

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

C.W.P No.6400 of 2015
Date of decision: 29.9.2016

Chief Materials Manager

... Petitioner

Versus

M/s CMI Limited and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr.Karminder Singh, Advocate,
for the petitioner.

Mr.Gaurav Chopra, Advocate,
for the respondents.

Mr.P.P.Chahar, DAG, Haryana.

RAKESH KUMAR JAIN, J. (Oral)

This petition is directed against the order dated nil (Annexure P-6) (report submitted by the sole arbitrator to respondent No.1) and Annexure P-7, i.e., the award of the Sole Arbitrator dated 23.12.2014.

In brief, the petitioner (Western Railway) floated tender No.07.12.5339 for the supply of signaling cable size 24 core x 1.5 sq. mm quantity 231.50 KM (Kilometre) on 14.8.2012. The offer made by respondent No.1 was accepted for supply of 189.50 KM and accordingly, order was released on 22.5.2013. It is alleged that the purchase order was placed as per Indian Railway Standard Condition of Contract (IRS). There is no dispute that respondent No.1 supplied the goods to the petitioner and

there is no dispute that the principal amount of the goods supplied has been

paid by the petitioner to respondent No.1. The dispute in this case is only for the payment of interest on delayed principal amount. Respondent No.1, in order to recover the interest on the delayed payment, submitted an application to Haryana Micro and Small Enterprises Facilitation Council (in short, “the Council”), constituted under Haryana Micro and Small Enterprises Facilitation Council Rules, 2007 (in short, “rules of 2007”) enacted under the Micro, Small and Medium Enterprises Development Act, 2006 (in short, “the Act”).

After receipt of the application, notice was issued to both the parties on 16.7.2014. The parties appeared before the Council on 7.8.2014. The conciliation proceedings took place after the appearance of both the parties and the following was recorded in its 53rd meeting, held on 8.9.2014 :-

“ The council noted that the respondent and claimant was persuaded in the last meeting to settle the payment dispute cordially. But it was observed that the respondent is reluctant to come to any kind of conciliation through mutual understanding and it is essential to refer the case for arbitration and no further efforts would be fruitful.

After hearing the claimant, the council unanimously decided to refer the matter to the empanelled Arbitrator notified by the Government vide order dated 24.10.2013 & 08.08.2014 under Rule 16 of the HMSEFC Rules, 2007 read with Section 18(3) of Chapter-V of Micro Small & Medium Enterprises Development Act, 2006. The Arbitrator shall decide the matter within 12 weeks from the date of receipt of the case.

Disposed off.”

After the dismissal of the conciliation proceedings, initiated in terms of Section 18(3) of the Act, the Council appointed the sole arbitrator.

The arbitrator initiated the proceedings and associated both the parties in

which the only objection raised by the petitioner was in respect of the competence of the arbitrator on the ground that as per Condition No.2900 of IRS Conditions of Contract, the jurisdiction to appoint the arbitrator vests with the General Manager Railways. The objection was rejected and the award was announced by the arbitrator directing the respondents to pay a sum of ₹ 47,45,311/-. The award was drawn on a non-judicial stamp paper of ₹ 100/- and information was sent by the arbitrator to the Council separately.

Aggrieved against that report of the arbitrator, sent to the Council and the award dated 23.12.2014, the present petition has been filed.

Learned counsel for the petitioner has argued that as per Condition No.2900 of IRS Conditions of Contract, the Council had no jurisdiction to appoint the Arbitrator as it is the sole prerogative of the General Manager Railways. It is also submitted that there is a malafide act on the part of the sole arbitrator about which reference has been made in para. 12 (vii) of the writ petition.

On the other hand, learned counsel for the respondents has submitted that the writ petition is not maintainable in its present form as the petitioner has challenged the award passed by the sole arbitrator, which has to be treated as an award, having been passed under the provisions of the Arbitration and Conciliation Act, 1996 (in short, “Act of 1996”) against which the petitioner had the remedy of filing objection under Section 34 of the Act 1996. It is also submitted that in the absence of any contract between the parties for not paying the interest on the delayed payment, the petitioner has to refer to Chapter V of the Act which deals with delayed payment to micro and small enterprises. He has also argued that Condition

No.2900 of IRS Conditions of Contract is not applicable in this case because of Section 24 of the Act by which overriding effect has been given of the provisions of Section 15 to 23 to any other law for the time being in force which is inconsistent therewith. He has also relied upon a decision of this Court in **CWP No.23888 of 2015** decided on 11.12.2015 inter parties in which Condition No.2900 of IRS Conditions of Contract has been discussed and it has been held that it does not oust the jurisdiction of the Council to appoint arbitrator. He has also referred to the decision of this Court in **Haryana Power Generation Corporation Limited v. Haryana State Micro and Small Enterprises Facilitation Council and another**; CWP No.24306 of 2015 decided on 30.8.2016. He has also referred to another decision of this Court in CWP No.24753 of 2015; **General Manager, North Central Railway and another v. M/s Rational Business Corporation Private Limited and others**; decided on 28.11.2015 in which Condition No.2900 of IRS Conditions of Contract has been considered and held that it would not affect the jurisdiction of the Council to appoint the arbitrator.

In support of his submission that the award of the arbitrator can only be challenged under Section 34 of the 1996 Act, refers to the decision of the Division Bench of Karnataka High Court in **Crompton Greaves Limited, Mumbai v. Annapurna Electronics, Bangalore and others**; 2016 AIR (Karnataka) 13.

