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W.A.No.3336 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.No. 3336 of 2024
and
C.M.P.No.25886 of 2024

Classik Plasto Packagings,
Represented by its Managing Partner,
P.Sujatha
Plot No.B-3, Industrial Estate,
Thattanchavady,
Puducherry – 9.

...Appellant

Vs.

1.The Chairperson,
MSE Facilitation Council,
Tiruchirapalli Region, / Industries Commissioner
And Director of Industries & Commerce,
Guindy, Chennai – 600 032.

2.M/s.Maruthi Polybags Private Limited,
Represented by its Managing Director,
N.Renganathan,
No.10&11C, SIPCOT Industrial Complex,
Pudukottai – 622 002.

...Respondents



Prayer: Writ Appeal filed under Clause 15 of the Letters Patent praying to set aside the the order dated 28.08.2024 made in W.P.No.15677 of 2024.

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For Appellant : Mr.Ravi Kannan
For Respondents : Mr.S.Kamadevan

J U D G M E N T

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

The appellant was visited with an award passed by the Facilitation Council constituted under the Micro, Small and Medium Enterprises Development Act, 2006.

2. Section 18 of the said Act which provides for mediation as well as arbitration of disputes reads as follows:-

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



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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 disputes 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



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decided within a period of ninety days from the date of making such a reference.

This clause seeks to provide for the jurisdiction of the Micro and Small Enterprises Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in clause 17. (Notes on Clauses). 19. Application for setting aside decree

3. The effect of Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 is, an award passed by the Council becomes an award under the provisions of the Arbitration and Conciliation Act, 1996, thus making it subject to challenge under Section 34 of the said enactment before the competent Court.

4. Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 provides for, challenge to the award should not be entertained by the Court unless the person who has been directed to pay any amount under the award, deposits with it 75% of the said amount.

5. In order to overcome this difficulty of pre-deposit, the appellant chose to challenge the award before this Court in W.P.No.24410 of 2023.



The appellant however chose to withdraw the writ petition and this Court allowed withdrawal with liberty to move the appropriate Court under Section 34 of the Arbitration and Conciliation Act. The operative portion of the order of this Court in W.P.No.24410 of 2023 reads as follows:-

2. When it was pointed out that the petitioner cannot invoke the discretionary jurisdiction of this Court under Article 226 of the Constitution to challenge the order dated 30.12.2022 in Case No.MSEFC/TRY/18/202 passed by the first respondent under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006, in view of the effective alternative remedy available under Section 34 of the Arbitration and Conciliation Act, 1996, before the jurisdictional Court as held by the Hon-ble Supreme Court of India in India Glycols Limited ~Vs~ Micro and Small Enterprises Facilitation Council, Medchal~Malkajgiri (Order dated 06.11.2023 in Civil Appeal No.7491 of 2023), Learned Counsel for the petitioner seeks permission of the Court to withdraw the writ petition with liberty to resort to the aforesaid procedure, and he has made an endorsement to that effect in the Court record.

In such circumstances, the writ petition is dismissed as withdrawn granting such liberty. It is made clear that for the purpose of reckoning limitation for availing the aforesaid remedy, the period from the date of filing of the writ



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petition, viz., 27.04.2023, till the date on which the certified copy of this order is made ready by the Registry, shall be excluded. Consequently, the connected miscellaneous petition is closed. No costs.

6. Thereafter, without availing the remedy under Section 34 of the Arbitration and Conciliation Act, the appellant again chose to rush to this Court raising a completely new set of grounds, particularly one relating to jurisdiction of the Facilitation Council to pass an award.

7. This Court rejected the challenge on the ground that having not raised the issue in the earlier Writ Petition and having chosen to withdraw it, the appellant cannot re-agitate the issue again before this Court under Article 226 of the Constitution of India. Aggrieved the instant appeal.

8. Mr.Ravi Kannan, learned counsel appearing for the appellant would vehemently contend that the issue relating to inherent lack of jurisdiction can be raised at any time and availability of alternative remedy by itself cannot bar this Court from entertaining the Writ Petition, particularly when the issue of jurisdiction is raised.



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9. Though the said submission is very attractive, we do not think we can entertain the said submission at this stage. The principles of *res judicata* would apply to proceedings under Article 226 of the Constitution of India also. Explanation IV of Section 11 of the Code of Civil Procedure prevents the Court from dealing with an issue which ought to have been raised in an earlier proceeding. The fact that the issue relating to jurisdiction was not raised in the earlier Writ Petition by itself would not enable the appellant to invoke the writ jurisdiction again in view of Explanation IV to Section 11 of the Code of Civil Procedure, which reads as follows:-

Explanation IV.- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

10. The issue of jurisdiction should be deemed to have been matter directly and substantially in issue in the earlier Writ Petition. Having chosen to withdraw the Writ Petition, the appellant cannot be allowed to agitate the issue again before us.



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11. Hence, the Writ Appeal fails and it is accordingly **dismissed.** No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M., J.) (C.K., J.)
20.12.2024

dsa

Index : No
Neutral Citation : No
Speaking Order



To



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