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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 14.09.2023**

**PRONOUNCED ON : 29.09.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**W.P.No.25062 of 2023**

**and**

**W.M.P.No.24497 of 2023**

M/s Feedback Infra Private Limited  
Rep. by its Assistant Vice President  
Mr. RishiMendiratta  
311, 3<sup>rd</sup> Floor, Vardhaman Plaza,  
Pocket 7, Plot No.6, Sector 12,  
Dwarka,  
New Delhi – 110078

... Petitioner

vs.

1.The Micro and Small Enterprises Facilitation Council,  
Chennai Region,  
Rep by its Joint Director,  
No. 65/1, MSME Bhawan,  
GST Road, Guindy,  
Chennai – 600 032.

2.Velcity Consulting Engineers Private Limited  
No. 9B, 18<sup>th</sup> Street, Tansi Nagar Extension,  
Velachery,  
Chennai – 600042.



W.P.No.25062 of 2023

3.K.Sakthi Ganesh

Managing Director

Velciti Consulting Engineers Private Limited

No. 9B, 18<sup>th</sup> Street, Tansi Nagar Extension,

Velachery,

Chennai – 600042.

... Respondents

**PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned Order dated 19.04.2022 vide MSEFC/CR/340/2019 issued by the 1<sup>st</sup> Respondent and quash the same and direct the 1<sup>st</sup> Respondent to refer the parties to arbitration in terms of the arbitration clause under the Work Order agreement bearing No.FIPL/Highways/NH-49/RMNTHP-RAM/Geotech/18-19/W23 dated 03.07.2018.

For Petitioner : Mr.Naveenkumar Murthy  
for M/s.S.Varsha

For R1 : Mrs.S.Anitha  
Special Government Pleader

For R2 and R3 : M/s.V.Kamala Kumar

### **ORDER**

The writ petition is filed challenging the order passed by the 1<sup>st</sup> respondent directing the petitioner to pay a sum of Rs.16,07,382/- (Rupees Sixteen Lakhs Seven Thousand Three Hundred and Eighty Two only) along with compound interest with monthly rests, at three times the bank rate.

2/20

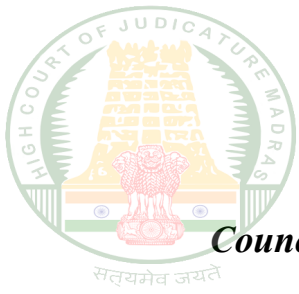


W.P.No.25062 of 2023

WEB COPY

2. According to the 2<sup>nd</sup> respondent, it is engaged in the business of offering services relating to Geotechnical consultants and highways foundation works. The 2<sup>nd</sup> respondent claimed that a sum of Rs.19,07,382/- together with interest was due from the petitioner as per the invoice raised by it dated 26.02.2019 for the services rendered by it.

3. The learned counsel appearing for the petitioner assailed the impugned order on the ground that the 1<sup>st</sup> respondent failed to follow the step by step procedure contemplated under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'MSMED Act' for brevity). The learned counsel further submitted that the 1<sup>st</sup> respondent not even recorded failure of conciliation before proceeding to initiate arbitration proceedings. It is further submitted that the 1<sup>st</sup> respondent without affording any opportunity to the parties to file their pleadings and lead evidence as per the provisions of Arbitration Act, passed impugned order. The learned counsel also submitted that the 1<sup>st</sup> respondent failed to issue express notice regarding initiation of arbitration proceedings. In support of his contention, the learned counsel relied on the order passed by this Court in *Sri Valli Process Vs Mirco, Small Enterprises Facilitation*



W.P.No.25062 of 2023

**Council** reported in **2022 SCC OnLine Mad 3537 : (2022) 5 MLJ 489.**

WEB COPY

4. The learned counsel appearing for the respondents 2 and 3 submitted that the writ petition filed by the petitioner challenging the order passed by the 1<sup>st</sup> respondent in an arbitration proceedings initiated under Section 18(3) of MSMED Act is not maintainable. The learned counsel by drawing the attention of this Court to Section 34(2)(a)(iii) of the Arbitration and Conciliation Act, 1996, contended that even assuming no notice was given to the petitioner regarding initiation of arbitration proceedings, the same shall be challenged only in an application filed under Section 34 of Arbitration Act read with 19 of MSMED Act. In support of his contention, the learned counsel relied on the judgment of the Apex Court in ***Gujarat State Civil Supplies Corporation Limited vs. Mahakali Foods Private Limited and another*** reported in **(2023) 6 SCC 401**.

