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O.P.No.1019 of 2019

In the High Court of Judicature at Madras

Reserved on 04.11.2025	Delivered on : 10.11.2025
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Original Petition No.1019 of 2019
& A.No.9503 of 2019

M/s.Tamil Nadu Salt Corporation
Ltd., LLA Building, 735, Anna
Salai, Chennai-2 rep.by its
General Manager

...Petitioner

Vs

M/s.Aero Plast Limited through
Sh.Abhay Goyal, Director

...Respondent

PETITION under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the award dated 11.1.2019 made in Case No.646/18 No.TS/HMSEFC Case No.646/18/20360-A passed by the Arbitral Tribunal and thereby dismiss the claim of the respondent herein.

For Petitioner : Mr.S.R.Rajagopal, SC for
Mr.M.A.Abdul Wahab

For Respondent : Mr.K.Seetharam



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ORDER

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This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act) challenging the award passed by the sole Arbitrator dated 11.1.2019.

2. Heard both.

3. The case of the petitioner is as follows :

(i) The petitioner entered into a contract with the respondent for the supply of laminated roll and pouches for packing salt after the respondent became the successful bidder in the tender. After supply, the respondent made a claim for a sum of Rs.1,25,70,274.98 Ps from the petitioner. The petitioner also paid a sum of Rs.2,29,65,875/- to the respondent. This was in view of the fact that the respondent was charging 30% interest.

(ii) A dispute arose since the respondent made a claim for the alleged balance amount of Rs.1,20,70,274.98 Ps. But, the request made by the respondent did not yield any result. Hence, a reference was made under Section 16 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short, the MSMED Act) to the



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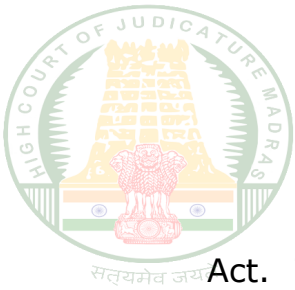
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Haryana Micro and Small Enterprises Facilitation Council (for short, the Council). However, none appeared before it on behalf of the petitioner. Hence, the matter was referred for arbitration before the sole Arbitrator.

(iii) The sole Arbitrator issued notice to both parties. But, since the petitioner did not respond to the notice, the petitioner was set ex parte. On considering the claim made by the respondent and the materials relied upon by the respondent, the sole Arbitrator passed an award directing the petitioner to pay a sum of Rs.39,90,222/- to the respondent along with interest. Aggrieved by that, the above original petition has been filed before this Court.

4. The learned Senior Counsel appearing on behalf of the petitioner made the following submissions :

The award is a non speaking award and therefore, it has to be set aside on the ground of patent illegality under Section 34(2A) of the Act. The agreement between the parties provided for appointment of an Arbitral Tribunal consisting of three members. However, the arbitration proceedings were conducted by a sole Arbitrator and hence, the award is liable to be interfered under Section 34(2)(a)(v) of the



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Act. The procedure as contemplated under Section 18(2) of the MSMED Act was not followed and in view of the same, the award is vitiated and liable to be interfered under Section 34(2)(a)(v) of the Act.

5. Per contra, the learned counsel appearing for the respondent made the following submissions :

The sole Arbitrator was appointed by the Council and the respondent had no say in the constitution of the Arbitral Tribunal. That apart, the parties are governed by the MSMED Act, which overrides the agreement between the parties in so far as the constitution of Arbitral Tribunal is concerned. Though the petitioner was invited for conciliation, none appeared on behalf of the petitioner during the conciliation. Therefore, left with no other alternative, the matter was referred to the sole Arbitrator by the Council. Even in the arbitration proceedings, the petitioner did not appear nor participate and hence, the petitioner was set ex parte. The sole Arbitrator had taken into consideration the various documents and had passed the award, which does not suffer from any perversity or patent illegality warranting the interference of this Court.



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6. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned award.

7. The petitioner floated a tender on 20.12.2015 for the supply of 1 Kg poly polyester laminated LD film pouches for packing crystal iodised salt and refined free flow iodised salt to Kerala. The respondent was the successful bidder and they were awarded the contract. Thereafter, orders for the supply of goods were placed by the petitioner. The respondent acted upon the same and raised invoices from time to time. It is not the case of the petitioner that the quality of the product suffers from any deficiencies.

