

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 17 - 02 -2026

ORDER PRONOUNCED ON : 19 - 02 -2026

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THE HON'BLE MR JUSTICE N. ANAND VENKATESH

Arb O.P.(COM.DIV.) No. 682 of 2022

M/s.TGV SRAAC LTD.,
(Formerly M/s Sree Rayalaseema Alkalies and
Allied Chemicals Limited), 40-304, 2nd Floor,
Krishna Jyothsna Complex, Bhagyanagar,
Kurnool-518 004. Andhra Pradesh.

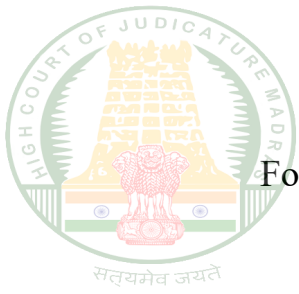
..Petitioner(s)

Vs

M/s.Unicon Engineers
513-A/6, Bharthi Street, Chinnavedampatti,
Coimbatore-641 049.

..Respondent(s)

PRAYER: This Original Petition is filed under Section 34 (2) of the Arbitration and Conciliation Act, 1996, to set aside the impugned Arbitration Award dated 02.11.2021 passed by the Arbitrator.



For Petitioner(s): Ms. Punnagai M.
for M/s Hari Radhakrishnan

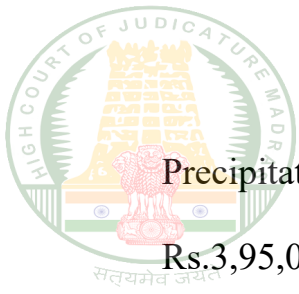
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For Respondent(s): Mr. B.Manoharan

ORDER

The petitioner has assailed the Award passed by the sole Arbitrator dated 02.11.2021 in the present petition filed under Section 34 (2) of the Arbitration and Conciliation Act, 1996, (for brevity, hereinafter referred to “the Act”).

2. The case of the respondent/claimant is that they are a small enterprise registered in the year 1991 under the Micro, Small and Medium Enterprises Development Act, 2006, (hereinafter referred to as “the MSMED Act”) and that they are engaged in the manufacture of air pollution control equipments. The petitioner proposed to install a captive thermal power Plant of 25 MW capacity for the purpose of supplying energy to its manufacturing units. This power plant required pollution control equipment and, for that purpose, the petitioner negotiated with the respondent and issued a Letter of Intent (LOI) dated 12.03.2009 containing various terms and conditions for the design, engineering, manufacture, supply, storage, erection and commissioning of Elector Static



Precipitator (hereinafter referred to as “ESP”). The contract price was fixed at Rs.3,95,00,000/-.

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3. The further case of the respondent is that they supplied the ESP machinery at a price of Rs.3,75,00,000/- upon various payment terms. In the purchase order, it was stated that a separate work order will be issued later for erection and commissioning at a cost of Rs.20,00,0000/-. Subsequently, the purchase order was amended vide letter dated 22.05.2009, whereby the cost of supply was revised to Rs.3,55,00,000/- and the cost of erection and commissioning was revised to Rs.40,00,000/-.

4. It is the further case of the respondent that an advance amount of 10% of the contract value, amounting to Rs.37,50,000/-, was paid by the petitioner by means of cheques. When the respondent sent the scanned copy of the drawings, the petitioner released a further payment of Rs.33,50,000/- vide cheques in line with the terms contained in the purchase order.

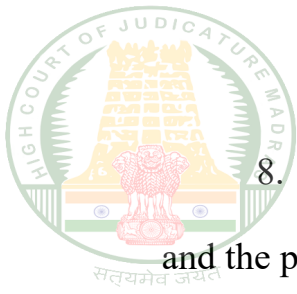
5. There was a delay in making further payments and the parties arranged for a meeting and entered into a fresh agreement, which was recorded in the minutes of the meeting held from 12.03.2011 to 14.03.2011. Pursuant to the



agreement, an amended letter dated 01.04.2011 was issued by the petitioner to the respondent, increasing the purchase price from Rs.3,55,00,000/- to Rs.3,97,60,000/-. This amended letter also provided for a hike in the price of erection and commissioning to the tune of Rs.47,40,000/-.

