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Arb. O.P. (Com. Div.) No.134 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2025

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb. O.P. (Com. Div.) No.134 of 2024

Mana and Kias Infrastructures Ltd.,
(Previously known as M.P. Constructions Co.),
Rep. by its Managing Director Mr.Bhola Singh,
H-1601, AIS Housing Complex,
West Natesan Nagar,
Virgumbakkam, Chennai - 600 092.

... Petitioner

Vs.

1. Vanitha Maheswaran
2. M. Padmanaban

... Respondents

PRAYER: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the arbitral award dated 10.11.2023 passed by the sole arbitrator in its entirety and impose exemplary costs on the 1st respondent / claimant.

For Petitioner : Mr. P.J. Rishikesh

For Respondents : Mr. Shyamkumar



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Arb. O.P. (Com. Div.) No.134 of 2023



ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the impugned arbitral award dated 10.11.2023. Under the impugned arbitral award, the petitioner along with the second respondent have been made jointly and severally liable to pay certain sums of money to the first respondent / claimant.

2. Pursuant to the claim made by the first respondent/ claimant, the Micro and Small Enterprises Facilitation Council (MSEFC) had referred the dispute to arbitration. After failure of conciliation, an arbitrator was appointed as per the Madras High Court (Arbitration) Rules, 2020 (In short Arbitration Rules) and the said arbitrator has passed the impugned arbitral award.

3. The petitioner has challenged the impugned arbitral award on the following grounds:

a) As on the date, when the supplies were alleged to have been effected by the first respondent, the first respondent was not registered under the Micro, Small and Medium Enterprises Development Act, 2006



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(MSMED Act) and therefore, the impugned arbitral award passed by the arbitrator, nominated by the MSEFC under the Arbitration Rules, is patently illegal. The arbitrator has not taken note of the fact that the first respondent was not a registered enterprise under the MSMED Act, when the alleged supplies were made by them;

b) A reference was made to the MSEFC under Section 18 of the MSMED Act by the first respondent, only as against the second respondent and not against the petitioner. By total non application of mind to the said fact and contrary to the provisions of Section 18 of the MSMED Act, the arbitrator has passed the impugned arbitral award as against the petitioner as well;

c) The petitioner's Managing Director, one Mr.Bhola Singh, eventhough had filed vakalat only on behalf of the second respondent, before the arbitrator and the petitioner not being a party to the arbitration, the arbitrator by total non application of mind to the said fact has passed the impugned arbitral award against the petitioner as well, by erroneously holding that the petitioner is jointly and severally liable to pay the award



amount along with the second respondent;

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d) The petitioner had taken a consistent stand before the arbitrator that they are not a party to the contract and that they are not liable for the claim made by the first respondent. Both the applications viz., the one filed by the petitioner under Section 16 of the Arbitration and Conciliation Act, 1996 as well as the application filed by the first respondent under Section 17 of the Arbitration and Conciliation Act, 1996, were dismissed on the ground that only after Trial, the contentions of the respective parties can be adjudicated by the arbitrator.

e) The impugned arbitral award has been passed beyond the stipulated period fixed under Section 29A of the Arbitration and Conciliation Act, 1996. Even without obtaining extension from this Court, the arbitrator has proceeded further with the arbitral proceedings and has passed the impugned arbitral award beyond the period of one year from the date of completion of the pleadings. The petitioner also never agreed for granting extension of time for the arbitrator to pronounce the arbitral award by another period of six months after completion of one year from the date



when the pleadings were completed before the Arbitrator;

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f) The document, viz., the purchase order, filed by the first respondent / claimant before the arbitrator and marked as an exhibit, is a forged and fabricated document. However, the arbitrator has erroneously accepted the same to be a genuine one and has passed the impugned arbitral award;

g) No reasons have been given in the impugned arbitral award as to how the arbitrator has arrived at the figure of Rs.38,40,880/-.

