IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11967 OF 2013

Maharashtra State Electricity
Board now Maharashtra State
Electricity Distribution Company Ltd. .. Petitioner
vs.
Pratik Conductors Pvt. Ltd. & Ors. .. Respondents

WITH
WRIT PETITION NO. 11968 OF 2013

Maharashtra State Electricity
Board now Maharashtra State
Electricity Distribution Company Ltd. .. Petitioner
vs.
Reliance Cables and Conductors
Pvt. Ltd. & Ors. .. Respondents

WITH
WRIT PETITION NO. 11969 OF 2013

Maharashtra State Electricity
Board now Maharashtra State
Electricity Distribution Company Ltd. .. Petitioner
vs.
Bombay Wire Products & Ors. .. Respondents

WITH
WRIT PETITION NO. 11971 OF 2013

Maharashtra State Electricity
Board now Maharashtra State
Electricity Distribution Company Ltd. .. Petitioner
vs.
Prerna Cables Pvt. Ltd. & Ors. .. Respondents

Mr. Shriram Kulkarni with Kiran Gandhi i/b. Little & Co. for Petitioner in all Petitions.
Mr. Suresh Dhole with Anuja Dhole for Respondent No. 1 in all Petitions.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 11 February 2015
Date of Pronouncing the Judgment : 17 February 2015

JUDGMENT :-

1] As common issues of law and fact arise in these petitions, the same are disposed of by common order.

2] Rule in each of the petitions. At the request of and with the consent of the learned counsels for the parties, Rule is made returnable forthwith.

3] The challenge in these petitions is to the decision of the Micro and Small Enterprises Facilitation Council (Council) to proceed with arbitration of the disputes which have arisen between the petitioner and the respondents under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (“said Act”). The impugned decision is reflected in the minutes recorded on 25 October 2013.

4] Mr. Kulkarni, the learned counsel for the petitioner made the following submissions in support of petitions :

(A) That in the present cases, the Council had itself held 'Conciliation', however, the same was not successful. Therefore, upon correct interpretation of the provisions contained in Section 18(2) of the said Act read with section 80 of the Arbitration and Conciliation Act, 1996 (1996 Act), the Council is barred from acting as Arbitrator in the matter.

(B) Without prejudice, it was submitted that the Council is *'biased'* in the matter, which is evident from the observations recorded in the minutes dated 11 October 2013 and 25 October 2013. Accordingly, the Council is precluded from arbitrating the dispute between the parties.

(C) In any case, the learned counsel submitted that Section 18(3) of the said Act vests a discretion with the Council to either itself take up the dispute for arbitration or to refer it to any institution or centre providing alternate dispute resolution services for such arbitration. Since the present case involves adjudication into serious and complicated issues of fact and law, the Council, in deciding to take up the dispute itself for arbitration, has exercised its discretion capriciously.

5] Mr. Suresh Dhole, the learned counsel for respondent no. 1 in each of these petitions, on the contrary, submitted that in the present case the Council had no occasion to conciliate in the matter, on account of the refusal on the part of the petitioner to accept the invitation to conciliate. In any case, the learned counsel relying upon the several decisions referred to hereafter, submitted that the non-obstante clause with which Section 18(1) begins and the provisions contained in Section 24 which confer an overriding effect upon the provisions contained in Sections 15 to 23 of the said Act, there can be no bar whatsoever to the Conciliator acting as an Arbitrator, the provisions contained in Section 80 of the 1996 Act, notwithstanding.

(i) Lanco Infratech Ltd. vs. Micro and Small Enterprises Facilitation Council[1]

(ii) M/s. Paper and Board Convertors Thru' Partner Rajeev Agrawal vs. U.P. State Micro & Small Enterprises & Ors.[2]

(iii) M/s. Bharat Heavy Electricals Limited vs. State of U. P. & Ors.[3]

(iv) Welson Corporation ltd. vs. The Micro and Small, Medium Enterprises Facilitation Council, Punjab & Ors.[4]

(v) M/s. Eden Exports Company vs. Union of India[5]

6] Having heard the learned counsels for the parties and perused the record, it does appear that in the facts and circumstances of the present case, there was no real occasion for the Council to embark upon any conciliation into the disputes

