

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2202 OF 2015

Kirloskar Brothers Limited

.... Petitioner

vs

1 The Micro and Small Enterprises
Facilitation Council at Pune

2 The State of Maharashtra

3 M/s. Fusion Control

.... Respondents

Mr. Tejas Dande with Krupanshu Nandu i/by Tejas Dande &
Associates for the petitioner.

Mr. V.N. Sagare, AGP for respondent No.2.

Mr. Suresh Dhole with Anuja Dhole for respondent No.3.

**CORAM: ANOOP V. MOHTA AND
A. S. GADKARI, JJ.**

DATE : December 07, 2016

ORAL JUDGMENT (Per Anoop V. Mohta, J.):

The Petitioner has filed the present Petition on 23 February 2015 thereby invoked Article 226 of the Constitution of India and prayed for a direction to decide Applications dated 1.9.2014 and 29.01.2015 for an appointment of Arbitrator under Section 18 of The Micro, Small and Medium Enterprises Development Act, 2006 (For short, Act of 2006) and challenge is raised to the jurisdiction of The

Micro and Small Enterprises Facilitation Council, Pune (for short, “The Council”) to resolve the disputes and also prayed for ad-interim relief of stay of the proceedings.

2 The basic background of the litigation is as under:-

On 29.09.2011, Respondent No.3 filed the Reference Petition No. 18/2011 before the Council to secure the due amount from the Petitioner/buyer who is Respondent before the Council. It is a claim statement on affidavit of Respondent No.3 with all supporting documents. Same was communicated to the Petitioner immediately alongwith the notice.

3 On 11.07.2012, Respondent No.3 requested the Conciliator to ensure participation of competent representative of the Petitioner, duly authorized by the Board of Director with specific names, designation and authority to settle the claim in conciliation. But no one having power and authority to take financial decision on spot appeared before the Conciliator from KBL, except a officer who was playing the role of messenger. On 09.02.2013, Conciliation failed. The report was submitted by the Conciliator to that effect. On 24.09.2013, 24.10.2013, 10.12.2013, 16.01.2014 and 12.03.2014, the Petitioner did not appear before the Council for the alleged reason of

non-receipt of the notices.

4 On 19.07.2014, the notice was issued under Section 18(3) of the Act of 2006 for adjudication. On 01.08.2014, the parties appeared before the Council. The Petitioners submitted that they have filed Arbitration Petition No.48/2013 and requested for the adjournment. An Application to dismiss the Reference was also filed. On 06.08.2014, the Arbitration Petition was dismissed as not maintainable by Single Judge of this Court. In this Arbitration Petition, the Council was not the Respondent nor any order/direction against the Council.

5 The Petitioner has filed evidence in chief before the Council and so also Section 16 Application under the Arbitration Act. The counter reply was filed to such objections.

6 On 07.02.2015, the Petitioner insisted to make separate order on the Application of jurisdiction and appointment of Arbitrator which was orally rejected and the Petitioner was asked to submit written note of argument or argue the case orally in view of the procedure to be adopted by this Council as per the law laid down by the Hon'ble Supreme Court in judgment dated 14.03.2002 in *Union of*

India v. Delhi Bar Association ¹.

7 The relevant Section 18 (3) of the Act of 2006 is reproduced as under :

“18 Reference to Micro and Small Enterprises Facilitation Council -

(1)

(2)

(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 it to 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 disputes as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.”

8 Considering the scope and purpose of Act of 2006, it is very clear that in case of any dispute with regard to the amount due notwithstanding anything contained in any other law, reference is required to be made to the Council. The procedure so prescribed under Section 18 is reproduced above. In the present case, the conciliation proceedings failed and ultimately the Council proceeded to settle the dispute as an Arbitrator. The Petitioner, as recorded above, in fact participated in the proceedings. The statement is made

1 (2002) 4 SCC 275

that after filing the respective pleadings now the matter is closed for orders after hearing both the parties on merits.

