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W.P.No.9345 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.9345 of 2024 and
WMP.Nos.10366 & 10367 of 2024

M/s.Komos Automotive India Private Limited
Represented by its Director Jongick Lee
No.B-10/1, SIPCOT Industrial Growth Centre,
Oragadam, Vaippar A-Village,
Sriperumbudur Taluk, Kanchipuram District
Petitioner ...

-Vs-

1.The Micro and Small Enterprises Facilitation Council(MSME),
Rep. by its Joint Director,
No.65/1, MSME Bhawan, GST Road,
Chennai Region, Guindy, Chennai 600 032
2.M/s.Sleefex Metal Systems Pvt.Ltd.,
Rep. by its Director J.Ramaswamy
No.118 & 120, SIDCO Industrial Estate,
3rd Street, Thirumazhisai, Chennai 600 124 ... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India
praying for the issuance of a Writ of Certiorari calling for records
pertaining to the impugned order dated 12.05.2023 in
MSEFC/CR/323/2022 passed by the first respondent and quash the same.

For Petitioner : Mr.B.Kumar,
Senior Counsel
for Mr.C.Suraj



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W.P.No.9345 of 2024

For Respondents

For R1 : Mr.V.Manoharan,
Additional Government Pleader

For R2 : Mr.M.Mathan Raj

ORDER

This writ petition has been filed challenging the award passed by the first respondent dated 12.05.2023 thereby ordered to pay a sum of Rs.24,56,702/- along with compound interest with monthly rests.

2. The second respondent filed application under Section 18(1) of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter called as 'MSMED Act, 2006') before the first respondent claiming to have certain outstanding dues from the petitioner. The second respondent allegedly supplied goods to the petitioner and raised 23 invoices between 22.07.2021 to 08.01.2022 to the tune of Rs.24,56,702/-. However, the petitioner refused to pay the said amount for the supplied material as they found quality issues. On receipt of the claim petition, the first respondent issued notice and had meeting through video conference. The first respondent is being the facilitator



W.P.No.9345 of 2024

tried to exploit the possibility of settlement between the parties.

However, the petitioner did not appear for conciliation proceedings held on 12.05.2023 and the petitioner appeared only through video conference. The conciliation failed and the entire conciliation proceedings were closed by the first respondent. Thereafter, the claim of the second respondent was taken up for conducting arbitration proceedings as contemplated under Section 18(3) of MSMED Act, 2006. Thereafter, the second respondent was heard and on perusal of the invoices and other documents produced by the second respondent, award dated 12.05.2023 was passed.

3. The learned Senior Counsel appearing for the petitioner submitted that the award passed by the first respondent is not an award in the eye of law since the first respondent failed to follow the procedure as laid down under Section 18(3) of MSMED Act, 2006. After failure of the conciliation proceedings, the first respondent has to initiate arbitration proceedings. Before initiation of arbitration proceedings, the petitioner must have been served private notice and the procedure to be followed as laid down under the Civil Procedure Code. On receipt of the invoices



W.P.No.9345 of 2024

and other documents, simply the first respondent allowed the claim made by the second respondent. Therefore, the writ petition is very much maintainable for the reason that award passed by the first respondent is non est in the eye of law.

4. The learned counsel appearing for the second respondent would submit that even in the conciliation proceedings, the petitioner never appeared and he appeared only through video conference. In fact, through telegram, information was provided about the arbitration proceedings. Even then, they wantonly failed to appear before the first respondent and allowed the first respondent to pass award. On the basis of the award, now execution proceedings has been filed and also ordered notice to the petitioner. At this stage, the petitioner filed this writ petition and this writ petition itself is not maintainable. The petitioner has to file a petition under Section 34 of the Arbitration and Conciliation Act challenging the award passed by the first respondent. In order to avoid the deposit of 75% of the award amount, in a short cut method, the petitioner approached this Court by way of writ petition under Article 226 of the Constitution of India. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of

M/s.India Glycols Limited & another Vs. Micro and Small Enterprises



W.P.No.9345 of 2024

Facilitation Council, Medchal – Malkajgiri & another reported in **2023**

SCC Online 1852, wherein the Hon'ble Supreme Court of India held that the writ petition filed under Article 226 of the Constitution of India as against the award passed by the facilitation council is not maintainable when there is recourse to the proceedings under Section 34 of the Arbitration and Conciliation Act.

5. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.

6. It is seen that the above appeal was filed arising out of the limitation whereas in the case on hand, the writ petition has been filed on other ground. The impugned award cannot be termed as award passed under Section 18(3) of MSMED Act, 2006 and the same is vitiated by failure to follow the mandatory procedures as contemplated under Section 18(2) and 18(3) of MSMED Act, 2006. When the award itself is not award under Section 18(3) of MSMED Act, 2006, the petitioner can very well maintain this writ petition. It is not necessary to challenge the award under Section 19 of MSMED Act, 2006 r/w Section 34 of



W.P.No.9345 of 2024

Arbitration and Conciliation Act. Therefore, the judgment cited by the second respondent is not applicable to the case on hand.

7. On perusal of the award dated 12.05.2023 revealed that on receipt of claim petition from the second respondent, the first respondent issued notice. On receipt of the same, the petitioner appeared through video conference on various dates and finally appeared for conciliation on 12.05.2023. However, conciliation failed and as such, conciliation proceedings were closed by the first respondent on 12.05.2023. On the said day, the first respondent had taken the proceedings as arbitration proceedings and passed award on the same day i.e. 12.05.2023. Admittedly, the petitioner was not served with any fresh notice while initiating arbitration proceedings. That apart, the second respondent filed only claim petition along with invoices and other documents. The second respondent did not let in any evidence. Therefore, the first respondent failed to follow the procedure as contemplated under Section 18(3) of MSMED Act, 2006. Unless otherwise agreed, oral evidence are to be held. After closing the conciliation proceedings, while commencing arbitration proceedings as contemplated under Section 18(3) of MSMED



W.P.No.9345 of 2024

Act, 2006, the first respondent shall record the failure of conciliation proceedings and initiate an adjudicatory procedure as an arbitrator.

Further, it is obligatory on the part of the first respondent to inform parties about the change of face from that of conciliator to that of an arbitrator, so that the parties will be made to understand that they are participating in the adjudicating process, which will result in a binding order having impact on their rights.

8. On perusal of the award passed by the first respondent, there is nothing available to show regarding, at what point of time, the first respondent council acquired the character of arbitrator from that of conciliator. As stated supra, the conciliation proceedings were closed on 12.05.2023 and on the same day, award was passed by the first respondent. Therefore, award itself is non est in the eye of law and it cannot be sustained.

9. In view of the above, the impugned award is liable to be quashed. Accordingly, the impugned award dated 12.05.2023 in MSEFC/CR/323/2022 passed by the first respondent is quashed. The



W.P.No.9345 of 2024

matter is remanded back to the file of the first respondent and the first respondent is directed to complete the arbitration proceedings by following the provisions and procedures under Section 18(3) of MSMED Act, 2006 and to pass award within a period of twelve weeks from the date of receipt of copy of this order.

10. With the above direction, this writ petition is allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

22.10.2024

Neutral citation: Yes/No
Index : Yes/No
Speaking/Non Speaking order
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W.P.No.9345 of 2024

To

1. Joint Director,
The Micro and Small Enterprises Facilitation Council (MSME),
No.65/1, MSME Bhawan, GST Road,
Chennai Region, Guindy, Chennai 600 032
2. J. Ramaswamy,
Director,
M/s. Sleefex Metal Systems Pvt. Ltd.,
No.118 & 120, SIDCO Industrial Estate,
3rd Street, Thirumazhisai, Chennai 600 124



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W.P.No.9345 of 2024

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W.P.No.9345 of 2024



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W.P.No.9345 of 2024

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