In the High Court of Punjab and Haryana at Chandigarh.

CWP No. 19189 of 2015
Decided on 28.9.2015

M/s. Mahesh Kumar Singla and another
--Petitioners

Vs.

Punjab Transformers and Electronics Ltd. and others
--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr. V.K.Jindal, Sr. Advocate, with
Mr. M.S.Punia, Advocate, for the petitioners

Rakesh Kumar Jain,J: (Oral)

The petitioner, A Class Electrical Contractor, has challenged the order dated 30.9. 2014, passed by the Facilitation Council (for short, 'the Council), constituted under the Micro Small and Medium Enterprises Development Act, 2006 (for short,'the Act').

In short, respondent No.1 filed a claim petition before the Council for recovery of ₹1,37,71,374/- on account of delayed payment by the petitioner, alleging that respondent No.1. is a small scale industrial undertaking registered with the Director of Industries, Punjab, vide Registration No. 16/12/145-49 dated 05.10.1994, and continued to be a Small scale industrial unit, when again registered with the Director of Industries, under the Act with registration number 03/016/1/1/00257 dated 03.2.2011.

It is further alleged that the petitioner had placed orders dated 13.11.2007, 01.04.2008, 02.05.2008, 25.5.2008, 26.5.2008, 25.7.2008, 01.8.2008, 10.9.2008, 15.11.2008 and 05.3.2009 for the purchase of three phase Conventional Type Transformers of different ratings and prices, included all duties and taxes, as applicable at the time of supply. The material was to be inspected at the premises of respondent No.1 by the representatives of the Punjab State Electricity Board at the costs of the petitioner and the payment was to be made by the petitioner before dispatch of the material. It is alleged that the material was supplied and the bills were raised but the petitioner failed to make the payment in advance i..e before dispatch, but the material was dispatched by respondent No.1 according to the assurance given by the petitioner that the payment would be made with interest.

It is further alleged that since the petitioner failed to make the payment of interest on delayed payment despite requests, respondent No1. sent a legal notice on 30.1.2011, calling upon the petitioner to make the payment which was duly received by the petitioner, but neither payment was made nor any reply was sent. Thereafter, the matter was referred to the Council and relevant part of the order dated 30.9.2014 passed by it is as under:-

> "Thus, we have no hesitation to hold that the claimant company is entitled to the amount claimed in

> the claim petition. Accordingly an amount of ₹2,88,61,758/- is passed with costs in favour of the claimant and against the respondent along-with future interest at the rate of three times of the bank rate with month rests w.e.f. 1.10.2014 till the date of realization as mentioned in the MSMED Act. This amount of 2,88.61,758/- has been calculated as interest payable up to 30.9.2014. Since the order was reserved on 30.9.2014, so, let the award be communicated to both the parties by sending the copy of the award to them. The provisions of Arbitration and Conciliation Act, 1996 are applicable to the proceedings of the MSE Fecilitation Council as per Section 18 (3) of the MSMED Act,2006 and this award is enforceable as it was a decree of the Court, as ordained by Section 36 of the Arbitration and Conciliation Act, 1996 after the period for making application under section 34 of the Arbitration and Conciliation Ac, 1996 for setting aside the Arbitral award has expired".

It is argued by learned counsel for the petitioner that the Act came into force w.e.f. 16.6.2006 after repealing Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act,1993. It is submitted that as per Section 8 of the Act, any person who intends to establish,-

> (a) a micro or small enterprise, may, at his discretion, or
>
> (b) a medium enterprise engaged in providing or rendering of services may, at his discretion; or
>
> (c) a medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation)Act, 1951 (65 of 1951) shall file the memorandum of micro , small or, as the case may be, of medium enterprise with such authority as may be specified by the State government under sub-section (4) or the Central Government under sub-section (3); Provided that any person who, before the commencement of this Act established:-
> (a) a small scale industry and obtained a

> registration certificate, may, at his discretion; and
>
> (b)` an industry engaged in the manufacture or production of goods, pertaining to any industry in the First Schedule to the Industries (Development and Regulation) Act, 1951(65 of 1951) having investment in plant and machinery of more than one crore rupees but not exceeding ten crore rupees and, in pursuance of the notification of the Government of India in the erstwhile Ministry of Industry (Department of Industrial Development) number S.O.477 (E) dated the 25th July,1991, filed an Industrial Entrepreneur's Memorandum, shall within one hundred and eighty days from the commencement of this Act, file the memorandum, in accordance with the provisions of the Act.

