

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

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Civil Revision 631 of 2017
Date of decision: 14.11.2017

Uttar Haryana Bijli Vitran Nigam Limited *Petitioner*

Versus

M/s Jay Bee Industries Panchkula and another *Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Deepak Balyan, Advocate
for the petitioner

Mr. Sourabh Goel, Advocate
for respondent No. 1

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Rekha Mittal, J. (Oral)

The present petition directs challenge against order dated 15.12.2016 (Annexure P8) passed by the Arbitrator (respondent No. 2) dismissing application filed under Section 16 (2) of the Arbitration and Conciliation Act, 1996 (in short, 'the Act of 1996') with costs of Rs.2,500.00.

Counsel for the petitioner has submitted that respondent No. 1-claimant filed an application before the Chairman, Haryana Micro Small and Medium Enterprises Facilitation Council (in short, 'the Council') under Section 18 read with Sections 15, 16 and 17 of the Micro Small and Medium Enterprises Development Act, 2006 (in short, the Act) claiming a sum of Rs.1,86,95,804.00. The petitioner filed reply to claim petition

(Annexure P2). The claimant/respondent No. 1 filed replication to the reply filed by the petitioner (Annexure P3). The Council vide order dated 10.08.2015 decided to refer the matter to the empanelled Arbitrator notified by the Government vide Orders dated 24.10.2003, 08.08.2014 & 23.06.2015 under Rule 16 of the HMSEFC Rules, 2007 read with Section 18 (3) of Chapter V of the Act. Respondent No. 2 was appointed as sole Arbitrator and he directed the parties to appear before him on 14.10.2016 at 9.30 a.m. The petitioner filed an application under Section 16 (2) of the Act of 1996 for allowing the petitioner to file reply to the claim application filed by respondent No. 1 but the same has been rejected by the Arbitrator without correctly appreciating the provisions of the Act of 1996. It is further argued that the Arbitrator not only dismissed the application but imposed costs of Rs.2,500.00. It is prayed that the order impugned may be set aside with a direction to the Arbitrator to permit the petitioner to file reply to the claim application.

Counsel representing respondent No.1 has submitted that admittedly, the petitioner filed a detailed reply running into 19 pages to claim application filed by respondent No. 1 before the Council and even replication to the reply was filed by respondent No. 1. It is argued with vehemence that as respondent No. 1 has neither amended its claim submitted to the Council nor filed any additional claim, there is no question of any prejudice to the petitioner by not permitting to file another reply to the claim application. In addition, it is argued that in reply filed by the petitioner before the Council, the petitioner has raised an issue with regard to jurisdiction of the Arbitral Tribunal, a plea that is available to be raised

by the contesting party under Section 16 (2) of the Act of 1996, therefore, the instant application is nothing but an abuse and misuse of process of law with a clear intent to delay the proceedings. However, counsel has fairly conceded that he has got no objection if the order of the Arbitrator imposing costs is set aside to that extent.

I have heard counsel for the parties, perused the paper book particularly the application filed by the petitioner and the order impugned but find that the petition is devoid of merit and deserves to be rejected.

Counsel for the petitioner has not disputed that the petitioner filed reply to the claim preferred by respondent No. 1 before the Council. It is also conceded position of the case that the entire records available with the Council regarding the matter in question have been sent to the Arbitrator for adjudication in the light of contesting claims of the parties. Counsel for the petitioner has not disputed that in the reply filed by the petitioner, an issue with regard to jurisdiction of the Arbitral Tribunal has also been raised, to be decided by the Arbitrator in due course of time.

I have gone through the provisions of Section 16 (2) of the Act of 1996 which provides that a plea that the Arbitral Tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence, however, the party shall not be precluded from raising such a plea merely because that he has appointed or participated in the appointment of an Arbitrator. As the petitioner has already submitted a statement of defence raising an issue with regard to jurisdiction of the Arbitral Tribunal there was no occasion for the Arbitrator to permit the petitioner to file another reply, raising the same issue. In this view of the matter, I do not

find any error much less illegality in the impugned order as would call for intervention. However, in view of the concession recorded by counsel for respondent No. 1, order of the Arbitrator imposing costs of Rs.2,500.00 against the petitioner is set aside.

For the foregoing reasons, the petition stands disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

14.11.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No