In the High Court of Judicature at Madras

Reserved on **28.10.2025**	Delivered on : **03.11.2025**

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

O.P.No.481 of 2009 &
Arbitration O.P.(Com.Div.) No.160 of 2021
& A.No.3321 of 2021

M/s.Saravana Selvarathinam,
Dairy Division, rep.by its
Proprietor Mr.S.Saravana
Arul ...Petitioner in both OPs

Vs

1.M/s.Nivjer Infrastructure, rep.
by its Chief Executive
Mr.R.Vincent Raju

2.The Chairman, Micro Small
Enterprises Facilitation Council,
Chennai Region, Office of the
Director of Industries &
Commerce, Behind Ezhilagam,
Chennai-5. ...Respondents in both OPs

PETITIONS under Section 34 of the Arbitration and Conciliation Act, 1996 praying

(i) to set aside the order passed by the second respondent herein in MSEFC/CR/03/2005 dated 06.2.2009 (O.P.No.481 of 2009) and

(ii) to set aside the order passed by the second respondent in MSEFC/CR/03/2005 dated 10.6.2010 (Arbitration O.P.(Com.Div.) No. 160 of 2021).

For Petitioner in both OPs	:	Mr.G.Karthikeyan
For R1 in both OPs	:	Mr.Hari Radhakrishnan

COMMON ORDER

O.P.No.481 of 2009 has been filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 (for brevity, the Act) seeking to set aside the order passed by the second respondent dated 09.1.2009 (signed on 06.2.2009). Arbitration O.P.(Com.Div.) No.160 of 2021 has been filed by the very same petitioner under Section 34 of the Act challenging the award dated 10.6.2010 passed by the second respondent.

2. Heard both.

3. The petitioner issued a purchase order dated 19.8.2002 to the first respondent for supply, erection and commissioning of a refrigeration plant. This purchase order was for a sum of Rs.40 lakhs. There were some variations and as a result, the first respondent was claiming a total sum of Rs.48,52,838/- for the supplies effected to the petitioner. It is an admitted case that a sum of Rs.45,50,000/- was paid by the petitioner to the first respondent towards such supplies. Accordingly, a balance sum of Rs.3,02,838/- remained unpaid along with interest.

4. In order to recover the outstanding amount, proceedings were initiated under the Micro, Small and Medium Enterprises Development Act by the first respondent in the year 2005. Further, the second respondent passed an order on 09.1.2009 (signed on 06.2.2009) directing the petitioner to pay a sum of Rs.3,48,263/- to the first respondent along with compound interest.

5. The said order dated 06.2.2009 was put to challenge by filing O.P.No.481 of 2009 before this Court. Further, this Court, by order dated 04.3.2010, interfered with the said order dated 06.2.2009 on the ground that it was vitiated since it was bereft of reasons and ultimately, the matter was remanded to the second respondent for rehearing the matter and to pass a speaking order. While issuing such a direction, O.P.No.481 of 2009 was kept pending and three months' time was granted to the second respondent to pass appropriate orders after affording an opportunity to both sides. Thereafter, the award dated 10.6.2010 came to be passed by the second respondent.

6. The said award dated 10.6.2010 was challenged by filing the another petition namely Arbitration O.P.(Com.Div.) No.160 of 2021. It is relevant to point out that Arbitration O.P.(Com.Div.) No.160 of 2021 was heard by a learned Single Judge of this Court and it was allowed on 18.11.2021 by setting aside the order dated 10.6.2010.

7. In the meantime, O.P.No.481 of 2009 came up for hearing and on 30.1.2020, it was dismissed by a learned Single Judge of this

Court on the ground that the second respondent passed the subsequent award dated 10.6.2010 and that therefore, nothing would survive for further consideration.

8. The order dated 30.1.2020 made in O.P.No.481 of 2009 was challenged by the petitioner by filing O.S.A.(CAD) No.8 of 2024. The first respondent filed O.S.A.(CAD) No.19 of 2022 challenging the order dated 18.11.2021 made in Arb.O.P.(Com.Div.) No.160 of 2021. Further, both the original side appeals were disposed of by a Division Bench of this Court vide common judgment dated 28.10.2024 in the following terms :

> *"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 09.1.2009 along with 10.6.2010 proceedings of the MSME Council shall be tested on merits but*

> *obviously within the legal perimeter of Section 34 of A and C Act;*
>
> *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."*

9. Pursuant to the said common judgment rendered by the Division Bench of this Court, O.P.No.481 of 2009 was listed for hearing on 28.10.2025. However, the papers in Arbitration O.P. (Com.Div.) No.160 of 2021 were also made available along with the bundle in O.P.No.481 of 2009 and the learned counsel on either side also made submissions in Arbitration O.P.(Com.Div.) No.160 of 2021. Hence, both the original petitions were taken up together for joint disposal.