The sum and substance of the arguments of learned counsel for the petitioner is that after the commencement of the Act on 16.06.2006, small scale industry who had filed certificate, shall have to be registered within 180 days from the commencement of the Act. It is submitted that transactions between the parties are of the year 2007-2008, where as respondent No.1 was earlier registered vide registration No. 16/12/14549 dated 05.10.1994 also got itself registered under the Act vide Registration No.,03/016/1/100257 dated 03.2.2011. Thus, the proceedings initiated under the Act were void ab-initio because respondent No.1 was not registered in terms of Section 8 of the Act, within 180 days from the date of commencement of the Act.

In the beginning, the learned counsel for the petitioner was asked as to 'whether the petitioner has any alternative remedy under the statute ?'.

Learned counsel for the petitioner has submitted that though there is a remedy under Section 19 of the Act but since the impugned order is illegal and void, therefore, this Court has the jurisdiction to entertain this writ petition.

I have heard learned counsel for the petitioner and perused the record with his able assistance.

The impugned order has been passed by the Facilitation Council. Section 20 of the Act provides for the establishment of Council which read as under:-

> "Establishment of Micro and Small Enterprises Facilitation Council:-
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> "The State Government shall, by notification, establish one or more Micro and Small Enterprises Facilitation Councils, at such places,exercising such jurisdiction and for such areas, as may be specified in the notification".
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> Section 21 provides for composition of Council which reads as under:-
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> "Composition of Micro and Small Enterprises Facilitation Council.-
>
> (1) The Micro and Small Enterprises Facilitation Council shall consist of not less than three but not more than five members to be appointed from amongst the following categories, namely:-
>
> **(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"

Section 15 deals with the liability of the buyer to make payment. Section 16 deals with the date from which and rate at which interest is payable and Section 17 deals with recovery of amount due. Relevant sections for the purpose of the present case are Sections 18 and 19 which are reproduced below:-

> "<u>18.Reference to Micro and Small Enterprises Facilitation Council</u>.-
>
> **(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 of 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 section 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to a\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 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 any where 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."

"19.Application for setting aside decree, award or order.-

No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution service to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy five percentage of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court;

Provided that pending disposal of the application to set aside the decree, award or order, the Court shall order that such percentage of the amount deposited shall be paid to the supplier, as it consider reasonable under the circumstances of the case subject to such conditions as it deems necessary to impose".

Section 18 (1) 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, may make a reference to the Micro and Small Enterprises Facilitation Council.

After receipt of the reference under Section 18(1) of the Act, it is the duty of the Council, either to itself conduct conciliation in the matter or to seek the assistance of any other institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre for conducting conciliation under the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996.

Section 18 (4) provides that the Micro and Small enterprises Facilitation Council or the centre providing for alternate dispute resolution services shall have the jurisdiction to act as an Arbitrator or Conciliator in a dispute between the supplier and a buyer located anywhere in India and Section 18 (5) of the Act provides for reference made under this section shall be decided within a period of ninety days from the date of making such a reference.

In the present case also, the matter has been referred to the Facilitation Centre, for the purpose of reconciliation, but after the reconciliation failed, the Facilitation Centre took upon itself to decide the lis between he parties as an arbitrator and passed the impugned order on 30.9.2014, which was ordered to be enforced as a decree under Section 36 of the Arbitration ad Conciliation Act, 1996..

No doubt if the said decree has been passed under Section 36 of the Act, it could be challenged under Section 34 of the said Act as well by rasing objection. Section 19 of the Act provides that No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution service to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy five percentage of the amount in terms of the decree, award or, as the case may be, in the manner directed by such court.

Section 19 does not debar jurisdiction of any Court but it is subject to deposit of seventy five percentage of the amount, in terms of the order or decree of the Court which is determined by it. The petitioner could have gone to the Civil Court for the purpose of adjudication by depositing seventy five percentage of the amount and can even invoke jurisdiction of this Court for the purpose of entertaining the petition to challenge the award but subject to deposit of seventy five percentage of the amount of decree, but in the absence thereof, the writ petition is not maintainable.

Thus, in view of the the above, since the petitioner has failed to deposit seventy five percentage of the amount of decree, this writ petition cannot be entertained under Article 226 of the Constitution of India.

Dismissed.

28.9.2015 **(Rakesh Kumar Jain)**
rr **Judge**