I have heard the learned counsel for the parties and perused the record with their able assistance.

From the narration of the aforesaid facts, two questions which requires adjudication, are as under : -

1. Whether the present petition is maintainable against the award of the arbitrator or the petitioner had an alternate remedy to file objections under Section 34 of the Act of 1996?

2. Whether Condition No.2900 of IRS Conditions of Contract would oust the jurisdiction of the Council constituted under the Act for the purpose of appointment of the arbitrator?

I will deal with the first question as it pertains to the maintainability of the writ petition but before that I would also like to refer to certain provisions of the Act which are relevant for our purpose. The issue in this case is basically of payment of interest on delayed payment. Chapter V of the Act, starting from Section 15 to Section 20, deals with payment of interest on the delayed payment and provides the forum to decide and the manner in which the decision taken by the forum can be challenged. Sections 15 to 20 are reproduced as under : -

“15. Liability of buyer to make payment – Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day;

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

16. Date from which and rate at which interest is payable – Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from time the appointed day or, as the case may be, from the date immediately following the date agreed upon, at

three times of the bank rate notified by the Reserve Bank.

17. Recovery of amount due-- For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.

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 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.

(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.

19. Application for setting aside decree, award or order – No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any Court unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such Court.

Provided that pending disposal of the application to set aside the decree, award or order, the Court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose.

20. Establishment of Micro and Small Enterprises Facilitation Council – The State Government shall, by notification, establish one or more Micro and Small Enterprises Facilitation Councils, at such places, exercising such jurisdiction and for such areas, as may be specified in the notification.”

It is provided in Section 15 of the Act that where any supplier supplies any goods or renders any service to any buyer, the buyer shall make payment therefor on or before the date agreed upon between the parties and if there is no agreed date, then before the appointed date. The appointed date is defined in Section 2 (b) of the Act which reads as under : -

“2. Definitions -

(b) “appointed day” means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier”

Section 16 of the Act provides for payment of interest on the delayed payment but in case there is a dispute, Section 18 provides for reference of the dispute to the Council.

Section 18(3) of the Act lays down that the Council has to first try to conciliate the matter and in case, the dispute is not settled, then the Council may itself or refer it to any institution for arbitration. The arbitration proceedings are to be carried in terms of the Act of 1996. This is what exactly has happened in this case as the Council had found that the parties were not in a position to settle their dispute before it and thus, vide order dated 8.9.2014, referred the matter to the sole arbitrator who was directed to decide the dispute within a period of 12 weeks from the date of receipt of the case.

The Arbitrator has decided the case by passing an award and that the said award is deemed to have been passed under the Act of 1996 against which if the petitioner have any objection, it could have filed objection only under Section 34 of the Act of 1996 and not the writ petition alleging that the arbitrator could not have been appointed by the Council. Thus, the first question is decided against the petitioner and it is held that in case of award passed by the Arbitrator, the only remedy available is to file objection under Section 34 of the Act of 1996 and if the arbitrator has passed the award in terms of the provisions of the Act, then Section 19 of the Act is also to be taken into consideration. In this regard, the decision rendered by the Karnataka High Court in *Crompton Greaves Limited, Mumbai* (supra) is applicable.

In so far as the second question of the applicability of Condition No.2900 of IRS Conditions of Contract is concerned, that has already been settled by this Court in the aforesaid two judgments rendered in CWPs No.23888 of 2015 and 24753 of 2015 (supra) in which it has been held that Condition No.2900 would not oust the jurisdiction of the Council

to appoint the arbitrator.

I have also heard the argument in respect of malafide, as alleged against respondents No.3 and 4, but keeping in view the fact that the award was drawn on India Non-judicial stamp paper of ₹ 100/- and was conveyed on the same date after the award was passed, the allegation of malafide also does not survive.

At the end, the order passed by this Court on 11.5.2015 is also reproduced in which it is provided that the amount deposited by the petitioner would go to the parties who will ultimately succeed : -

“ Learned counsel for the respondents seek time to file reply. Mr.Chopra has, however, argued that in this case an award of Rs.45 lacs odd has been passed and in these circumstances he has raised the preliminary objection that this petition is not maintainable and only an objection under Section 34 of the Arbitration and Conciliation Act, 1996 can lie. They have also argued that there are judgments wherein the Courts have held that the provisions of the Act of 2006 would supersede the Arbitration and Conciliation Act, 1996. Learned counsel for the petitioner has argued that even though the award may have been passed but since the petitioner is raising objection regarding the very jurisdiction of respondent No.2 to refer the matter to arbitration in derogation of the clause 2900 this objection cannot survive.

In my considered opinion the interest of justice would be served if the petitioner make a fixed deposit in the name of the Registrar of this Court in the amount of Rs.50 lacs in any Natinalised bank (to be handed over to the party who may be found entitled thereto by this Court). Let the deposit be made within a period of one month failing which interim order shall stand vacated.

Adjourned to 18.09.2015.”

Since the petitioner has lost this case, therefore, the amount

deposited by the petitioner has to be appropriated for payment to be made to respondent No.1. It is ordered to be released to the petitioner who is further directed to make the payment to the respondents of the amount due within a period of one month from the date of receipt of a certified copy of this order.

No other point has been raised in this petition.

In view of the above discussion, I do not find any merit in the present petition and the same is dismissed.

(RAKESH KUMAR JAIN)
JUDGE

September 29, 2016

Paritosh Kumar

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No