



W.P. (MD) No. 18113 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2023

CORAM

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

W.P. (MD) No. 18113 of 2022
and
W.M.P. (MD) No.13214 of 2022

M/s.Subam Papers Private Ltd.,
Through its Managing Director,
No.143-146, Vaduganpatti Village,
Nadukallur to Vettuvankulan Road,
Manur Block, Tirunelveli District.

... Petitioner

Vs.

1.The Chariperson,
MSE Facilitation Council
Industries Commissioner and Director of Industries and Commerce,
Guindu, Chennai-600032.

2.M/s.Jayam Paper Chemicals,
No.66, Bazaar Street,
Velayuthapuram Palayam,
Karur-07.

... Respondents

[R1 -Cause title was suo motu amended vide Court order dated 20.02.2023]



W.P. (MD) No. 18113 of 2022

WEB COPY

PRAYER: Petition filed under Article 226 of the Constitution of India, for issue of Writ of Certiorarified Mandamus, calling for the records, pertaining to the MSEFC/CBER/86/2021, dated 20.01.2022, impugned order, passed by the first respondent and quash the same as void and illegal and thereby direct the first respondent to make an enquiry afresh, by invoking Section 18 and 19 of the Micor, Small and Medium Enterprises Development Act-2006, by referring this matter to the institution or centre providing Alternate Dispute Resolution Service or under the provision of Section 65 to 81 of hte Arbitration and Conciliation Act, 1996 (26 of 1996) by following C.P.C., Cr.P.C., Evidence Act etc, in the light of the investigation made by the District Crime Branch Tirunelveli, along with material evidences available.

For Petitioner	: Mr. F.X.Eugene
For R1	: Mr. D.Gandhiraj Special Government Pleader
For R2	: Mr.B.Charmurugan

ORDER

Heard Mr. F.X.Eugene, Learned Counsel appearing for the Petitioner, Mr. D.Gandhiraj, Learned Special Government Pleader for the First Respondent and Mr. B.Charmurugan, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.



W.P. (MD) No. 18113 of 2022

WEB COPY

2. The Second Respondent had made a claim in Case No. MSEFC/CBER/86/2021 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. 1,36,39,326/- from the Petitioner towards remaining amount due for goods supplied with interest calculated in terms of that Act, in which an order dated 20.01.2022 was passed holding that the Petitioner was liable to pay the principal sum of Rs. 1,36,39,326/- 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 is assailed in this Writ Petition.

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-*



W.P. (MD) No. 18113 of 2022

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 5 of the impugned order, which is extracted below:-

“3. In the Council meeting held on 18.11.2021 through Video Conference, the Petitioner was present and represented by Thiru Ilavarasu. Managing partner and the Respondent was present. During the hearing, the Respondent requested to submit the statement of past 5 years. The Council directed the Petitioner to submit the same. Hence the Council adjourned the case to the next hearing.

4. In the Council meeting held on 14.12.2021 through Video Conference, the Petitioner was present and represented



W.P. (MD) No. 18113 of 2022

WEB COPY

by Thiru Blavarasu, Managing partner and the Respondent was present and represented by Thiru Bala Gurunathan and Thiru Abdul Majeeth. The Council observed that the Petitioner has not submitted the payment statement to the Respondent as instructed in the previous hearing. Therefore, the Council instructed the Petitioner to send the same to the Council and the Respondent and adjourned the case to the next hearing.

5. In the Council meeting held on 20.01.2022 through Video Conference, the Petitioner was present and represented by Thiru Muthusamy, Legal advisor and the Respondent was present and represented by Thiru P.Balagurunathan, Director. This is the third hearing. The Petitioner submitted that relevant ledger copy had been sent to the Respondent as instructed. During the hearing, the Respondent unscrupulously demanded for statement of all the customers of the Petitioner to compare the rates. The Council observed that the Respondent was resorting to unethical demands to avoid payment. Based on a detailed and critical examination of the claims made by the Petitioner along with available materials on record, the Council decided to issue final orders directing that the Respondent is liable to pay the balance amount of Rs. 1,36,39,326/- to the Petitioner with compound interest with monthly rests, at three times the Bank rate



W.P. (MD) No. 18113 of 2022

WEB COPY notified by the Reserve Bank of India as stipulated in the Sections 15 and 16 of MBMED 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.

5. In such circumstances, the impugned order dated 20.01.2022 in Case No. MSEFC/CBER/86/2021 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 26.07.2023 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 week showing progress of the case, that full opportunity of hearing is afforded to all



W.P. (MD) No. 18113 of 2022

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.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

27.02.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

ta

Note:- Issuer order copy by 23.06.2023.

To

1. The Chariperson,
MSE Facilitation Council,
Industries Commissioner and Director of Industries and Commerce,
Guindu, Chennai-600 032.

7/9



W.P. (MD) No. 18113 of 2022

WEB COPY

2.M/s.Jayam Paper Chemicals,
No.66, Bazaar Street,
Velayuthapuram Palayam,
Karur-07.

Copy to:-

M/s.Subam Papers Private Ltd.,
Through its Managing Director,
No.143-146, Vaduganpatti Village,
Nadukallur to Vettuvankulan Road,
Manur Block, Tirunelveli District.



WEB COPY



W.P. (MD) No. 18113 of 2022

P.D. AUDIKESAVALU, J.

ta

W.P.(MD) No. 18113 of 2022

Dated : 27.02.2023