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W.P.No.21257 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 19.09.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**W.P.No.21257 of 2023**  
**and W.M.P.No.20669 of 2023**

M/s.Modern Tooling Solution,  
Rep. by its Partner Mr.C.Venkatesan,  
Having Office at Plot No.DP 282, 6<sup>th</sup> Main Road,  
SIDCO Industrial Estate,  
Thirumudivakkam, Chennai – 44,  
Kanchipuram, Tamil Nadu.

... Petitioner

VS.

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

2.M/s.Uni Modern Tooling Solution Chennai Private Limited,  
Plot No.DP 69C,  
1<sup>st</sup> Main Road,  
SIDCO Industrial Estate,  
Thirumudivakkam, Chennai.

... Respondents

**PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order of the 1<sup>st</sup> respondent in MSEFC/CR/222/2022, dated 23.03.2023 and quash the same.



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For Petitioner : Mr.E.Kotteeswaran  
For R1 : Mr.R.U.Dinesh Rajkumar  
Additional Government Pleader  
For R2 : Mr.R.Prasadh

### **ORDER**

The writ petition is filed challenging the order passed by the 1<sup>st</sup> respondent-Micro and Small Enterprises Facilitation Council directing the petitioner herein to pay the balance principal amount of Rs.35,52,700/- (Rupees Thirty Five Lakh Fifty Two Thousand and Seven Hundred only) along with compound interest with monthly rests, at three times the bank rate.

2. The 2<sup>nd</sup> respondent herein is engaged in the business of manufacturing of mould and plastic components and they filed a claim petition under Section 18(1) of Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'MSMED Act, 2006') against the petitioner herein for recovery of Rs.50,52,700/- (Rupees Fifty



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Lakhs Fifty Two Thousand and Seven Hundred only) together with interest.

It is the specific case of the 2<sup>nd</sup> respondent that above said sum was due from the petitioner. The 1<sup>st</sup> respondent-Micro and Small Enterprises Facilitation Council by the impugned order held that the 2<sup>nd</sup> respondent is entitled to Rs.35,52,700/- with component interest. Aggrieved by the same, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner assailed the impugned order mainly on the ground that the 1<sup>st</sup> respondent failed to follow the step by step procedure contemplated under Section 18 of MSMED Act, 2006. The learned counsel elaborated it by saying that after recording the failure of the conciliation proceedings, the 1<sup>st</sup> respondent proceeded to hear the arguments of the parties and passed the impugned order, without following the procedure under Arbitration Act. Therefore, the impugned order is liable to be set aside.

4. The learned counsel appearing for the 2<sup>nd</sup> respondent submitted that the 1<sup>st</sup> respondent, after considering rival claims based on material available on record passed impugned order directing petitioner to pay above



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mentioned amount. Therefore, even assuming that there is any infirmity in the proceedings passed by the 1<sup>st</sup> respondent, the petitioner is not entitled to challenge the same by way of writ petition.

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



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6. Section 18 of Micro, Small and Medium Enterprises

Development Act, 2006 reads as follows:-

***“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*



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*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.”*

7. A reading of the above said provision would make it clear that as soon as the 1<sup>st</sup> respondent received a claim petition under Section 18 (1) of MSMED Act, 2006, after issuing notice to the parties, the 1<sup>st</sup> respondent should attempt conciliation proceedings. In case, there is a failure of conciliation proceedings, the same shall be terminated. After terminating the conciliation proceedings, the 1<sup>st</sup> respondent should go for



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arbitration proceedings as per the provisions of the Arbitration Act. This Court in the above mentioned case law held that after recording the termination of the conciliation proceedings, there shall be an express notice to the parties regarding initiation of adjudicatory process.

8. In the case on hand, there is nothing available on record to suggest that after termination of conciliation proceedings, the parties were issued with express notice for initiation of arbitration proceedings. Likewise, there is no material available on record to suggest that the parties were granted an opportunity to file their pleadings by following the procedure contemplated under Arbitration Act. As per impugned order failure of conciliation was recorded on 06.03.2023 and matter was adjourned for conducting Arbitration Proceedings. On the next hearing namely 23.03.2023, impugned order came to be passed. Hence, it is clear the parties never allowed to file their pleadings and lead evidence as per provision of Arbitration Act. Hence, impugned award cannot be treated as an award within the meaning of Arbitration Act.



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9. Based on the claim petition filed by the 2<sup>nd</sup> respondent, prior to conciliation proceedings, the impugned order came to be passed without following the procedure contemplated under the Arbitration Act. In such circumstances, the impugned order cannot be treated as an award passed under the provisions of Arbitration Act.

10. When it is held that the impugned order cannot be treated as an award under the Arbitration Act, the petitioner cannot challenge it as per the provisions of Section 34 of the Arbitration Act. In these circumstances, the writ petition is clearly maintainable before this Court for the reasons stated above and the impugned order is liable to be set aside.

11. Now, it is clear from the submission made by the learned counsel appearing for the petitioner and 2<sup>nd</sup> respondent, there is no possibility for conciliation. Therefore, the impugned order is set aside and the matter is remanded back to the 1<sup>st</sup> respondent for initiation of arbitration proceedings. The 1<sup>st</sup> respondent can either take up the arbitration proceedings itself or send it to any other institution or centre offering alternative dispute resolution services. The arbitration proceedings shall be completed within a



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period of ninety (90) days from the date of making such a reference as per

Section 18(5) of MSMED Act, 2006.

12. With the above direction, the writ petition stands allowed.

No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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To

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Micro Small Enterprises Facilitation Chennai/  
Industries Commissioner and Director of Industries  
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**S.SOUNTHAR, J.**

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