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W.P.No.21703 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.21703 of 2023

and

W.M.P.No.21074 of 2023

M/s.Utility Powertech Limited,
Rep.by Mr.Ganta Himakara Rao,
Vellivoyal Chavadi, Ponneri Taluk,
Tiruvallur District,
Chennai-600 103.

...Petitioner

Vs.

1.The Micro Small Enterprises Facilitation Council,
Chennai Region,
Rep. by its Chairperson,
Guindy, Chennai-600 032.

2.M/s.Shree Shara Enterprises,
Flat No.1/46, E.Tamilarasu,
Malima Nagar, Vilangadupakkam,
Perumal Koil Street, Ground Floor,
Chennai-600 052.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for
issuance of a Writ of Certiorari, calling for the records pertaining to the



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Impugned Order dated 28.12.2022 in MSEFC/CR/112/2022, Online Application No.TN 020079779/M/00002 passed by the first respondent herein and to quash the same.

For Petitioner : Mr.B.Deepak Narayanan

For Respondents : Mr.R.U.Dinesh Rajkumar for R1
Additional Government Pleader

: Mr.K.Nishanth for R2
(No appearance)

ORDER

This Writ Petition is filed challenging the order passed by the first respondent allowing the claim made by the second respondent and thereby directing the petitioner to pay a sum of Rs.8,72,213/- together with interest till the realization of the liability.

2. According to the petitioner, the second respondent approached the first respondent by filing a petition against the petitioner for recovery of amount. It was claimed by the second respondent that it is engaged in the business of manufacturing Pharmaceutical Formulations. It was also claimed



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by the second respondent that a sum of Rs.9,05,430/- was due to the second respondent from the petitioner together with interest.

3. Though the contesting second respondent was served and his name is appeared in the list, there was no representation for the second respondent.

4. The learned counsel for the petitioner assailed the impugned order passed by the 1st respondent on the ground that the 1st respondent failed to follow the step by step procedure contemplated under Section 18 of MSMED Act, 2006 and therefore, the same is liable to be set aside. It is the specific case of the petitioner that 1st respondent has not attempted conciliation and terminated the same in the manner known to law and therefore, without fulfilling the step under Section 18(2) of MSMED Act, 2006, the 1st respondent ought not to have proceeded under Section 18(3) of MSMED Act, 2006 and passed the impugned order.

5. Section 18 of Micro, Small and Medium Enterprises Development Act, 2006 which reads as follows:-



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“Section 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 located anywhere in India.



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

6. A reading of the above said provision would make it clear that on receipt of a reference under Section 18(1), the 1st respondent is expected to conduct conciliation proceedings and if the conciliation is not successful, the same shall be terminated. Thereafter, the 1st respondent council can either take up the arbitration itself or refer the matter to any other institution or centre for arbitration proceedings. Once the matter is referred to arbitration then the provision of Arbitration Act is applicable.

7. 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



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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



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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”.

8. Therefore, if the conciliation proceedings is not successful, the 1st respondent Council is expected to record the failure of the conciliation proceedings and initiate an adjudicatory process by way of arbitration. It has been expressly held that it is obligatory on the part of the 1st respondent Council to inform the parties about the change of its face from that of the conciliator to 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.



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9. A perusal of the impugned order passed by the 1st respondent

would suggest that the 1st respondent failed to issue an express notice to the parties intimating commencement of arbitration proceedings after failure of conciliation. There is nothing available on record to say after commencement of arbitral proceedings, a claim statement was made by the 2nd respondent and petitioner was given an opportunity to file a counter as per the provisions of Arbitration Act. Therefore, the 1st respondent failed to follow the step by step procedure contemplated under Section 18 of MSMED Act, 2006 and also provisions of Arbitration Act. Consequently, the order impugned in this writ petition cannot be treated as an award passed under Arbitration Act.

10. Once this Court comes to a conclusion that the order impugned is not an award within the meaning of Arbitration Act, there is no possibility for the petitioner to file an application to set aside the award under Section 34 of Arbitration Act.

11. In view of the discussions made earlier, the impugned order is set aside since the 1st respondent failed to follow the step by step procedure under Section 18 of MSMED Act, 2006 and the matter is remanded back to the



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file of the 1st respondent with direction to follow procedure contemplated under Section 18 of the MSMED Act, 2006.

12. The counsel for the petitioner submitted that there is no possibility of conciliation in the matter. Therefore, the conciliation process is deemed to be terminated and the 1st respondent is directed to initiate arbitration proceedings as per Section 18(3) of MSMED Act, 2006. The arbitration proceedings shall be finished within a time limit prescribed under Section 18(5) of the MSMED Act, 2006.

13. It is also made clear that the member of the 1st respondent Council, who attempted conciliation earlier shall not act as an arbitrator in view of bar under Section 80(a) of Arbitration and Conciliation Act, 1996. It is open to the 1st respondent to take up arbitration itself or send it to any other institution or centre offering alternative dispute resolution services.

14. With the above observations, this writ petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index : Yes/No



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Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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S.SOUNTHAR, J.

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To

The Micro Small Enterprises Facilitation Council,
Chennai Region,
Rep. by its Chairperson,
Guindy, Chennai-600 032.

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and

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