5. Section 18 of MSMED Act, reads as follows:-

***“Section 18: Reference to Micro and small Enterprises Facilitation Council.***

***(1) Notwithstanding anything contained in any other law***



WEB COPY



W.P.No.25062 of 2023

*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 center 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 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 disputes as if the arbitration was in pursuance of an arbitration agreement referred to in sub section (1) of Section 7 of that Act.”*

6. A reading of above provision would make it clear that on receipt of reference under Section 18(1) of MSMED Act, the 1<sup>st</sup> respondent-Council shall either conduct conciliation itself or send the parties to conciliation by



W.P.No.25062 of 2023

WEB COPY

any other institution providing alternate dispute resolution services. If the mandatory conciliation proceedings initiated under Section 18(2) of MSMED Act fails, the Council has to record termination of the same and then, the Council can either take up the dispute for arbitration or shall refer the parties to any other Centre providing alternate dispute resolution services for such arbitration. Once, the matter is referred to arbitration then provisions of the Arbitration and Conciliation Act, 1996 shall govern the procedure to be adopted.

7. The procedure to be followed by an Arbitrator in conducting arbitral proceedings are governed by Chapter-V of the Arbitration and Conciliation Act, 1996 (i.e., Sections 18 to 27 of Arbitration Act). Of these provisions, Sections 23 and 24 of the Arbitration and Conciliation Act, 1996 are useful in deciding the dispute in this writ petition, the same reads as follows:-

***“23. Statements of claim and defence***

*(1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state*



WEB COPY



W.P.No.25062 of 2023

*his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.*

*(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.*

*[(2A) The respondent, in support of his case, may also submit a counter-claim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counter-claim or set-off falls within the scope of the arbitration agreement.]*

*(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.*

*[(4) The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing of their appointment.]*

#### **24. Hearings and written proceedings**

*(1) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents*



WEB COPY



W.P.No.25062 of 2023

*and other materials:*

*Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held:*

*[PROVIDED FURTHER that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on day-to-day basis, and not grant any adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause.]*

*(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or other property.*

*(3) All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.”*

8. A close scrutiny of the above mentioned Section 18 of MSMED

Act and the above mentioned provisions of Arbitration Act, would make it





W.P.No.25062 of 2023

clear that in cases where conciliation attempted under Section 18(2) of MSMED Act ends in a failure, the 1<sup>st</sup> respondent-Council has to record the same and terminate the conciliation proceedings. Thereafter, it shall commence arbitration proceedings under Section 18(3) of MSMED Act either by itself or by any other centre offering alternate dispute resolution services. Therefore, the parties, who are appearing before the Council from time to time for conciliation proceedings under Section 18(2) of MSMED Act, must be given an express notice regarding initiation of arbitration proceedings. So that, they will be made to understand an adjudicatory process which will have binding effect upon their rights gets initiated. The need for such an express notice was considered by me in ***Sri Valli Process Vs Mirco, Small Enterprises Facilitation Council*** reported in ***2022 SCC OnLine Mad 3537 : (2022) 5 MLJ 489***, the relevant observation in the above mentioned case law reads as follows:-

*“23. The complexion or character of MSMED council changes from one capacity to other while following the step by step procedure contemplated under Section 18 of MSMED Act. While exercising power under Section 18(1) of the Act, MSMED council acts as an ordinary authority to receive*



WEB COPY



W.P.No.25062 of 2023

*respective representations of the parties. On the other hand, while acting under Section 18(2) the complexion of the council would change from that of an ordinary authority to that of a conciliator acting under relevant provision of arbitration and conciliation Act. While exercising power under Section 18(3), the complexion of MSMED council changes from that of conciliator to that of an Arbitrator. Therefore, it is incumbent upon the first respondent council to inform the parties by express notice under what capacity, they receive the pleadings of the parties. At least while commencing the arbitration under Section 18(3) of MSMED Act, the first respondent is obliged to record the failure of conciliation proceedings and initiation of an adjudicatory procedure as an Arbitrator. It is obligatory on the part of the first respondent council to inform the parties about the change of its face from that of conciliator to that of an Arbitrator, so that the parties will be made to understand that they are participating in an adjudicatory process, which will result in a binding order having impact on their rights. There is nothing available in the impugned order to show that at what point of time, the first respondent council acquired the character of arbitrator from that of conciliator. The parties appeared to have participated in the proceedings without knowledge whether they are participating in an ordinary reference stage under Section 18(1) or conciliation stage under Section 18(2) or in an adjudicatory stage under Section*



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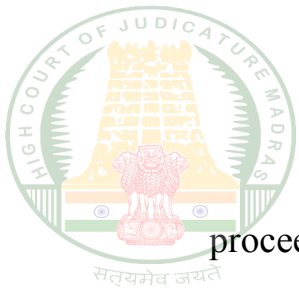
W.P.No.25062 of 2023

