In the High Court of Judicature at Madras

Reserved on : **09.10.2025**	Delivered on: 14**.10.2025**

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Arbitration O.P.(Com.Div.).No.242 of 2023 &
Arbitration O.P.(Com.Div.) Diary No.12222 of 2023

Arb.O.P.No.242 of 2023 :

M/s.Best and Fast Metal Fab
Rep.by its Managing Partner
Mr.Sudhakar ...Petitioner

Vs

M/s.Sri Shakra Computer Offset
Printers, Sole Proprietor
Mr.C.K.Gnanavel ...Respondent

Arb.O.P.Diary No.12222 of 2023 :

M/s.Sri Chakra Computer Offset
Printers, Sole Proprietor
Mr.C.K.Gnanavel ...Petitioner

Vs

M/s.Best and Fast Metal Fab
Rep.by its Managing Partner
Mr.Radhakrishnan ...Respondent

PETITIONS under Section 34(2) of the Arbitration and Conciliation Act, 1996 praying

(i) to set aside Claim II of the impugned Arbitral Award dated 29.10.2022 passed by the Arbitral Tribunal (Arb.O.P.No.242 of 2023); and

(ii) to set aside the arbitral award dated 29.10.2022 bearing No. I.A.F.No.25/2019/MHCAC passed by the sole Arbitrator Mr.Mohammed Fayaz Ali to the extent, to which, it is challenged and for costs (Arb.O.P.Diary No.12222 of 2023).

For Petitioner in Arb.O.P.No.242 of 2023 & For Respondent in Arb.O.P.(D).No.12222 of 2023	:	Mr.S.Dinuprashanth
For Respondent in Arb.O.P.No.242 of 2023 & For Petitioner in Arb.O.P.(D).No.12222 of 2023	:	Mr.Arun for Mr.R.Sriram

COMMON ORDER

The petitioner in Arbitration O.P.No.242 of 2023 was the claimant before the sole Arbitrator. For the sake of convenience, the parties will be referred to as arrayed before the sole Arbitrator.

2. Arbitration O.P.No.242 of 2023 has been filed by the claimant under Section 34(2) of the Arbitration and Conciliation Act, 1996 (for short, the Act) against the refusal to award any compensation under claim No.2 in the arbitral award dated 29.10.2022.

3. In turn, the other petition in Arbitration O.P.Diary No.12222 of 2023 has been filed by the respondent under Section 34(2) of the Act wherein a challenge was made to the same award of the sole Arbitrator granting claims 1, 3 and 4 in favour of the claimant.

4. This unnumbered original petition has been listed on 09.10.2025 for maintainability. The counsel on record for the respondent was repeatedly taking adjournments right from June 2025. In spite of giving a long rope, the counsel has not chosen to argue this case. Even on the date of hearing of these cases, an adjournment was once again sought for. But, this Court rejected his request. This Court further made it clear that final orders would be passed by hearing the learned counsel appearing for the claimant after considering the

materials available before this Court and after considering the award passed by the sole Arbitrator.

5. Heard the learned counsel appearing for the claimant.

6. The case of the claimant is as follows :

(i) The respondent was awarded the contract of fabrication and erection of cattle sheds at Coimbatore and Tuticorin Districts. The respondent, in turn, appointed the claimant as a sub-contractor vide letter dated 03.10.2015 for completion of the works. The claimant did four different kinds of work namely

(a) fabrication and erection of cattle sheds at Coimbatore District;

(b) fabrication and erection of cattle sheds at Tuticorin District;

(c) supply of tri-cycle spares used for garbage collection; and

(d) job work by receiving raw materials from the respondent.

(ii) The claimant performed the aforesaid works and raised invoices. Since the payments were not made, the claimant approached the Micro & Small Enterprises (MSE) Facilitation Council, Coimbatore

Region since the claimant is registered under the Micro Small and Medium Enterprises (MSME) Development Act, 2006. Further, the MSE Facilitation Council referred the matter for arbitration under Section 18(3) of the MSME Development Act. Pursuant to that, an Arbitral Tribunal was constituted.

(iii) In the claim statement filed before the sole Arbitrator, the claimant made the following claims :

> (a) a sum of Rs.69,74,098/- towards fabrication and erection of cattle sheds at Coimbatore District;
>
> (b) a sum of Rs.1,55,00,309.20 Ps towards fabrication and erection of cattle sheds at Tuticorin District;
>
> (c) a sum of Rs.76,45,256/- towards supply tricycle spares meant for garbage collection; and
>
> (d) a sum of Rs.75,38,887/- towards job work by receiving raw materials from the respondent.

7. Before the sole Arbitrator, the respondent filed a statement of defence by raising the plea that the the claims made by the claimant were false and frivolous, that the respondent was admitting only the total outstanding sum of Rs.13,79,907.91 Ps as per the running account and that this amount would be paid with interest.

8. The sole Arbitrator framed two issues. The main issue that was framed was as to whether the invoices submitted by the claimant were genuine and valid and as to whether the claimant could sustain claims on those invoices.

9. The sole Arbitrator, after considering the evidence of C.W.1, through whom, Ex.A.1 to Ex.A.25 were marked and the evidence of R.W.1, through whom, Ex.B1 to Ex.B10 were marked, came to the conclusion that the claimant proved claim Nos.1,3 and 4 and accordingly, awarded the amounts. In so far as claim No.2 was concerned, it came to be rejected.

