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Arb.OP.(comdiv) No.442 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2025

CORAM

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

Arb.O.P.(Comm.Div.) No.442 of 2023

Swiss Garniers Genexiaa Sciences Pvt Ltd.,
Rep. By its Authorised Signatory
Mr.Suresh Lal, Assistant Manager-Legal,
Chennai.

.. Petitioner

-VS-

TSA Process Equipments Pvt Ltd.,
Mumbai.

.. Respondent

Petition under Section 34 of the Arbitration and Conciliation Act, 1996, has been filed seeking to set aside the arbitral award dated 30.01.2023 passed by the Sole Arbitrator.

For Petitioner : Mr.Surya Teja SS Nalla
for M/s.Lakshmi Kumaran &
Sridharan Attorneys

For Respondent : Mr.A.Ramesh Kumar



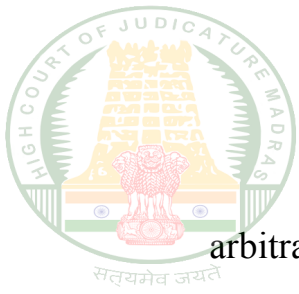
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ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (in short “the Act”) challenging the impugned award dated 30.01.2023 passed by the Micro and Small Enterprises Facilitation Council (MSEFC) (in short “Council”) under the Micro, Small and Medium Enterprises Development Act, 2006 (in short “MSMED Act”).

2. The respondent claims to have supplied materials based on purchase orders placed by the petitioner. According to the respondent, certain sums of money are due and payable to them by the petitioner for the supplies made by them. The respondent claimed that they are registered under the MSMED Act and therefore, they are entitled to make a reference to the Council for the recovery of the amount due and payable by the petitioner to the respondent. Accordingly, they made a reference to the Council as per the provisions of the MSMED Act. As per the provisions of the MSMED Act, conciliation proceedings were initiated by the Council, but, the conciliation failed. Thereafter, the



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arbitration commenced and both the parties to the dispute participated in the arbitration. Under the impugned award dated 30.01.2023 passed by the Council, the petitioner has been directed to pay a sum of Rs.12,51,064/- to the respondent along with compound interest as per Section 16 of the MSMED Act till realisation of the amount by the respondent. Before the Council, the petitioner had made a counter-claim against the respondent, as, according to them, the goods supplied to them were defective and therefore, they have made a counter-claim of Rs.17,99,533/- against the respondent in this petition.

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

(a) Eventhough a counter-claim was made by the petitioner, the Council under the impugned award has failed to consider the same and the impugned award is a non-speaking award with regard to the counter-claim made by the petitioner against the respondent.

(b) The contract placed on the respondent by the petitioner is a works contract, which includes supply, erection and commissioning, and therefore, the Council does not have jurisdiction to entertain the



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reference as per the provisions of MSMED Act.

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(c) As on the date of the supplies effected by the respondent, the respondent was not registered under the MSMED Act, as they had obtained registration subsequently. Therefore, the Council ought not to have entertained the reference made by the respondent in respect of their claim.

4. The learned counsel for the petitioner drew the attention of this Court to the impugned award and would submit that the Council has not taken into consideration the counter-claim made by the petitioner against the respondent as there is absolutely no discussion made in the award by the Council with regard to the same. He also drew the attention of this Court to the various purchase orders placed by the petitioner on the respondent and would submit that as seen from the same, the purchase orders stipulate that the respondent will have to supply, erect and commission the petitioner's project, which amounts to works contract. According to the petitioner, being a works contract, MSMED Act will not apply. He also submits that various documents were produced by the



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petitioner before the Council to support the petitioner's counter-claim, which have not been considered by the Council in the impugned award.

He also submits that the award passed by the Council is an unintelligible award and therefore, the award has to be set aside under Section 34 of the Act.

5. On the other hand, the learned counsel for the respondent would reiterate the contents of the impugned award and would submit that only based on the evidence placed on record, the Council has passed the impugned award.

DISCUSSION:

6. Admittedly, the counter-claim was made by the petitioner against the respondent before the Council and in their counter-claim, the petitioner had claimed that the materials supplied by the respondent were defective in nature and the cost of the materials amounts to Rs.17,99,533/-. As seen from the impugned award, there is absolutely no discussion made by the Council with regard to the counter-claim made by



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the petitioner against the respondent. Before the Council, the petitioner had produced documentary evidence in the form of email, which reveals that the respondent had requested the petitioner to replace the defective materials and inform the cost of the same to the respondent to enable the respondent to consider reimbursement of the said cost to the petitioner. The said email dated 24.07.2019 has not been considered in the impugned award passed by the Council and there is absolutely no discussion with regard to the same. Whenever a counter-claim is made, the Council or the Arbitrator, who is adjudicating the dispute, will have to necessarily consider the same on merits and in accordance with law based on the evidence placed on record.

7. In the case on hand, eventhough documents were produced by the petitioner before the Council to support their counter-claim, the Council has failed to take note of those documents and has failed to discuss as to whether those documents support the petitioner's counter-claim or not. The Council under the impugned award has only taken note of the respondent's claim and has failed to take note of the petitioner's counter-claim. Therefore, as rightly contended by the learned counsel for



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the petitioner, the impugned award is an unintelligible award which enables this Court to interfere under Section 34 of the Act. The law is well settled that whenever an unintelligible award is passed, this Court has got power to set aside the arbitral award. Therefore, the first contention of the petitioner that the impugned award is an unintelligible award has to be accepted.

8. Insofar as the jurisdiction issue raised by the learned counsel for the petitioner is concerned, namely, the Council does not have jurisdiction to adjudicate the reference made by the respondent, this Court cannot decide the issue in this petition filed under Section 34 of the Act, when a specific plea has not been raised by the petitioner before the Council along with their counter-claim. The said issue is left open to be adjudicated before the competent authority as and when the said issue is taken up for consideration.

9. With regard to non-registration of the respondent under the MSMED Act as on the date of the first purchase order made by the petitioner on the respondent is concerned, the said plea was never taken



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by the petitioner before the Council. Only for the first time before this

Court under Section 34 of the Act, such a plea has been taken by the petitioner. Therefore, this Court is rejecting the contention of the petitioner with regard to the plea of non-registration of the respondent concern under the MSMED Act as on the date of the first purchase order placed by the petitioner on the respondent. Only on the ground that there is absolutely no discussion made by the Council under the impugned award with regard to the counter-claim made by the petitioner against the respondent, and since the impugned award is a non-speaking award insofar as the counter-claim is concerned, this Court is of the considered view that the impugned award is an unintelligible award. Only on that ground, under Section 34 of the Act, this Court is interfering with the impugned award.

10. For the foregoing reasons, the impugned award dated 30.01.2023 passed by the Council is set aside and this petition is allowed. Liberty is granted to both the parties to initiate appropriate legal proceedings against the other party in accordance with law. Since the impugned award has been set aside by this Court, the statutory deposit



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made by the petitioner while filing this petition, is directed to be refunded to the petitioner by the Registry within a period of four weeks from the date of receipt of a copy of this order.

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Index:yes/no
Neutral citation: yes/no



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ABDUL QUDDHOSE, J.

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