

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.9048 of 2018
Date of Decision:17.04.2018

Bony Polymers P. Ltd.

..... Petitioner

Vs.

M/s Bestways Transport India P. Ltd. and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Alok Jain, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner has challenged the proceedings of the Haryana Micro and Small Enterprises Facilitation Council recorded in its 102nd meeting held on 11.5.2017 by which the Council had unanimously decided to refer the matter to the empanelled Arbitrator notified by the Government in terms of Rule 16 of the Haryana Micro and Small Enterprises Facilitation Council, Rules, 2007 [for short 'the Rules'] read with Section 18(3) of Chapter V of Micro Small and Medium Enterprises Development Act, 2006 [for short 'the Act'] and directed the Arbitrator to decide the matter within 12 weeks.

In brief, a claim reference was made by respondent No.1 to the Haryana Micro and Small Enterprises Facilitation Council, in terms of the provisions of the Act, against the petitioner in regard to an amount accruing on account of services rendered by respondent No.1 as a transporter to the

petitioner, who is a manufacturer. On 8.3.2017, the Council passed the following order: -

“Present:

1. Sh. Anand Malik, Fleet Manager, on behalf of claimant.

2. None appeared on behalf of respondent.

None appeared on behalf of respondent. The Council observed that the case was listed for the first time. The Council decided to give one more opportunity to the respondent for appearing before the council and for making efforts for settlement of the payment dispute.

Adjourned.”

Since there was no date given at the time of adjourning the hearing, therefore, a notice was issued by the Council for the next hearing meeting on 21.3.2017 for 12.4.2017 at 11.30 AM in the office of Directorate of Industries & Commerce, Haryana, 1st Floor, 30 Bays Building, Sector 17, Chandigarh.

Apropos, the meeting was held on 12.4.2017, which was called 100th meeting of the Council in which the following order was passed: -

“Present:

1. None on behalf of claimant.

2. *Sh. K. K. Srivastava, G.M. Finance on behalf of respondent.*

None appeared on behalf of claimant, however a telephonic message received from the claimant that he is not able to attend meeting due to bus strike. Respondent submitted that last transaction made in May, 2010 and they had not received any communication earlier regarding pending payment. As the claimant was not present, the Council decided to adjourn matter for next hearing to take a decision regarding jurisdiction on the issue of filing of claim application with the council.

Adjourned.”

Again no specific date was given while adjourning the meeting, therefore, vide notice dated 27.4.2017, the meeting was called for 11.5.2017 at the same time and place on which the earlier meeting was held. This meeting was called 102nd meeting in which the following order was passed: -

“Present: -

1. *Sh. Anand Malik, Fleet Manager, on behalf of claimant.*

2. *Sh. K. K. Srivastava, G.M. Finance on behalf of respondent.*

Respondent submitted that there was no business/correspondence since Sept, 2013 as last GR copy is of 11.09.2013 and the recent communication was received by them on 25.10.2016. Thus the claim is barred by law of limitation. The Council observed that as per the ledger accountant submitted along with claim application, last payments were received on 23.6.2014 by cheque. Therefore, the Council was of the view that claim is not barred by law of limitation. The Council observed that as per the ledger accountant submitted along with claim application, last payments were received on 23.06.2014 by cheque. Therefore, the Council was of the view that claim is not barred by law of limitation.

The Council further observed that the respondent had failed to reconcile the matter despite of sufficient opportunities provided during the meetings held on 08.03.2017, 12.04.2017 and 11.05.2017. But the respondent is not coming forward to settle the dispute. The Council was of the view that there are no chances of mutual

settlement and the reconciliation process stands terminated.

After hearing both the parties, the Council unanimously decided to refer the matter to the empanelled Arbitrator notified by the Government vide order dated 24.10.2013, 08.08.2014 and 23.06.2015 under Rule 16 of the HMSEFC Rules, 2007 read with Section 18(3) of Chapter V of Micro Small & Medium Enterprises Development Act, 2006. The Arbitrator shall decide the matter within 12 weeks from the date of receipt of the case.

Disposed off.”

The petitioner, who was the respondent before the Council, was represented by K.K. Srivastava, G.M. Finance. In the said meeting i.e. 102nd meeting, it was observed by the Council that the respondent therein had failed to reconcile the matter despite sufficient opportunities provided during the meetings. Therefore, exercising its power under Section 18(3) of the Act, the Council appointed empanelled Arbitrator, notified by the Government under Rule 16 of the Rules, to decide the *lis* between the parties. The matter, thereafter, was put up before the empanelled Arbitrator, who is a retired District and Sessions Judge. Before the Arbitrator, there was no representation on behalf of the petitioner and it was proceeded against *ex parte*. The Arbitrator passed the award on 16.8.2017 as per which the

petitioner has been made liable to make the payment of certain amount. Aggrieved against the award of the Arbitrator, the petitioner availed the remedy of filing objections under Section 34 of the Arbitration and Conciliation Act, 1996 before the District Judge, Faridabad. The said objections are pending and are now fixed for 17.5.2018.

