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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-02-2025

CORAM

**THE HONOURABLE MR JUSTICE S. M. SUBRAMANIAM
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**WA No. 284 of 2025
AND
CMP NO. 2215 OF 2025**

M/s.VEE KAY LOGISTICS
Rep. by its Partner, Mr.Mathew.J,
New No.24/3, Sri Vinayaga Sarang
Garden Street,
George Town, Chennai - 600 001.

Appellant(s)

Vs

1. The Micro And Small Enterprises
Facilitation Council
Chennai Region, A30,
Thiru Vi. Ka. Industrial Estate,
Guindy, Chennai - 600 032.

2.M/s. Eco Care Pest Control Services
New No.62, 4th North Beach Road,
Chennai - 600 001

Respondent(s)



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To set aside the impugned order dated 05-01-2024 in WP.No.36067/2023.

For Appellant(s): Mr.D.Prabhu Mukunth Arun
Kumar For M/s.G.Derrick Sam

For Respondent(s): MR.T.Chandra Sekaran SGP For
R1
Mr.Mohanaselvan
For Mr.E.Shankar For R2

JUDGMENT

(Judgement was delivered by S.M.Subramaniam J.)

Under assail is the order dated 05.01.2024 passed in W.P.No.36067 of 2023. The unsuccessful writ petitioner is the appellant before this Court.

2. The writ of certiorari has been instituted to quash the order dated 23.03.2023 passed by the Micro and Small Enterprise Facilitation Council (MSEFC), Chennai Region.

3. The brief facts to be considered in the present Intra-Court Appeal are that the 2nd respondent had made a claim in Case No.MSEFC/CR/232/2022



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before the MSEF Council under Section 18(1) of the Micro, Small and Medium Enterprises Development Act, 2006 [hereinafter referred to as 'MSMED Act'] claiming payment of Rs.15,49,234/- from the writ appellant towards the remaining amount due for services rendered, along with interest calculated in terms of that Act. By an order dated 23.03.2023, the Council held that the appellant was liable to pay the principal amount of Rs.15,49,234/- with compounded interest, with monthly rate at three times of the Bank rate notified by the Reserve Bank of India (RBI), as stipulated in Sections 15 and 16 of the MSMED Act. The interest was payable from the due dates of appointment until payment.

4. Three key issues arise for consideration in the present *lis* on hand, as under;

- (1) Whether a writ petition under Article 226 of the Constitution of India is maintainable, when an efficacious alternate remedy is contemplated under the provisions of the Arbitration and Conciliation Act for setting aside the award passed under the Arbitration Act?



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(2) Whether the claim petition filed under Section 18(1) of the MSMED Act was validly taken up for conciliation by the Council, and whether the Council's decision to proceed with the arbitration upon the failure of conciliation proceedings is valid?

(3) When the conciliation proceedings and consequential arbitration proceedings are taken up by the Council as a continuous process, whether certain procedures under the Arbitration Act need to be repeated?

5. Section 18(1) of the MSMED Act pertains to “Reference to Micro and Small Enterprises Facilitation Council”. Sub Section (1) stipulates that “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 Micro and Small Enterprises Facilitation Council”. Sub Section (2) contemplates “On receipt of a reference under Sub-Section (1), the Council shall either conduct mediation itself or refer the matter to any mediation service provider as provided under the Mediation Act, 2023”. Sub Section (3) contemplates “The conduct of mediation under this section shall be as per the provisions of the Mediation Act, 2023”. Sub Section (4) contemplates “Where



the mediation initiated under Sub-Section (3) 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 alternative 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”.

6. In the context of Section 18(1), it is admitted that a reference was made to the Council in the present case. The Council conducted conciliation proceedings between the parties, which ultimately ended in failure. Thereafter, the Council initiated further proceedings for arbitration, fixing a date for arbitration. The arbitration proceedings were conducted by adjudication of merits by the Council. The documents and invoices were verified by the Council and subsequently an award was passed.

7. The learned counsel appearing on behalf of the appellant would mainly



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contend that the procedures as contemplated by the Council for conducting arbitration are in violation of various provisions of the Arbitration and Conciliation Act, 1996. Specifically, the arbitration was not conducted in accordance with the procedures contemplated and no notice was issued for conducting arbitration under the Arbitration Act. Further, it is contended that the procedures relating to the filing of written statement, hearing of parties claims, and differences, were not followed. It is contended that the procedures contemplated under Sections 20, 23, 24 and 25 of the Arbitration Act have been violated. Consequently, the arbitration award passed by the Council is infirm and liable to be set aside.

