



Arb.O.P(Com.Div.) No.20 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.) No.20 of 2023

and

O.A.No.76 of 2023

Tamil Nadu Text Book and
Educational Services Corporation,
Represented by its Member Secretary,
No.68, Colllege Road,
Chennai – 600 006.

... Petitioner

Vs.

M/s.Shine Plast,
No.82, 2nd Cross, Risaldar Street,
Seshadripuram,
Bangalore – 560 020.

... Respondent

Prayer: Original Petition is filed under Section 11(4) of the Arbitration and Conciliation Act, 1996, praying for appointing a Retired Judge as a Sole Arbitrator to hear and resolve the disputes between the petitioner and respondent and directing the respondent to pay the costs of these proceedings.

For Petitioner : Mr.J.Ravindran

For Respondent : Mr.A.Aravindan



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ORDER

This Original Petition has been filed under Section 11(4) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.

2. The respondent had earlier approached this Court in O.A.Nos.684 and 685 of 2020 being sustained by the proposed action of the petitioner to invoke the bank guarantee and secure order at the time of admission on 10.12.2020. Therefore, in terms of Section 43 of the Arbitration and Conciliation Act, 1996 only the Court in Chennai will have jurisdiction to deal with the issue.

3. It appears that before securing this order from this Court on 10.12.2020 in O.A.Nos.684 and 685 of 2020, the applicant had approached the Micro and Small Enterprises Facilitation Council, Bangalore (In short 'MSEFC Bangalore'). There was no conciliation as is contemplated under Section 18(2) of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as MSME ACT, 2006) and therefore, the MSEFC Bangalore has now referred the matter to the Arbitration and Conciliation Center, #49, Khanija Bhavan, Race Course Road, Bengaluru, Karnataka.



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4. The Arbitration Original Petition is opposed by the learned counsel for the respondent by making reference to the decision of the Hon'ble Supreme Court in the case of **Gujarat State Civil Supplies Corporation Ltd vs. Mahakali Foods Private Limited (Unit 2) and Another**, 2022 SCC OnLine SC 1492.

5. The learned counsel for the respondent would submit that in terms of the decision of the Hon'ble Supreme Court in the above case notwithstanding private arrangement under the arbitration clause in the agreement between the parties, the jurisdiction of the MSME, Bangalore will override the private arrangement and therefore, submits that this Arbitration Original Petition is liable to be dismissed.

6. That apart, it is submitted that pursuant to reference made by the MSEFC, Bangalore on **21.02.2022**, the respondent has also paid the charges to the Arbitration and Conciliation Centre in Arbitration and Conciliation Center, #49, Khanija Bhavan, Race Course Road, Bengaluru, Karnataka.



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7. Finally the learned counsel for the respondent would submit that the petitioner has participated in the proceedings all along which has culminated in the further proceedings and a reference has been made to the Arbitration and Conciliation Center, #49, Khanija Bhavan, Race Course Road, Bengaluru, Karnataka and therefore, there is acquiescence on the part of the petitioner with the jurisdiction of the Arbitration and Conciliation Center, #49, Khanija Bhavan, Race Course Road, Bengaluru, Karnataka, pursuant to order of MSME, Bangalore.

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

9. Although right to approach the MSEFC was available to the respondent, the respondent should have approached the MSEFC, Chennai as the dispute pertains to a party in Chennai, in which case, a reference could have been made either to any Arbitration and Conciliation Centre in Chennai or the MSEFC, Chennai itself could have nominated any of its member to act as an Arbitrator.



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10. That apart, having invoked the jurisdiction of this Court in O.A.Nos.684 and 685 of 2020 earlier, it was not open for the respondent to proceed with the proceedings before the MSEFC, Bangalore. By its conduct, the respondent had also conferred jurisdiction on this Court under Section 42 of the Arbitration and Conciliation Act, 1996 for the purpose of Section 11 and 34 of the Act.

11. That apart, Section 18(3) of the MSME ACT, 2006, itself makes clear that where conciliation is initiated before the council is not successful and stands terminated without any settlement between the parties, the councils shall either by itself taken up the dispute for arbitration or make reference to any Centre providing alternate dispute services for such arbitration and the provisions of Arbitration and Conciliation Act, 1996 shall then apply to the dispute as if the arbitration was in pursuant to an Arbitration agreement referred to Section 7 of the Arbitration and Conciliation Act, 1996.

12. Since the respondent had approached this Court in O.A.Nos.684 and 685 of 2020 and secured an interim order on 10.12.2020, all Arbitral Proceedings whether under the provisions of the Arbitration and Conciliation Act, 1996 or under the provisions of the MSME ACT, 2006 will have to be



only within the jurisdiction of this Court.

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13. Considering the above, Court is inclined to pass the following order:-

- i. **Hon'ble Mr.Justice P.Devadass, (Retd.), Former Judge of Madras High Court residing at No.23, Garden Street, VGN Monte Carlo, Dr.Gurusamy Road, Nolambur, Chennai – 600 095 (Mobile No.9444487799)** is appointed as the sole Arbitrator to enter upon reference to resolve the *inter se* dispute between the parties.
- ii. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve (12) months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.



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iii. The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondent remains *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondent.

14. In view of the above, Arb.O.P.(Com.Div.) No.20 of 2023 stands allowed and O.A.No.76 of 2023 stands dismissed. No costs.

22.01.2024

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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