



WEB COPY



C.M.A No.2480 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A No.2480 of 2024

&

C.M.P.No.19690 of 2024

in

C.M.A.No.2480 of 2024

Chief Engineer/PTPS-1 (Now Chief Engineer/PTPS)
Panipat Thermal Power Station
(A Unit of Haryana Power Generation Corporation Ltd.,)
Assandh Road, Panipet- 132 105 ... Appellant

Vs.

- 1) M/s.Unicon Engineers
No.513-A/6, Bharathi Road
Chinnavedampatty, Coimbatore - 641 049
2. Micro & Small Enterprises Facilitation Council
Coimbatore Region, Coimbatore
through its Chairman ... Respondents

(R2 deleted vide this order)

Civil Miscellaneous Appeal filed under Section 13(1) of the
Commercial Courts, Commercial Division and Commercial Appellate

Page Nos.1/10



C.M.A No.2480 of 2024

Division of the High Courts Act, 2015 read with Section 37 of Arbitration and Conciliation Act, 1996 to set aside the order dated 01.11.2023 passed by the learned Commercial Court, Coimbatore dismissing the application under Section 34 of the Arbitration and Conciliation Act, 1996 in O.P.No.31 of 2023 of objector petitioner and consequently set aside the Arbitral Award dated 17.11.2016 passed by the Micro & Small Enterprises Facilitation Council, Coimbatore Region, Coimbatore in Case No.M & SEFC/CBER/3/2016.

For Appellants : Mr.R.C.Chugh

For R1 : Mr.B.Manoharan

JUDGMENT

[Order of the Court was made by M.SUNDAR, J.,]

Captioned 'Civil Miscellaneous Appeal' ['CMA' for the sake of brevity] is directed against an order dated 01.11.2023 made in Arb.O.P.No.31 of 2023 (CNR No.TNCB22-000165-2023) [Coimbatore P.D.J.Court Old Arb.O.P.No.55 of 2017] on the file of Commercial Court (District Judge Cadre), Coimbatore. This '01.11.2023 order' shall be referred to as 'impugned order' and the Court which made the impugned order shall be referred to as 'said Commercial Court', both for the sake of convenience and clarity.

2. The appellant before us shall be referred to as 'PTPS' denoting 'Panipat Thermal Power Station' and such reference is solely for the sake of

Page Nos.2/10



C.M.A No.2480 of 2024

convenience. Likewise, the first respondent before us shall be referred to as 'UE' denoting 'M/s.Unicon Engineers' and this is also solely for the sake of brevity and convenience.

3. In the hearing today, Mr.Ramesh Chander Chugh, learned counsel for PTPS-appellant is before us.

4. Short facts are that UE is manufacturing what is known as 'Electrostatic Precipitators' [hereinafter 'said products' for the sake of convenience]. UE is not only the manufacturer but it is also into the business of supply, erection and commissioning; that UE had supplied erected and commissioned said products for PTPS and it is the case of UE that PTPS has not made payment; that PTPS made a counter claim under various heads; that the matter went before 'Micro & Small Enterprises Facilitation Council' [hereinafter 'MSME council' for the sake of convenience]; that MSME council entered upon arbitration vide 'The Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006)' [hereinafter 'MSME Act' for the sake of brevity]; that MSME council made an 'award dated 17.11.2016' [hereinafter 'impugned award' for the sake of brevity] in favour of UE; that impugned award was assailed by PTPS in said



C.M.A No.2480 of 2024

Commercial Court vide afore-referred Arb.O.P.No.31 of 2023 which is a petition under Section 34 of A and C Act; that said Commercial Court, after contest dismissed the Arb.O.P; that aggrieved by dismissal of Arb.O.P by said Commercial Court, PTPS is on appeal vide captioned CMA before us.

5. Notwithstanding myriad grounds in the memorandum of grounds of appeal, Mr.R.C.Chugh, learned counsel contended that the counter claim of PTPS has not been dealt with at all by MSME council.