8. In support of the contentions raised, the learned counsel for the appellant relied on the judgment of the Hon'ble Supreme Court of India in the case of *Jharkhand Urja Vikas Nicam Limited vs. State of Rajasthan and Others*¹, and the judgment in the case of *Silpi Industries and Others vs. Kerala State Road Transport Corporation and Another*². Additionally, the learned counsel cited the case of *Super Steam Boilers Engineers Private Limited vs.*

1. (2021) 19 SCC 206
2. (2021) 18 SCC 790



The Micro, Small Enterprises Facilitation Council, Coimbatore Region and

Others³, wherein, the Division Bench of the Madras High Court decided the

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issues on 07.08.2022, relating to procedures to be followed.

9. Relying on the above judgments, the learned counsel for the appellant would submit that there is a patent violation in adhering to the procedures contemplated under Sections 23, 24 and 25 of the Arbitration Act. Consequently, it was argued that the Writ Court erred in dismissing the writ petition.

10. Mr.T.Chandrasekaran, the learned Special Government Pleader appearing on behalf of the 1st respondent would oppose by stating that the procedures as contemplated under both the Micro, Small and Medium Enterprises Development (MSMED) Act and the Arbitration and Conciliation Act were duly followed. He emphasised that the proceedings are continuous in nature. On receipt of claim petition under Section 18(1) of the MSMED Act, conciliation was conducted and upon its failure, arbitration proceedings

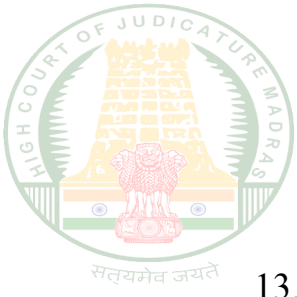
3. MANU/TN/5356/2022



commenced thereafter. There is no bar for commencing the arbitration proceedings based on the failure of conciliation proceedings. Thus, there is no infirmity and the Writ Court has rightly rejected the writ petition.

11. The learned counsel for the 2nd respondent, who is the claimant before the Council, submitted that all the documents relating to the claim petition were filed during the course of conciliation before the Council. As the dispute relating to business transactions, which are record based, including invoice, these documents were perused even during the conciliation proceedings by the Council. Further, when the arbitration proceedings commenced, these documents were reconsidered and formally recorded. In light of this, the Writ Court is right in forming a opinion that to circumvent the conditions stipulated under Section 19 of the MSMED Act. Consequently, the writ petition is not maintainable otherwise.

12. This Court has carefully considered the arguments as advanced by the parties to the *lis* on hand.



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13. Section 18(1) of MSMED Act empowers the Council to entertain the claim petition. In the present case, the Council duly entertained the petition and made an effort to conciliate the matter to resolve the issues. However, during the course of conciliation, the appellant refused to settle the amount, leading to the conciliation proceedings being declared unsuccessful.

14. A perusal of the impugned dated 23.03.2023, reveals that the claim petition was filed before the Council on 23.06.2022 under Section 18(1) of MSMED Act. The Council held its meetings on 30.08.2022, 09.12.2022, 19.02.2023 and 09.03.2023. During the course of meetings conducted in the aforesaid dates, relevant documents were also verified by the Council. From paragraph 6 of the order reveals that the sufficient opportunities were afforded to the parties for conciliation. Since the conciliation proceedings did not fructify, the Council held that the conciliation proceedings failed.

15. Thereafter, on 09.03.2023, the Council decided to post the case for



conducting arbitration proceedings. Therefore, it is made clear that the Council decided to proceed with the arbitration proceedings on account of the failure of conciliation proceedings, on 09.03.2023 itself.

16. Pertinently, arbitration proceedings did not commenced on 09.03.2023. Following the decision to conduct arbitration proceedings, the Council held a meeting via video conference on 23.03.2023, where both parties were present along with their representatives. An inquiry was conducted on the same day.

