

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION (L) NO. 2780 OF 2018

Larsen & Toubro Limited

... Petitioner

Versus

State of Maharashtra and Ors.

... Respondents

Mr. G.S. Godbole a/w Mr. Faisal Sayyed, Mr. Shadab Jan I/by
M/s. Manilal Kher Ambalal for the petitioner.

Mr. A.L. Patki, AGP for respondent nos.1 and 2.

Mr.Tarun Sinha for respondent no. 3.

**CORAM : SHANTANU KEMKAR &
SARANG V. KOTWAL, JJ.**

DATE : SEPTEMBER 18, 2018

P.C.:

Leave to amend the petition is allowed so as to seek quashment of clause (2) of the operative portion and clause (f) of the impugned order dated 25/1/2018 is granted. The amendment to be carried out forthwith. Reverification is dispensed with.

2. With the consent of the parties, heard finally.

3. The grievance of the petitioner is that having recorded the fact of the failure of the conciliation in the order dated 25/1/2018, respondent no. 2 Facilitation Council - Konkan Revenue Division

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ought to have referred the dispute for arbitration to any institute or center providing alternate dispute resolution services for such arbitration in view of the provision contained in section 80 of the Arbitration Act which is made applicable as per section 18(2) of the Micro, Small and Medium Enterprises Development Act, 2006 (for short MSMED Act). In support of his submissions, learned counsel for the petitioner has placed reliance on the Division Bench judgment of this court in the case of Gujarat State Petronet Ltd.. Vs. Micro and Small Enterprises Facilitation Council and Ors. 2018 S.CC Online Bom 2039.

4. Having gone through the provisions contained in section 18(2) and (3) of the MSMED Act and in view of the law laid down by the Division bench in the case of Gujarat State Petronet Ltd. (supra), we are of the view that clause (2) of the operative portion and clause (f) of the order dated 25/1/2018 are not in consonance with the said provisions and the judgment passed by the Division Bench of this Court.

5. In the circumstances, we set aside the said clause (2) and (f) of the impugned order dated 25/1/2018 passed by respondent no.2 and direct respondent no. 2 to refer the dispute for arbitration to any institute or center providing alternate dispute

resolution services for such arbitration. Needless to say that the facilitation council shall not itself take upon to decide the arbitration dispute.

6. We also record the statement made by the learned counsel for the parties that the proceedings so far as has been conducted shall form part of the arbitration proceedings as may be initiated on the basis of the order as may be passed by the Facilitation Council.

7. Parties to act on authenticated copy of this order.

8. All contentions of the parties are kept open.

9. In regard to prayer clause (a), it will be open for the petitioner to raise that issue before the new arbitrator as may be appointed.

10. With the aforesaid directions, writ petition is disposed of.

(SARANG V. KOTWAL, J.)

(SHANTANU KEMKAR, J.)