6. Once again, the parties were not able to comply with the terms of agreement, which resulted in a subsequent agreement, which was recorded in the minutes of the meeting held on 01.06.2011. Pursuant to the revised agreement, the petitioner opened an LC for Rs.1,50,00,000/- on 07.07.2011 and another LC for the remaining amount on 23.05.2012 and 19.01.2013, respectively. Accordingly, the respondent completed the supply of the ESP machinery on 04.04.2013 and conducted the necessary tests.

7. Both parties alleged breach of contract against each other. Since the parties were not able to reach an amicable settlement, the dispute ultimately reached the sole Arbitrator. The respondent made a claim for a sum of Rs.1,66,27,986/- on various heads. The petitioner also made certain counterclaims.



8. The respondent relied upon documents marked as Ex.C1 to Ex.C125 and the petitioner relied upon documents marked as Ex.R1 to Ex.R102.

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9. The sole Arbitrator, on considering the facts and circumstances of the case and on appreciation of evidence, allowed Claim Nos.1(a), 1(b), 1(c), 1(d), 2(ii), 2(iv), and 2(v) and rejected the remaining claims. Insofar as the counterclaims made by the petitioner are concerned, the entire counterclaim was rejected.

10. Aggrieved by the same, the present petition has been filed before this Court.

11. When this petition came up for final hearing on 04.02.2026, the learned counsel raised certain preliminary issues which touched upon the very jurisdiction of the arbitral tribunal and hence, this Court recorded the submissions and passed the following order:-

“This Court heard the learned counsel for the petitioner.

2. The learned counsel for the petitioner raised two preliminary objections questioning the very jurisdiction of the Arbitral Tribunal in entertaining the claim made by the respondent. The first preliminary issue that was raised on the side of the petitioner is that the purchase order for supply and commissioning of Electro Static



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Precipitator [ESP] was executed between the parties on 17.03.2009 and the same was amended on 13.05.2009 and 22.05.2009 respectively. According to the petitioner, the respondent had obtained registration under the MSMED Act, 2006 only on 27.04.2016, which was subsequently modified on 25.08.2020. Therefore, the respondent is not entitled to seek any benefit under the provisions of MSMED Act. To substantiate this submission, the learned counsel relied upon the judgments of the Apex Court in ***Tata Power Company Ltd., vs. Genesis Engineering Company*** reported in [MANU/DE/2550/2023], ***Sterling and Wilson Pvt., Ltd., vs. Union of India*** reported in [MANU/MH/1631/2017]. ***P.L.Adke Vs. Wardha Municipal Corporation*** reported in [MANU/MH/2179/2021] and the judgment in ***Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd.***, reported in (2023) 6 SCC 401.

3. The second preliminary issue that has been raised by the learned counsel for the petitioner is that the nature of contract between the parties involved Design, Engineering, Manufacture, Supply, Storage, Erection and Commissioning of ESP and that this work awarded to the respondent was essentially a works contract and it is not for procurement of goods or services. Hence, the learned counsel by relying upon the judgment of the Apex Court in ***Kone Elevator India (P) Ltd. v. State of T.N.***, reported in (2014) 7 SCC 1, submitted that the contract executed is essentially for erection and commissioning of ESP and the supply of goods and services was incidental and therefore the said judgment of the Apex Court will squarely apply to the facts of will the case. Consequently, it was contended that the proceedings under Section 18(1) of the MSMED Act, is without any legal sanctity. To substantiate his submission, the learned counsel relied upon the judgments of the Apex Court in ***Silpi Industries vs. Kerala State Road Transport Corporation*** reported in [MANU/SC/0390/2021] and in ***Anupam Industries Ltd., Vs. The State Level Industry Facilitation Council*** reported in [MANU/GJ/3013/20221]

4. In the light of the above preliminary objections raised on the side of the petitioner, there shall be a direction to the learned counsel for the petitioner to file a convenience set containing the documents, order passed by the Arbitral Tribunal on the preliminary



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objections and also the judgments relied upon by the petitioner. An advance copy shall be served on the learned counsel for the respondent. This Court will hear both sides on the preliminary objections raised and if the preliminary objection is upheld, there will be no need to go into the merits of the case. If it is rejected, this Court will consider the case on merits and pass final orders.

5. Post this case under the caption part heard cases on 10.02.2026.”

12. The learned counsel for the respondent submitted that the petitioner had given up the preliminary objection regarding the status of the respondent as a ‘Supplier’ as defined under Section 2(n) of the MSMED Act and, therefore, the petitioner cannot be permitted to raise those preliminary objections and that the present case has to be necessarily dealt with on merits.