17. During the inquiry, the Council examined the invoices and other relevant documents, including GSTR-1 documents. The appellant / respondent in the claim petition denied the claim stating that bills were inflated. In their counter statement, the appellant contended that, according to the unwritten agreement between the buyer and supplier of fumigation services rendered to the clients, a sum of Rs.250/- per import container, during the period between 2018 to 2021, and thereafter 2021-2022 a sum of Rs.500/- per import container,



are the only mutually agreed rate for supplier of fumigation services.

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18. A thorough reading of paragraph 8 in the arbitration award reveals that the writ appellant filed a counter statement and relied on the counter statement for the purpose of defending his case. The Council during the course of inquiry considered the audit report, invoices and all other relevant documents, including GSTR-1 documents. The relevant para of the arbitration award relating to the inquiry are extracted here under:

“6. In the Joint Sitting held on 09.05.2023, both the parties were present. Petitioner was represented by Thiru. Sivakumar. Partner and Respondent was represented by Thiru Jhon Mathew Petitioner stated that Respondent was not ready to make the payment. The Respondent stated that ledger of the Petitioner was confusing and requested the Petitioner to provide Auditor's report for relevant financial years. Further stated that, according to their books of accounts, a total sum of Rs.1,67,267/- remain pending. The Petitioner instructed to submit Auditor's report for relevant financial years and a documentary evidences



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to the Council. Conciliation failed and conciliation proceedings are closed. It is decided to post the case before the Council for conducting arbitration proceedings

7. In the Council meeting held on 23 03.2023 through Video Conference both the parties were present. Petitioner was represented by Thiru.K. Sivakumar and Respondent was represented by Thiru. Sampath Kumar. Conciliation failed, and conciliation proceedings were closed. The case is taken up for conducting arbitration proceedings. Petitioner stated that Audit report will be submitted to the Council. The Council decided to pass orders based on merits.

8. The Council has gone through the invoices and other relevant documents including GSTR-1 documents. Respondent denied liability and contended that the claim of the Petitioner is inflated. Respondent in their counter statement has contended that according to the unwritten agreement between the buyer and supplier of fumigation services rendered to the clients, a sum of Rs.250/-per import container, during the period between 2018 to 2021, and thereafter upto 2021-2022 a sum of Rs.500/- per



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import container, are the only mutually agreed rates for the supply of fumigation services. It is further stated therein that whatever balance amount claimed in the Petitioner's bills shall become payable to the buyer of the services, by the supplier of the services. Also, it is stated in the counter that the modus operandi of the disbursal of excess amount to the buyer of the services claimed in the Petitioner's bills were liable to be set off against amounts claimed vide their subsequent bills raised on the buyer of services. It is the contention of the Respondent that such excess amount claimed by the supplier of services is adjusted by issuing credit notes reflected in the ledger of Petitioner for the year 2021-2022. It is pertinent to note that admittedly there is no written agreement for supporting the contentions of the Respondent. The invoice number 16373/15-16 dated 18.02.2016, 16230/16-17 dated 04.01.2017 and invoice number ECC/6910/21-22 dated 21.07.2021 are submitted by the Respondent in support of their contentions. It is ascertained that invoice no. 16373/15-16 and no.16230/16-17 do not pertain to fumigation and is raised towards document charges. Invoice No.



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ECC/6910/21-22 pertains to fumigation and also is part of the claim of the Petitioner. No evidence is adduced by the Respondent to establish their contentions. Credit notes have been already adjusted by the Petitioner and the balance amount is claimed in this petition. Further, the Petitioner has referred to a report dated 27.06.2022 with respect to investigation on the complaint filed by the Respondent regarding non usage of Methyl Bromide for import shipment by the Petitioner. The report which is signed by RCMPIC, DD, states that fumigation has been done by the Petitioner as per prescribed standards It is ascertained that work has been duly completed by the Petitioner. The claim of the Petitioner is established by way of documents. Based on a detailed and critical examination of the claims made by the Petitioner along with available materials on record and on merits of the case, the Council has come to the considered conclusion that the Respondent is liable to pay to the Petitioner the principal amount of Rs. 15,49,234/- along with the compound interest with monthly rests at three times the Bank rate notified by the RBI in accordance with Sections 15 & 16 of the



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MSMED Act, 2006.