8. The price of the goods was as per the terms agreed to between the parties whereby 90% of the invoice value was to be paid within one week from the date of receipt of the invoice and the balance was to be paid within one month. The respondent alleged that the petitioner was irregular in making the payments and as a result, the arrears were mounting. Ultimately, a legal notice dated 29.1.2018 came to be issued by the respondent and it was received by the



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petitioner. Further, the Managing Director of the petitioner, through a reply dated 13.2.2018, informed the respondent that they were facing financial difficulties besides slump in the industry and hence, sought for time to clear the balance dues. The petitioner also sent a cheque for Rs.5 lakhs towards the invoice amount towards full and final settlement and also requested the respondent not to charge interest.

9. The specific case of the respondent is that they had supplied goods worth Rs.2,78,65,540/-, that they had received only a total sum of Rs.2,39,60,818/- and that the balance principal amount payable was Rs.39,04,723/-, which they were claiming with interest.

10. Since the respondent is a Member under the MSMED Act, they were entitled to the benefit of the provisions of the MSMED Act. Therefore, a reference was made under Section 18 of the MSMED Act and it was processed by the Council. Further, a notice dated 09.8.2018 was issued to the petitioner. However, none appeared before the Council on behalf of the petitioner. Hence, the Council referred the matter to the sole Arbitrator.



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11. The sole Arbitrator also issued a notice to both parties. Even before the sole Arbitrator, the petitioner did not appear and hence, they were set ex parte.

12. One of the grounds that was raised by the learned Senior Counsel appearing on behalf of the petitioner is that the procedure under Section 18(2) of the MSMED Act was not followed since no attempt was made to send the parties for mediation.

13. As could be seen from the materials available before this Court, the Council had issued a notice dated 09.8.2018 to the petitioner. But, they did not choose to appear before the Council for conciliation. When such is the conduct of the petitioner, it is too late in the day for the petitioner to raise a ground that the procedure was not followed by referring the parties for mediation. Had the petitioner appeared before the Council, there would be any justification on the part of the Council to refer the parties for mediation. In the absence of the same, the Council was left with no other option except to refer the matter to the sole Arbitrator.



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14. The next ground that was raised by the learned Senior Counsel appearing on behalf of the petitioner is that the constitution of the Arbitral Tribunal was not in line with the agreement that was entered into between the parties, who were governed by the terms and conditions of the tender. To substantiate this submission, he relied upon the terms and conditions of the tender and more particularly Clause 22, which provides that all disputes and differences should be referred to arbitration consisting of three arbitrators, that the petitioner and the supplier should appoint one arbitrator each, that the arbitrators so appointed should appoint a third arbitrator and that the arbitration should be held in accordance with the provisions of the Act.

15. Section 18(3) of the MSMED Act provides as follows :

"18. Reference to Micro and Small Enterprises Facilitation Council:

.....

(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



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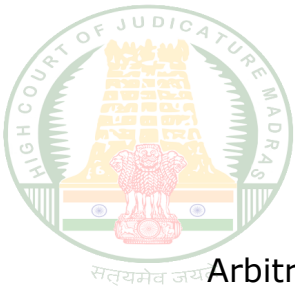


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the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the disputes as if the arbitration was in pursuance of the arbitration agreement referred to in Sub-Section (1) of Section 7 of that Act."

16. A careful reading of Sub-Section (3) of Section 18 of the MSMED Act makes it abundantly clear that if there is no settlement between the parties, the Council can itself either take up the dispute for arbitration or refer the matter to any institution or centre providing alternative dispute resolution services for such arbitration and that the provisions of the Act should then apply to the disputes as if the arbitration was in pursuance of an arbitration agreement referred to under Section 7(1) of the Act.

17. In so far as the reference to the Arbitral Tribunal is concerned, a notional agreement is created under the MSMED Act and the moment the Council referred the matter to the Arbitral Tribunal, it is deemed to have been referred pursuant to an agreement under Section 7(1) of the Act. Thus, even in the absence of an agreement in line with Section 7(1) of the Act, a matter can be referred to the



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Arbitral Tribunal by the Council. To that extent, the parties will be governed under the provisions of the MSMED Act de hors the agreement between them. In other words, the MSMED Act has a overriding effect over the Act namely the Arbitration and Conciliation Act, 1996 in view of the fact that the Act is a general legislation whereas the MSMED Act is a special legislation, which is intended to benefit the micro, small and medium enterprises covered under the MSMED Act.