13. As recorded in the previous proceedings dated 04.02.2026, one of the issues that has been raised by the learned counsel for the petitioner goes to the root of the matter, touching upon the very jurisdiction of the sole Arbitrator, which is circumscribed under Section 18 of the MSMED Act. Hence, even if the parties give up the issue of jurisdiction, if ultimately the exercise of jurisdiction by the Arbitral Tribunal becomes questionable, the Court has to necessary deal with that issue considering the fact that an Award passed by an Arbitral Tribunal without jurisdiction will be construed as *non est* in the eye of



law. In any event, a jurisdiction that is not vested in the Arbitral Tribunal cannot be conferred by the parties, more particularly in a case, where such jurisdiction is defined under the MSMED Act.

14. The main preliminary issue that was raised on the side of the petitioner is that the nature of the contract between the parties does not confine itself to mere supply of goods and rendering of services and it also includes within itself erection and commissioning of the ESP, which makes it a works contract. If the contract between the parties is ultimately held to be a works contract, it would fall outside the jurisdiction of the Arbitral Tribunal constituted under the MSMED Act.

15. The law on this issue was dealt with by the Apex Court in the case of ***Kone Elevator India Private Limited Vs. State of Tamil Nadu*** reported in ***(2014) SCC OnLine SC 430***, wherein the majority judgment held as follows:-

70. Coming back to **Kone Elevators**, it is perceivable that the three-Judge Bench has referred to the statutory provisions of the 1957 Act and thereafter referred to the decision in **Hindustan Shipyard Ltd.**, and has further taken note of the customers' obligation to do the civil construction and the time schedule for delivery and thereafter proceeded to state about the major component facet and how the skill and labour employed for converting the main components into the end product was only incidental



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and arrived at the conclusion that it was a contract for sale. The principal logic applied, i.e., the incidental facet of labour and service, according to us, is not correct. It may be noted here that in all the cases that have been brought before us, there is a composite contract for the purchase and installation of the lift. The price quoted is a composite one for both. As has been held by the High Court of Bombay in [Otis Elevator](#), various technical aspects go into the installation of the lift. There has to be a safety device. In certain States, it is controlled by the legislative enactment and the rules. In certain States, it is not, but the fact remains that a lift is installed on certain norms and parameters keeping in view numerous factors. The installation requires considerable skill and experience. The labour and service element is obvious. What has been taken note of in [Kone Elevators](#) is that the company had brochures for various types of lifts and one is required to place order, regard being had to the building, and also make certain preparatory work. But it is not in dispute that the preparatory work has to be done taking into consideration as to how the lift is going to be attached to the building. The nature of the contracts clearly exposit that they are contracts for supply and installation of the lift where labour and service element is involved. Individually manufactured goods such as lift car, motors, ropes, rails, etc. are the components of the lift which are eventually installed at the site for the lift to operate in the building. In constitutional terms, it is transfer either in goods or some other form. In fact, after the goods are assembled and installed with skill and labour at the site, it becomes a permanent fixture of the building. Involvement of the skill has been elaborately dealt with by the High Court of Bombay in [Otis Elevator](#) and the factual position is undisputable and irrespective of whether installation is regulated by statutory law or not, the result would be the same. We may hasten to add that this position is stated in respect of a composite contract which requires the contractor to install a lift in a building. It is necessary to state here that if there are two contracts, namely, purchase of the components of the lift from a dealer, it would be a contract for sale and similarly, if separate contract is

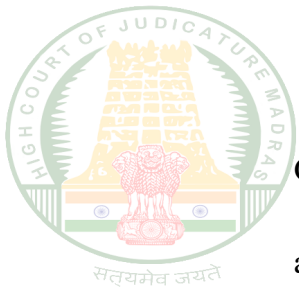


entered into for installation, that would be a contract for labour and service. But, a pregnant one, once there is a composite contract for supply and installation, it has to be treated as a works contract, for it is not a sale of goods/chattel simpliciter. It is not chattel sold as chattel or, for that matter, a chattel being attached to another chattel. Therefore, it would not be appropriate to term it as a contract for sale on the bedrock that the components are brought to the site, i.e., building, and prepared for delivery. The conclusion, as has been reached in [Kone Elevators](#) , is based on the bedrock of incidental service for delivery. It would not be legally correct to make such a distinction in respect of lift, for the contract itself profoundly speaks of obligation to supply goods and materials as well as installation of the lift which obviously conveys performance of labour and service. Hence, the fundamental characteristics of works contract are satisfied. Thus analysed, we conclude and hold that the decision rendered in [Kone Elevators](#) does not correctly lay down the law and it is, accordingly, overruled.