9 The submission is made by the learned counsel for the Petitioner that the present Petition is still required to be heard and decided by directing the Council/Arbitrator to decide those Applications. We are not inclined to accept this submission as the Petitioner's Application even under Section 11 of Arbitration and Conciliation Act, 1996 as filed on 26.09.2011, though a Petition under Section 18 of the Act of 2006 on 26.09.2011. A Single Bench of this Court on 6.8.2014 rejected the Application as the proceedings under the Act of 2006 was already initiated. Section 16 Application so filed before the Council/Arbitrator about the issue of jurisdiction, even if any, as not decided, still the fact of participation by the Petitioner before the Council/Arbitrator and the stage so achieved, that itself in our view, is sufficient to reject the submission, as the issue so raised, in a given case, needs to be agitated at appropriate stage in accordance with law. For that reason also, there is no question to halt the proceedings in question, at this stage, at the instance of the Petitioner, specifically one who has participated in the proceedings and the matter is already closed for orders.

10 Even the Application dated 01.09.2014 to appoint another Arbitrator in the teeth of Section 18 so reproduced above, in our view, also cannot be the reason to disturb the proceedings so initiated and proceeded by the Council/Arbitrator as recorded above.

11 The reliance so placed upon a judgment of Division Bench of this Court in Steel Authority of India Ltd v. Micro, Small Enterprise Facilitation Council,² in our view, is also of no assistance as in that matter, while concluding the Division Bench of this Court directed the parties to participate in the conciliation proceedings in view of Section 18 (1) of the Act of 2006. In the case in hand, those stages are crossed. The conclusion of arbitration proceedings so recorded above and in view of admitted position on record, apart from the provisions of law, the case so cited is distinct and distinguishable on facts itself.

12 The Supreme Court in Lalitkumar V. Sanghavi (dead) and anr. v. Dharamdas V. Sanghavi & ors.,³ after considering the provisions of the Arbitration Act and the scheme and purpose of such arbitral provisions, expressly observed that the writ proceedings under Article 226 of the Constitution of India is not maintainable in view of the specific provisions of the Acts.

2 2010 BCI 361

3 (2014) 7 SCC 255

13 A Division Bench of Allahabad High Court in **Judgment dated 29.04.2014 in Writ – C No.24343 of 2014 - M/s. Paper & Board Convertors v. U. P. State Micro & Small Enterprises**⁴, and after dealing with the scheme and purpose and object and specifically Section 18, directed the Arbitral Councillor to continue with the arbitration proceedings by recording that the appointment of another Arbitrator was illegal. This, in our view, also reject the contention of the Petitioner with regard to the Application for appointment of another Arbitrator:

“In this view of the matter, the impugned order of the Facilitation Council directing the parties to a reference before the sole arbitrator appointed by the respondents was manifestly illegal. We would, accordingly, have to allow the petition and set aside the impugned order dated 13 February 2014. We order accordingly. As a consequence, we restore the proceedings back to the first respondent. The first respondent shall now act in accordance with the provisions of sub-section (3) of Section 18 and either conduct the arbitration itself or refer the arbitral proceedings to any institution or centre providing alternate dispute resolution services. The first respondent shall pass necessary orders in consequence of this direction within a period of one month from the receipt of a certified copy of this order.”

14 The learned counsel has also pointed out the pendency of

4 (2014) 6 Allahabad Law Journal page 89

another Petition arising out of the same proceedings in question. Without expressing anything on the merits of the order passed by this Court dated 6.4.2015 in Writ Petition No. 3521 of 2015, we are inclined to dispose of the present writ petition in view of the facts and circumstances so referred above. Such Petition's pendency frustrates the scheme and object of both the Acts in question.

15 Therefore, taking overall view of the matter, no case is made out for any reliefs by the Petitioners. The writ petition is accordingly dismissed.

16 There shall be no order as to costs.

(A. S. GADKARI, J.)

(ANOOP V. MOHTA, J.)