18(3). *There is nothing available in the impugned order to show valid constitution of arbitral Tribunal and beginning of adjudicatory process with express notice to the parties. Hence, I hold the impugned order cannot be termed as an award and hence liable to be set aside.”*

9. A reading of impugned order would suggest that the 1<sup>st</sup> respondent not even recorded failure of conciliation and initiated arbitration proceedings by express notice. Paragraph No.13 of the impugned order reads as follows:-

*“13. In the Council meeting held on 19.04.2022 through video conference, both the parties were present. Respondent was represented by Thiru.Akanksha Kwatra, Legal Consultant. The Respondent reiterated their contentions in the previous hearing. The Council decided to pass orders on the merits of the case.”*

10. The impugned order appeared to have been passed on 19.04.2022 itself. First of all, the 1<sup>st</sup> respondent failed to record the termination of conciliation. There is no indication in the impugned order that express notice was issued to the petitioner informing initiation of arbitration



W.P.No.25062 of 2023

proceedings. Further, there is no indication in the impugned order that 2<sup>nd</sup>

respondent has filed claim statement as per the provisions of Arbitration Act and the petitioner was allowed to file his pleadings.

11. A reading of impugned order would suggest that there was a joint sitting for some hearings and suddenly, even without recording the termination of conciliation proceedings, the 1<sup>st</sup> respondent proceeded to pass orders on merits on 19.04.2022 without giving express notice about the arbitration proceedings and allowing the parties to file pleadings and lead evidence. Therefore, the impugned order cannot be treated as an award passed under the Arbitration Act by no stretch of imagination.

12. This Court in *Ramesh Conductors Private Limited Vs. M & SE Facilitation Council (Micro and Small Enterprises)* reported in (2016) 1 *CTC 403* observed as follows:-

“34. At this juncture, it is pertinent to refer to the provisions relating to arbitration as there is a clear mandate in sub section (3) of Section 18 of the Act to conduct the arbitration proceedings as per the provisions of the arbitration and conciliation Act, 1996.



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W.P.No.25062 of 2023

35. *Chapter II to VII in the arbitration and conciliation Act, deals with, arbitration agreement, composition of arbitral tribunal, jurisdiction of arbitral tribunals, conduct of arbitral proceedings, making of arbitral award and termination of proceedings and recourse against arbitral award, respectively.*

36. *The provisions of Sections 7 to 34 deals with, arbitration agreement, power to refer parties to arbitration where there is an arbitration agreement, interim measures, etc. by Court, Number of arbitrators, appointment of arbitrators, grounds of challenge, challenge procedure, Failure or impossibility to act, Termination of mandate and substitution of arbitrator, competence of Arbitral Tribunal to rule on its jurisdiction, interim measures ordered by arbitral tribunal. Equal treatment of parties, determination of rules of procedure, place of arbitration, commencement of arbitral proceedings, language, statements of claim and defence, hearings and written proceedings, default of a party, expert appointed by arbitral tribunal Court assistance in taking evidence, Rules applicable to substance of dispute, decision making by panel of Arbitrators, settlement, Form and contents of arbitral award, termination of proceedings, correction and interpretation of award; additional award and application for setting aside arbitral award, respectively*



WEB COPY



W.P.No.25062 of 2023

37. *A scrutiny of the Order passed by the first respondent would reveal that no provisions of the above sections of the arbitration and conciliation Act, 1996 have been applied for conducting the arbitration, even though the sub-section (3) of Section 18 has specifically stated that the provisions of the arbitration and conciliation act, shall be applied for conducting the arbitration.*

38. *A perusal of the Order in the light of the above provisions would clearly reveal that the order was passed in total negation of sub-section (2) & (3) of Section 18, and therefore, it cannot be construed that either an Order was passed under sub-section (2) of Section 18, or an award was passed under Sub-section (3) of Section 18 of the Act.”*

13. In ***Union of India vs. The Chairman, Uttar Pradesh (UP), State Micro and Small Enterprises Facilitation Council in W.P.(MD).No.13870 of 2021***, while dealing with similar case, this Court observed as follows:-

*“37. If at all, an arbitration to be conducted by the Council, the law is well settled in this regard that, though not strictly, but the procedure of Civil Procedure Code can very*