1 Writ Petition No. 6636 of 2012 decided on 24 October 2013
2 Writ Petition No. 24343 of 2014 decided on 29 April 2014 (Allahabad High Court)
3 Writ Petition No. 11535 of 2014 decided on 24 February 2014 (Allahabad High Court)
4 Writ Petition Civil No. 23016 of 2011 decided on 13 December 2011 (Punjab & Haryana High Court)
5 Writ Petition No. 2461 of 2011 dated 20 November 2012 (Madras High Court)

between the petitioner and the respondent no. 1. If this be so, then there is no occasion to decide the larger issue raised by Mr. Kulkarni that in view of the provisions contained in Section 80 of the 1996 Act and the applicability of the provisions of Sections 65 to 81 of the 1996 Act to conciliation and arbitration under Section 18(2) of the said Act, the Council stands precluded from arbitrating, once it has conciliated in the matter.

7] The perusal of the proceedings of the Council as reflected in the minutes recorded on 11 October 2013 indicate that there is some record of the Council having advised the parties to settle the dispute amicably. The minutes record that efforts at amicable settlements between the parties have failed. The minutes also make reference to further efforts in the direction of amicable settlement. The minutes ultimately record the contention on behalf of the petitioner that decision in the matter of settlement shall have to be taken by the Board of Directors or some competent representative authorized by the Board of Directors. Accepting this position, the minutes record that the Board of Directors of the petitioner ought to deliberate upon the matter and to depute some Director / representative duly empowered to take spot decision in the next meeting of the Council scheduled on 25 October 2013.

8] The minutes of the proceedings of the Council on 25 October 2013 then record that the petitioner has addressed a communication dated 24 October 2013 to their Advocate along with a copy to the Chairman of the Council that the competent authority i.e. the company management of the petitioner '*has decided not to settle / compromise on 25 October 2013 before MSEFC Thane in this case filed in MSEFC Thane, towards interest on delayed payment against supply of materials to MSEDCL under MSMED Act, 2006.'*

9] The minutes further record that from the aforesaid and the earlier affidavit dated 10 September 2012 of the petitioner, it is clear that the petitioners have refused each and every opportunity of settlement / compromise of the interest claimed with the respondents, nor do they want to hold conciliation at all, on the subject matter with the respondents in any manner. In this regard, reference can usefully be made to paragraphs 3, 3 (sic),4 and 5 of the minutes (impugned decision) which reads thus:

> *"3. But the respondent MSEDCL has sent the communication No. SP/IFC/Thane/09/004314 dt. 24.10.2013 to their Advocate Shri Shriram S. Kulkarni with the submission of copy to the Chairman, Micro and Small Enterprises Facilitation Council, Thane that at the time of meeting on 25*th *October 2013 <u>Competent Authority i.e. Company Management of MSEDCL has decided not to settle / compromise on 25/10/2013 before MSEFC Thane in this case filed in MSEFC, Thane, towards "Interest on delayed payment" against</u>*

> *<u>supply of materials to MSEDCL under MSMED Act 2006</u>.*
>
> *It is clear from the clear cited above and earlier affidavit dt. 10.09.2012 of MSEDCL as well as directions dt. 14.09.2012 of Micro and Small Enterprises Facilitation Council to hold effective conciliation that respondent MSEDCL has refused each and every opportunity of settlement / compromise of interest claim with the petitioner, <u>nor they want to hold conciliation at all on the said subject matter with the petitioner in any manner</u>.*
>
> *3. On the other hand the petitioner came forward with their proposals for compromise and same were sent to MSEDCL on the date 22.10.2013 that they are ready to reduce their claim by 20% on the upto date calculation of interest, provided the amount is paid to them within one month period at a stroke. If amount is not paid to them within one month, the offer of the petitioner would stand withdrawn. <u>But the respondent MSEDCL has not entertained the proposals of petitioner in terms of their letter dt. 24 October 2013 as cited above.</u>*
>
> *4. <u>Micro and small Enterprises Facilitation Council cannot compel the parties for conciliation. Since MSEDCL has declined to come forward for conciliation, the conciliation process has came to an end</u>.*
>
> *5. <u>Under such circumstances, the Micro and Small Enterprises Facilitation Council had no occasion to act as conciliator at all between the parties to disputes under Section 18(2) of MSMED Act, 2006</u>. Therefore, the requests of the parties to this Council dt. 10.09.2012 to decide the matters on merits remains as it is and further proceedings shall be under Section 18(3) of MSMED Act, 2006."*
>
> *(emphasis supplied)*

