IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE N. SENTHILKUMAR

Writ Appeal No.692 of 2023
and
CMP.Nos.6952 of 2023 & 11205 of 2025

The Tamil Nadu Cements Corporation Limited
Aavin Illam - 5th Floor,
23, Pasumpon Muthuramalinganar Road,
Nandanam, Chennai – 600 035
rep. by Manager (Materials) in-charge
.. Appellant

vs

1.Micro and Small Enterprises Facilitation Council
Coimbatore Region, rep. by its General Manager,
District Industries Centre/Zonal Office,
No.2, Raja Street, Coimbatore – 641 049.

2.M/s.Unicorn Engineers,
No.513-A/6, Bharathi Road,
Chinnavedampatty, Coimbatore – 641 049
rep. by its Managing Partner, P.Ponram .. Respondents

Prayer : APPEAL filed under Clause 15 of the Letters Patent against the Order dated 03.02.2023 made in W.P.No.20580 of 2022 on the file of this Court.

For Appellant	:	Mr.Ramanlaal Additional Advocate General assisted by Mr.T.Arunkumar, Additional Government Pleader
For Respondents	:	Mr.Om Prakash Senior Counsel for Mr.B.Manoharan – R2 No appearance – R1

JUDGMENT

(Delivered by Dr.ANITA SUMANTH.,J)

We have heard the detailed submissions of Mr.Ramanlaal, learned Additional Advocate General assisted by Mr.T.Arunkumar, learned Additional Government Pleader for the Tamil Nadu Cements Corporation Limited (Tancem/appellant) and Mr.Om Prakash, learned Senior Counsel appearing for Mr.B.Manoharan learned counsel for R2. None appears for the Micro and Small Enterprises Facilitation Council (MSME Council).

2. Shorn of unnecessary details, the primary facts necessary to decide this Writ Appeal are as follows. R2 had effected supplies of Electrostatic Precipitator to Tancem, in respect of which certain disputes arose. A reference had thus come to be made by R2 before the MSME Council seeking settlement of an amount of Rs.11.21 lakhs (approx.).

3. The provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (in short 'MSMED Act') provides for the procedure for consideration of a claim by the MSME Council under Section 18 which deals with '*Reference to Micro and Small Enterpirses Facilitation Council'* and reads as follows:

> ***Section 18 Reference to Micro and small Enterprises Facilitation Council***
>
> *(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.*
>
> *(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.*
>
> *(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section(1) of section 7 of that Act.*

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.

4. Section 18(3) is relevant, seen in the context of the dates and events in the particular case. After the completion of the preliminaries and the pleadings, the MSME Council had passed an order on 04.06.2016 holding Tancem liable to pay a sum of Rs.6,97,986/- to R1. As far as the procedure is concerned, we note that the Council has recorded failure of conciliation between Tancem and R1 as on 04.06.2016 itself. The relevant portion of the MSME order is as follows:

During the meeting held on 04.06.2016, the petitioner enterprise was represented by Thiru P.Ponram, Managing Partner. The respondent enterprise was represented by Thiru S.Kulasekarapandian, Manager (Materials), Tamilnadu Cements Corporation Limited (TANCEM). The. petitioner submitted that they had completed the Design, Detailed Engineering, prepared the drawings and submitted to the respondent. After approval of the drawings by the respondent, the petitioner submitted an invoice for Rs.l4,15,736/-. The petitioner informed that the respondent never directed the petitioner at any stage to keep the work in abeyance prior to submission of the invoice. The respondent had cancelled the order only after 5 months after submission

> *of the invoice, by the petitioner. Also, the petitioner justified the expenses incurred with records. An advance of Rs.7,17,750/- was already paid by the respondent, in this regard. Balance payment due is Rs.6,97,986/-. Therefore, the petitioner pleaded that their claim of Rs.6,97,986/- is justified pleaded the council to close the hearing and pass orders directing to TANCEM Ltd to pay the balance amount of Rs.6,97,986/- with interests. petitioner pleaded that their. Since adequate opportunities were given to the respondent, the Council recorded the failure of conciliation between the petitioner and the respondents.*

5. The order makes it clear that it was on 04.06.2016 that R1, represented by its Managing Partner Thiru.P.Ponram and Tancem, represented by its Manager (Materials), Thiru.S.Kulasekarapandian had been heard, post which the Council records the failure of conciliation as per Section 18(3) of the MSMED Act.