4. The learned counsel for the petitioner relied upon the documents filed along with this petition by reiterating the above grounds. In support of the petitioner's contentions, learned counsel for the petitioner relied upon the following authorities:

a) ***Silpi Industries Vs. Kerala State Road Transport Corporation reported in 2021 (3) SCR 1044.*** The said decision was cited for the proposition that as on the date of the supply, the claimant ought to have been registered under the MSMED Act to enable the claimant to launch prosecution before the MSEFC;



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b) ***Gujarat State Civil Supplies Corporation Ltd. Vs. Mahakali Foods Pvt. Ltd. reported in 2023 (6) SCC 401.*** The said decision has been relied upon for the proposition that if any registration is obtained subsequently, the same would have prospective effect only and would only apply for the supply of goods and rendering services subsequent to the date of registration as a MSME Enterprise;

c) ***Lion Engineering Consultants Vs. State of Madhya Pradesh and Others reported in 2018 (16) SCC 758.*** The said decision was relied upon for the proposition that plea of jurisdiction, i.e., a legal plea can be taken at any stage of the proceeding, which includes in a proceeding challenging an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996. The learned counsel for the petitioner would submit that since the petitioner has raised the jurisdiction issue with regard to the jurisdiction of the MSEFC to adjudicate the dispute raised by the first respondent as against the petitioner, the plea taken by the petitioner questioning the jurisdiction can be raised by the petitioner in this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996;



WEB COPY



Arb. O.P. (Com. Div.) No.134 of 2021

d) *Hindustan Zinc Limited (HZL) Vs. Ajmer Vidyut Vitran Nigam*

Ltd. reported in 2019 (17) SCC 82. The said decision has been relied upon for the proposition that plea of inherent lack of jurisdiction is available at any stage and also in collateral proceedings.

5. The learned counsel for the petitioner would, therefore, submit that since the first respondent was not registered under the MSMED Act, when supplies were allegedly made, and since the petitioner was not a party against whom the first respondent had made a reference to the MSEFC under Section 18 of the MSMED Act, the impugned arbitral award suffers from patent illegality and therefore, the same will have to be set aside by this Court in so far as the petitioner is concerned.

6. On the other hand, the learned counsel for the first respondent / claimant would submit that the arbitral award passed against the petitioner is perfectly a valid award. But, would submit that since the petitioner had voluntarily entered appearance on behalf of the second respondent and since the second respondent / proprietor concern was converted into a partnership



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firm, in which the petitioner's Managing Director, is a partner, the petitioner is also liable for the claim amount and the arbitrator has rightly passed the impugned arbitral award, not only against the second respondent but, also against the petitioner, jointly and severally holding them liable for the award amount. He would submit that the vakalat on behalf of the second respondent was filed only by the petitioner's Managing Director, which has also been recorded by the arbitrator through her proceedings and only thereafter, the arbitrator has come to the conclusion that the petitioner's Managing Director is also jointly and severally liable to pay the claim amount along with the second respondent under the impugned arbitral award. He would submit that only based on the amended pleadings through which the first respondent had made the petitioner also jointly and severally liable for the claim amount along with the second respondent, the arbitrator has passed the impugned arbitral award holding both the petitioner and the second respondent jointly and severally liable to pay the award amount.

7. The learned counsel for the first respondent / claimant drew the attention of this Court to a Judgment of the Honourable Supreme Court in the case of ***NBCC (India) Ltd. Vs. The State of West Bengal and Others***



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reported in 2025 (1) SCR 610, in support of his contention that the decisions relied upon by the learned counsel for the petitioner in *Silpi Industries* case and *Mahakali Foods* case were held by the Honourable Supreme Court that those decisions cannot be considered to be binding precedents on the issue. However, as seen from the said decision, relied upon by the learned counsel for the first respondent / claimant, the Honourable Supreme Court has only referred the issue to a three Judge Bench for further consideration.

8. The learned counsel for the first respondent / claimant also drew the attention of this Court to the following authorities:

a) Decision of the Honourable Supreme Court in the case of *Shri Sunil Siddharthbhai etc., Vs. Commissioner of Income Tax, Ahmedabad, etc., reported in 1985 SUPP.3 SCR pages 102 to 122* for the proposition that a partnership firm is not a separate legal entity and that the assets owned by the partnership are collectively owned by the partners and that when a partner hands over a business asset to the partnership firm as his contribution to its capital, he cannot be said to have effected sale.



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9. The learned counsel for the first respondent would submit that since the second respondent / proprietor concern has been converted into a partnership firm, in which the petitioner was induced as a partner in the year 2017, the petitioner is therefore liable to pay the claim amount as per the decisions rendered by the Honourable Supreme Court reported in ***Sunil Siddharthbhai*** case reported in ***1985 SUPP.3 SCR pages 102*** and referred to supra. He also drew the attention of this Court to the registration certificate obtained by the first respondent in the year 2007 and would submit that the said registration certificate is a valid registration certificate, which has been issued to confirm that the first respondent is a MSME enterprises since 2007.