WEB COPY



W.P.No.25062 of 2023

*well be invoked in arbitration proceedings. The party shall be permitted to file their pleadings, counter pleadings and thereafter issue shall be framed and party shall be given opportunity to let in their evidence both in oral and documentary ways and if any oral evidence is let in, the opposite party can choose to cross-examine. Therefore, the procedure to be adopted in arbitration proceedings, is nothing but almost a replica of the Civil Court proceedings. Of course summarily proceedings should have been conducted in the manner provided under the Arbitration Act. In this case, if we look at the impugned order, nothing has been stated as to how and when such an arbitration has been conducted by involving both the parties in the arbitration proceedings.*

*38. Merely on the basis of the reference made by the respondents herein who are the petitioners before the Council and merely based on letter dated 17.09.2018 alone the Council has proceeded to conclude the matter and passed an award through the impugned order directing the petitioner to pay the aforesaid sum with interest etc.,*

*39. Therefore, this Court has no hesitation to hold that absolutely there has been no arbitration proceedings in the manner known to law conducted by the Council and since the conduct of arbitration is a mandatory one under Section 18(3)*



WEB COPY



W.P.No.25062 of 2023

*of the MSME Act and in that case since the Council has failed to conduct arbitration in the manner known to law, the impugned order, though it is styled as an award under Arbitration Act, cannot be treated as an award, therefore, the argument advanced by the respondents that, as against the impugned order or award, the petitioner has to invoke only Section 19 of the MSME Act or Section 34 of the Arbitration Act is liable to be rejected. Accordingly, it is rejected.”*

14. The law laid down in the above mentioned decisions are squarely applicable to the facts of the present case. Therefore, the impugned order passed by the 1<sup>st</sup> respondent cannot be termed as an award passed under the provisions of Arbitration Act. Though Section 34(2)(a)(iii) of the Arbitration and Conciliation Act, 1996, enables that aggrieved party to challenge the award on the ground that no proper notice of the appointment of an arbitrator or of the arbitral proceedings was given to it or it was otherwise unable to present his case, in the present case, as mentioned earlier, the 2<sup>nd</sup> respondent not even filed a claim statement after initiation of arbitration proceedings and in the absence of filing of pleadings and recording of evidence as per the provisions of Arbitration Act, this Court has already come to a conclusion that the impugned order cannot be termed





W.P.No.25062 of 2023

as an award.

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15. In such circumstances, the petitioner need not be relegated to challenge the same under Section 34 of the Arbitration and Conciliation Act, 1996 read with Section 19 of MSMED Act. If he is relegated to avail the alternate remedy under Section 19 of MSMED Act, the petitioner has to deposit 75% of the amount as directed by the 1<sup>st</sup> respondent-Council in the impugned order. Directing the petitioner to deposit 75% of the amount as per the impugned order is highly inequitable in a case where there is no filing of pleadings and leading of evidence as per the provisions of Arbitration Act and in view of the conclusion reached by this Court that the impugned order cannot be termed as an award within the meaning of Arbitration Act, I hold the petitioner is entitled to invoke Article 226 of the Constitution of India.

16. As discussed earlier, the impugned order was passed by the 1<sup>st</sup> respondent without claim statement and counter statement by the parties and without recording the evidence as per the provisions of Arbitration Act. The

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W.P.No.25062 of 2023

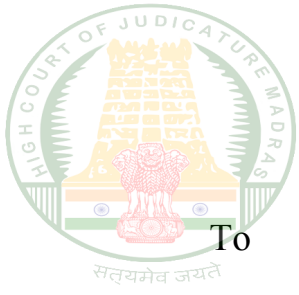
entire arbitration proceedings appeared to have been completed within a day

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17. Consequently, the impugned order is liable to be set aside and the writ petition stands allowed. The matter is remanded back to the file of 1<sup>st</sup> respondent with a direction to conduct the arbitration proceedings by either itself or through a centre offering alternate dispute resolution services by following provision of Section 18(3) of MSMED Act read with provisions of Arbitration Act and pass fresh award within a period of 90 days from the date of receipt of copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

**29.09.2023**

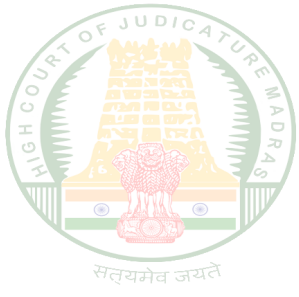
Index : Yes  
Speaking order : Yes  
Neutral Citation : Yes  
dm



W.P.No.25062 of 2023

To

**WEB COPY** The Joint Director,  
Micro and Small Enterprises Facilitation Council,  
Chennai Region,  
No. 65/1, MSME Bhawan,  
GST Road, Guindy,  
Chennai – 600 032.



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W.P.No.25062 of 2023

**S.SOUNTHAR, J.**

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**Pre-delivery order made  
in W.P.No.25062 of 2023**

**29.09.2023**

20/20

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