



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 29610 OF 2017 (GM-RES)

BETWEEN:

M/S ENMAS GB POWER SYSTEMS
PROJECTS LTD.(EGB),
5TH FLOOR, GUNA BUILDING ANNEX,
443 ANNA SALAI, TEYNAMPET
CHENNAI-600 018.
REPRESENTED BY ITS
DIRECTOR MR. N.K.GOPINATH

...PETITIONER

(BY SRI. SUNIL P P.,ADVOCATE)

AND:

1. MICRO AND SMALL ENTERPRISES
FACILITATION COUNCIL,
NO.49, 2ND FLOOR, SOUTHERN BLOCK
KHANIJABHAVAN, RACE COURSE ROAD,
BANGALORE-560 001.
REPRESENTED BY ITS
PRESIDENT, ADDITIONAL DIRECTOR(MSME)
& MEMBER SECRETARY, MSEFC.

2. LOTUS POWER GEAR PRIVATE LTD.,
NO.12/13 KM,
KANAKAPURA MAIN ROAD,
DODDAKALLASANDRA
BANGALORE-560 062.
REPRESENTED BY ITS DIRECTOR.

...RESPONDENTS

(BY SRI. SURESH P, ADVOCATE FOR R2,
R1-MICRO AND SMALL ENTERPRISES
FACILITATION COUNSEL-SERVED)





THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE AWARD DTD.14.3.2017 AT ANNEX-L PASSED BY THE R-1 AND DIRECT THE R-1 TO CONDUCT THE PROCEEDINGS IN THE MANNER STIPULATED UNDER SEC.18(3) OF THE MSME ACT.

THIS PETITION, COMING ON FOR DISMISSAL FOR NON - PROSECUTION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:
CORAM: HON'BLE MR JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

The petitioner is before this Court seeking for the following reliefs:

Wherefore, the petitioner respectfully prays that this Hon'ble Court be pleased to:

i. Issue writ order of direction quashing the award dated 14.03.2017 at (Annexure-L), passed by the 1st respondent, in the interest of justice and equity.

ii. Issue writ, order or direction, directing the 1st respondent to conduct the proceedings in the manner stipulated under Sec.18(3) of the MSME Act, in the interest of justice and equity.

iii. Issue writ of certiorari to issue any other appropriate writ of order of direction to the respondents deemed fit on the facts and circumstances of the case, in the interest of justice and equity.

2. The petitioner claims to be a private company providing economical solutions for the infrastructure, power and Industrial sectors. The petitioner had issued a purchase order to 2nd respondent - Company on 14.02.2013 for supply of certain materials at the cost of Rs.22,570,000/- with a gross value of Rs.25,886,845.04/- inclusive of



taxes. The entire payment not having been made, the 2nd respondent had initiated conciliation proceedings under Section 18 of the Micro, Small and Medium Enterprises Development Act (hereinafter for short MSMED Act) for recovery of the balance money.

3. The matter being taken up by the Council in Case No.1/2016, there were several meetings held by the Council and finally an award was passed on 14.03.2017 directing the petitioner to make payment of sum of Rs.11,88,756/- towards the principal outstanding dues along with interest at three times of the bank rate notified by the Reserve Bank of India. It is challenging this award, that the petitioner is before this Court.
4. Sri. Sunil P.P, learned counsel for the petitioner would submit that what was taken up by the council was only conciliation proceedings, no award could have been passed by the Council upon the conciliation having failed, it was required for the Council to terminate the conciliation proceedings and either take up the matter as arbitral proceedings by itself or refer the matter to



institutional arbitration. Neither having been done despite the petitioner having denied the dues of the 2nd respondent by having paid the admitted amounts, the Council has passed an award, which is not permissible under Section 18(3) of the MSMED Act. He therefore submits that there is no jurisdiction with the Council to pass such an award. The award being without jurisdiction, this Court can exercise its power under Article 226 of Constitution to set aside such an award passed which is passed without jurisdiction.

5. Sri. Suresh P, learned counsel for respondent No.2 submits that an award having been passed, it is only the proceedings under Section 19, which could be initiated by the petitioner. The petitioner cannot approach this Court by filing a writ petition. An award having been rightly passed by the Council on the basis of the admission made by the petitioner, no fault can be found in the said award. On this ground, he submit that the writ petition requires to be dismissed.