16. The above judgment was followed by the Delhi High Court in the case of *Tata Power Company Limited Vs. Genesis Engineering Company* reported in *2023 SCC OnLine Del 2366* and the relevant portions are extracted hereunder:-

17. The primary question to be adjudicated before coming to the arbitrability of the disputes in question is the applicability of the MSME Act to the case at hand. In order to determine, the applicability of the said Act, it is pertinent to peruse the contract and determine the nature of the contract.

18. Pursuant to the issuance of the LoC, the parties entered into the following Work Orders along with the General Conditions of



Contract:

(a) Work Order No. 6000040502 for Replacement of Street Lights along with LEDs; and

(b) Work Order bearing No. 6000042695 for Supply & Installation of Tubular poles, Supply & Installation of Earth Wire, Supply & Installation of PVC Cable and other relevant accessories and services as per BOQ.

19. In order to ascertain whether the scope of work as awarded to Petitioner would qualify as a 'work contract' or 'composite supply', the judgment of the Hon'ble Supreme Court of India in Kone Elevator India Private Limited v. State of Tamil Nadu, (2014) 7 SCC 1 is relevant to appreciate the categories of contract, i.e. (a) Contract for work to be done for remuneration and for supply of materials to be used in the execution of work for a price (b) Contract for work in which the use of the materials is necessary or incidental to the execution of the work (c) Contract for supply of goods where some work is required to done as Incidental to the sale. The Hon'ble Supreme Court has opined that category (a) as composite contract consisting of two contracts, one of which is for the sale of goods and the other which is for work and labour. It was held that the involvement of supply of goods and material as well as installation of the lift had concluded that the contracts awarded to Kone Elevators satisfy the characteristics of Works Contract and held that it cannot be considered as contract of sale.

20. Applying the judgment to the instant case, the Works Orders as executed by the parties in the instant case falls within category (a) as it comprises of two contracts which include supply of goods such as Cables, wire, connectors, street lights and poles and subsequent involvement of work and labour for its installation. Further, the element of both supply of goods and element of labour and service is involved in the Work Orders. It is also a settled principled of law that that dispute/claims arising from Works Contract are not amenable to the jurisdiction of Facilitation Council constituted under the MSME Act.



17. The next judgment that was relied upon is again the judgment of the Delhi High Court in the case of *M/s.Shree Gee Enterprises Vs. Union of India*

and Anr. reported in *2015 SCC OnLine Del 13169*. In this judgment, the Delhi High Court took into consideration the clarification given by the Ministry of Micro, Small and Medium Enterprises and the relevant portions are extracted hereunder:-

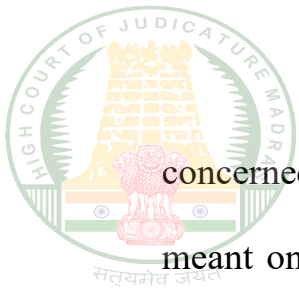
“10. Reference may also be had to the office memorandum dated 20.02.2014 issued by the Director of the Office of the Development Commissioner, Ministry of MSME, Union of India, wherein frequently asked questions and their answers had been circulated to the various Ministries and in particular to question No. 18 and their answers thereto which reads as under:-

Ques. 18. Whether this policy is applicable for works/trading activities also?

Ans. Policy is meant for procurement of only goods produced and services rendered by MSEs.

11. A reading of the policy along with the frequently asked questions meant for giving preference in respect of procurement of goods produced and services rendered by Micro, Small and Medium Enterprises (MSME). It would not be applicable to a "works contract" simpliciter.

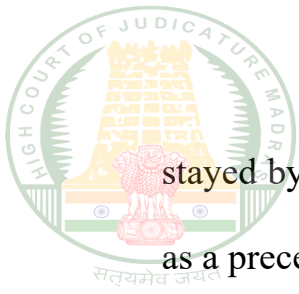
18. It is quite clear from the above judgments that where the contract between the parties is a composite contract, which includes supply of goods, rendering services and other components like, installation, commissioning, etc., it has to be treated as a works contract since it is not a sale of goods or rendering of services *simpliciter*. This clarification was in fact, given by the Ministry



concerned under the FAQs to the effect that the policy under MSMED Act is meant only for goods produced and services rendered and is not applicable to works contract.

