Case Citation: (2026) ibclaw.in 5193 HC

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	**20.08.2026**
DELIVERED ON	**3.09.2026**

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
and
THE HONOURABLE MR.JUSTICE GK.MUTHUKUMAAR

O.S.A.(CAD)No.111 of 2025
and C.M.P.Nos.26708 of 2025
and 20514 of 2026

M/s.Madras Fertilizers Ltd.,
Rep. by its Company Secretary,
Manali,
Chennai – 600 103. .. Appellant(s)

vs

1.The Micro and Small Enterprises
Facilitation Council
Represented by its Chairman/Secretary,
Regional Director,
Industries Commissioner and Director of Industries
and Commerce,
Guindy,
Chennai – 600 032.

2.M/s.Keerthana Enterprises,
Rep. By its Proprietor C Jayaseelan,
No.52/10, Manali New Town,
Manali,
Chennai – 600 068. .. Respondent(s)

Prayer : Original Side Appeal filed under Section 13 of Commercial Courts Act and Section 37 of Arbitration and Conciliation Act read with Order XXXVI

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Rule 9 of Madras High Court O.S. Rules Read with Clause 15 of Letters Patent, praying to set aside the Decree and Judgment dated 13.08.2025 in Arb.O.P.(Com.Div.)No.461 of 2023 as confirming the Award dated 09.11.2022 in MSEFC/CR/466/2020 of the 2nd respondent.

For Appellant(s) : Mr.Jayesh B. Dolia, Senior Counsel

For Respondent(s) : Mr.Karthik Selvaraj for R1
Additional Government Pleader

Mr.P.J.Ganesh
for Mr.Karthik Jagannath for R2

JUDGMENT

GK.MUTHUKUMAAR, J.

This Original Side Appeal is preferred against the Judgment and Decree dated 13.08.2025 passed in Arb.O.P.(Com.Div.) No.461 of 2023 on the Original Side of this Court, dismissing the said Arbitration Original Petition, which had been preferred challenging the Award dated 09.11.2022 passed in MSEFC/CR/466/2020 on the file of the Arbitral Tribunal.

2.Mr.Jayesh B.Dolia, Learned Senior Counsel appearing for the Appellant, would submit as follows:

3.That the 2nd respondent was awarded the contract of running an Industrial Labour Canteen at the Appellant's factory premises to cater to the needs of its workmen on a daily basis. The 2nd respondent was selected as the

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successful bidder through a tender process and awarded the contract for providing Labour Canteen services for the period from 13.08.2018 to 12.08.2019.

4.A dispute arose between the Appellant and the 2nd respondent when the Appellant sought to introduce a biometric system to verify the number of workmen consuming food in the canteen. The grievance of the appellant was that the 2nd respondent had allegedly inflated the number of tokens with a view to deriving additional monetary benefits. The Arbitral Tribunal, which is the 1st respondent herein comprising of 5 Arbitrators, adjudicated the dispute and passed the said Award dated 09.11.2022 directing the Appellant to pay the balance principal amount of Rs.20,76,522/- together with compound interest with monthly rests, as detailed in the Award.

5.Aggrieved by the same, the Appellant had preferred Arb.O.P. (Com.Div.) No.461 of 2023 before the Learned Single Judge of this Court under Section 34 of the Arbitration and Conciliation Act, 1996 (In short 'The Arbitration Act). The Learned Single Judge, upon hearing both sides, held that there was no infirmity in the impugned Award passed by the Arbitral Tribunal as none of the grounds available for challenge under Section 34 of the Act had been made out, and hence dismissed the Original Petition.

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6.Being further aggrieved by the said order, the Appellant has preferred the present appeal under Section 37 of the Arbitration Act. The principal contention of the Appellant is that a reasonable opportunity of hearing was not afforded to it by the 1st respondent Arbitral Tribunal which conducted only two hearings and thereafter proceeded to decide the matter. The Appellant would further submit that the biometric system introduced for verifying the workmen who consumed food in the canteen was effective and that the same revealed that the 2nd respondent had inflated the number of tokens and consequentially raised inflated invoices with a view to deriving additional monetary benefits.

