



WEB COPY



C.M.A.No.196 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-01-2026

CORAM

**THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN
AND
THE HONOURABLE MR.JUSTICE HEMANT CHANDANGOUDAR**

CMA No. 196 of 2024

P. Ponram
Managing Partner,
M/s.Unicon Engineers,
513-A/6, Bharathi Road,
Chinnavedampatty,
Coimbatore - 641 049.

Appellant(s)

Vs

1. The Chief Engineer,
M/s.Deen Bandhu Chhottu Ram
Thermal Power Station
(A Unit of Haryana Power Generation
Corporation Ltd.,)
Yamuna Nagar, Haryana - 135 001.

2. Micro and Small Enterprises
Facilitation Council
No.1, Raja Street,
Coimbatore - 641 001.

Respondent(s)

PRAYER : Civil Miscellaneous Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996, praying to set aside the fair order dated 01.11.2023 made in Arb.O.P.No.32 of 2023, on the file of Commercial Court (District Judge Cadre), Coimbatore confirming the Award dated



C.M.A.No.196 of 2024

17.11.2016 on the file of Micro Small Enterprises Facilitation Council,
Coimbatore Region and consequently allow the claim of the appellant.

For Appellant : Ms.S.Jaimithra
for Mr.B.Manoharan
For Respondent-1 : Mr.R.C.Chugh
For Respondent-2 : No appearance

JUDGMENT

(Judgment of the Court was made by C.V.KARTHIKEYAN, J.)

The petitioner in Arbitration O.P.No.32 of 2023 before the Commercial Court (District Judge Cadre at Coimbatore) aggrieved by the order dated 01.11.2023 is the appellant herein.

2.The appellant had filed a claim in Case No.M&SEFC/CBER/5/2016 before the Micro and Small Enterprises Facilitation Council, Coimbatore Region, raising a claim for Rs.22,56,409/- together with interest till the date of realisation and other connected reliefs. By proceedings dated 17.11.2016, the claim petition was dismissed, however holding that there was no further amount on account of liquidated damages payable by both the respondent and the petitioner. Challenging that order, the appellant had filed Arbitration O.P.No.32 of 2023. By an order dated 01.11.2023, the Commercial Court (District Judge Cadre at Coimbatore) had dismissed the said petition, necessitating filing of the present appeal.



C.M.A.No.196 of 2024

WEB COPY

3.Heard the learned counsel for the appellant and also the learned counsel for the first respondent.

4.We are deeply conscious of the fact that on conclusion of hearing, both learned counsel for the appellant and the learned counsel for the first respondent had made the following endorsement,

“No objection if the Hon’ble Court appoints an Arbitrator”.

5.In view of such endorsement made, it is only prudent that we do not discuss the relevant merits of the case on either side. We would however state the facts in brief. The appellant is a Small Manufacturing Enterprise registered with Directorate of Industries and Commerce. It manufactures Electrostatic Precipitator Design, supply, erection and commissioning and supplied the same to the Chief Engineer, M/s.Deen Bandhu Chhotu Ram Thermal Power Station, (A unit of Haryana Power Generation Corporation Ltd), Yamuna Nagar, Haryana – 135 001. In this connection, both the appellant and the respondent had entered into an agreement. The total principal amount for the aforementioned work was Rs.7,02,96,608/-. It had been contended by the appellant that the respondent had paid a sum of Rs.6,80,40,199/- and the balance payable was Rs.22,56,409/-. The appellant



C.M.A.No.196 of 2024

also claimed Bank Guarantee extension cost of Rs.1,27,248/-, claiming total amount of Rs.23,83,657/-. The appellant had approached the Micro and Small Enterprises Facilitation Council at Coimbatore seeking resolution of their dispute with the respondent. The Chairman of the said Council in his proceedings, dated 17.11.2016, had examined the rival submissions made and at one particular place, had actually stated as follows:

Hence, the total additional claim Rs.19,27,248/- apart from the due amount of Rs.22,56,409/- has to be paid along with interest by the respondent.

6. Thereafter, it had been further held as follows:

“Hence, LD applied at 2.50% as against 10% by Respondent Enterprises is not justified. The petitioner did not ask for any extension for the completion period and the Respondent did not issue any extension for the completion period. But, the Petitioner was allowed to work by the Respondent till 16-1-12. Hence, it is implied that the completion period is extended without the application of LD upto 16-1-12. So, the Respondent's counter claim for the Liquidated damages of 10% is not justified. Therefore, the council decided as no amount is due to petitioner and at the same time, no further



C.M.A.No.196 of 2024

*Liquidated damages can be applied to the petitioner by respondent enterprise. The council took the arguments of both sides on record and observed that no amount is due to the Petitioner Enterprises and also no further LD is also due to the Respondent Enterprises. **Hence, the council dismissed the case.***

The council directed that there is no further amount on account of Liquidated damages is payable by both the Respondent and the Petitioner.

