

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

**CWP No. 24753 of 2015**  
**Date of decision: 28.11.2015**

General Manager, North Central Railway and another

....Petitioner(s)

Versus

M/s. Rational Business Corporation Pvt. Ltd. and others

...Respondent(s)

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

Present: Mr. Sandeep Suri, Advocate,  
for the petitioners.

**G.S.SANDHAWALIA, J. (Oral)**

Challenge in the present writ petition is to the order dated 06.06.2014 (Annexure P-1) wherein, the dispute was referred to respondent no. 3 for arbitration by respondent no. 2-Micro and Small Enterprises Facilitation Council of Haryana on the application of respondent no. 1. In the proceedings before the Arbitrator, the application was also filed questioning his jurisdiction, which has been rejected vide order dated 08.08.2015 (Annexure P-6) which is, however, not a subject matter of challenge in the present writ petition as per the prayer clause.

Counsel for the petitioner has vehemently argued that in view of 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 contracts entered into by the Zonal Railways and Production Units, arbitrator had to be a Member of the Railway Board. It is submitted that the Arbitrator appointed by the respondent-Council, thus, would not have jurisdiction once the parties had

entered into a contract regarding the mode of appointment and arbitrator.

A perusal of the dispute would go on to show that the claim before the Council by the respondent no. 1 was regarding the payment of ₹11,13,956/-, which was outstanding amount on account of a purchase order which had been acted upon by the said respondent and a bill had been also raised for the said amount. Part delivery had also been made on 06.08.2013 and the entire stocks were receipted on 25.09.2013. Apart from the amount, interest was also claimed to the tune of ₹1,11,910/- under the provisions of the Micro Small and Medium Enterprises Development Act, 2006 (in short 'the 2006 Act'). It is the case of the petitioners herein that 95% of the principal amount already stands paid on 26.02.2014 and the balance 5% was paid in July, 2014. Thus, the dispute now which is pending before the Arbitrator only pertains to the interest element.

The 2006 Act provides that where any supplier renders any service to any buyer and the payment is not made on the date agreed or beyond 45 days, then the supplier could claim interest under Section 16. On the said cause of action, reference can be made to the Council under Section 18 and thereafter, on the issue not being resolved by way of conciliation, the matter can be referred to arbitration. The right of respondent no. 1 is a statutory right to claim interest on delayed payments by the Central Act. Section 24 refers to the over riding effect of the Act and also refers to Sections 15 to 23 which provides the procedure under Chapter V as a right of the supplier to claim interest. Clause 2900 reads thus:-

**“2900. Arbitration**

*(a) In the event of any question, dispute or difference arising under these conditions or any special conditions of contract, or in connection with this*

*contract (except as to any matters the decision of which is specially provided for by these or the special conditions) the same shall be referred to the sole arbitration of a Gazetted Railway Officer appointed to be the arbitrator, by the General Manager in the case of contracts entered into by the Zonal Railways and Production Units; by any Member of the Railway Board, in the case of contracts entered into by the Railway Board and by the Head of the Organisation in respect of contracts entered into by the other Organisations under the Ministry of Railways. The Gazetted Railway Officer to be appointed as arbitrator however will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as railway servant have expressed views on all or any of the matters under dispute or difference. The award of the arbitrator shall be final and binding on the parties to this contract.*

*(b) In the event of the arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his award being set aside by the court for any reason, it shall be lawful for the authority appointing the arbitrator to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.*

*(c) It is further a term of this contract that no person other than the person appointed by the authority as aforesaid should act as arbitrator and that if for any reason that is not possible, the matter is not to be referred to 'arbitration at all.*

*(d) The arbitrator may from time-to-time with the consent of all the parties to the contract enlarge the time for making the award.*

*(e) Upon every and any such reference, the*

*assessment of the cost incidental to the reference and award respectively shall be in the discretion of the arbitrator.*

*(f) Subject as aforesaid, the Arbitration Act, 1996 and the rules there under and any statutory modifications thereof for the time being in force shall be deemed to apply to the arbitration proceedings under this clause.*

*(g) The venue of arbitration shall be the place from which the acceptance note is issued or such other place as the arbitrator at his discretion may determine.*

*(h) In this clause the authority, to appoint the arbitrator includes, if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise.”*

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.

Accordingly, the present writ petition is dismissed.

28.11.2015  
shivani

(G.S. SANDHAWALIA)  
JUDGE