7.To substantiate the said contention, the Learned Senior Counsel would draw the attention of this Court to the attachments to the letter dated 27.07.2022 addressed by the Appellant to the 1st respondent, wherein the tabulation revealed a substantial difference between the number of manually claimed coupons and the biometric head count. He would also point out that the copy of the Award received by the Appellant did not contain the signatures of all the Arbitrators constituting the Arbitral Tribunal and hence the same is bad in law. He would further submit that the time taken to complete the Arbitration proceedings had exceeded the time prescribed under Section 18(5) of the Micro,

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Small and Medium Enterprises Development Act, 2006 (herein after referred as 'MSME Act'). He hence sought for setting aside of the same.

8.The Learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court in ***M/s. Dyna Technologies Pvt. Ltd. v. M/s. Crompton Greaves Limited*** reported in **(2019) 15 S.C.R 295** and the judgment of this Court in ***Hatsun Agro Products Limited. v. Three C Visuals and Others*** reported in ***MANU/TN/5432/2021*** and the judgment of High Court of Bombay in ***IGL Industries Limited Vs. Vardhaman Auto Components Private Limited (W.P.No.1681 of 2020*** **order dated 30.3.2023)** in support of his contentions. These judgments would be referred to in the later part of this order.

9.Per contra, Mr.P.J.Ganesh, learned counsel appearing for the 2nd respondent, would submit as follows:

10.He would contend that the terms and conditions of the contract did not stipulate any biometric system. He would further submit that many workmen did not cooperate with the biometric reading system and, consequently, several head counts were lost, resulting in loss of revenue to the 2nd respondent contractor. This according to him was the reason for the difference in head

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count between the biometric system and token systems and hence the same was not acceptable to the 2nd respondent. He would further contend that any attempt by the Appellant to implement the biometric system would amount to going beyond the scope of the contract and would also amount to rewriting the contract, which is impermissible in law. He would further submit that the Award was passed nearly three and a half months after the conclusion of the hearings, during which period the Appellant did not raise any objection regarding the alleged denial of reasonable opportunity before the Arbitral Tribunal.

11.While deciding the present Original Side Appeal, this Court is conscious of the fact that, this Court is exercising jurisdiction under Section 37 of the Arbitration Act and that its power of interference with the impugned Judgment and Decree of the Learned Single Judge is limited to that mandated under Section 37 & 34 of the Arbitration and Conciliation Act.

12.Upon hearing the arguments of the Learned Senior Counsel for the Appellant, the Learned Counsel appearing for the 2nd respondent and upon considering the materials on record, this Court finds that the following points arise for determination in this Appeal;

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(i).Whether the Act of the appellant in introducing the biometric system of head count was contrary to and beyond the terms of the contract, and would also amount to rewriting the contract?

(ii).Whether there were sufficient reasons furnished in the award so as to sustain it?

(iii).Whether the appellant was offered reasonable opportunity of hearing before the Arbitral Tribunal?

(iv).Whether the Arbitral Award has been signed by all the Arbitrators?

(v).Whether the Arbitral Tribunal is barred under Section 18(5) of the MSME Act, from passing the Award in view of non-compliance with the time frame stipulated therein?

(vi).Whether the Arbitral Tribunal was right in dismissing the appeal preferred under Section 34?

Point No. 1

13.The undisputed facts of the case are that the appellant had called for a tender by issuing a tender notice dated 25.05.2018 inviting bids from eligible contractors to provide canteen services on a round-the-clock basis to its contract workmen. The 2nd respondent, as the highest bidder, was awarded the contract. As per Clause 10 of Annexure 2 of the tender document, food items were to be served to the workmen of the Appellant by the 2nd respondent only on payment

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basis. For this purpose, the 2nd respondent was to devise methods for payment, such as cash or the issuance of printed metal tokens. These tokens were to be issued to the workmen by the 2nd respondent and then collected from them by the supervisors of the appellant, based on which food was provided by the 2nd respondent to the workmen. The contract period was from 13.08.2018 to 12.08.2019. The contract included termination and arbitration clauses.