Discussion:

10. The following are the undisputed facts:

a) In the reference made by the first respondent / claimant to the MSEFC as per the provisions of Section 18 of the MSMED Act, the complaint was not lodged against the petitioner. In the said reference, the complaint was lodged only against the second respondent / proprietor



concern;

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Arb. O.P. (Com. Div.) No.134 of 2021



b) The arbitrator has not passed any order in the arbitral proceedings, permitting the first respondent to amend the pleadings made in the claim statement by arraying the petitioner as a party respondent in the arbitral proceedings and by making the petitioner also liable for the claim made by the first respondent;

c) Section 16 application filed under the Arbitration and Conciliation Act, 1996 by the petitioner as well as the Section 17 application filed by the first respondent, seeking for interim protection were dismissed by the arbitrator on the ground that the relief sought for in those applications can be adjudicated only after Trial;

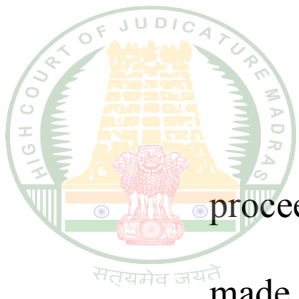
d) The petitioner has taken a consistent stand before the arbitrator that they are not liable for the claim made by the first respondent. In all the pleadings they have filed before the arbitrator, they have categorically contended that they are not liable for the claim amount;



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e) Infact, as seen from the proceedings of the arbitrator, it has been recorded by the arbitrator that the vakalat was filed by the petitioner's Managing Director, Mr.Bhola Singh only on behalf of the second respondent.

11. Any reference made to the MSEFC as per the provisions of Section 18 of the MSMED Act with regard to the complaint for non payment for the supplies effected will have to be made against the parties, who are liable for the claim amount. In the instant case, admittedly, reference made under the provisions of Section 18 of the MSMED Act by the first respondent / claimant was made only against the second respondent and not against the petitioner. The pleading in the complaint lodged by the first respondent while making a reference to the MSEFC as per the provisions of Section 18 of the MSMED Act, also does not reveal that the petitioner is also liable for the claim amount. The petitioner's Managing Director also filed vakalat only on behalf of the second respondent, which is also confirmed by the arbitrator as seen from her proceedings, which have been filed before this Court. At no point of time did the petitioner's Managing Director agree to be arrayed as a party respondent in the arbitral



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proceedings and had undertaken to hold himself responsible for the claim made by the first respondent in the arbitral proceedings. There is also no order passed by the arbitrator, permitting the first respondent to amend the pleadings by arraying the petitioner as a party respondent in the arbitral proceedings and by permitting the first respondent to seek prayer for holding both the petitioner as well as the second respondent jointly and severally liable for the claim amount.

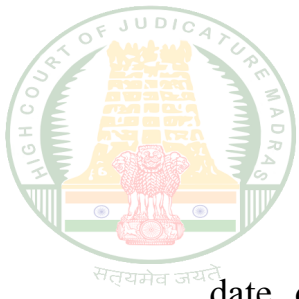
12. The petitioner at the earliest point of time, had also filed an application under Section 16 of the Arbitration and Conciliation Act, 1996, questioning the arbitrability of the dispute as against the petitioner and also questioning the jurisdiction of the MSEFC to act upon the reference as against the petitioner. The arbitrator had dismissed the Section 16 application after framing various issues and by holding that those issues can be adjudicated only after Trial. Section 17 application filed by the first respondent to direct the petitioner as well as the second respondent to furnish security was also dismissed by the arbitrator by holding that only after Trial such a request can be entertained.



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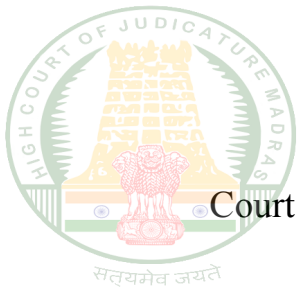


13. Without there being a reference made to MSEFC against the petitioner, it is surprising as to how the petitioner has been held to liable to pay the award amount by the arbitrator. By total non application of mind to the aforesaid undisputed facts, which have been recorded by this Court in the earlier paragraphs of this Court in its "discussion heading", the arbitrator has passed the impugned arbitral award as against the petitioner as well which is erroneous, patently illegal and opposed to public policy. The learned counsel for the first respondent / claimant also made a submission that the petitioner does not have a *locus standi* to file this petition since the petitioner, being a public limited Company, was not a party before the arbitral proceedings. However, it is seen that only after obtaining leave of this Court through an order passed by this Court, the petitioner was allowed to file this petition under Section 34 of the Arbitration and Conciliation Act, 1996 since the earlier partnership firm got converted into a public limited Company. Therefore, the objection raised by the learned counsel for the first respondent / claimant with regard to the right of the petitioner, to file this petition, has to be rejected by this Court.



