

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****APPEAL NO. 497 OF 2016****IN****CHAMBER SUMMONS (L) NO. 260 OF 2015****IN****EXECUTION APPLICATION NO. 166 OF 2015**

Gol Offshore Limited

(formerly known as Great Offshore Ltd.)

.. Appellants

V/s.

M/s. United Macro Engineering

.. Respondents.

Mr. Dharam Jaumani a/w. Debashree Mandpe i/b M/s. Ganesh & Co.
for the Appellants.

Mr. Shivaramkrishnan Proprietor of Respondent Company present.

**CORAM: DR. MANJULA CHELLUR, C.J. &
M.S.SONAK, J.**

DATE : 15 DECEMBER 2016.

P.C.

1] Apparently, the challenge raised in the present appeal is with regard to section 34(d) of the Bombay Stamp Act which exempts any instrument executed on behalf of the Government from the rigours of section 34.

2] In the present case on a reference made under section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (2006 Act) to recover an amount due to the Council, which is established by Notification under section 20 of the 2006 Act, shall look into the said reference and dispose of the same at such places, as established by virtue of Notification under section 20 of the 2006 Act. The exemption

to pay stamp duty is envisaged under section 34(d) of the Bombay Stamp Act, which reads as under:

“34 (d) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.”

3] Learned Single Judge opines that the nature of award would attract the exception in section 34 (d) of the Bombay Stamps Act. In order to understand the creation of the Council, one has to refer to the exact functioning of the Council and how it is created for what purpose. Any dispute which falls within the scope of above said 2006 Act can be referred to Micro and Small Enterprises Facilitation Council. Though there is no definition of this Council, the composition of Council as envisaged under section 21 of the 2006 Act gives some insight. The Council has to be established at such places indicating or notifying the area or the areas in the notification depending upon the place of dispute. A person can refer the dispute to the said Council provided the dispute requires reference to such Council. The Council composition is clearly mentioned at Section 21, which reads as under:

“21. 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.

(2) The person appointed under clause (i) of sub-section (1) shall be the Chairperson of the Micro and Small Enterprises Facilitation Council.

(3) The composition of the Micro and Small Enterprises Facilitation Council, the manner of filling vacancies of its members and the procedure to be followed in the discharge of their functions by the members shall be such as may be prescribed by the State Government.”

4] Section 18 of 2006 Act is also relevant in order to understand the powers of the Council and how it has to discharge its functions. Section 18 of 2006 Act reads as under:

“18. Reference to Micro and Small Enterprises Facilitation Council.—(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 or 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 sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(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 the 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 anywhere 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.”

The decision given by the Council on reference of a matter to the Council is treated as an award.

5] The question before us is whether the award requires payment of stamp duty envisaged under section 34 of the Bombay Stamp Act. It is not in dispute that the award under section 34 of the Bombay Stamp Act needs to be properly stamped and there is only exception if it falls within the category of a document attracting section 34(d) of the Bombay Stamp Act. The constitution of the Council clearly indicates who could be the members of the Council and it also says that a Council will have minimum members of three but not more than five members. The Director of Industries will be the Chairperson of the Facilitation Council. The functions to be discharged by the members, the manner of filling up vacancies of its members and the procedure to be followed by the Council for discharge of duties entrusted to them have to be prescribed by the State Government. The term 'on behalf of the Government' in section 34 of the Stamp Act, according to us, would include Facilitation Council which consists of members as envisaged under section 21 of the 2006 Act.

6] In view of the above, we are of the opinion that none of the grounds raised would warrant interference with the opinion of learned Single Judge by his order dated 6th April 2015. Accordingly, the appeal is dismissed.

(CHIEF JUSTICE)

(M.S.SONAK, J.)