IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 456 OF 2017

M/S ROYAL POWER TURNKEY IMPLEMENTS PVT. LTD AND ANR., ... Petitioners

Versus

M/S NANU INDUSTRIES THR. MR. PRAVAS KRISHNA NAIK. ... Respondent

Mr. C. A. Fonseca, Advocate for the petitioners.
Mr. D. J. Pangam, Advocate for the respondent.

Coram:- M. S. SONAK, J.

Date:- 5th May, 2017

P.C.

The learned Counsel for the parties state that I was in no way concerned with this matter and, therefore, they have no objection to my taking up this matter.

Heard Mr. Fonseca for the petitioners and Mr. Pangam for the respondent.

2. The challenge in this petition is to the order dated 26/04/2017 made by the Goa Miscro and Small Enterprises Facilitation Council (Council), which reads thus :

> "Matter heard both the parties are present. Sufficient opportunity has been given to the respondents. The Application filed to exercise powers under 18(3) of MS&MED Act, 2006 to hold arbitral proceedings at the stage of hearing orders as the case has already been fixed for passing orders after giving sufficient

> opportunity to the respondent. Since the application will defeat the very purpose of law, the Council after deliberation has come to the conclusion that the said application stands dismissed. Case is fixed for orders on 11/05/2017 at 11.00 a.m."

3. Mr. Fonseca, the learned Counsel for the petitioners submits that in terms of Section 18, the Council upon receipt of the reference under subsection (1) of Section 18 is required to either itself conduct conciliation in the matter or seek assistance of any institution or centre providing alternate dispute resolution services by making reference to such institution or centre for conducting conciliation and the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply to such dispute as if the conciliation was initiated under Part III of that Act. Mr. Fonseca submits that in this case, neither the Council itself has conducted any conciliation nor have the parties been referred to any other institution or centre for the purposes of conciliation. Mr. Fonseca submits that until conciliation is attempted, there is no question of Facilitation Council proceeding to make its award in the matter. For this reason, Mr. Fonseca submits that the impugned order warrants interference.

4. Mr. Pangam, the learned Counsel for the respondent submits that several opportunities were granted for conciliation, which

have not been availed by the petitioners. Mr. Pangam points out that on 10/04/2017, the petitioners have accepted that an amount of Rs.1,18,11,702/- is due and payable to the respondent. Mr. Pangam submits that even the cheques were issued in respect of the said amount and the cheques have since been dishonoured. Mr. Pangam points out that even in the balance sheet of the petitioners, the said amount is reflected as due and payable to the respondent. In such circumstances, Mr. Pangam submits that there is absolutely no jurisdictional error in making of the impugned order. Mr. Pangam submits that the petitioners are only trying to delay the proceedings before the Facilitation Council.

5. If the roznama produced on record along with the petition is perused, it does appear that opportunities were afforded to the petitioners in the matter of conciliation, which opportunities have not been availed of. The period between 26/12/2016 and 20/03/2017 has almost been wasted. On 10/04/2017, the petitioners once again requested for conciliation and accepted that the amount is due. On the next date, however, the matter had to be adjourned on account of ill health of the petitioner. On 26/04/2017, the impugned order has been made holding that no further procedure is required to followed.

6. There is really no jurisdictional error as such in making of

the impugned order. However, in view of certain statements made by Mr. Fonseca on behalf of the petitioners, yet another limited opportunity can be granted to the petitioners. The statement made by Mr. Fonseca is that the petitioners do not dispute the liability for payment of Rs.1,18,11,702/- to the respondent. However, Mr. Fonseca states that the petitioners require some reasonable time i.e. 8 to 10 months to pay the amount. Further, Mr. Fonseca submits that some rebate may be granted by the respondent in the matter of payment of interest. Mr. Fonseca submits that if yet another opportunity is granted, a concrete as well as reasonable proposal would be placed before the Council and even the respondent can consider such proposal. Mr. Fonseca states that a copy of such proposal will be furnished to the respondent well in advance, if yet another opportunity is granted.

7. In the aforesaid circumstances, although there is no case made out to interfere with the impugned order, one final opportunity can be granted to the petitioners. The matter is now posted before the Council on 11/05/2017. The petitioners/ representative of the petitioners to remain present before the Council on the said date without fail. On the said date, the petitioners to submit its proposal for the payment of the amount due together with interest, which they propose to pay upon the amount due on 11/05/2017 itself. The respondent/ representative

of the respondent to also remain present before the Council on the said date, without fail. The Council is requested to conciliate in the matter and see whether the matter can be disposed of on basis of terms, which the parties agree in the course of the conciliation. The proceedings for conciliation to conclude on the same date itself and there will be no further question of any adjournment for the said purpose.

8. If the conciliation is successful, obviously, the matter can be disposed of on the basis of the same.

9. If, however, for any reason, the conciliation is not successful, then, the Council shall be at liberty to make its award in accordance with law and on its own merits.

10. The petition is disposed of in the aforesaid terms. There shall be no order as to costs.

11. All concerned to act on basis of authenticated copy of this order.

M. S. SONAK, J.

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