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W.P.No.22059 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.08.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.22059 of 2023 and

W.M.P.No.21441 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, to call for the records pertaining to the Impugned Order dated 28.12.2022 in MSEFC/CR/111/2022, Online



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Application No.TN 020079779/M/00001 passed by the first respondent herein and to quash the same.

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For Petitioner	:Mr.B.Deepak Narayanan
For Respondent 1	: Mrs.S.Anitha Special Government Pleader
For Respondent 2	: Mr.R.Hashwanth

ORDER

The petitioner herein filed this writ petition challenging the order passed by the 1st respondent directing the petitioner to pay a sum of Rs.16,85,258/- together with compound interest at three times the bank rate notified by RBI.

2. The 2nd respondent herein approached the 1st respondent by filing an application under Section 18(1) of Micro, Small and Medium Enterprises Development Act hereinafter referred as MSMED Act, 2006 against the petitioner for recovery of Rs.16,85,258/- (Rupees Sixteen Lakhs Eighty Five Thousand Two hundred and Fifty Eight only) together with interest. The 2nd respondent is engaged in the business of manufacturing Pharmaceutical formulations. It was the specific case of the 2nd respondent that above said sum payable to it was not received from the petitioner.



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3. 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.

4. The learned counsel for the 2nd respondent submitted that the 1st respondent initially attempted the conciliation between the petitioner and the 2nd respondent. When there was no consensus between the parties, the conciliation was terminated and the arbitration proceedings were initiated. After giving sufficient opportunity to both the parties, the award was passed by the 1st respondent. Therefore, the petitioner is not entitled to move the writ petition without filing an appeal under Section 34 of Arbitration Act. On these



grounds, the learned counsel for the 2nd respondent sought for dismissal of the writ petition.

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

“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



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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.

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

5. 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.



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6. 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



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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



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cannot be termed as an award and hence liable to be set aside”.

7. 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.

8. A perusal of the impugned order passed by the 1st respondent would suggest 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.

9. 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. In such circumstances, the contention raised by the 2nd respondent that petitioner has got alternative remedy of invoking Section 34 of Arbitration Act is not appealable to this Court.

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

11. Both the counsel for the petitioner and the 2nd respondent agrees that



there is no possibility of conciliation in the matter. The said statement is recorded. 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.

12. This direction is issued to the 1st respondent in view of the consensus arrived between the learned counsel for the petitioner and the 2nd respondent that there will be no purpose in exploring the conciliation proceedings again. Therefore, this Court treat the statement made by the learned counsel for the petitioner and the 2nd respondent as failure of the conciliation and direct the 1st respondent to proceed with arbitration proceedings in accordance with law.

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.



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14. With the above observations, this writ petition is disposed of.

Consequently, connected miscellaneous petition is closed. No costs.

10.08.2023

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
nr

To

The Chairperson,
Micro Small Enterprises Facilitation Council,
Guindy, Chennai-602 032.

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S.SOUNTHAR, J.

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