10] Section 18(2) of the said Act makes specific reference to the provisions of Sections 65 to 81 of the 1996 Act in the matter of conciliation and arbitration under the said Act. Section 62 of the 1996 Act provides that the party initiating conciliation shall send to the other party a written invitation to conciliate under this part, briefly identifying the subject of the dispute. Conciliation proceedings shall commence when other party accepts in writing the invitation to conciliate. If the other party rejects the invitation, there will be no conciliation proceedings.

11] In the present case, the Council can be said to have made efforts to persuade the petitioners to agree to conciliation. The representatives of the petitioner, declined to be persuaded, *inter a alia* on the ground that they had no authority from the management / Board of Directors to do so. Therefore, the Council, as recorded in the minutes dated 11 October 2013, directed the petitioner to call an emergent meeting of its Board of Directors in order to take decision in the matter of proceeding with conciliation and to empower the representative Director / Officer to hold effective conciliation in the matter. In pursuance of such directions, the petitioner as recorded in the minutes dated 25 October 2013, made it clear that the company management of the petitioner had decided not to settle / compromise the dispute, meaning thereby the petitioner declined to resolve the issue by way of conciliation. There is no dispute that by this date, the respondent no.1 in each of the petitioners, had invited the petitioner to conciliate in the matter. From the record, including in particular the communication dated

24 October 2013, it is clear that the petitioner declined to accept the invitation to conciliate. In these circumstances, consistent with the provisions contained in Section 62(3) of the 1996 Act, there could be no conciliation proceedings. In the absence of there being any conciliation proceedings, there obviously arises no question of going into the larger issue as to whether the Council, having itself conciliated in the matter, can proceed to act as Arbitrator in the very same dispute.

12] In so far as the second contention of Mr. Kulkarni is concerned, reference can be made to the observations recorded in the minutes dated 11 October 2013 and 25 October 2013, in order to appreciate whether the same indicate in predisposition or are sufficient to invoke any reasonable apprehension or likelihood of bias in the Council, should Council proceed with the arbitration of the dispute between the petitioner and the respondents. The observations relied upon by Mr. Kulkarni read as follows:

> *"4. Prima facie it appears that the supplier submitted the claims for interest for delayed payments as the payments were effected with after the due dates of payments. It is fact that material was secured by MSEDCL and payment for that was released but after due dates.*
>
> *5. It is clearly seen that as per legal provisions the unpaid interest provisions are swelling day by day and suppliers and exercising their legal right to seek the amount by way of submitting reference."*
>
> *(Minutes dated 11 October 2013).*

> *“As stated above, all issues were raised by MSEDCL before the Hon'ble High Court in LPA, on which directions to Council are given by Hon'ble High Court to decide these issues while finally deciding the main proceedings. Therefore, enlarging the further numbers of issues is nothing but malafide intention of the respondent MSEDCL to prolong the proceedings on this or that ground to deprive off the restitution of legitimate and legal rights of the individual petitioner and to harass them at the cost of their very survival.*
> *(Minutes dated 25 October 2013)*

13] In so far as the observations in the minutes dated 11 October 2013 are concerned, the Council has merely observed that it *prima facie* appears that the supplier submitted the claims for interest for the delayed payments, as the payments were effected after the due date and that as per the legal provisions unpaid interest provisions are swelling each day. Such observation, which is stated to be *'prima facie',* can by no stretch indicate any predisposition on the part of the Council or give rise to any reasonable apprehensions or likelihood of bias. In fact, in the present case, there is no dispute that material was obtained by the petitioners from the respondents and that payment in respect thereof has also been effected but allegedly after the due dates. The observation, at the highest means that if the allegations made by the respondents are correct, then liability for payment is bound to arise and the same shall swell each day. Further, in so far as the observation in the minutes dated 25 October 2013 is concerned, upon careful perusal of the minutes, it is clear that the same is not even observation made by the

Council. What Mr. Kulkarni, the learned counsel for the petitioner refers to as the observation of the Council, is in fact nothing but objections urged by Mr. Dhole, the learned counsel for the respondents to the submissions of Mr. Kulkarni, before the Council. This is clear from the reading of the entire paragraph 8 of the minutes dated 25 October 2013, in which such observations are found. The conclusion or the findings of the Council are in fact recorded in paragraph 9 of the minutes and therein, there is no reference whatsoever to *'malafide intention'* on behalf of the petitioner in the matter of enlarging the scope of controversy and prolonging the proceedings. There is accordingly no substance in the contention of Mr. Kulkarni that the Council is *'biased'* or that observations in the minutes dated 11 October 2013 and 25 October 2013 give rise to any reasonable apprehension or likelihood of bias.

