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CRP NPD.No.3056 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 31.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP NPD No.3056 of 2024 & CMP.No.16479 of 2024

The Manager [Materials,
M/s.Tamil Nadu Cements Corporation Ltd.,
Chennai.

... Petitioner

Versus

P.Ponram, Managing Partner,
M/s.Unicon Entineers,
513/A/6, Bharathi Road,
Chinnavedampatti, Coimbatore – 641 049.

... Respondent

PRAYER : Petition filed under Article 227 of the Constitution of India to set aside the Order passed by the learned X Assistant Judge, City Civil Court at Chennai dated 12.07.2024 in E.P.No.242 of 2017 in Arbitral Award Case No.M&SEFC/CBER/30/2016 dated 04.06.2016.



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For petitioner : Mr.R.Ramanlaal,
Additional Advocate General
Asst. by Mr.M.Murali,
Government Advocate

For respondent : Mr.R.Kannan

ORDER

Challenge has been made to the Order of the executing Court in ordering attachment of the movable properties of the judgment debtor, the present Civil Revision Petition has been filed.

2. The decree holder levied execution on the basis of the award passed by the Micro and Small Enterprises Facilitation Council for a sum of Rs.6,97,986/- with future interest. The award came to be passed on 04.06.2016. As the amount has not been deposited, execution petition has been filed. The same has been opposed by the respondent only on the ground that the award is not enforceable and the award is vitiated due to lack of jurisdiction, The Micro and Small Enterprises Facilitation Council is not



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competent to entertain the claim and decide the matter. Therefore, opposed the award. However, the trial Court considering the submissions of both the parties, ordered attachment. Challenging the same, the present Civil Revision Petition has been filed.

3. Mr.R.Ramanlaal, learned Additional Advocate General appearing for the petitioner submitted that the award has been passed without following the procedure under the Arbitration and Conciliation Act. He further submitted that in this regard the Supreme Court has also in the recent judgment has held that when the conciliation fails, the Council is not to take up arbitration on its own, but to refer it to any institution providing alternative dispute resolution services. According to them, the members of Micro and Small Enterprises Facilitation Council, who are members of the proceedings, cannot themselves act as an arbitrator. Therefore, according to them, the entire award is not enforceable.



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4. Whereas, the learned counsel appearing for the respondent would submit that this revision is nothing but clear abuse of process of law. The award passed by the Micro and Small Enterprises Facilitation Council has already been challenged in O.P.Nos.692 and 1030 of 2019 and this Court by an Order dated 09.09.2021 has dismissed the Original Petitions on the ground of limitation and that Order has not been challenged. Thereafter, it appears that a Writ Petition has been filed in W.P.No.20580 of 2022 and that Writ Petition has also been dismissed by an Order dated 03.02.2023. When the award has already reached finality, the execution court cannot go beyond the award. The executing Court has already passed an Order of attachment of the movable properties.

5. Heard the learned counsel appearing for both sides and perused entire materials available on record.



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6. The contention of the learned counsel appearing for the petitioner cannot be countenanced. No doubt, the Supreme Court has already referred the matter to Larger Bench in **M/s.Tamilnadu Cements Corporation Limited Vs. Micro and Small Enterprises Facilitation Council and another in SLP.[C] Diary No.3776 of 2023** to determine the following decisions :

“(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?



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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.”

7. Mere reference by the Apex Court will not unsettle the settled issues. It is relevant to note that the award itself has been challenged before this Court under section 34 of the Arbitration and Conciliation Act, which has been dismissed and no appeal has been filed and the award had reached finality. That apart, the Writ Petition filed in W.P.No.20580 of 2020 challenging the award has also been dismissed by this Court by an Order dated 03.02.2023. In such view of the matter, I do not find any merits in this Civil Revision Petition.

8. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

31.01.2025



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Index : Yes / No

Internet: Yes

Speaking/non speaking order

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To,

The X Assistant Judge,
City Civil Court, Chennai.



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N. SATHISH KUMAR, J.

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