9. Section 15 of the MSMED Act 2006 is extracted as under:

15. Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment there for on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance"

Section 16 of the MSMED Act 2006 is extracted under:

"16. Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank"

10. The Council hereby allows the reference of the Petitioner and directs the Respondent to pay the principal amount of Rs. 15,49,234/- (Rupees Fifteen Lakh Forty Nine Thousand Two Hundred and Thirty



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Four only) long with compound interest with monthly rests, at three times the bank rate, notified by the Reserve Bank of India as stipulated in Section 15 and 16 the MSMED Act, 2006 from the appointed due dates pertaining to 203 Nos. of Invoices dated from 08.01.2020 to 06.08.2021 to the Petitioner, till the date of realization of dues.

Based on the above, the petition filed before this Council on 23.06.2022 stands disposed.”

19. Let us now consider the procedures to be followed under the provisions of the Arbitration and Conciliation Act, 1996.

20. Regarding the procedures for conciliation, Section 18(2) of the MSMED Act, specifically provides that for conducting conciliation, the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act shall apply.

21. Sections 65 to 81 of the Arbitration and Conciliation Act, 1996, govern the conciliation process. Here's a breakdown of these sections:



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- (a) Section 65: Submission of statements to conciliator.*
- (b) Section 66: Conciliator not bound by certain enactments.*
- (c) Section 67: Role of the conciliator.*
- (d) Section 68: Administrative assistance.*
- (e) Section 69: Communication between the conciliator and parties.*
- (f) Section 70: Disclosure of information.*
- (g) Section 71: Co-operation of parties with the conciliator.*
- (h) Section 72: Suggestions by parties for settlement of dispute.*
- (i) Section 73: Settlement agreement.*
- (j) Section 74: Status and effect of settlement agreement.*
- (k) Section 75: Confidentiality.*
- (l) Section 76: Termination of conciliation proceedings.*
- (m) Section 77: Resort to arbitral or judicial proceedings.*
- (n) Section 78: Costs.*
- (o) Section 79: Deposits.*
- (p) Section 80: Role of conciliator in other proceedings.*
- (q) Section 81: Admissibility of evidence in other proceedings.*

22. Section 76 of the Arbitration Act deals with termination of conciliation proceedings. Once the conciliation proceedings are terminated, Section 81 governs the admissibility of evidence in other proceedings.



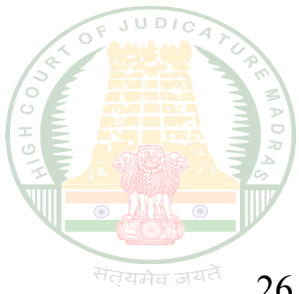
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23. Section 81 explicitly states that the parties shall not rely on or introduce as evidence as arbitral or judicial proceedings, whether or not such proceedings relate to dispute that is the subject of the conciliation proceedings.

Sub Section (a) to Section 81 specifically states that “views expressed or suggestions made by the other party in respect of a possible settlement of the dispute”.

24. Therefore, it is made clear that conciliation proceedings and arbitration proceedings are distinct and different, and the procedures are contemplated separately with reference to the evidence adduced. In other words, certain admissions made during the conciliation proceedings by any of the parties cannot be relied upon in arbitration proceedings.

25. The safeguard is provided because the scope of conciliation is to arrive a compromise between the parties, so as to resolve the disputes. Once the conciliation failed and the arbitration proceedings commenced, then it is to be adjudicated based on the documents and with reference to the claims.



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26. The purpose of this distinction is to ensure that confidential or oral statements made during conciliation proceedings are not used to the advantage of either party in arbitration or other proceedings. These proceedings must be conducted independently, based on documents and evidence presented before the arbitration. Thus, the role of the Council in conciliation is distinct from its role in conducting arbitration proceeding. However, there is no impediment to the Council to conduct conciliation and subsequently to conduct arbitration proceeding, as contemplated under the Act. When acting in a dual role, the Council is expected to exercise its powers in accordance with the procedures contemplated for conciliation and arbitration.

27. In the case of *Jharkhand Urja Vikas Nicam Limited* cited *supra*, the Apex Court clarified the role of the Council in paragraphs 14, 15, and 16, which reads as under:

“14. From a reading of Sections 18(2) and 18(3) of the MSMED Act it is clear that the Council is obliged to conduct conciliation for which the



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provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 would apply, as if the conciliation was initiated under Part III of the said Act. Under Section 18(3), when conciliation fails and stands terminated, the dispute between the parties can be resolved by arbitration. The Council is empowered either to take up arbitration on its own or to refer the arbitration proceedings to any institution as specified in the said section. It is open to the Council to arbitrate and pass an award, after following the procedure under the relevant provisions of the Arbitration and Conciliation Act, 1996, particularly Sections 20, 23, 24 and 25.

