

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.23888 of 2015(O&M)
Decided on:11.12.2015

Chief Material Manager

... Petitioner

Vs.

M/s CMI Ltd. & ors.

... Respondents

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

Present: Mr. G.S.Bal, Sr. Advocate with
Mr. A.D.S. Bal, Advocate
for the petitioner.

G.S.Sandhawalia, J.(Oral)

CM No. 16012 of 2015

The application for amendment of the writ petition is allowed. Amended writ petition is taken on record subject to all just exceptions.

CM stands disposed of.

CWP No.23888 of 2015

Challenge in the writ petition is to the order dated 24.02.2015 (Annexure P-1) whereby notice was issued to the petitioner for appearing before respondent No.2 in view of the provisions of the Haryana Micro, Small and Medium Enterprises Development Act, 2006. The challenge has also been raised to the subsequent order dated 06.07.2015 (Annexure P-9) whereby the matter was referred to the Arbitrator respondent No.3.

Counsel for the petitioner has submitted that as per Clause 2900 any dispute or difference arising in question with the contract had to be referred to the sole arbitration of a gazetted officer to be

appointed by the General Manager. In case of contract entered into by the Zonal Railways and Production Units, arbitrator had to be a Member of the Railway Board and by the Head of the organisation.

It is, accordingly, submitted that once there was a specific procedure prescribed then reference to respondent No.3 by respondent No.2 could not be allowed as the same was without any jurisdiction. Reliance has been placed upon the judgment of the Bombay High Court passed in ***M/s Steel Authority of India Ltd. & Anr. vs. Micro, Small Enterprise Facilitation Council, AIR 2012 Bombay 178*** to canvass the said proposition. It is further submitted that the 2006 Act would not apply and there was no cause of action arising at Chandigarh or within the State of Haryana.

It is not disputed that there was a contract inter se the parties for supplying cable. It is the case of the petitioner that payments have been made but they were late by 45 days. It is on that basis the claim has been submitted by respondent No.1 asking for the interest on the delayed payment under the Act. The Act provides that under Section 15 where the buyer makes the payment after 45 days, he will be liable to pay interest to the supplier. The matter is to be referred to respondent No.2 - Micro and Small Enterprises Facilitation Council of Haryana for conducting conciliation and getting the matter therein settled, as per the provisions of Section 18(3). The dispute herein is, thus, only on the issue of interest which is payable on account of delayed payment. This Court had occasion to deal in a similar matter in ***CWP No.24753 of 2015*** titled as ***General Manager, North Central Railway and another Vs. M/s. Rational Business Corporation Private Limited and others*** on 28.11.2015

wherein also the facts were identical and Clause 2300 also provided a mode of arbitration. This Court noticed that in the absence of any term under the contract regarding the issue of interest on the delayed payment, the matter could not be referred to the arbitration as per the terms of the agreement and dismissed the petition whereby the challenge had been raised to the appointment of an Arbitrator. The relevant portion reads as under:

"Counsel for the petitioner could not bring to the notice of this Court any terms under the contract whereby, there was any clause regarding the issue of interest on the delayed payment. Clause 2300 refers to the system of payment but nothing could be brought to the notice of this Court that there is any clause pertaining to the right of interest on the payments which had been delayed. In such circumstances, reference to clause 2900 would be without any basis.

In such circumstances, respondent No.1 had statutory right to claim interest before the Council and, therefore, the matter has been rightly referred to arbitration in the absence of any provision to claim interest under the arbitration clause."

The facts on the said issue are thus, similar in the present case also as nothing could be shown that there was a provision to raise any dispute regarding the delayed payments under the agreement.

Regarding the applicability of the judgment of the Bombay High Court it is apparent that the dispute in the said case was regarding defects in the material and on that account the Court had held that once there was an arbitration agreement inter se the parties and there was a forum provided and the procedure was laid down, there was no question of agreement ceasing to have effect. The dispute in the said case did not pertain to the issue of interest as

noticed in the present case, therefore, the said judgment would not be applicable.

Another aspect regarding the applicability of the Act or whether there was any cause of action, it is not disputed that the matter was referred to the Arbitrator way back on 06.07.2015. It is the case of the petitioner itself that the petitioner was appearing before Arbitrator on the repeated dates and had also filed reply challenging the jurisdiction of arbitrator but the written statement, however, is not placed on record for the benefit of perusal by this Court. Moreover, Section 16 of Arbitration and Conciliation Act, 1996 itself provides that the arbitral tribunal has competence to rule on its own jurisdiction.

In such circumstances, the matter already being before the Arbitrator, it would not be appropriate to challenge the issue of jurisdiction before this Court. It is always open for the petitioner to raise the issue of jurisdiction before the said forum and nothing said herein will bind the petitioner as the present writ petition is being dismissed in limine.

11.12.2015
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(G.S.SANDHAWALIA)
JUDGE