10. This Court has carefully considered the submissions of the learned counsel for the claimant.

11. In so far as the second claim is concerned, it pertained to fabrication and erection of cattle sheds at Tuticorin District. This claim was rejected by the sole Arbitrator by assigning the following reasons :

> *"4.14. According to the claimant, the respondent has received a sum of Rs.1,75,09,469/- towards erection of cattle sheds at Tuticorin from the Block Development, Dharapuram. However, the claimant has not produced any evidence to substantiate this claim. The claimant witness CWI, N.Sudhakar during the cross examination states that he had been orally informed by the respondent that the aforesaid amount was paid by the BDO. According to the claimant, from out of the sum of Rs.1,75,09,469/- received by the respondent, the claimant had deducted 11% towards royalty in terms of the work order dated 18.06.2016 Ex.A2 and the following bills were issued for a total sum of Rs.1,55,00,309.20. However, the claimant has not stated as to what is the unpaid amount from the following invoices :*

S.No.	*Bill*	*Bill dated*	*Net amount claimed after deducting 11% of the total*

			value
1	71	15.10.2016	55,63,693.80
2	72	21.10.2016	21,22,193.85
3	73	27.10.2016	17,95,259.55
4	86/3	16.05.2017	31,80,718.00
5	4	13.06.2017	28,38,444.00
Total			1,55,00,309.20

4.15. The respondent disputes the claim under Item II. The respondent states that a letter dated 12.07.2017 was issued by the claimant to the respondent stating that the alleged outstanding amount payable by the respondent is Rs.1,48,42,221/-. However, the claimant has enhanced the claim to Rs.1,83,89,450/- before the MSME Council as on 17.01.2018 and before this Tribunal without any substantial evidence. The respondent disputes the invoice details and the amount payable as false, fictitious and fabricated. The respondent specifically disputes the Invoice No.86/3 stating that the respondent had raised two identical bills both dated 16.05.2017 bearing Invoice No.86 and Invoice No.3 in order to make a wrongful claim. The respondent also disputes the authenticity of Bill No.4 dated 13.06.2017. It is also an admitted fact that the claimant has not paid the VAT for invoice No.4. The respondent thereby disputes the entire claim made under item No.II to the tune of Rs. 1,55,00,309.20/-as not maintainable.

4.16. In order to prove the aforesaid claim, the claimant ought to have filed the books of *accounts/ledger statement before the Tribunal. In order to assess the claim made by the claimant, the vital evidence is the books of accounts/ledger statement which the claimant has failed to disclose. The claimant has neither chosen to file its books of accounts either before the MSEFC or before this Tribunal when it had sufficient opportunity. The claimant ought to have filed this crucial evidence at least before the Arbitral Tribunal in order to prove this claim. It is not the case of the claimant that all the aforesaid invoices have not been paid. If it is to be accepted that all the invoices are unpaid, the total claim amount would go beyond the actual amount claimed. Therefore, it is only the partial payment which the claimant is seeking relief for and the claimant has failed to sufficiently prove the claim. Therefore, I am unable to allow the claim under Item No.II and accordingly it fails and thereby rejected."*

12. The main ground, on which, the sole Arbitrator denied claim No.2 is that the claimant failed to prove the alleged outstanding amount payable by the respondent.

13. The learned counsel for the claimant submitted that Ex.B6 – the ledger statement was filed on the side of the respondent.

14. In so far as claim No.2 is concerned, it pertained to invoice Nos.71, 72, 73, 86 and 4. Invoice Nos.71, 72 and 73 have been specifically entered in the ledger account for the period from 01.9.2016 to 31.10.2016.

15. Similarly, the learned counsel for the claimant also relied upon the communication made by the Assistant Commissioner (ST), Podanur Assessment Circle, Coimbatore dated 02.1.2019 to substantiate his submission. By pointing out to this communication, he submitted that VAT payment was made in respect of Invoice Nos.71, 72 and 73 for the period 2016-17 and in respect of Invoice No.86 during the period 2017-18.

16. The claimant has not chosen to file any document before the sole Arbitrator to substantiate the claim and C.W.1 also has not properly explained the basis, on which, claim No.2 was made. Even in

Ex.B6, there was no direct reference to Invoice Nos.71, 72 and 73. Further, there was no reference to Invoice Nos.86 and 4.

17. The said communication dated 02.1.2019 issued by the Commercial Tax Department has been placed before this Court for the first time and this document was not marked before the sole Arbitrator. Therefore, this Court cannot act upon the said document.

18. In view of the above, the finding of the sole Arbitrator that the claimant has not produced any evidence to substantiate their claim in respect of claim No.2 cannot be held to be a perverse finding. In the considered view of this Court, it was for the claimant to file the books of accounts/ledger statement before the sole Arbitrator and it would have easily clinched the claim made by the claimant. In the absence of the same, the claimant is now relying on Ex.B6, which was the running account ledger statement for the period from 01.7.2015 to 09.2.2017. But, there is no clarity in the said running account ledger statement as to whether it really pertained to Invoice Nos.71, 72, 73, 86 and 4. Therefore, the rejection of claim No.2 by the sole Arbitrator cannot be

interfered with and it does not suffer from any perversity or manifest illegality.

19. ***In the light of the above, Arbitration O.P.(Com.Div.) No.242 of 2023 stands dismissed.***

20. In so far as the other petition filed by the respondent, which is at the stage of maintainability, is concerned, the respondent has not chosen to deposit the mandatory pre-deposit of 75% in spite of a direction given by the Registry of this Court. Hence, the objections raised by the Registry are sustained.

21. Accordingly, ***Arbitration O.P. (Com.Div.) Diary No. 12222of 2023 is rejected.***

14.10.2025

Index : Yes/No
Neutral Citation : Yes/No

RS

N.ANAND VENKATESH,J

RS

COMMON ORDER IN
Arb.O.P.(Com.Div.) No.242 of 2023 &
Arb.O.P.(Com.Div.) Diary No.
12222 of 2023

14.10.2025