15. There is a fundamental difference between conciliation and arbitration. In conciliation, the conciliator assists the parties to arrive at an amicable settlement, in an impartial and independent manner. In arbitration, the Arbitral Tribunal/arbitrator adjudicates the disputes between the parties. The claim has to be proved before the arbitrator, if necessary, by adducing evidence, even though the rules of the Civil Procedure Code or the Evidence Act



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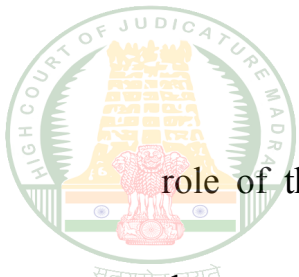


may not apply. Unless otherwise agreed, oral hearings are to be held.

16. If the appellant had not submitted its reply at the conciliation stage, and failed to appear, the Facilitation Council could, at best, have recorded the failure of conciliation and proceeded to initiate arbitration proceedings in accordance with the relevant provisions of the Arbitration and Conciliation Act, 1996, to adjudicate the dispute and make an award. Proceedings for conciliation and arbitration cannot be clubbed.”

28. Therefore, the claim must be proved before the Arbitrator, if necessary, by producing evidence, even though the Rules of Civil Procedure Code or the Evidence Act may not apply. Oral hearings are also permitted.

29. The primary objective of the conciliation proceedings is to amicably settle the dispute between parties. With reference to the claim petition instituted under Section 18(1) of MSMED Act, in the event of failure, the Council can proceed with arbitration proceedings after intimating the parties. Thereafter, the

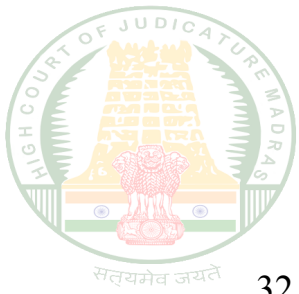


role of the Council is to ensure that the issues are considered based on the documents and evidence produced between the parties, as per the Arbitration Act.

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30. One of the contention raised by the appellant is that no separate notice was issued for the commencement of arbitration proceedings after declaring that the conciliation proceedings ended in failure.

31. In this context, the arbitral award dated 23.03.2023, paragraphs 6 and 7 unambiguously indicate that the joint sitting for conciliation was held on 09.03.2023 and the failure of conciliation was declared and consequently closed. The parties were informed by the Council that arbitration proceedings would be taken up, and the date for arbitration proceedings was communicated to the parties. The Council meeting for arbitration held on 23.03.2023 through video conference, reveals that both the parties were present along with their representatives, which would be sufficient to hold that the date of arbitration proceedings was intimated to all the parties by the Council.



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32. Perusal of the findings in paragraph 7 onwards reveals that the Council considered the documents independently, including invoices, auditor reports and all other relevant documents. The particulars regarding the documents are recorded in the proceedings.

33. That being so, the appellant has to file an application for setting aside the arbitrator's award under Section 34 of the Arbitration and Conciliation Act,. Section 34 of the Act, reads as follows:

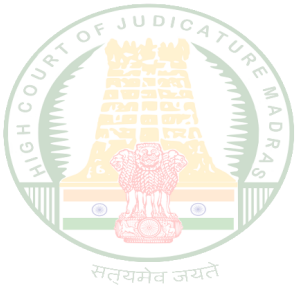
“Section 34. Application for setting aside arbitral

award.- (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if--

***(a) the party making the application
I[establishes on the basis of the record of the
arbitral tribunal that]--***

(i) a party was under some incapacity, or



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(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement,



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was not in accordance with this Part; or

(b) the Court finds that--

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1.--For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,--

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.--For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

(2A) An arbitral award arising out of arbitrations other than international commercial



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arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under subsection (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in



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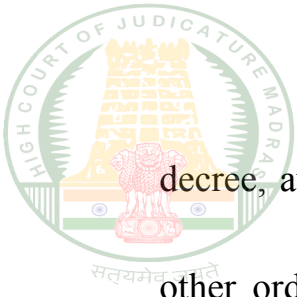
the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.”