18. Therefore, even if there is an agreement between the parties for resolution of disputes by arbitration, a party covered by the MSMED Act can certainly approach the Competent Authority to make their claim. In such circumstances, the agreement between the parties is to be ignored in view of the statutory obligation and mechanism provided under the MSMED Act.

19. Useful reference can be made to the judgment of the Hon'ble Apex Court in ***Silpi Industries Vs. Kerala State Road Transport Corporation [reported in 2021 (18) SCC 790]***.

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20. A reference can also be made to another decision of the Hon'ble Apex Court in ***Gujarat State Civil Supplies Corporation Ltd. Vs. Mahakali Foods (P) Ltd. (Unit 2) [reported in 2023 (6) SCC 401]***.

21. In the light of the above discussions, this Court holds that the constitution of the Arbitral Tribunal is governed by the MSMED Act and that the agreement reached between the parties otherwise under the terms and conditions of the tender has to be ignored.

22. The next issue that was raised by the learned Senior Counsel appearing on behalf of the petitioner is that proper procedure was not followed by the sole Arbitrator and that the award was not supported by proper reasons.

23. In so far as the issue as to whether the procedure adopted by the sole Arbitrator was proper is concerned, Section 19 of the Act makes it clear that the Arbitral Tribunal is free to evolve its own procedure, that it must only ensure that sufficient opportunity is given to the parties and that the proceedings are conducted in accordance



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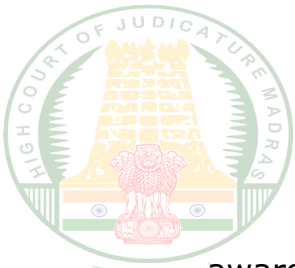
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24. The complaint against the sole Arbitrator seems to be that no issues were framed, that no documents were marked and that no witnesses were examined.

25. Even though all these are not found in the body of the award, in substance, the issues involved and the documents relied upon were clearly spelt out in the award.

26. In so far as the reasons assigned in the award are concerned, the sole Arbitrator has taken into consideration the letters that were exchanged between the parties and also the various records that were placed before the sole Arbitrator by the respondent. In fact, the sole Arbitrator has also taken into consideration the communication dated 13.2.2018 sent by the petitioner wherein the petitioner had virtually acknowledged the liability. Thus, there was sufficient reference to documents and records and in the absence of contra evidence on the side of the petitioner, the sole Arbitrator had to necessarily act upon those documents and records and pass the

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award.

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27. It is now too well settled that a distinction must be drawn between an arbitral award where reasons are either lacking/unintelligible or perverse and an arbitral award where reasons are there, but appear to be inadequate or insufficient. In the latter cases, if, on a careful reading of the entire award coupled with the documents relied upon, the underlying reason, factual or legal that forms the basis of the award, is discernible/intelligible and the same exhibits no perversity, the Court need not set aside such award in exercise of its jurisdiction under Section 34 of the Act. The Court can rather explain the existence of that underlying reason, which will enable the award passed by the Arbitral Tribunal to be understood in a better and clearer manner.

28. In the case in hand, this Court has dealt with the award passed by the sole Arbitrator by keeping in mind the above principle of law.



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29. The Hon'ble Supreme Court in ***Dyna Technologies (P) Ltd. Vs. Crompton Greaves Ltd. [reported 2019 (20) SCC 1]*** set aside the arbitral award on the ground that the award was unintelligible as the award suffered from inadequate reasoning and that the award was confusing and had abruptly concluded at the end of the factual narration without providing any reasons. That is not the case here.

30. In the light of the above discussions, this Court finds that the award passed by the sole Arbitrator does not suffer from any perversity or patent illegality nor does it fall foul of any of the pigeon holes available under Section 34 of the Act.

31. Accordingly, the above original petition stands dismissed with costs of ***Rs.1,50,000/- (Rupees one lakh and fifty thousand only)***, which is payable by the petitioner to the respondent. Consequently, the connected application is also dismissed.

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N.ANAND VENKATESH,J

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