10. The learned counsel for the petitioner raised two grounds. The first ground was that the final award was passed by the second respondent without giving an opportunity to the petitioner. The second ground was that the second respondent had not examined any witness

nor any documents were marked and the very procedure followed by the second respondent was vitiated.

11. Per contra, the learned counsel appearing for the first respondent submitted that a mere reading of the award dated 10.6.2020 passed would show that the second respondent applied its mind on all the issues and the documents that were placed before it and that therefore, there was no ground to challenge the award under Section 34 of the Act. In order to substantiate his submissions, he relied upon the decision of the Hon'ble Apex Court in ***Associate Builders Vs. Delhi Development Authority [reported in 2015 (3) SCC 49].***

12. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record.

13. In order to ascertain as to whether the petitioner was given an opportunity before the second respondent, this Court called for the

records from the second respondent. Pursuant to that, a communication dated 22.10.2025 was received from the Regional Joint Director of Industries and Commerce, MSE Facilitation Council, Chennai Region, Chennai-32 to the effect that none of the documents was traceable even though effective steps were taken to trace the records and that many documents were lost during the floods in 2015.

14. In the light of the said communication dated 22.10.2025, this Court must only look into the award dated 10.6.2010 passed by the second respondent and ascertain as to whether the petitioner was given an opportunity before ever the final award was passed.

15. It has been mentioned in the award dated 10.6.2010 that pursuant to the earlier order passed by this Court on 04.3.2010 in O.P.No.481 of 2009, when the matter was remanded to the second respondent, the parties were given an opportunity to put forth their views and file documents. This observation made in the award dated 10.6.2010 has to be taken on the face value and at this length of time, this Court cannot hold that no opportunity was given to the petitioner.

This is more so since it was the petitioner, which had approached this Court during the earlier round of litigation and therefore, the petitioner was effectively prosecuting the case.

16. The next issue was with respect to the procedure that was adopted by the second respondent.

17. There is no standard procedure in arbitration proceedings and the Arbitral Tribunal can evolve a procedure, which must ensure that sufficient opportunity is given to both parties and that the principles of natural justice are followed. The second respondent applied its mind on the various documents that were relied upon by the first respondent. Ultimately, it was found that out of the total amount of Rs.48,52,838/-, the petitioner paid Rs.45,50,000/- and that only the balance amount was claimed by the first respondent. The same was considered by the second respondent. The second respondent also took into consideration the copy of the letter dated 20.2.2004 - the mechanical completion certificate, which stated that the first respondent had started the erection work on 10.5.2003 and

that the entire work was completed and handed over on 20.2.2004. This document had been signed by both the parties. On behalf of the petitioner, the Vice President himself put the signature.

18. The petitioner raised a ground that the said signature was a forged one.

19. But, no steps were taken to send the said document for an expert opinion. Therefore, the second respondent verified the said document and satisfied itself that the signature tallied.

20. The other issue that was decided by the second respondent was the amount that was claimed by the first respondent.

21. For this purpose, the mechanical completion certificate dated 20.2.2004 was relied upon. The second respondent found that there was absolutely no justification on the part of the petitioner to deny the balance amount of Rs.3,02,838/- along with interest.

22. It is now too well settled that a distinction must be drawn between an arbitral award where reasons are either lacking/ unintelligible or perverse and an arbitral award where reasons are there, but appear to be inadequate or insufficient. In the latter cases, if, on a careful reading of the entire award coupled with the documents relied upon, the underlying reason, factual or legal that forms the basis of the award, is discernible/intelligible and the same exhibits no perversity, the Court need not set aside such award in exercise of its jurisdiction under Section 34 of the Act. The Court can rather explain the existence of that underlying reason, which will enable the award passed by the Arbitral Tribunal to be understood in a better and clearer manner.

23. In the case in hand, this Court has dealt with the award dated 10.6.2010 passed by the second respondent by keeping in mind the above principle of law.

24. In the considered view of this Court, the award passed by the second respondent is supported by reasons and the relevant

documents are relied upon by the second respondent. The award does not suffer from any perversity or patent illegality warranting the interference of this Court.

25. In so far as the issue regarding the violation of principles of natural justice was concerned, it is seen from the award that an opportunity was given to both parties before ever the final order was passed. Therefore, the award dated 10.6.2010 is not vitiated on this ground also.

26. Accordingly, Arbitration O.P.(Com.Div.)No.160 of 2021 stands dismissed with costs of ***Rs.50,000/- (Rupees fifty thousand only)*** payable by the petitioner to the first respondent. Consequently, the connected application is also dismissed. In the light of the order passed in Arbitration O.P.(Com.Div.) No.160 of 2021, the other petition in O.P.No.481 of 2009 stands closed.

03.11.2025

To
The Chairman, Micro Small

Enterprises Facilitation Council,
Chennai Region, Office of the
Director of Industries &
Commerce, Behind Ezhilagam,
Chennai-5.

RS

N.ANAND VENKATESH,J

RS

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