14.The dispute arose when the appellant sought to implement a biometric system for taking the head count of workmen having food. The 2nd respondent objected to this because many workmen do not keep their imprints or cooperate with the biometric system. Consequently, several head counts were lost, resulting in a loss of revenue to the 2nd respondent. According to the 2nd respondent, this caused the discrepancy in the head count between the biometric system and the token system.

15.We find that, as contended by the Learned counsel for the 2nd respondent, the contract does not provide for a biometric system of head count; it specifies only a token system. The Hon'ble Supreme Court, in ***PSA Sical Terminals Private Limited v. The Board of Trustees of V.O. Chidambaranar Port Trust, Tuticorin and Others being Civil Appeal Nos. 3699-3700 of 2018***,

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(at paragraphs 82 and 83), held that a unilateral addition or alteration of a contract can never be foisted upon an unwilling party. It further held that a party cannot be made liable to perform something for which it had not entered into a contract.

16.In view of the above judgment of the Hon'ble Supreme Court, it is clear that the appellant cannot unilaterally insist upon the 2nd respondent to implement the biometric system. Doing so would replace the token system provided under the contract, which would amount to going beyond the scope of the contract, and also amount to rewriting it, all of which are impermissible in law. This being the settled legal position, we find that, insisting upon the 2nd respondent to implement the biometric system would amount to going beyond the scope of the contract and would also amount to rewriting. Therefore, we hold that the appellant cannot insist upon the 2nd respondent to implement the biometric system.

17.Further, the Hon'ble Supreme Court has in the said judgment also held that the role of an arbitrator is to arbitrate within the terms of the contract and that an arbitrator has no power apart from the purpose given under the contract. If the arbitrator travels beyond the contract, the award would be without

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jurisdiction. In the light of these principles, we find that the Arbitral Tribunal was well within its jurisdiction in passing the award and upholding the respondent's claim. Consequently, the award and the order of the Learned Single Judge in this regard and do not warrant interference. Hence Point No.1 is answered accordingly.

Point No.2

18.The 2nd point pertains to whether sufficient reasons have been furnished in the Award so as to sustain it. From a perusal of the Award, we find that reasoning has been given at paragraphs 11 to 15. In order to ascertain whether these reasons are sufficient to sustain the Award, the following Judgments of the Hon'ble Supreme Court are being referred to;

(a).***M/s. Dyna Technologies Private Limited v. M/s. Crompton Greaves Limited.*** reported in ***(2019) 15 S.C.R 295***, (paragraphs 35 and 36), wherein, the Hon'ble Supreme Court has held that the mandate under Section 34(3) of the Arbitration Act is that the reasons furnished in an Arbitration Award must be intelligible and adequate and that the provision does not require a lengthy Judgment to be passed by the Arbitrators keeping in mind the requirement for speedy resolution of disputes.

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(b).***Somdatt Builders-NCC-NEC (JV) v. National Highways Authority of India and Others*** reported in ***(2025) 6 SCC 757***, (paragraph 45), the Hon'ble Supreme Court has held that an Arbitral Award ought not to be interfered with if the view taken by the Arbitrator is a possible view based on facts. It was further held that the scope of interference under Sections 34 & 37 is limited and that the Court cannot travel beyond the restrictions laid down under Section 37. It was further held that the Court cannot undertake an independent assessment of the merits of the Award and can only ascertain whether the exercise of power by the Court under Section 34 had exceeded the scope of that provision.

