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O.S.A. (CAD) Nos.8 of 2024 and 19 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

O.S.A. (CAD) Nos.8 of 2024 and 19 of 2022
and
C.M.P. Nos.20454 and 20455 of 2022
in O.S.A. (CAD) No.19 of 2022

O.S.A. (CAD) No. 8 of 2024:

M/s.Saravana Selvarathinam Dairy Division
rep. By its Proprietor S.Saravana Arul,
No.33, Ranganathan Street,
T.Nagar, Chennai – 17.

.. Appellant

Vs

1.M/s.Nivjer Infrastructure rep. By its
Chief Executive R.Vincent Raju,
No.44A (Old No.22), 18th Avenue,
Ashok Nagar, Chennai – 600 083.

2.The Chairman,
Micro Small Enterprises Facilitation Council,
Chennai Region,
O/o.The Director of Industries and Commerce,
Behind Ezhilagam, Chennai – 5.

.. Respondents

O.S.A. (CAD) No. 19 of 2022:

M/s.Nivjer Infrastructure rep. By its
Chief Executive R.Vincent Raju,
No.44A (Old No.22), 18th Avenue,



O.S.A. (CAD) Nos.8 of 2024 and 19 of 2022

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.. Appellant

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rep. By its Proprietor S.Saravana Arul,
No.33, Ranganathan Street,
T.Nagar, Chennai – 17.

2.The Chairman,
Micro Small Enterprises Facilitation Council,
Chennai Region,
O/o.The Director of Industries and Commerce,
Behind Ezhilagam, Chennai – 5.

.. Respondents

Prayer in O.S.A. (CAD) No.8 of 2024: Appeal filed under Section 13 of The Commercial Courts Act, 2015 read with Section 37 of The Arbitration and Conciliation Act, 1996 and Order XXXVI Rule 9 of Original Side Rules against the fair and decretal order dated 30.01.2020 made in O.P.No.481 of 2009.

Prayer in O.S.A. (CAD) No.19 of 2022: Appeal filed under Section 13 of The Commercial Courts Act, 2015 read with Section 37 of The Arbitration and Conciliation Act, 1996 and Order XXXVI Rule 9 of Original Side Rules against the fair and decretal order dated 18.11.2021 made in Arb.O.P.No.160 of 2021.

O.S.A. (CAD) No.8 of 2024:

For Appellant : Mr.T.V.Ramanujun,
Sr. Counsel
for Mr.E.Karthik Raja

For Respondents : Mr.Hari Radhakrishnan for R1
R2 – Not ready in notice



O.S.A. (CAD) Nos.8 of 2024 and 19 of 2022

O.S.A. (CAD) No.19 of 2022:

For Appellant : Mr.Hari Radhakrishnan
For Respondents : Mr.T.V.Ramanujun,
Sr. Counsel
for Mr.E.Karthik Raja for R1
No appearance for R2

COMMON JUDGMENT

(Judgment of the Court was delivered by **M.Sundar, J.**)

This common order will now dispose of the captioned two 'Original Side Appeals' (hereinafter 'OSAs' in plural and 'OSA' in singular for the sake of brevity) and captioned two 'Civil Miscellaneous Petitions' (hereinafter 'CMPs' in plural and 'CMP' in singular for the sake of brevity) thereat.

2. Captioned OSAs are appeals under Section 37 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' (hereinafter 'A and C Act' for the sake of brevity, convenience and clarity).