6. The statute provides that the Council will initiate arbitration proceedings where the attempt at conciliation has been unsuccessful. For this purpose, it was open to the Council to either take the matter up for arbitration itself, or refer it to any other institution or centre providing alternate dispute resolution services, in which case, the provisions of the Arbitration and Conciliation Act, 1996 (A & C Act) would apply.

7. We cannot thus fault the MSME Council for taking the matter up itself for arbitration which is what has been done. However, the

proceedings for arbitration have been closed on the same day, i.e., 04.06.2016 itself. In our view, this is a mockery of the proceedings and constitutes an irregularity in procedure going to the root of the matter.

8. In fact, the first Bench of this Court has, on 01.08.23, also recorded the position that proceedings for both mediation and arbitration have been concluded back-to-back on the same date. No material to the contrary has been produced by Tancem to disprove this position and this is, in our view, a fatal irregularity in procedure.

9. However, this has not been challenged by R1 and only Tancem has challenged the aforesaid order belatedly. A chronicling of the remedies availed by Tancem in this regard is telling. The first was under Section 33 of the A&C Act, seeking to set aside order dated 04.06.2016. Clearly this remedy is misconceived as Section 33 enables only corrections to be made in the order or the passing of an additional award where necessary. In cases where an award has itself to be challenged, the proper remedy is under Section 34 of the A and C Act.

10. The application under Section 33 came to be dismissed on 12.12.2016, and pursuant thereto, R1 filed an Execution Petition before the City Civil Court, Chennai prompting Tancem to approach this Court

under Section 34 of the A & C Act in O.P.No.1030 of 2019, albeit belatedly.

11. Tancem had also filed A.No.144 of 2018 in O.P.No.3400 of 2017 seeking waiver of pre-deposit. To be noted, Section 19 of the MSMED Act makes it mandatory for the appellant, not being a supplier, to deposit 75% of the decreed/awarded amount as a pre-condition to maintain the appeal filed against such award.

12. The application filed by Tancem seeking waiver of pre-deposit came to be dismissed on 06.03.2018 and Tancem was directed to deposit the amount in 3 equal instalments. There was a delay in the making of the deposit as directed and ultimately a sum of Rs.10.00 lakhs was deposited belatedly. The Original Petition ultimately came to be dismissed on 09.09.2021 as being barred by limitation.

13. Section 34(3) of the A & C Act, states that '*an application for setting aside may not be made after three months have elapsed from the date on which the party making that application have received the arbitral award'*. The proviso sets out a further period of 30 days and makes it clear that there may be no condonation *'thereafter'*.

14. Hence, a maximum period of 120 days has been provided,

beyond which, the appeal would not be entertained. The learned Judge thus rightly rejected the appeal holding that the time limit provided for filing of appeal under Section 34 is sacrosanct and there is no provision for condonation of delay beyond what was statutorily provided.

15. As against order dated 09.09.2021, an Original Side Appeal had sought to be moved in O.S.A.Sr.No.114462 of 2021 on 15.12.2021 but was not pursued. Learned Additional Advocate General confirms the position that the OSA has been abandoned as on date, and there is no intention of pursuing the matter any further. Tancem thereafter filed a Writ Petition invoking Article 226 of the Constitution of India challenging the Award that dismissed on 03.03.2023, as against which, the present appeal has been filed.

16. Tancem had also filed CRP No.3056 of 2024 as against order of attachment passed by the X City Civil Court, Chennai in E.P.No.242 of 2017, that dismissed by the learned single Judge on 31.01.2025, and that order has attained finality. That apart, W.P.No.29101 of 2017 had been filed challenging the vires of certain provisions of the MSMED Act, that had been transferred to the Supreme Court and is pending consideration. This then is the list of measures taken by Tancem to challenge the award

of the MSME.

17. The mainstay of the arguments of learned AAG turn upon the fact that the Writ Petition challenging the vires of the MSMED Act has been transferred before the Supreme Court, and certain questions have been referred to the attention of the Larger Bench. According to him, those very questions arise in the present matter as well.

