IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O.No.6593 of 2016 (O&M)
Date of Decision: November 08, 2016

The Punjab State Power Corporation Limited, Patiala

...Appellant

Versus

M/s Jay Bee Industries, Malout Road, Bathinda & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Praveen Chander Goyal, Advocate,
for the appellant.

*****

AMIT RAWAL, J. (Oral)

Notice of motion.

Mr.C.B.Kaushik, Advocate, who is on the caveat, accepts notice on behalf of respondent No.1.

Mr.Praveen Chander Goyal, learned counsel for the appellant submits that respondent No.1 had lodged a claim of ₹62,49,280/- before Micro and Small Enterprises Facilitation Council at Chandigarh under Micro Small and Medium Enterprises Development Act, 2006 (for short "2006 Act") owing to the transaction having taken place between the parties as respondent No.1 had supplied certain goods. However, the payment was not made, resultantly petition under Section 17 of 2006 Act was moved. However, the provisions of Sections 16 and 17 are stringent in nature as it entail compound interest and as well as three times of RBI rate of interest, which is not sustainable and in this backdrop of the matter, the award by the aforementioned Council was assailed by moving a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for brevity, 1996 Act"), but the same has erroneously been dismissed/rejected. The awarding of interest is against the public policy and, therefore, the objections were filed within the provisions of Section 34 of 1996 Act.

Mr.C.B.Kaushik, learned counsel for respondent No.1 submits that the aforementioned provisions of the Act have been enacted for the purpose of getting Small and Micro Enterprises in business, for, in case the payments are withheld, they would not be able to sustain. Since the goods were supplied and the payments were not made, it is in this backdrop of the matter, the claim was lodged. The appellants were aware of the stringent and statutory provisions of the law, yet they withheld the payment. There is no dispute to the outstanding payment and, therefore, the consequential affect of Section 16 of 2006 Act was inevitable. He further submits that the vires of the Act could not be challenged in the proceedings under Section 34 of 1996 Act and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties and appraised the paper book.

For the sake of brevity, Sections 15, 16 and 17 of the Act are reproduced herein below:-

> *"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 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."

The vires cannot be assailed under the provisions of Section 34 of 1996 Act. If at all, the appellants are aggrieved, they are at liberty to challenge the same in appropriate forum/court of law. Unless and until those proceedings are in vogue passed by the Legislature, the same have to be respected, regarded and applied in its letter and spirit. Once there is no dispute with regard to the outstanding payment of respondent No.1, the element of interest as per the provisions of Section 16 of 2006 Act awarded by the Council cannot be said to be erroneous, illegal and against the public policy. Once the grant of interest is as per the provisions, thus, this Court is of the view that the order under challenge is perfectly legal and justified. If at all, the appellants are aggrieved, they are at liberty to challenge the vires of the same by invoking the provisions of Article 226 or 32 of the Constitution of India, but not in the manner and mode as has been adopted.

For the foregoing reasons, no case for interference is made out.

Appeal stands dismissed.

November 08, 2016 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**