6. Admit.

7. Issue notice to R1 i.e., UE.

8. Mr.B.Manoharan, learned counsel on record, who is before us, having lodged caveat for UE accepted notice for UE.

9. As regards R2, the MSME council, which has been arrayed as R2 as it is the entity which had made the impugned award, by applying ***Vinay Heavy Equipments*** principle [***Zonal. Gen.Manager, Ircon Inter. Natnl. Ltd., vs. Vinay Heavy Equipments*** reported in ***2007 SCC OnLine SC 4*** and ***Zonal General Manager, Ircon International Limited Vs. Vinay Heavy Equipments*** reported in ***(2015) 13 SCC 680***], we delete R2. This means that UE becomes the sole respondent.



C.M.A No.2480 of 2024

10. Considering the narrow scope of the captioned CMA and the short point on which it now turns, both learned counsel agreed to have the main CMA taken up and disposed of.

11. It comes to light that MSME council has not dealt with the counter claim and therefore, both parties agreed for re-arbitration by an independent arbitrator to be appointed by this Court.

12. Therefore, by consent of both sides, the following order is made:

i) Impugned order dated 01.11.2023 made by said Commercial Court, Coimbatore in Arb.O.P.No.31 of 2023 and impugned award dated 17.11.2016 made in Case No.M&SEFC/CBER/3/2016 made by MSME council are set aside. The impugned order of said Commercial Court and impugned award of MSME Council are set aside solely for the purpose of facilitating re-arbitration and this means that this 'Commercial Appellate Division' ['CAD' for the sake of brevity] has not expressed any view or opinion on the merits of the matter;

ii) The sequitur is, all questions, all rights and



C.M.A No.2480 of 2024

WEB COPY

contentions of both sides are left open to be raised before the 'Arbitral Tribunal' ['AT' for the sake of brevity] i.e., learned Arbitrator to be appointed infra by this Court;

iii) Before we appoint the independent Arbitrator, we make it clear that the parties have agreed for re-arbitration by an independent Arbitrator *de hors* the statutory scheme under MSME Act but this will not preclude UE from claiming that it is an MSME and it is entitled to interest as per MSME Act but this will be subject to UE establishing before independent Arbitrator that it is an MSME;

iv) Mr.T.Mohan, learned Senior Advocate, having office at Flat No.2, People Glade Apartments, 64 Beach Road, Kalashetra Colony, Besant Nagar, Chennai 600 090 (Mob:8056100357) is appointed as the sole Arbitrator;

v) Learned Arbitrator is requested to enter upon reference, adjudicate all arbitrable disputes between UE and PTPS and render an award as expeditiously as possible;



C.M.A No.2480 of 2024

vi) Both parties shall cooperate and assist the learned

Arbitrator in rendering an award expeditiously;

vii) Learned Arbitrator shall conduct arbitration in accordance with Madras High Court Arbitration Proceedings Rules 2017 and fee of Hon'ble sole Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017;

viii) The fee and expenses of the learned Arbitrator shall be borne in equal moieties by both sides i.e., by UE and PTPS;

ix) To be noted, though obvious as it is a consent order, parties have agreed for arbitration in Chennai, which means 'seat of arbitration' will be 'Chennai';

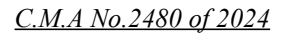


C.M.A No.2480 of 2024

WEB COPY

x) We are informed that PTPS has deposited Rs.6,23,18,634/- [Rupees Six Crores Twenty Three Lakhs, Eighteen Thousand Six Hundred and Thirty Four only] in said Commercial Court and it is lying to the credit of Arb.O.P.No.31 of 2023 in that Court. Let this sum lying to the Credit of Commercial Court be transferred to the credit of arbitration proceedings to ensue, pursuant to this order, let the same be kept in a interest yielding Fixed Deposit, in Madras High Court branch of Indian Bank and original Fixed Deposit receipt shall be handed over the learned Arbitrator. It is open to the learned Arbitrator to pass suitable orders regarding the Fixed Deposit receipt when the award is rendered. In the unlikely event of need arising deposit shall be renewed;

xi) Both learned counsel have made endorsements in the case file agreeing for the aforementioned consent order and scanned reproduction of the same is as follows:



Captioned CMA and CMP are disposed of in the aforesaid manner.

(M.S.,J.) (K.G.T.,J.)
23.09.2024

Index : Yes
Neutral Citation : Yes
gpa



WEB COPY



C.M.A No.2480 of 2024

M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

gpa

C.M.A No.2480 of 2024

23.09.2024