BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.01.2025**

CORAM:

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

W.P.(MD)No.19365 of 2022
and
W.M.P(MD)No.14134 of 2022

B.Shanthi ... Petitioner

/Vs./

1.The Micro, Small Enterprises Facilitation Council, Madurai Region, represented by its Chairperson/ Industries Commissioner and Director of Industries and Commerce, Guindy, Chennai.

2.M/s.ARR Packaging Industry, Through its Proprietor, Shed No.40, SIDCO Kappalur, Madurai-625 008. ... Respondents

PRAYER**:** Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating with the impugned order of the first respondent dated 26.11.2020 and made in Case No.MSEFC/MDU/12/2020 and quash the same as it is arbitrary and illegal as it violates the mandate under Section 18 of the MSME Act, 2006.

For Petitioner : Mr.R.Suriya Narayanan
For R1 : Mr.M.Senthil Ayyanar
Government Advocate
For R2 : Mr.A.Arputharaj

ORDER

This writ petition has been filed challenging the award passed by the first respondent, dated 26.11.2020 thereby, directed the petitioner to pay a sum of Rs.6,38,565/- together with compounded interest in favour of the second respondent.

2. The petitioner is the manufacture and supplier of the paper plates and paper cups. In order to manufacture the said products, the petitioner purchased the materials on credit basis with the second respondent. However, during COVID-19, the petitioner was not able to get the order for the said products and as such, there is a dues to the second respondent. Therefore, the second respondent initiated the proceedings before the Micro and Small Enterprises Facilitation Council, Madurai Region by way of claim petition under Section 18 of the Micro, Small, Medium Enterprises, Development Act (hereinafter called as

MSMED Act). On receipt of the said claim petition, the petitioner was served with notice and passed an order, dated 26.11.2020. Aggrieved by the same, the petitioner preferred an appeal on the ground that Section 18 (1) to (4) have not been complied with by the first respondent. Therefore, the award passed by the first respondent is arbitrary and illegal. As per Section 18 of the MSMED Act, the first respondent explore the possibility of Mediation and Conciliation between the parties as arbitrator, after failure of the said proceedings or terminate proceeding, take up the dispute and act as arbitrator and passed an award.

3. On perusal of the records and also on perusal of the counter affidavit filed by the second respondent revealed that on receipt of the claim made by the second respondent to the tune of Rs.6,38,565/- under Section 18 of MSMED Act, 2006, the first respondent issued notice to the petitioner. On receipt of the same, the petitioner appeared through counsel and requested time to furnish the copies. Once again the documents were furnished to the petitioner, even thereafter, the learned counsel for the petitioner requested time to file a counter. The same request was made on three occasions through Video Conference.

Thereafter, the first respondent decided to dispose of the claim by passing final orders. It is relevant to extract the provision under Section 18 of the MSMED Act, 2006.

> *"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. Accordingly, the first respondent ought to have proceeded with the Mediation process and if the Mediation process failed between the parties, the first respondent itself either 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. There is no record to show that the first respondent proceed with the mediation process between the parties, namely, the petitioner and the second respondent and there is no order of termination for mediation process on the ground that there is no settlement between the petitioner and the second respondent.

5. The Hon'ble Supreme Court of India, in the case of ***Jharkhand Urja Vikas Nigam Limited Vs. State of Rajasthan and others*** *reported*

*in **2021 SCC Online SC 1257*** has held as follows :

> *"11. From a reading of Section 18(2) and 18(3) of the MSMED Act it is clear that the Council is obliged to conduct conciliation for which the 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 20,23,24,25."*

6. Further, the Hon'ble Division Bench of this Court in ***W.A.No. 2655 of 2021*** in the case of ***M/s.Super Steam Boilers Engineers Pvt. Ltd., Vs. The Micro, Small Enterprises Facilitation Council, Coimbatore Region, Rep. by its Chairperson, Office of Industries Commissioner and Director of Industries and Commerce, Guindy, Chennai – 600 032,*** held as follows :

"8. A perusal of the order passed by the Council shows that initially the matter was taken up for conciliation and was deferred from time to time to settle the disputes in the interest of the parties. When the conciliation failed, an order was passed to take up the matter for arbitration invoking Section 18(3) of the Act of 2006. While taking a decision to arbitrate the matter, the procedure required for it has not been followed. The matter was ordered to be posted directly for arguments and for that, to lead evidence by the parties. Without realising that, after the failure of conciliation proceedings, the matter was to be taken up for arbitration as per the procedure.

*9. The Council could have taken up the matter for arbitration or send it for independent arbitration as given under Section 18 of the Act of 2006. It at all the matter is taken up for arbitration, it should have been after calling for the claim and thereupon writeen statement from the side opposite with counter claim, if any. The procedure aforesaid was not followed and in view of the judgment of the Apex Court in the case o f**Jharkhand Urja Vikas Nigam Limited,** it becomes clear that the procedure given under Section 18 of the Act of 2006 is mandatory in nature and when conciliation fails, the Council is empowered either to take up* *arbitration on its own or to refer it to any institution providing alternative dispute resolution services and the provisions of the Arbitration and Conciliation Act, 1996 to apply therein."*

7. In view of the above, the award passed by the first respondent dated 26.11.2020 is liable to be quashed and accordingly it is quashed. The matter is remitted back to the first respondent for fresh consideration and the first respondent is directed to follow the procedure as contemplated under Section 18(1) to (4) of the MSMED Act and pass fresh award within a period of twelve weeks from the date of receipt of a copy of this order. Whatever the amount deposited by the petitioner in the light of the interim order passed by this Court, it may be adjusted towards any award passed as against the petitioner.

8. In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

29.01.2025

Index : Yes / No
NCC : Yes / No
am

To

1.The Micro, Small Enterprises
Facilitation Council, Madurai Region,
represented by its Chairperson/
Industries Commissioner and Director of
Industries and Commerce,
Guindy, Chennai.

2.M/s.ARR Packaging Industry,
Through its Proprietor,
Shed No.40, SIDCO
Kappalur, Madurai-625 008.

G.K.ILANTHIRAIYAN, J.

am

Order made in
W.P.(MD)No.19365 of 2022

Dated:
29.01.2025