With this order, the petition filed before the council on 19.01.2016 by the petitioner stands disposed.

Dated this the day of 17th November 2016.”

7.As a clarification, it has to be stated that LD is the abbreviation for liquidated damages. A reading of the aforementioned extracts would show that it is quite contrary to the specific finding also extracted supra that the respondent will have to pay the total additional claim of Rs.19,27,248/- apart from the due amount of Rs.22,56,409/-.



C.M.A.No.196 of 2024

WEB COPY

8.This order of the Council was taken up under Section 34 of the Arbitration and Conciliation Act, before the Commercial Court (District Judge Cadre at Coimbatore) by the appellant herein. In paragraph No.11 of the order dated 01.11.2023, the Commercial Court held as follows:

Even though, the council found that the petitioner is entitled to total additional sum of Rs.19,27,248/- apart from Rs.22,56,409/- with interest, held that the petitioner failed to establish that there was delay due to flood conditions in the site during the relevant period. It further held that the 1st respondent is not entitled to LD and rejected the counter claim. In view of the non production of evidence regarding floor or force majeure condition, the claim of the petitioner was rejected by the Council. There is a detail findings to that effect. Considering all aspects, this Court finds that the arbitral tribunal rightly found that the petitioner is not entitled to any amount from the 1st respondent, which cannot be contended by the petitioner that the award has to be set aside on the ground that there was no detail order.

9.It is thus seen that the Commercial Court had noted that the appellant was entitled to a total additional sum of Rs.19,27,248/- apart from



C.M.A.No.196 of 2024

Rs.22,56,409/- with interest, but it still had proceeded to dismiss the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996. The present appeal has been filed against the said order.

10.As stated earlier, we are not delving into the relevant merits of the case of either side, but we have only extracted the relevant portions from the order of the Council and the order of the Commercial Court to only emphasis that it would be appropriate that the entire issue is revisited by appointment of an Arbitrator who should enter into a discussion on all the aspects with a fresh mind undeterred by any of the observations either by the Council or by the Commercial Court or in the course of the order. Both learned counsels also insisted that the orders by the Council and the Commercial Court contradicted themselves and there is no clarity in the orders. It is for that reason they also consented for the issue to be examined afresh by an Arbitrator. The learned counsel for the respondent stated that a Senior Counsel may be appointed as an Arbitrator.

11.In this connection, we would appoint *Mr.V.P.Sengottuvel, Senior Advocate, Residence: (Old No.8, S Block), 77, 6th Avenue, Anna Nagar, Chennai 600 040, Ph:26267684, 26285010, Cell: 9884466566,*



C.M.A.No.196 of 2024

WEB COPY

Email: vpsengottuvel@gmail.com, *Chamber:* 303, Law Chambers, High Court Buildings, Chennai 600 104, as an Arbitrator to enter into reference of the dispute between the appellant and the respondent. The fees of the Arbitrator may be determined in accordance with the Schedule 4 of the Arbitration and Conciliation Act, 1996. We would place a request to the learned Arbitrator now appointed by us to complete the arbitration proceedings within a period of six (6) months from the date of receipt of the relevant records.

12.The Civil Miscellaneous Appeal stands disposed of. No costs.

(C.V.K.,J.) (H.C.,J.)
[27.01.2026]

Index : Yes / No

Neutral citation : Yes / No

Speaking / Non-speaking order

sli



C.M.A.No.196 of 2024

WEB COPY

To:

1. The Commercial Court (District Judge Cadre),
Coimbatore.

2. Micro Small Enterprises Facilitation Council,
Coimbatore Region.

3. Mr. V.P. Sengottuvel, Senior Advocate,
Residence: (Old No.8, S Block), 77, 6th Avenue,
Anna Nagar, Chennai 600 040,
Ph: 26267684, 26285010,
Cell: 9884466566,
Email: ypsengottuvel@gmail.com
Chamber: 303, Law Chambers,
High Court Buildings,
Chennai 600 104.



WEB COPY



C.M.A.No.196 of 2024

C.V.KARTHIKEYAN, J.
AND
HEMANT CHANDANGOUDAR, J.

sli

C.M.A.No.196 of 2024

27.01.2026