(c).***The Chief Engineer/Metropolitan Transport Project (Railways) and Another v. M/s. Progressive-Aliens (JV)*** *in* ***Arb.O.P.(Com.Div.) No. 83 of 2021, dated 08.03.2022***, this Court has emphasized the sacrosanct philosophy underlying Sections 34 and 37 of the Arbitration Act to prioritizes the finality of an Arbitral Award with minimal judicial intervention as the norms.

(d) ***M/s.Engineering Projects (India) Limited v. Tamil Nadu Generation & Distribution Corporation*** in ***O.S.A. Nos. 38 and 65 of 2011, dated 11.9.2023***, (paragraph 68), this Court has held that the inadequacy of reasons in an arbitral award cannot be a ground for setting aside the award, provided the reasons stated are proper, intelligible, and adequate.

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19.Analysing the Award in the light of these pronouncements of the Hon'ble Supreme Court and this Court, we find that the reasons stated in paras 11 to 15 of the Award are adequate and the same are proper and sufficient to arrive at the decision in the Award. Though the reasoning in the paras may not be lengthy still we find that the same are sufficient to come to the conclusion arrived at in the Award. Therefore, we do not find any infirmity in the award or in the order of the Learned Single Judge in this regard so as to warrant our interfere under Section 37 of the Arbitration and Conciliation Act,1996.

Point No.3

20.Regarding the third point as to whether the appellant was afforded a reasonable opportunity of hearing before the Arbitral Tribunal, it is seen from the records that during the hearing on 13.08.2021, the appellant was granted time by the Arbitral Tribunal to file a counter-affidavit with all details. During the next hearing on 7.01.2022, the counter affidavit was not filed and there was a dispute raised between the appellant and the second respondent regarding payments made by the appellant to the second respondent. The appellant was therefore granted time to submit proof of payment of bills to the respondent, and the matter was adjourned. Thereafter, at the hearing on 27.05.2022, the appellant submitted that its counter affidavit and the proof of payment and other relevant documents that were directed to be filed during the previous hearing

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had not been filed as directed and sought further time to file it. In view of this, the matter was adjourned to 3.06.2022. Even during the subsequent hearings on 3.6.2022 and 5.07.2022, the appellant did not file its counter-affidavit or documents. The matter was then adjourned to 22.07.2022 for a joint sitting and conciliation. On this date also, the appellant did not file any documents. The conciliation also failed. Hence the conciliation proceedings were treated as closed. In view of which the arbitration proceedings proceeded further. At the hearing on 28.7.2022, both parties were heard, the 2nd respondent was directed to clear PF and ESI dues, and the matter was adjourned. On the next hearing on 19.11.2022, the 2nd respondent submitted that all dues were cleared, following which both the appellant and the 2nd respondent were heard.

21.From paragraphs 11 to 15 of the arbitral award, it is evident that the Arbitral Tribunal appreciated the case of both the appellant and the 2nd respondent, considered all relevant documents, applied its mind, and decided the issue on hand and passed the award, upholding the claim of the second respondent and directed the appellant to pay the balance principal amount with interest. Therefore, it is clearly evident that reasonable opportunity was granted to the appellant to put forth its case before the Arbitral Tribunal. Hence, we find no ground for interference with the award on this ground. Therefore, the

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exercise of power by the Learned Single Judge under Section 34 to set aside the Award on this ground, does not arise. Hence Point No.3 is held against the appellant.