14] Mr. Kulkarni then submitted that the dispute which the respondents desire to be resolved by arbitration would involve complicated issues of law and fact and therefore the Council ought to have exercised discretion to refer the dispute for adjudication by some arbitral tribunal having judicial members. Again, this contention is also misconceived. The issue involved in the dispute is primarily whether there has been delay on the part of the petitioners in effecting payments to the respondents in respect of the goods supplied by the respondents and if so, whether the petitioner is liable to pay interest as provided under the said Act. Section 15 of the said Act provides that where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day. The proviso provides that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance. Section 16 provides that where any buyer fails to make payment of the amount to the supplier, as required under Section 15, the buyer shall, notwithstanding anything in the agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank. Section 17 of the said Act provides that for any goods supplied or services rendered by the supplier, the buyer shall be liable to pay amount with interest thereon as provided under Section 16.

15] The said Act has been enacted to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto. The statement of objects and reasons records that the world over, the emphasis has now been shifted from *'industries'* to *'enterprises'.* Added to this, a growing need is being felt to extend policy support for the small enterprises so that they are enabled to grow into medium ones, adopt better and higher levels of technology and achieve higher productivity to remain competitive in a fast globalisation area. The said Act aims at facilitating the promotion and development and enhancing the competitiveness of small and medium enterprises, *inter alia* by providing for a special mode for resolution of disputes.

16] In the aforesaid regard, reference can be made to the provisions contained in section 18 of the said Act which provides that 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 Council. Further, notwithstanding anything contained in any other law for the time being in force, such Council shall have jurisdiction to act as Arbitrator or Conciliator in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India and however reference under section 18 may be decided within ninety days from the date of such reference. The submission that because some complicated issues of law and fact may arise, the Council may not be well suited to enter upon arbitration, is again, misconceived. Firstly, in the present case, it cannot be said that any complicated questions of law and fact arise. In any case, if the composition of the Council is considered, then it cannot be said that such questions cannot be addressed to by the Council. In terms of Section 21 of the said Act, the Council shall consist of not less than three but not more than five members to be appointed from amongst the following categories :

(i) Director of Industries, by whatever name called, or any other officer not below the rank of such Director, in the Department of the State Government having administrative control of the small scale industries or, as the case may be, micro, small and medium enterprises; and

(ii) one or more office-bearers or representatives of associations of micro or small industry or enterprises in the State; and

(iii) one or more representatives of banks and financial institutions lending to micro or small enterprises; or

(iv) one or more persons having special knowledge in the field of industry, finance, law, trade or commerce.

17] In the aforesaid circumstances, it cannot be said that the

Council has exercised its discretion capriciously in proposing to adjudicate the dispute between the parties itself rather than refer the same to any institution or centre providing alternate dispute resolution services for arbitration. In writ petition nos. 11184 of 2012 to 11187 of 2012 and the Letters Patent Appeals arising therefrom, this Court has taken cognizance of the preliminary issues raised by the petitioner, with regard to the jurisdiction of the Council, effect of consent terms in writ petition no. 1244 of 1997 upon the liability to interest and bar of limitation. However, this Court, in the said proceedings has directed the Council to decide all these issues whilst finally deciding the main proceedings. At this stage, it does not appear that the petitioner objected to the Council adjudicating the dispute by way of arbitration on the ground that complicated issues of law and fact are involved. Accordingly, it is not possible to accept Mr. Kulkarni's third contention with regard to capricious exercise of discretion by the Council

18] In the aforesaid circumstances, there is no merit in each of the petitions. The petitions are accordingly dismissed. Interim orders, if any, are vacated. There shall be no order as to costs. Rule discharged.

Chandka **(M. S. SONAK, J.)**