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W.P. No. 34141 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM

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

W.P. No. 34141 of 2019

M/s. Uma Enterprises,
rep. by its Proprietor,
Uma Ashokkumar
No. 60, Kasturi Rangan Road,
Alwarpet,
Chennai – 600018.

... Petitioner

-VS-

1. Micro Small Enterprises Facilitation Council and
Director of Industries and Commerce,
Represented by its Chairman,
Sidco Corporate Building,
Guindy,
Chennai – 600032.

2. The Chief Engineer,
Materials Management,
Tamil Nadu Generation and Distribution Corporation Limited,
144 (Old 8000-4th Floor, Anna Salai,
Chennai – 600002.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the First Respondent culminating in the order in O.P. No. MSEFC/CR/83/2018 dated 20.11.2018 quash the same and direct the First Respondent to refer the claim of the Petitioner dated 23.03.2018 to arbitration in accordance with the provisions of Section 18 (3) of the MSMED Act.



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W.P. No. 34141 of 2019

For Petitioner : Mr. Y.Ramanaiah
For Respondents : Mr. S.Yashwanth,
Additional Government Pleader (for R1)
Mr. D.R. Arun Kumar (for R2)

ORDER

Heard Mr. Y.Ramanaiah, Learned Counsel for the Petitioner, Mr. S.Yashwanth, Learned Additional Government Pleader appearing for the First Respondent and Mr. D.R.Arun Kumar, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner had made a claim in Case No. MSEFC/CR/83/2018 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. 15,60,889/- from the Second Respondent towards interest remaining due for the goods supplied calculated in terms of that Act, in which an order dated 20.11.2018 was passed dismissing the claim as barred by limitation, which is challenged in this Writ Petition.



W.P. No. 34141 of 2019

WEB COPY

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 the impugned order in this case.

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



W.P. No. 34141 of 2019

WEB COPY

“3. In the Council meeting held on 11.07.2018, the Petitioner was present and represented by Thiru. Sampathkumar and the Respondent was present and represented by Thiru. M.T.Santhosh Kumar, AEE/MM/TANGEDCO. The Council directed the Petitioner to give a statement along with the evidence for the delay in payment and adjourned the case to the next hearing.

4. In the Council meeting held on 10.08.2018, the Petitioner was present and represented by Thiru. Sampathkumar and the Respondent was present and represented by Thiru. S.R.Shanmugadass, Advocate. The Council directed the Respondent to file a counter affidavit by 25.08.2018 and adjourned the case to the next hearing.

5. In the Council meeting held on 14.09.2018, the Petitioner was present and represented by Thiru. Sampathkumar and the Respondent was present and represented by Thiru. M.T.Santhosh Kumar. As the Respondent had requested for an adjournment due to the absence of his Counsel, the case was adjourned to the next hearing.



W.P. No. 34141 of 2019

WEB COPY

6. *In the Council meeting held on 23.10.2018, the Petitioner was present and represented by Thiru. Sampathkumar and the Respondent was present and represented by Thiru. M.T.Santhosh Kumar. The Respondent had filed counter affidavit and the Council directed the Petitioner to file a rejoinder and adjourned the case to the next hearing.*

7. *In the Council meeting held on 20.11.2018, the Petitioner was present and represented by Thiru. Sampathkumar and the Respondent was present and represented by Thiru. M.T.Santhosh Kumar. As the Respondent submitted that the petition was barred by limitation and since the Petitioner also had accepted the contention of the Respondent, the council decided to dismiss the case.”*

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.



W.P. No. 34141 of 2019

WEB COPY

5. Learned Counsel for the Petitioner placing reliance on the decision of the Hon'ble Supreme Court of India in ***Tamil Nadu Generation and Distribution Corporation Limited -vs- PPN Power Generating Company Private Limited*** [(2014) 11 SCC 53] asserts that by virtue of Section 2(4) of the A & C Act, the provision for limitation under Section 43 of that Act would not be applicable to statutory arbitrations conducted under the Electricity Act, 2003, akin to Section 18 of the MSMED Act. Alternatively, it is contended that the First Respondent has erroneously arrived at the conclusion that the claim for interest is barred by limitation without any discussion making reference to the facts of the case on hand. In particular, it is highlighted that while reckoning limitation, the dates of payment of the principal amounts under the various bills and the contemporaneous acknowledgments of liability made in the letters exchanged between the parties, which would extend time, have not been taken into account. Though it is mentioned in the impugned order that the Petitioner has accepted before the First Respondent that the claim is barred by limitation, it is not possible to uphold it without disclosure of its source and supporting materials. In other words, the question relating to limitation requires to be properly considered afresh by the First Respondent and whatever decision is arrived on that aspect has to be supported by reasons.



W.P. No. 34141 of 2019

WEB COPY

6. In such circumstances, the impugned order dated 20.11.2018 in Case No. MSEFC/CR/83/2018 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 19.06.2024 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.



W.P. No. 34141 of 2019

In the result, the Writ Petition is disposed on the aforesaid terms. No

costs.

30.10.2023

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Index: Yes/No

Note: Issue order copy by 31.05.2024.

To

1. The Chairman,
Micro Small Enterprises Facilitation Council and
Director of Industries and Commerce,
Sidco Corporate Building,
Guindy,
Chennai – 600032.
2. The Chief Engineer,
Materials Management,
Tamil Nadu Generation and Distribution Corporation Limited,
144 (Old 8000-4th Floor, Anna Salai,
Chennai – 600002.

Copy to

The Registrar (Judicial),
Madras High Court,
Chennai – 600104.



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W.P. No. 34141 of 2019

P.D. AUDIKESAVALU, J.

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W.P. No. 34141 of 2019

30.10.2023

1/2