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W.P. No. 25665 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

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

W.P. No. 25665 of 2022

and

W.M.P. No. 24682 of 2022

M/s. IVC Labs & Environmental Services
Rep. By its Sole Proprietor Dr.P.Vetriselvan
IVC House, No.1048, Burmal Colony
II Street, Perungudi
Chennai-600 096.

... Petitioner

-VS-

1. MSEFC-Chennai Regional Joint
Director of Industries and Commerce
Thiru-Vi.Ka Industrial Estate
Guindy, Chennai – 600 032.

2. M/s. Chempure Technologies Pvt. Ltd.
Registered Office : Sarvam House
Plot Nos. 84 & 89, Door No. 63
Rajagopalapuram 5th Street
Mowlivakkam, Chennai – 600 125.

... 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's order dated 27.05.2022 made in Application No.TN/08A0060584/M/0003 and quash the same as null and void consequently direct the First Respondent refer the claim of the Second Respondent made in



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Online Application No. TN08A0060584/M/0003 to alternate dispute resolution by Arbitration in terms S.18 of the Micro Small and Medium Enterprises Developments Act, 2006.

For Petitioner : Mr. A.Arumugam

For Respondents : Mr. S.Yashwanth, AGP (R1)

R2-No appearance

ORDER

Heard Mr. A.Arumugam, Learned Counsel for the Petitioner, Mr. S.Yashwanth, Learned Additional Government Pleader appearing for the First 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/32/2021 before the First Respondent under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'the MSMED Act' for short), claiming payment of Rs. 1,97,250/- from the Petitioner towards remaining amount due for goods supplied with interest calculated in terms of that Act, in which an order dated 27.05.2022 was passed holding that the Petitioner was liable to pay the



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principal sum of Rs. 1,97,250/- 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 assailed in this Writ Petition.

3. In response to the query raised by the Court 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



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impugned order in this case.

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4. In this context, it would be necessary to refer to paras 3 to 5 of the impugned order, which is extracted below:-

“3. In the Council meeting held on 31.08.2021 through Video Conference, the Petitioner and the Respondent were absent. The Council decided to give one more opportunity to both the parties and adjourned the case to the next hearing.

4. In the Council meeting held on 07.01.2022 through Video Conference, the Respondent submitted that 90% of the payment is made and 10% is deducted towards non completion of erection and commissioning as well as deficiency in work. The Petitioner stated that commissioning is completed and has report of the same. The Council instructed the Petitioner to submit the copy of the same and the Respondent to file counter. The case was adjourned to the next hearing.

5. In the Council meeting held on 27.05.2022 through



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Video Conference, only the Petitioner was present and represented by Mr.Rajasekar, Director. The Petitioner informed that as instructed in the previous hearing they have submitted commissioning report dated 20.12.2016. However, the same has not been received by the Council. The Council instructed the Petitioner to resend the documents upon receipt of which orders will be passed on merits. The documents sent by the Petitioner have been received by the Council.

6. *The Council has gone through the invoices and other documents. The invoice details are as below:*

Invoice No.	Invoice Date	Bill Amount (Rs.)	Balance due (Rs.)
CTPL/PD/2015-16/189	30.09.2015	8,17,215/-	-
CTPL/PD/2015-16/210	20.10.2015	1,76,190/-	-
CTPL/PD/2015-16/223	31.10.2015	5,97,450/-	-
CTPL/PD/2015-16/235	13.11.2015	4,10,445/-	1,300/-
CTPL/PD/2016-17/194	15.09.2016	1,03,950/-	1,03,950/-
CTPL/E&C/2016-17/478	22.03.2017	57,500/-	57,500/-
CTPL/E&C/2016-17/480	22.03.2017	34,500/-	34,500/-
Total Balance amount due			Rs. 1,97,250/-

The email correspondences between the parties and also from



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the Respondent's client (M/s. L&T Valves Ltd.) establish that commissioning has been done and the plant has been handed over by the Petitioner. Correspondences further show that the Petitioner has attended RO recovery issue upon request from the Respondent subsequently and a report has been sent to the Respondent in this regard. Based on a detailed and critical examination of the claims made by the Petitioner along with available materials on record and on merits of the case, the Council has come to the considered conclusion that the Respondent is liable to pay to the Petitioner the principal amount of Rs. 1,97,250/- 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."

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 in Case No. MSEFC/CR/32/2021 passed by the First Respondent is set aside and the claim made by the Second Respondent is restored to 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 then to take up the matter, 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 shall be 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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Consequently, the connected Miscellaneous Petition is closed. No costs.

30.10.2023

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NCS: Yes/No

Index: Yes/No

Note: Issue order copy by 08.01.2024.

To

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Copy to

1. The Registrar (Judicial),
Madras High Court,
Chennai – 600 104.
2. P.Vetriselvan,
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P.D. AUDIKESAVALU, J.

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