34. Sub Section 34(2)(iii) of the Arbitration Act stipulates that the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case. This ground can also be raised before the Competent Forum under Section 34 of the Act.

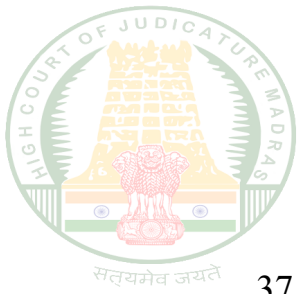
35. Section 19 of MSMED Act contemplates Application for setting aside



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decree, award or order. “No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any Court unless the appellant (not being a supplier) has deposited with it seventy-five per cent. of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such Court”. Therefore, Section 19 mandates that 75% of the award amount is to be deposited for entertaining an application under Section 34 of the Arbitration Act.

36. Numerous writ petitions have been filed before the High Court under Article 226 of the Constitution of India, attempting to circumvent the conditions stipulated under Sections 17 and 19 of MSMED Act, and to avoid depositing 75% of the award amount. These writ petitions are filed commonly on the ground of non-compliance of rules of natural justice, arbitral proceedings no notice was issued for the commencement of the arbitration proceeding and other grounds.



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37. In the case of *Jharkhand Urja Vikas Nicam Limited* cited *supra* relied on behalf of the appellant for maintainability of writ petition reveals that the council did not initiate arbitration proceeding and instead decided the issue on the same day. Pertinently, notice for conciliation was issued, but the opposite party remained absent, and on the very same day arbitration award was passed. Thus, in paragraph 18, the Hon'ble Supreme Court held that it is directly in violation of provisions and entertained the writ petition.

38. However, the facts of the present case are distinguishable. In the present case, conciliation proceedings were conducted on various dates, and the commencement of arbitration proceedings was intimated to the parties. Both parties were present during the arbitration proceedings, and the council scrutinized and assessed the documents before passing the award on merits.

39. Once the award has been passed on merits, with reference to the document, then the remedy lies in filing an application under Section 34 of the



Arbitration Act. Therefore, writ petitions filed merely on the ground that the arbitration proceedings are continued after the failure of the conciliation are unacceptable.

40. Even such grounds can be raised under Section 34 of the arbitration Act. Consequently, parties are to be relegated to file an application. In a writ proceeding, disputed facts relating to business transactions cannot be adjudicated with reference to the original documents and evidence considered during the conciliation and arbitration proceedings.

41. The other judgments relied on by the appellant are also distinguishable on facts. The Division Bench of this Court has not considered various provisions of the MSMED Act and arbitration proceeding. Therefore, the said judgment of the Division Bench in the case of ***Super Steam Boilers Engineers Private Limited*** cited *supra* cannot be cited as precedent for the purpose of maintaining a writ petition challenging the arbitral award.



42. This Court often witnesses writ petitions being filed for prolongation and to increase the longevity of the disputes, so as to escape from the liability.

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Thus, writ petitions challenging arbitral awards passed on merits are not maintainable and the person aggrieved from and out of arbitral award shall be relegated to institute an application under Section 34 of the Arbitration Act for adjudication of issues on merits and in accordance with law.

43. In view of the above discussions, this Court concurs with the decision of the Writ Court and the same stands confirmed. Consequently, Writ Appeal is dismissed. The connected Miscellaneous Petition is closed. There shall be no order as to costs.

(S.M.SUBRAMANIAM J.)(K.RAJASEKAR J.)

27-02-2025

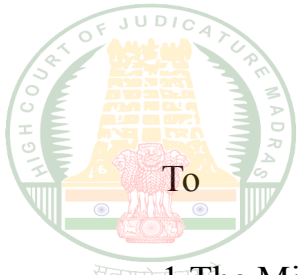
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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



To

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1. The Micro and Small Enterprises

Facilitation Council

Chennai Region,

A30, Thiru Vi.Ka. Industrial Estate,

Guindy, Chennai - 600 032.

2. M/s. Eco Care Pest Control Services

New No.62, 4th North Beach Road,

Chennai - 600 001



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**S.M.SUBRAMANIAM
J.
AND
K.RAJASEKAR J.**

Jeni

WA No. 284 of 2025

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