19. In the case in hand, even though separate purchases orders were issued for supply and services, the ultimate bill that was raised included within its fold manufacture, supply, storage, erection and commission of the ESP. This clearly constitutes a works contract and it is not a contract of manufacturing of goods and rendering of services *simpliciter*.

20. The learned counsel for the respondent relied upon an order passed in ***W.P.No.17814 of 2022, dated 13.06.2023***, where a similar objection was refused to be gone into by this Court. This order will not apply to the facts of the present case, since this Court was dealing with a writ petition and the nature of contract involved was held to be a question of fact, which cannot be gone into while exercising a writ jurisdiction. The learned counsel for the respondent also relied upon a judgment of the Calcutta High Court in ***WPO No.2896 of 2022, dated 27.06.2023***, where the Calcutta High Court held otherwise, even insofar as a works contract is concerned. It was brought to the notice of this Court that the said order passed by the learned single Judge was subsequently

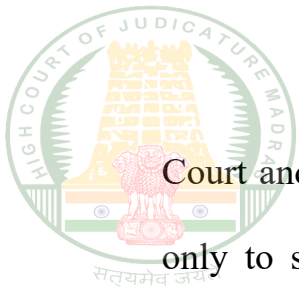


stayed by a Division Bench. In view of the same, this judgment cannot be taken as a precedent.

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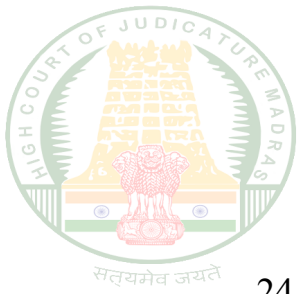
21. In the case in hand, an application came to be filed under Section 16 of the Act before the sole Arbitrator raising preliminary objection on the jurisdiction of the Tribunal to deal with the matter. Section 15 of the MSMED Act was brought to the notice of the sole Arbitrator and a ground was raised to the effect that only goods and services will come within the purview of the MSMED Act. This ground virtually touches upon the core issue that was discussed by this Court supra and the sole Arbitrator had rejected the application on 20.02.2020. Therefore, it is not as if this issue was not raised before the sole Arbitrator, but however, it was not addressed in a proper form, but in substance what was questioned was the jurisdiction of the Arbitral Tribunal. Hence, the petitioner is not raising this issue for the first time before this Court.

22. In the light of the above discussion, this Court holds that the term “buyer” defined under Section 2(d) of the MSMED Act only deals with goods or services. Similar is the definition of “enterprise” under Section 2(e) of the MSMED Act. These definitions, along with the law enunciated by the Apex



Court and the other High Courts, make it clear that MSMED Act would apply only to supply of goods or services and does not cover the works contract, which is a composite supply of goods and services and which also includes erection and commissioning of equipment. Accordingly, the sole Arbitrator lacked jurisdiction to deal with the claim made by the respondent since the jurisdiction is specifically defined under the MSMED Act, 2006. Accordingly, the Award rendered by an Arbitral Tribunal without jurisdiction will render the Award *non est* in the eye of law.

23. In the light of the above finding, it is not necessary for this Court to go into the other preliminary issue raised by the learned counsel for the petitioner to the effect that the respondent was not registered as an enterprise on the date of entering into the contract with the petitioner until the completion of the entire project and therefore, could not claim for the benefits under the MSMED Act. Getting into this issue will only be an academic exercise since this Court has rendered the Award as *non est* while dealing with the first preliminary issue raised by the learned counsel for the petitioner.



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24. The upshot of the above discussion leads to the only conclusion that the Award passed by the sole Arbitrator dated 02.11.2021 is liable to be interfered with and is accordingly set aside. It is left open to the parties to take steps to appoint a fresh Arbitrator to refer the dispute in accordance with law.

25. In the result, this Original Petition is allowed in the above terms. Considering the nature of the issue, there shall be no order as to costs.

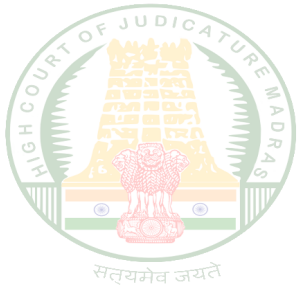
19-02-2026

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes

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To

M/s.Unicon Engineers
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N. ANAND VENKATESH, J.

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