



WEB COPY



Arb.OP.(Com.Div.).No.560 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.) No.560 of 2023

Tamil Nadu Medical Services Corporation Limited

Represented by its Managing Director

Mr.M.Arvind

No.417, Pantheon Road,

Egmore, Chennai – 8.

... Petitioner

Vs.

M/s.Smilax Healthcare Pvt Ltd

Plot No.54, EPIP-1, Jhamajri

Baddi Solan District

Himachal Pradesh – 173205.

... Respondent

Prayer: Original Petition is filed under Section 11(4) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator in terms of Section 11(4) of the Arbitration and Conciliation Act, 1996 on behalf of the respondent and to resolve the dispute that have arisen between the petitioner and the respondent.

For Petitioner : Mr.Balamurali.

For Respondent : Mr.T.D.Selvan Babu.



Arb.OP.(Com.Div.).No.560 of 2023

ORDER

WEB COPY

The petitioner has filed this petition under Section 11(4) of the Arbitration and Conciliation Act, 1996 for appointing an Arbitrator after an award dated 29.01.2023 was passed by a District Sessions Judge (retired) who was appointed as the sole Arbitrator by Himachal Pradesh Micro and Small Enterprises Facilitation Council under the provisions of Micro, Small and Medium Enterprises Development Act, 2006.

2. The facts on record however indicates that the respondent had invoked Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 and approached Himachal Pradesh Micro and Small Enterprises Facilitation Council. The aforesaid proceedings led to a reference of the dispute to a sole Arbitrator.

3. The reference has now culminated in an Award dated 29.01.2023 of an Arbitrator appointed by the said Facilitation Council a District Sessions Judge (retired) who was appointed as the sole Arbitrator by the aforesaid Facilitation Council. The petitioner has thereafter issued Section 21 notice on 16.08.2023 for appointment of an Arbitrator.



Arb.OP.(Com.Div.).No.560 of 2023

4. The learned council for the petitioner would submit that the appointment of Arbitrator by the Himachal Pradesh Micro and Small Enterprises Facilitation Council and the escalation of the issue before the Himachal Pradesh Micro and Small Enterprises Facilitation Council at Shimla by the respondent was without a prior notice under Section 21 of the Arbitration and Conciliation Act and therefore, the award passed by the learned Arbitrator on 29.01.2023 was a nullity.

5. It is submitted that the escalation of the issue before the Himachal Pradesh Micro and Small Enterprises Facilitation Council at Shimla under the provisions of Micro, Small and Medium Enterprises Development Act, 2006 was also unwarranted as the dispute between the parties was governed by an arbitration clause in the agreement.

6. The learned counsel for the respondent has also drawn attention to the amendment to the provisions of the Micro, Small and Medium Enterprises Development Act, 2006.



Arb.OP.(Com.Div.).No.560 of 2023

WEB COPY

7. I have considered the arguments advanced by the learned counsel for the petitioner and the respondent.

8. Section 62 of the Mediation Act, 2023 states that the Micro, Small and Medium Enterprises Development Act, 2000 shall be amended in the manner specified in the Seventh Schedule.

9. Seventh Schedule to the Mediation Act, 2023 amends Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006. Section 18(5) of the Micro, Small and Medium Enterprises Development Act, 2006 amended by Act 32 of 2023 of the Mediation Act, 2023 is *pari materia* with Section 18(4) of the Micro, Small and Medium Enterprises Development Act, 2000 (Prior to the amendment).

10. Section 18 as it stand and as it stands amended by Section 62 of Mediation Act, 2023 under Seventh Schedule to Mediation Act, 2023 are reproduced below for comparison:-

Section 18(MSME Act,2006)	Section 18 (as per the VII Schedule to Mediation Act,2023)
18. Reference to Micro and Small	18. Reference to Micro and Small



Arb.OP.(Com.Div.).No.560 of 2023

WEB COPY

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

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 conduct mediation itself or refer the matter to any mediation service provider as provided under the Mediation Act, 2023.
- (3) The conduct of mediation under this section shall be as per the provisions of the Mediation Act, 2023.
- (4) Where the mediation initiated under sub-section (3) 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 alternative dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996



WEB COPY



Arb.OP.(Com.Div.).No.560 of 2023

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.

(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.

- (5) **Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternative dispute resolution services shall have jurisdiction to act as an Arbitrator or mediator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India."**



Arb.OP.(Com.Div.).No.560 of 2023

WEB COPY

11. There are few minor changes to the language of Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006. The word “conciliation” has been substituted with the word “Mediation”. Section 18(5) as amended in the Seventh Schedule to Mediation Act, 2023 (Act 32 of 2023) by and large is *pari-materia* with sub-section (4) to Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006.

12. However, the Ministry of law and justice has notified only some of the provisions from the Mediation Act, 2023. Only some of the provisions of the Mediation Act, 2023 have to come into force with effect from 09.10.2023. Section 62 of the Mediation Act 2023 is yet to be notified. Amended Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 is yet to come into force.

13. Therefore, reference to the amendment to Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 vide Section 62 of the Mediation Act 2023 as amended by the Seventh Schedule to Mediation Act, 2023 (Act 32 of 2023) is not relevant at this



Arb.OP.(Com.Div.).No.560 of 2023

stage of discussion, since the amendment has not yet been notified till date by the Government of India, Ministry of Law and Justice.

14. Since a award has been passed by the District Judge appointed as the Sole Arbitrator by Himachal Pradesh Micro and Small Enterprises Facilitation Council under the provisions of Micro, Small and Medium Enterprises Development Act, 2006, there is no scope for appointing an arbitrator once again. The award passed under the Micro, Small and Medium Enterprises Development Act, 2006 is not withstanding anything contained in any other law which would include Arbitration and Conciliation Act, 1996.

15. A reading of Section 18(4) of the Micro, Small and Medium Enterprises Development Act, 2006 as it stands today makes it clear that the respondent was well within its rights to approach the Micro and Small Enterprises Facilitation Council in Himachal Pradesh, in respect of dispute with a buyer located anywhere in India like the petitioner.



Arb.OP.(Com.Div.).No.560 of 2023

WEB COPY

16. Therefore, indirect challenge to the Award that has been passed on 29.01.2023 by the learned Arbitrator is not permissible. It is also not mandatory for issuance of notice under Section 21 of the Arbitration and Conciliation Act, 1996, once the provisions of Micro, Small and Medium Enterprises Development Act, 2006 are invoked by an entity which is entitled for the relief under the said Act.

17. Therefore, this petition for appointment of an Arbitrator is liable to be dismissed. However, liberty is given to the petitioner to work out the remedy in the manner known to law before the jurisdictional Court against the Award dated 29.01.2023.

18. With the above observation, this Arbitration OP stands dismissed.

19.03.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
tsh/rgm



WEB COPY



Arb.OP.(Com.Div.).No.560 of 2023

C.SARAVANAN, J.

tsh/rgm

Arb.OP.(Com.Div.).No.560 of 2023

19.03.2024