3. Owing to the trajectory the matter has taken in the Section 34 Court, short facts shorn of elaboration will suffice.



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4. Factual matrix in a nut shell is that 'Micro Small Enterprises Facilitation Council' (hereinafter 'MSME Council' for the sake of brevity) passed an 'award dated 09.01.2009' (hereinafter 'said Award' for the sake of convenience and clarity) in favour of one 'Nivjer Infrastructure' (hereinafter 'NI' for the sake of brevity); that said Award in favour of NI is against 'Saravana Selvarathinam Dairy Division' (hereinafter 'SSDD' for the sake of brevity); that SSDD filed a Section 34 petition in O.P.No.481 of 2009 assailing said Award; that in O.P.No.481 of 2009, Section 34 Court resorted to sub-section (4) of Section 34 of A and C Act; that vide order dated 04.03.2010, Section 34 Court adjourned the O.P. by three months ('Call on 16.06.2010' is the order) and sent it to the Arbitral Tribunal (MSME Council) to resume the arbitration proceedings or to take such other action as the opinion of Arbitral Tribunal will eliminate the ground for setting aside the arbitral Award; that pursuant to this 04.03.2010 Section 34(4) order, MSME Council in an endeavour to eliminate the ground for setting aside the arbitral Award made proceedings dated 10.06.2010; that post 10.06.2010 proceedings of MSME Council, when O.P.No.481 of 2009 was listed before the Commercial Division, Hon'ble Commercial Division ought to have heard 09.01.2009 Award and 10.06.2010 proceedings together



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treating the same as one Award and decided the question as to whether the Award deserves to be set aside or sustained (whether setting aside ground has been eliminated) but the Commercial Division made an order dated 30.01.2020 dismissing O.P.No.481 of 2009 by merely saying that earlier order of MSME Council (09.01.2009) has been superseded by subsequent order (10.06.2010 order) and therefore nothing survives for further consideration in O.P.No.481 of 2009; that this has led to captioned O.S.A. (CAD) No.8 of 2024 by the SSDD; that after this 30.01.2020 order, on 04.03.2020, SSDD filed a separate Section 34 petition in Arb.O.P.No.160 of 2021 and that has been allowed by another Hon'ble Judge presiding Section 34 Court in and by an order dated 18.11.2021; that against this 18.11.2021 order of Section 34 Court, NI has filed captioned O.S.A. (CAD) No.19 of 2022.

5. Mr.T.V.Ramanujun, learned senior counsel instructed by Mr.E.Karthik Raja, learned counsel on record for SSDD and Mr.Hari Radhakrishnan, learned counsel for NI are before us.

6. Both counsel fairly submit that the procedure adopted by the Section 34 Court is not in consonance with sub-section (4) of Section 34 of A and C Act as sub-section (4) of Section 34 only



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provides for adjournment of O.P. and it was also fairly agreed that instead of filing an independent Arb. O.P. No.160 of 2021, the order dated 30.01.2020 in O.P. No.481 of 2009 alone should have been assailed.

7. In the light of the fair submission made by both sides, the following order is made:

7.1 O.S.A. (CAD) No.8 of 2024 and O.S.A. (CAD) No.19 of 2022 are allowed;

7.2 O.P. No.481 of 2009 is resuscitated;

7.3 O.P. No.481 of 2009 shall now be listed before the Section 34 Court;

7.4 When O.P. No.481 of 2009 is listed before the Section 34 Court, said Award dated 09.01.2009 along with 10.06.2010 proceedings of MSME Council shall be tested on merits but obviously within the legal perimeter of Section 34 of A and C Act;



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7.5 For the aforesaid legal drill, all questions are left open;

7.6 We are informed that SSDD has made deposit to the credit of Arb. O.P. No.160 of 2021. The same shall be refunded to SSDD in accordance with the obtaining procedure subject to statutory deductions, if any.

8. Captioned two OSAs are disposed of in the aforesaid manner with the aforesaid directive and aforementioned observations. Consequently, captioned two CMPs thereat are disposed of as closed. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
28.10.2024

Index:Yes/No
Neutral Citation: Yes/No
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To

- 1.The Chairman,
Micro Small Enterprises Facilitation Council,
Chennai Region,
O/o.The Director of Industries and Commerce,
Behind Ezhilagam, Chennai – 5.
- 2.The Sub Assistant Registrar,
Original Side, High Court,
Madras.



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

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