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C.R.P. No. 1914 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2024

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THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P. No. 1914 of 2022

M/s. United Steel Buildings Systems Pvt. Ltd.,
Rep. by its Managing Director
R.Chandra Mohan,
Having office at No. 9A, Big Street,
Kilpauk Garden,
Chennai - 600 010.

... Petitioner / Petitioner

Vs.

KEPL Engineering Pvt. Ltd.,
Door No. 11, West Club Road,
Shenoy Nagar,
Chennai - 600 030.

... Respondent / Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, to set aside the order dated 09.07.2021 on the file of the Micro Small Enterprises Facilitation Council.

For Petitioner : M/s. K.Sukumaran

For Respondent : M/s. V.Aishwarya



ORDER

This Civil Revision Petition has been preferred as against the order dated 09.07.2021 passed by the Micro Small Enterprises Facilitation Council, Chennai, wherein, the petitioner herein has filed an application before the Micro Small Enterprises Facilitation Council, Chennai for recovery of money and the same was dismissed. Against which, the present Civil Revision Petition is filed.

2. The petitioner unit is the manufacturing supply and erection of steel structural materials for industries and the respondent is doing the business of contract work. The respondent as a sub contractor for M/s. Glory International Constructions (P) Ltd., approached the petitioner for fabrication, supply and erection of an industrial building at upcoming KIA Motors project site in Andra Pradesh for DSA an ancillary unit. The respondent entered into a MOM with the petitioner on 20.09.2018 and issued a work order dated 21.09.2018 in KEPL/0102/2018-19 for a sum of Rs. 5,27,69,600/-. The petitioner was allowed to supply only 438.43 metres and balance quantity was supplied by the respondent directly out of material ordered by the petitioner from MKK Metal Sections (P) Ltd., without due cancellation of earlier work order or without notice. The petitioner fabricated, supplied and erected 438.43



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metres of structural material at sight for a total value of Rs. 4,44,91,876/-. The respondent paid a sum of Rs. 4,06,81,120/- against supply and installation invoices and a sum of Rs. 38,10,756/- is due from the respondent. The respondent is liable to pay compensation of Rs. 5,00,000/- for withholding the instruments and also the respondent is liable to pay a sum of Rs. 18,88,000/- against loss due to direct procurement in total a sum of Rs. 61,98,756/- with interest of Rs. 3,87,210/- at the rate of 24%. Therefore, the said claim was made before the Micro Small Enterprises Facilitation Council, Chennai. Without following the procedures contemplated under the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the MSMED Act for short), the Council dismissed the petition. As per Section 18(3) of the MSMED Act, if the conciliation is failed, the Council ought to have send the mater for Arbitration or the Council itself can conduct Arbitration. But, the Council without doing so, simply dismissed the petition. Therefore, the order passed by the Micro Small Enterprises Facilitation Council, Chennai is against law and the same is liable to be set aside.

3. The learned counsel appearing for the petitioner would contend that the petitioner made a reference as per the provisions of the MSMED Act before the Micro Small Enterprises Facilitation Council, Chennai. But the



Council, without referring the matter for Arbitration, after failure of conciliation proceedings, dismissed the petition without following the procedures. Therefore, the order passed by the Council is against law and the same is liable to be set aside.

4. The learned counsel appearing for the respondent also fairly conceded that there is no procedures followed as per the Arbitration and Conciliation Act, 1996, after failure of Conciliation Proceedings. Therefore, both the counsel agreed to remand back the case before the Micro Small Enterprises Facilitation Council, Chennai for fresh adjudication in accordance with law.

5. This Court heard both sides and perused the materials available on record.

6. On perusal of the records, it is seen that the Micro Small Enterprises Facilitation Council, Chennai passed the impugned order dated 09.07.2021 after the failure of Conciliation Proceedings. At this juncture, it is relevant to refer Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006, which is hereunder:-



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

(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 it to 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.”

As per Section 18(3) of the Act, if the Conciliation Proceedings are failed, the authority 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](#) 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.



On careful perusal of the order of the authority, there was no reference about the following of procedures under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006. After failure of Conciliation Proceedings, they straightway passed order without referring for Arbitration. Therefore, without following the procedures, they passed order and the same is against law. Thereby, the order passed by the Micro Small Enterprises Facilitation Council, Chennai is liable to be set aside and the matter has to be remanded back to the Micro Small Enterprises Facilitation Council, Chennai for proceeding the matter in accordance with the provisions of Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006.

7. In view of the aforesaid discussions, this Civil Revision Petition is allowed and the order dated 09.07.2021 passed by the Micro, Small Enterprises Facilitation Council, Chennai is set aside and the matter is remanded back to the Micro, Small Enterprises Facilitation Council, Chennai for proceeding the case in accordance with the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 and the concerned authority is directed to conclude the proceedings within 2 months from the date of receipt of a copy of this order.



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8. With the above said directions, the Civil Revision Petition is allowed. No costs.

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
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To

The Micro Small Enterprises Facilitation Council,
Chennai Region,
Tamil Nadu.



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P.DHANABAL, J.,

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