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14. In so far as the issue raised by the petitioner with regard to the date of registration of the first respondent as a MSME Enterprise is concerned, the said issue has been raised by the petitioner for the first time through this petition under Section 34 of the Arbitration and Conciliation Act, 1996. Further, the first respondent has also placed before this Court certificates which according to the respondents have been issued only in accordance with the MSMED Act and they have also claimed that ever since 2007, the first respondent is registered under the MSMED Act. When sufficient materials have been produced to substantiate the first respondent's contention that the first respondent has been a registered enterprise since 2007 onwards, without Trial the said issue as to whether the first respondent was a registered enterprise at the time when the supplies were effected cannot be decided in this Section 34 petition. There is also no necessity for this Court to decide the said issue in view of the fact that this Court has already given a finding that by total non application of mind, the impugned arbitral award has been passed against the petitioner as well despite the fact that no reference was made against the petitioner as per the provisions of Section 18 of the MSMED Act at the first instance by the first respondent and also in view of the undisputed facts which have been recorded by this



Court in the opening paragraph under the "discussion heading".

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15. Admittedly, supplies effected by the first respondent were effected on the second respondent, prior to the date of the partnership deed through which the partnership firm came into existence. Admittedly, the supplies were effected by the first respondent only to the proprietor concern viz., the second respondent. The arbitrator under the impugned arbitral award by total non application of mind has failed to take note of the said undisputed fact.

16. The decisions relied upon by the learned counsel for the first respondent has no bearing for the facts of the instant case as the partnership firm came into existence only after the supplies were effected by the first respondent on the second respondent. The other decisions relied upon by the learned counsel for the first respondent / claimant with regard to the issue raised by the petitioner that the claim made by the first respondent before the MSEFC is not maintainable, since on the date of supplies, the first respondent was not registered under the MSMED Act is concerned, the said issue, due to the reasons stated supra, has no bearing since there is no

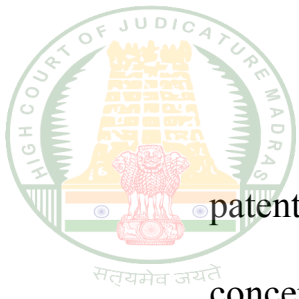


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necessity for this Court to decide the said issue as even otherwise the award passed by the arbitrator as against the petitioner is bad in law and is patently illegal and a perverse finding has been rendered as against the petitioner by erroneously holding that the petitioner is also jointly and severally liable to pay the award amount along with the second respondent although the petitioner was not a party, against whom a complaint was lodged by the first respondent under Section 18 of the MSMED Act.

17. The decision relied upon by the learned counsel for the first respondent in the case of *Oil and Natural Gas Corporation Ltd. Vs. M/s.Discovery Enterprises Pvt. Ltd. and Another reported in 2022 (4) SCR 926* has also got no bearing for the facts of the instant case, as in the instant case the petitioner never took over the liability of the second respondent and the petitioner had also taken a consistent stand throughout the arbitral proceedings that they are not liable for the claim made by the first respondent.

18. The petitioner has satisfied the requirements of Section 34 of the Arbitration and Conciliation Act, 1996, as the impugned arbitral award is



Arb. O.P. (Com. Div.) No.134 of 2023

patently illegal and opposed to public policy, in so far as the petitioner is concerned and therefore, necessarily the impugned arbitral award passed against the petitioner alone has to be set aside by this Court.

19. Accordingly, the impugned arbitral award dated 10.11.2023 passed against the petitioner alone is hereby set aside and this petition is allowed. However, it is made clear that the first respondent is entitled to proceed as against the second respondent for the recovery of the amounts as per the impugned arbitral award in accordance with law. No Costs.

26.06.2025

Index : Yes
Speaking Order : Yes
Neutral Citation Case: Yes
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WEB COPY



Arb. O.P. (Com. Div.) No.134 of 2024

ABDUL QUDDHOSE. J.,

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Arb. O.P. (Com. Div.) No.134 of 2024

26.06.2025