IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 18828 of 2015
Date of decision: 10.09.2015

M/s. Fleetguard Filters Pvt. Ltd. ....Petitioner(s)

Versus

Director of Industries, Chandigarh Administration and others
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. R.S. Thakur, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present writ petition is to the order dated 14.05.2015 (Annexure P-8) whereby, respondent no. 2-Chairman, Micro and Small Enterprises Facilitation Council has rejected the objections of the petitioner by holding that it has territorial jurisdiction to adjudicate over the issue in dispute. The order also dealt with the issue of limitation and prohibition of arbitration by the Council under the provisions of Section 80 of the Arbitration and Conciliation Act, 1996.

Counsel for the petitioner has vehemently submitted that as per the transport agreement dated 15.06.2012 (Annexure P-2) entered between the petitioner and respondent no. 3, the Courts at Pune were to have jurisdiction in case of any legal dispute as decision was to be binding on both the parties. It is further submitted that the registered office of respondent no. 3-claimant was at Delhi and, therefore, no cause of action arose at Chandigarh.

A perusal of the application filed under Chapter V of the Micro, Small and Medium Enterprises Development Act, 2006 (in short 'the Act') would go on to show that the claim of the said respondent was based on the ground that the payments were held up and as per the terms of payment, they were to be made in 45 days from the completion of job. The jurisdiction of respondent no. 2-Council was invoked on the ground that the defaults in payment had been committed in Chandigarh and the company was having a registered office and, therefore, the Council had jurisdiction. Accordingly, a sum of ₹2,24,09,166/- was claimed alongwith interest. The petitioner filed the application for dismissal of the claim on the ground that not even a single transaction had taken place within the Union Territory of Chandigarh but transaction had taken place at Zirakpur, which is part of State of Punjab. The issue of limitation was raised that the claim was barred by limitation as payments pertain to the year 2009-10. The claimant had never disclosed that it had a registered office at Chandigarh. Written statement was also filed taking similar pleas and that the arbitration could only be made if it is permitted in written agreement between the parties. It was admitted that there was a dispute between the parties regarding the payments and certain adjustments had been made on account of weight difference and the actual amount which was to be paid towards true transportation.

The said application for dismissal was opposed by the respondent taking defence of Section 18(4) of the Act that it started with the non-obstante clause and ousted all other provisions of law as regard to the jurisdiction and gave jurisdiction to the Council where the supplier is located. Provisions of Section 80 of The Arbitration and Conciliation Act, 1996 would come into play that on failure of conciliation proceedings, the matter was to be referred to arbitration. Resultantly, the impugned order had been passed wherein, it has been noticed that the Courts at Pune would have jurisdiction as per the agreement but the same has been distinguished on the ground that a private contract cannot have the over riding effect on the statutory provisions which are outcome of any Act of Parliament or of State Legislation. The supplier being located within U.T., Chandigarth was accordingly held to be the cause of action giving jurisdiction to the Council to adjudicate. The provisions of the Act which are to provide speedy and alternative remedy was also taken into consideration and the issue of limitation was dealt with by noticing that there is a recurring cause of action and a mixed question of fact and law and at this stage, the application was well within the period of limitation. On the issue of arbitration, it was noticed that it was at preliminary stage and if conciliation failed, then the matter was to go to arbitration as per the provisions of the Act. Accordingly, liberty was given to the petitioner to challenge the validity of the alleged resolution of the claimant-company at the time of leading evidence or cross examining the claimant witnesses. The application was, thus, dismissed with the above observations and proceedings were adjourned.

Section 15 of the Act provides that where any supplier renders any service to any buyer and there is delay in making the payment beyond the period of 45 days, the said supplier can claim the payment and compound interest under Section 16. The matter can be referred to the Council under Section 18 which can conduct the conciliation of the dispute and under sub-section (4), it has jurisdiction where the supplier is located within its jurisdiction and the buyer may be located anywhere in India. Section 18 reads as under:-

> *"**18. Reference to Micro and Small Enterprises Facilitation Council**.—*
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> *(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.*
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> *(2) On receipt of a reference under subsection (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.*
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> *(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."

Thus, a perusal of the above would go on to show that under sub-section (4), the Council would have jurisdiction as there is a specific averment made by the private respondent that it has an office in Chandigarh. The argument that no supplies had been made in Chandigarh is without any basis since the jurisdiction clause does not talk about any cause of action on account of a business dealing having occurred in Chandigarh but gives a wider jurisdiction to a supplier who is located where the Council has jurisdiction. Reference to the clause of jurisdiction of Pune Courts would accordingly be without any basis since the Statute extends the jurisdiction to the Council to the place where the supplier has its office and, therefore, no fault can be found as such to the order passed by the Council.

Keeping in view the above discussion, there is no scope for interference in the well reasoned order passed by the Council and the present writ petition is dismissed.

10.09.2015 (G.S. SANDHAWALIA)
shivani JUDGE