Point No. 4

22.The 4th Point pertains to the signing of the Arbitral Award by all the Arbitrators. A copy of the Arbitral Award has been filed by the appellant. Upon a perusal of the same, we find that the names of the Arbitrators are mentioned in the first page of the award. The last page of the award states that the award was signed all the five Arbitrators and that a certified copy of the same was issued by the Secretary, MSME Facilitation Council. Learned Senior Counsel appearing for the appellant relying upon a Judgment of the ***Bombay High Court in IGL Industries Limited Vs. Vardhaman Auto Components Private Limited (W.P.No.1681 of 2020*** **order dated 30.3.2023)** would contend that the omission of a member of the Arbitral Tribunal to sign the Award would invalidate it. However, he would also fairly concede that this ground was not raised before the Learned Single Judge but he was entitled to canvass the same in the present appeal as the same is a legal requirement. However, the Learned Counsel for the 2nd respondent would contend that a perusal of the Award filed by the appellant would itself reveal that the same has been signed by all the Arbitrators comprising the Arbitral Tribunal and that it was only a certified copy of the

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Award that was communicated by the Secretary, MSME Facilitation Council under his signature and seal of the Council. Upon perusal of the copy of the Award, we prima facie find that it is mentioned that it has been signed by all the Arbitrators and only communicated by the Secretary with the seal of the Council. Therefore, we find nothing erroneous in this regard and hence we agree with the contention of the Learned Counsel for the 2nd respondent in this regard. This point is answered accordingly.

Point No. 5

23.The 5th point pertains to whether the Arbitral Tribunal was barred under Section 18(5) of the MSME Act from passing the Award in view of non-compliance with the time frame stipulated therein. The Learned Senior Counsel for the appellant would strongly contend that the Arbitral Tribunal had exceeded the time frame provided under Section 18(5) in deciding the Award and hence, the same has to be struck down as being violative of Section 18(5), the same being a mandatory requirement. However, the Learned Counsel for the 2nd respondent would submit that the provisions of Section 18(5) are only directory and not mandatory. He also brought to the attention of this Court the fact that, the issue pertaining to whether the provisions of Section 18(5) are mandatory or directory is currently pending considering before the Hon'ble Supreme Court in

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S.L.P(Civil) No.17633 of 2022 and produced the order of the Hon'ble Supreme Court dated 01.08.2025 to this effect.

24.He also further relied upon a Judgment of the Hon'ble Supreme Court in the case of ***Bharat Sanchar Nigam Limited and Another v. Motorola India Private Limited*** reported in ***(2009) 2 SCC 337***, (paragraph 39) and would submit that this objection under Section 18(5) of the MSME Act was not taken by the appellant either before the Arbitral Tribunal prior to passing of the Award or before the Learned Single Judge despite the said ground being available to it at that point of time. Therefore, he would submit that under Section 4 of the Arbitration Act the appellant is deemed to have waived his right to object on this ground.

25.Based on the above, we find that the appellant has not raised this objection on an earlier occasion and is raising the same for the first time in appeal under Section 37 of the Arbitration Act before this Court. Therefore, in view of Section 4 of the Arbitration Act it can only be held that the appellant has waived his right to object on this ground in this Section 37 appeal. Further, the issue as to whether Section 18(5) of the MSME Act is mandatory or

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directory is currently pending before the Hon'ble Supreme Court and hence we do not intend to delve further into it. This point is answered accordingly.

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Point No.6

26.In light of our findings regarding points 1 to 5 enumerated above, we find no infirmity in the order passed by the Learned Single Judge in dismissing the appeal under Section 34 of the Arbitration Act. Hence, we answer point No.6 as to whether the Learned Single Judge was right in dismissing the appeal preferred under Section 34 in the affirmative.

27.For the aforesaid reasons, we find no ground for interference by this Court exercising powers in appeal under Section 37 of the Arbitration Act. Hence, we dismiss this Original Side Appeal. In the facts and circumstances of the case, the parties are directed to bear their own costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

[P.V.J.] [GK.M.J]
3.09.2026

Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes/No
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To

The Micro and Small Enterprises
Facilitation counsel
Represented by its Chairman/Secretary,
Regional Director,
Industries Commissioner and Director of Industries
and Commerce,
Guindy,
Chennai – 600 032.

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P.VELMURUGAN, J.
and
GK.MUTHUKUMAAR, J.

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A pre-delivery Judgment in
O.S.A.(CAD)No.111 of 2025

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