6. Heard, learned counsel for the petitioner as well as learned counsel for respondent No.2 and perused the record.

7. The short question that would arise for consideration is:

Whether the Micro and Small Enterprises Facilitation Council could have passed an award on account of conciliation having failed without referring the matter to arbitration?

8. Section 18 of MSMED Act, is reproduced as under for easy reference.

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 to it 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.

9. Sub Section (1) of Section 18 of MSMED Act starts with a non-obstante clause in as much as it states that notwithstanding anything contained in any other law for the time being in force, any party can make a reference under Section 17 for the recovery of the amount due to Micro and Small Enterprises Facilitation Council.
10. In terms of Sub Section (2) of section 18, 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, in terms of sections 65 to 81 of the Arbitration and Conciliation Act, 1996.

11. In the present case, on receiving a reference under Section 17, the Council did not make further reference to any other institution but took up conciliation proceedings by itself and has conducted conciliation between the petitioner and respondent No.2 on several occasions. During the process of the said conciliation, the petitioner filed a memo of calculation that the total amounts due by the petitioner to respondent No.2 was a sum of Rs.12,69,643/- and any other amount which has been claimed by the 2nd respondent over and above the said amount is denied to be due by the petitioner. The petitioner in furtherance of the same also paid the said amount of Rs.12,69,643/- firstly by way of cheque, which was dishonored and subsequently by way of Demand Draft, which amount was acknowledged to have been received by the 2nd respondent on 24.11.2016. Thereafter the matter was adjourned on several occasions.



12. In the meeting held on 08.02.2017, the council held that the petitioner and the 2nd respondent failed to reconcile the account despite sufficient time having been granted and further held that the fact that the petitioner had made payment of a sum of Rs.12,69,643/- indicated that the 2nd respondent was entitled to receive balance payment from the petitioner herein. On the basis of the affidavit, memorandum, delivery challans etc., came to a conclusion that there is no reason to disbelieve or discard the claim of the 2nd respondent, observing that there was a time limit for the Council to decide the reference passed the aforesaid award. Thus, essentially the Council has passed the award on account of conciliation between the petitioner and 2nd respondent having failed and at the same time concluding that there is no reason to disbelieve the claim of 2nd respondent.

13. In terms of Sub-Section (3) of Section 18, which is reproduced herein above, it is clear that when the conciliation initiated under sub-section (2) of Section 18 is not successful i.e. there is no settlement arrived at between the parties then the conciliation proceedings



would have to be terminated and thereafter the Council shall either take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

14. In the present case as could be seen upon the conciliation having failed neither the Council terminated the proceedings nor did it take up the matter for arbitration or refer the matter for arbitration to any institution.
15. Once the conciliation had failed, it was the duty and obligation on part of the Council to terminate its proceedings and refer the matter to arbitration or take up the matter for arbitration, which would require the Arbitration and Conciliation Act, 1996 to apply to the Arbitral proceedings. None of them having occurred, the Council could not have on its own come to a conclusion that there is no reason to disbelieve or discard the claim



of the petitioner allegedly supported by the documents without providing an opportunity to the petitioner to file its detailed objections to lead evidence and contest the matter.

16. In that view of the matter, it is clear that award has been passed contrary to sub-section (3) of Section 18 by the Council there being no jurisdiction vested with the Council to pass any such award after the conciliation has failed. The award having been passed suffering from jurisdictional error i.e. to say there being no jurisdiction at all. The decision of Hon'ble Apex Court in the case of ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others***¹ would be applicable for this Court to exercise its jurisdiction under Article 226 to intervene where such injustice has occurred by passing or ordes by an authority having no Jurisdiction. Hence, I pass the following:

ORDER

- i. The writ petition is ***allowed***.

¹ (1998) 8 SCC 1.



- ii. The award dated 14.03.2017 at Annexure - L passed by the 1st respondent is quashed.
- iii. The matter is remitted to the Karnataka Micro and Small Enterprises Facilitation Council, to formally terminate the conciliation proceedings and thereafter take a decision whether it intends to conduct the arbitration proceedings by itself or refer the matter for arbitration to be held by an institution. The said orders to be passed within a period of 30 days on receipt of copy of this order.
- iv. The Registrar(Judicial) is directed to forward the copy of this order to Karnataka Micro and Small Enterprises Facilitation Council both by Registered Post Acknowledgement due as also by email at its official address found on the website.

SD/-
(SURAJ GOVINDARAJ)
JUDGE