The petitioner has approached this Court by way of a writ in the nature of certiorari for quashing the order dated 11.5.2017 because by that order the Council has appointed the empanelled Arbitrator. It is submitted that the Council has wrongly recorded in its order that sufficient opportunities were provided to the petitioner in the past for the purpose of reconciliation. According to the petitioner, the Council has referred to 3 dates in the impugned order i.e. 08.03.2017, 12.04.2017 and 11.05.2017. I have already reproduced the orders passed on the aforesaid dates. According to the petitioner, the appearance in the 98th meeting held on 8.3.2017 was not for the purpose of reconciliation but in regard to decide the question of jurisdiction of the Council. It is further submitted that the copy of the order dated 11.5.2017 was not made available to the petitioner immediately thereafter and was obtained on 28.3.2018 and therefore, the petitioner could not challenge the impugned order dated 11.5.2017 in time and also could not appear before the Arbitrator otherwise the petitioner would have definitely challenged the impugned award in time or had appeared before the Arbitrator where they have been proceeded against *ex parte*.

Learned counsel for the petitioner has further submitted that even though the Arbitrator has announced the award and the petitioner has

filed objections under Section 34 of the Arbitration Act yet the petitioner can challenge the impugned order of the Council passed on 11.5.2017 by way of the writ petition on the ground that the order passed by the Council is without jurisdiction. In this regard, he has referred to a decision of Telangana and Andhra Pradesh High Court rendered in the case of ***“The Indur District Cooperative Marketing Society Ltd. Vs. Microplex (India), Hyderabad and another”*** 2016(3) Andh LD 588 , decision of Madras High Court rendered in the case of ***“M/s. Ramesh Conductors P. Limited represented by its Director P. Ramkumar Salem – 636 404 and others Vs. M & SE Facilitation Council (Micro & Small Enterprises) represented by its Chairman, Chennai-28 and others”*** 2015(74) RCR (Civil) 2016, decision of the Allahabad High Court rendered in the case of ***“M/s B.H.P. Engineers Pvt. Ltd. Vs. Director, Industries, U.P. (Facilitation Council), Kanpur and others”*** 2011(7) RCR (Civil) 657 and a decision of Gauhati High Court rendered in the case of ***“Oil and Natural Gas Corporation Ltd. and another Vs. Government of Assam and others”*** 2010 (8) RCR (Civil) 2452.

I have heard learned counsel for the petitioner and perused the record with his able assistance.

Insofar as the argument of the petitioner that 98th meeting of the Council, held on 8.3.2017, was regarding the issue of jurisdiction of the Council is totally wrong because the reading of the order dated 8.3.2017 would show that the business which was transacted in the said meeting held on 8.3.2017 was regarding granting one more opportunity to the petitioner herein for appearing before the Council and make efforts for settlement of disputed payment. Thus, the said meeting dated 8.3.2017 was not with

regard to the decision to be taken by the Council on its jurisdiction. However, in the 100th meeting held on 12.4.2017, the petitioner has raised the issue about the competence of respondent No.1 herein to file the claim before the Council and the jurisdiction of the Council to decide the same. Ultimately on 11.5.2017, the representative of the petitioner i.e. K.K. Srivastava, G.M. Finance was present before the Council when it passed the order that the parties have failed to reconcile the matter in dispute despite sufficient opportunities were granted to them and appointed empanelled Arbitrator. The said order was passed on 11.5.2017 and the present petition has been filed almost after one year. In the interregnum, the Arbitrator had passed the award against the petitioner. The petitioner has also filed objection against the said award.

I am not, for a moment, impressed with the argument of the petitioner that it was not aware of the order dated 11.5.2017 especially when the presence of their G.M. Finance has been marked in the impugned order.

In the present case, if K.K. Srivastava, G.M. Finance of the Company was present then he should have pursued the proceedings and should not have sit at home to await the supply of copy of order to him for the purpose of taking further action. It appears that the petitioner is now crying over the spilled milk by trying to challenge the order passed by the Arbitrator against it. Thus, I am of the considered opinion that the petitioner has actually missed the bus in challenging the impugned order for which it is to be blamed and not the respondents.

With these observations, I do not agree with the argument raised by counsel for the petitioner in regard to maintainability of the

petition at this stage and thus the same is hereby dismissed though without any order as to costs.

17.04.2018
Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking /reasoned : Yes/No
Whether Reportable : Yes/No