18. He circulates a copy of order dated 22.01.2025 passed in *Tamil Nadu Cements Corporation Limited V. Micro and Small Enterprises Facilitation Council and another* (Civil Appeal No.1016 of 2025) wherein the following issues have been referred to the Larger Bench for consideration:

> *19. In the light of the aforesaid decisions, we deem it appropriate to refer the following questions raised in the present appeal to a larger Bench of five Judges, namely:*
>
> *(i) Whether the ratio in M/s.India Glycols Limited (supra) that a writ petition could never be entertained against any order/award of the MSEFC, completely bars or prohibits maintainability of the writ petition before the High Court?*
> *(ii) If the bar/prohibition is not absolute, when and under what circumstances will the principle/restriction of adequate alternative remedy not apply?*
> *(iii) Whether the members of MSEFC who undertake conciliation proceedings, upon failure, can themselves act as arbitrators of the arbitral tribunal in terms of Section 18 of the MSMED Act read with Section 80 of the A&C Act?*
> *The first and second question will subsume the question of when and in what situation a writ petition can be entertained against an*

order/award passed by MSEFC acting as an arbitral tribunal or conciliator.

19. Though the submission of the State is that this matter should await the final hearing of the matter before the larger bench, we do not agree as the factual position in the two matters are totally distinguishable.

20. The questions referred emanated from an order of three Hon'ble Judges of the Supreme Court in the case of *India Glycols Limited and another V. Micro and Small Enterprises Facilitation Council, Medchal – Malkajgiri and other* (2023 SCC Online SC 1852). In that case, the Court was hearing an appeal against an order of the Telengana High Court dismissing a writ petition on the ground that a statutory remedy under section 34 of the A and C Act was available.

21. Recording the submission of the appellant that they would then move an appeal under Section 34 of the A and C Act, the appeal was closed as not maintainable. Paragraphs 16 and 17 of that judgment are relevant and read as follows:

> *16 Mr Parag P Tripathi, senior counsel then submitted that the appellant would move proceedings under Section 34 of the Act of 1996 and this Court may direct that they may be disposed of expeditiously. Having come to the conclusion that the remedy which was adopted by the appellant was thoroughly misconceived, it is not necessary for this Court to make any observation on what course of action should be adopted by the appellant. Were the appellant at this stage to take recourse to the proceedings under Section 34 of the Act of 1996, it would be*

> *open to the second respondent to object on all counts which are available in law.*
>
> *17 For the above reasons, we affirm the impugned judgment of the High Court of Telangana dated 21 March 2023 by affirming the finding that the petition which was instituted by the appellant to challenge the award of the Facilitation Council was not maintainable, in view of the provisions of Section 34 of the Act of 1996.*

22. The Bench ultimately holds that the Writ Petition instituted by the appellant challenging the award of the MSME Council was not maintainable in view of the fact that the remedy under Section 34 was still available. In the present case, Tancem has exhausted every available remedy, under the MSMED Act, A & C Act and Constitution, as on date. Further, it had availed the statutory remedy under Section 34 of the A & C Act, failed, filed an Original Side Appeal and allowed it to lapse, and then instituted a Writ Petition.

23. Article 226 has thus been the last resort after Tancem has attempted all other remedies and failed and this is not a case where the aggrieved party has chosen writ remedy at the first instance preferring it over the statutory remedy under section 34 of the A and C Act.

24. The appellant has been unsuccessful at every turn and to recapitulate, failed in the (i) petition under section 33 of the A and C Act that was dismissed on 12.12.2016 (ii) statutory appeal under section 34 of

the A and C Act that was dismissed on 09.09.2021 (iii) attempt to appeal the dismissal of order passed under section 34 by moving Original Side Appeal in O.S.A.Sr.No.114462 of 2021 on 15.12.2021 but abandoning it and (iv) CRP No.3056 of 2024 as against order of attachment passed by the X City Civil Court, Chennai in E.P.No.242 of 2017, that was dismissed on 31.01.2025. We thus see no reason to await the decision of the larger Bench on the question of maintainability of the writ petition on the ground of alternate remedy as all remedies have already been exhausted.

25. Finally, we refer to the objects and reasons of the MSMED Act, that state that the Act is for facilitating promotion, development and enhancement of competitiveness of micro, small and medium enterprises and for connected matters. The A & C Act has been enacted with the object of strengthening alternate dispute mechanisms in India. Read together, the protection set out for the MSME sector and the measures for ADR provided under the MSMED Act must, conjointly ensure that claims of micro, small and medium enterprises must be resolved expeditiously and as smoothly as possible.

26. In this view of the matter, we have no hesitation in dismissing this Writ Appeal. No costs. Connected Miscellaneous Petitions are also dismissed.

[A.S.M., J]   [N.S., J]
16.06.2025

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Index:Yes
Speaking order
Neutral Citation:Yes

To

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No.2, Raja Street, Coimbatore – 641 049.

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