

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

CWP No. 8128 of 2016 (O & M)

Date of decision: 06.05.2016

Union of India and another

....Petitioner(s)

Versus

Haryana Micro and Small Enterprises Facilitation Council-cum-Director of
Industries and Commerce, Haryana and another

...Respondent(s)

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

Present: Mr. Vivek Singla, Advocate,
for the applicant-petitioner.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 5386 of 2016

Application for placing on record Annexures P-11 and P-12 is
allowed, subject to all just exceptions.

The same are taken on record.

CWP No. 8128 of 2016

The petitioner seeks the quashing of the order dated 29.12.2015
(Annexure P-9) whereby, the matter has been referred to the Arbitrator by
respondent no. 1 i.e. Haryana Micro and Small Enterprises Facilitation Council-
cum-Director of Industries and Commerce, Haryana. The challenge is
primarily raised on the ground that since there was a contract inter se the parties
for supply of material and the same contains a arbitration clause which
provided that all the disputes and differences arising out of the supply order
have to be settled by bilateral discussions. Any questions arising or relating to

had been prescribed.

Counsel for the petitioner has referred to the judgment of the Bombay High Court in *M/s. Steel Authority of India Ltd. and another vs. Micro, Small Enterprises Facilitation Council, AIR (2012) Bombay 178* to canvas the said proposition that once there was specific procedure prescribed, the arbitration would be without jurisdiction. A perusal of the claim petition filed by respondent no. 2, which has now been placed on record as Annexure P-11, would go on to show that the claim was for the interest on the delayed payment made. It is not disputed that the payment was made on 21.08.2015, which would be clear from the writ petition itself. Respondent no. 2 had claimed interest on principal amount of ₹8,37,070/- on the ground that the payment had to be made within 45 days from the date of supply which was 03.12.2014. The said respondent had approached respondent no. 1. The present petitioners had submitted their reply on 08.01.2016 (Annexure P-12) and also admitted the payment made. However, they have raised a dispute that there is a delay in processing documents solely due to vendor's inability to submit the requisite documents in time since the inception of the project.

The argument which is now sought to be raised for the first time was never projected before respondent no. 1 that it did not have jurisdiction in view of the specific clause in the agreement. Once the petitioners opted not to challenge the jurisdiction as such and had only contested on the ground that the delay was only on account of respondent no. 2, it will not be appropriate for this Court to opine on the issue as the petitioners themselves had raised up the said issue. Even otherwise, under Section 16 of the Arbitration and Conciliation Act, 1996, the Arbitration Tribunal is competent to rule on its own

Manager vs. M/s. CMI Ltd. and others, decided on 11.12.2015, which came up before this Court pertaining to the dispute between the General Manager, Roadways and a vendor regarding the issue of interest, the matter was kept open to raise the issue before the Forum in question while noticing the judgment in *M/s. Steel Authority of India's case (supra)*. The relevant portion reads thus:-

“In such circumstances, the matter already being before the Arbitrator, it would not be appropriate to challenge the issue of jurisdiction before this Court. It is always open for the petitioner to raise the issue of jurisdiction before the said forum and nothing said herein will bind the petitioner as the present writ petitioner is being dismissed in limine.”

Accordingly, the present writ petition is also disposed of in the same terms with liberty to the petitioners to raise the said issue as noticed above.

06.05.2016
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(G.S. SANDHAWALIA)
JUDGE