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W.P.No.34699 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.34669 of 2022

&

W.M.P.No.34124 of 2022

WAPCOS Limited
Plot No.990,
50th Street
TVS colony, Collector Nagar
Anna Nagar West Extension
Chennai-600 101

... Petitioner

Vs.

1.The Chairperson
MSE Facilitation Council
Director of Industries and Commerce
Guindy, Chennai-600 032

2.M/s. Nisvo Marine Surveys
Plot No.18, Meadow Vilas
Phase-II, CTO colony 3rd street,
Extension, West Tambaram
Chennai-600 045

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the impugned order of the 1st respondent dated 11.08.2022 and consequently quash the same.

For Petitioner : Mr.C.Santhosh Kumar



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For Respondent : Mr.Karthik Jeganathan,
Govt. Advocate for R1

ORDER

Writ petition is filed seeking to issue a Writ of Certiorari calling for the records of the impugned order of the 1st respondent dated 11.08.2022 and consequently quash the same.

2. The main contention raised in the Writ Petition is that the mandatory position contained in the Sec.18 of the Micro, Small and Medium Enterprises Development) Act, 2006(in short 'Act') is not been followed. Therefore, seeks to set aside the award.

3. On perusal of the entire award, this Court is of the view that the contention of the petitioner cannot be countenanced for the simple reason that several opportunities were given to the parties and conciliation proceedings also conducted after conciliation is failed, the Arbitration proceedings have resorted by the counsel itself. Sec.18 of the Act reads as follows:

***18. Reference to Micro and Small Enterprises
Facilitation Council.—***



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(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 to it 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.

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

4. Sub clause 18 (3) of the Act makes it very clear that when the conciliation is failed, the counsel shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration. In this case, the counsel itself decided the issue after the conciliation is failed. Therefore, it cannot be said that there is no procedure followed. In such view of the matter, this Court is of the view that when the proceedings is culminated into award, the same can be challenged in the manner known to law by filing application U/s. 34 of the Arbitration and Conciliation Act.

4. In such view of the matter, Writ Petition is dismissed, with liberty



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to the petitioner to file appropriate application to set aside the award in the

manner known to law. No costs. Consequently, connected Writ

miscellaneous petition is closed.

02.01.2023

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Internet: Yes

Index: Yes/No

Neutral citation: Yes/No

To

1. The Chairperson

MSE Facilitation Council

Director of Industries and Commerce

Guindy, Chennai-600 032



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N. SATHISH KUMAR, J.

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