

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1328 OF 2016

M/s Microvision Technologies Pvt. Ltd. Petitioner
thru' it's Director Mr. Atul Nemichand
Dhadiwal.

Vs.

MSMED Facilitation Council & Ors. Respondents

Mr. Anand Bhandari a/w Ms. Chaitrali A. Deshmukh, Advocate for
the Petitioner.

Mr. T.J. Pandian, Advocate for Respondent no. 3.
Ms. V.S. Nimbalkar, AGP for Respondent no.4.

Coram : **Smt. R.P. SondurBaldota, J.**

Date : 4th July, 2016

P.C.

1 The petitioner, a unit registered under the Micro, Small and Medium Enterprises Development Act ("MSMED Act") had entered into contract dtd. 5th December, 2014 with respondent no.3 for supply, installation and commissioning of signalling gears in Kurla yard of Mumbai Division of Central Railway. When disputes arose between the parties over the payments due to the petitioner, it sent advocate's notice dtd. 21st April, 2016 demanding

a sum of Rs.55,65,874/-. Respondent no.3 sent reply denying the claim of the petitioner. Therefore, the petitioner approached respondent no.2, the Joint Director of Industries, Nasik Region & Member Secretary, Micro & Small Enterprises Facilitation Council, Nasik with Petition No. 57 of 2015 for conciliation under MSMED Act. When the conciliation failed, the petitioner requested respondent no.2 by it's application dtd. 13th October, 2015 to resort of Section 76 of the Arbitration and Conciliation Act and Section 18(2) of MSMED Act to declare that the conciliation had failed and start further procedure for arbitration under Section 18(3) of MSMED Act. Respondent no.2, by the order dtd. 21st October, 2015, impugned herein, rejected the petitioner's petition no.57 of 2015. By the same order, he also dismissed another Petition of the petitioner namely Petition No.65 of 2015 though that was not on the board of respondent no.2 for hearing.

2 In the impugned order, respondent no.2 refers to clauses 63 and 64 of the contract between the petitioner and respondent no.3 to direct the petitioner to resort to the remedy of arbitration thereunder. The petitioner had initially challenged that order by preferring the appeal before the District Court, which has been dismissed on the ground of want of jurisdiction to entertain the proceedings. It directed the petitioner to approach the competent forum after which the petitioner filed the present petition. The petitioner today does not dispute that the District Court had no jurisdiction to entertain the challenge to the order

passed by respondent no.2. Therefore, the challenge in the petition to that order need not be considered.

3 Mr. Bhandari, the learned advocate for the petitioner submits that the direction contained in the impugned order to resort to the arbitration clause in the contract between the parties is patently wrong. He draws attention of the court to the specific Note to the clauses in the contract, which takes the present dispute out of their application. The note reads as under :

“The provision of clause no.63 and 64 of GCC will be applicable only for settlement of claims/disputes between the parties for value less than or equal to 20% of the value of the contract and when the claims or disputes are of value more than 20% of the value of contract, provision of clause no.63 and 64 and other relevant clauses of tender will not be applicable and arbitration will not be remedy for settlement of such disputes.

4 Neither the Note nor the fact that the claim in the present dispute exceeds 20% of the value of contract is disputed by respondent no.3. In that circumstance, there can be no resort to the arbitration under Clauses 63 and 64 of the contract. Since the petitioner is a Unit, registered under the MSMED Act, it had rightly invoked the remedy of arbitration under that Act. Therefore, the impugned order cannot be sustained and hence must be set aside. It is also to be noted that surprisingly the impugned order disposes of another petition of the petitioner

being Petition No.65 of 2015, though the same was not on the board of respondent no.2, for consideration. Hence, the petition is allowed in terms of prayer clause (a) except the portion bracketed in red i.e. “the impugned order dated 3rd November, 2015 passed by the learned Principal District Judge, Nasik below Exhibit “A” to the present petition”.

5 At the instance of the learned advocates, it is clarified that all the contentions and objections of the parties are kept open for consideration by the appropriate forum.

(Smt. R.P. SondurBaldota, J.)