petitioner towards remaining amount due for goods supplied with interest calculated in terms of that Act, in which an order dated 09.05.2018 was passed holding that the Petitioner was liable to pay the principal sum of Rs. 5,56,452/- together with compounded interest with monthly rests at three



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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 it in this case.



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4. In this context, it would be necessary to refer to paras 3 to 7 of the impugned order, which is extracted below:-

“3. In the Council meeting held on 10.10.2017, the Petitioner was present and represented by Thiru. D.Veerappan and the Respondent was present and represented by Ms. S.Suganya, Counsel. The Council directed the Respondent to settle the amount due to the Petitioner before 25th of October and to file a memo of settlement to the Council and adjourned the case to the next hearing.

4. In the Council meeting held on 20.12.2017, the Petitioner was present and represented by Thiru. D.Veerappan and the Respondent was present and represented by Thiru R.Ravichandran. The Council instructed the Respondent to file a counter by 27.12.2017. The Council adjourned the case to the next hearing.

5. In the Council meeting held on 30.01.2018, the Petitioner was present and represented by Thiru D.Veerappan, Proprietor and the Respondent was present and represented by Thiru. R.Ravichandran, Counsel. The Respondent had filed a Counter-Affidavit. The Council instructed the Petitioner to file a rejoinder with proof of payment made earlier and adjourned the case to the next hearing.

6. In the Council meeting held on 08.03.2018, the Petitioner was present and represented by Thiru. D.Veerappan, Proprietor and the Respondent was present and represented by Thiru. R.Ravichandran, Counsel. The Council instructed the Respondent to file a response to the rejoinder of the Petitioner and adjourned the case to the next



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hearing.

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7. *In the Council meeting held on 09.05.2018, the Petitioner was present and represented by Thiru. D. Veerappan, Proprietor and the Respondent was present and represented by Thiru. R.Ravichandran, Counsel. The Respondent's contention was that as the 2 seals pertaining to gate entry and stores were not found affixed on the invoices, the delivery of the material was not proved. The Petitioner produced proof to indicate that on earlier instances, invoices which contained only one seal had also been given payment. Besides, the Petitioner also contented that in as much as the TDS payments for the captioned transactions had been made out by the Respondent, it is a clear establishment of the pending liability on the part of the Respondent. Taking cognizance of the above and based on the merits of the case, the Council accepted the contention of the Petitioner and directed the Respondent to pay the principal amount along with the interest in accordance with Section 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 09.05.2018 in O.P. No. MSEFC/CR/49/2017 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 (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

Maya

Index: Yes/No

Note: Issue order copy by 08.01.2024.

To

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

2. M/s. Sali Engineers,
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Nungambakkam,
Chennai – 600 034.

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



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P.D. AUDIKESAVALU, J.

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