

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION No. 394 OF 2017

Aesthetics

..Petitioner.

v.

Ess Dee Aluminium Limited

..Respondent.

Mr. G.N. Pandit, Advocate for the Petitioner.

Mr. Tejas Gokhale i/by M/s Dhaval Vassonji for the respondent.

CORAM : B. P. COLABAWALLA, J.

DATED :- 1st March, 2019.

P.C. :

1. This Arbitration Petition has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short “**the Act**”) impugning the two orders passed by the arbitral tribunal dated 14th December, 2016 and 17th February, 2017 respectively. Before the arbitral tribunal, the respondent filed an application under Section 16 of the Act challenging the jurisdiction of the tribunal on two grounds. The first ground was that the claim was time barred and the second ground was that the claim for interest made by the claimant was not in accordance with the provisions of the Micro, Small and Medium Enterprises Development Act, 2006

and would fall outside the reference made to the Tribunal. This application of the respondent was allowed on the ground that the claim filed by the claimant was barred by the Law of Limitation. This was the subject matter of the order dated 14th December 2016. Thereafter, a clarification was sought by the claimant of the order dated 14th December, 2016. This clarification application also was rejected by the arbitral tribunal. It is in these circumstances, the present petition has been filed seeking to impugn both the aforesaid orders.

2. At the out set, the learned Advocate appearing on behalf of the respondent raised a preliminary objection regarding maintainability of the present petition under Section 37 of the Act. The learned Advocate submitted that since the Tribunal had held that the claim filed before it was barred by Law of Limitation, the same partook the character of an award and therefore had to be challenged under Section 34 of the Act. In support of this proposition, the learned Advocate relied upon a decision of the Supreme Court in the case of **Indian Farmers Fertilizer Cooperative Limited vs. Bhadra Products** [(2018) 2 SCC 534.]

3. Having heard the learned Counsel for the parties on this preliminary issue, I find substance in the argument canvassed by the learned Advocate appearing on behalf of the respondent. The Supreme Court in the case of Indian Farmers Fertilizer (supra) has clearly held that even for a rejection of plea of limitation prior to rendering of an award on other issues would amount to an interim award and would therefore be amenable to challenge under Section 34 of the Act and not under Section 37 (2) (a) of the Act. This being the clear position in law as laid down by the Supreme Court, I find that the present petition filed under Section 37 of the Act is clearly not maintainable. It is accordingly therefore dismissed. Whilst doing so, liberty is granted to the petitioner to file an appropriate petition under Section 34 of the Act to challenge the orders impugned herein. It is made clear that the petitioner shall be at liberty to canvass in the aforesaid petition all contentions with reference to limitation including the applicability of Section 14 of the Limitation Act. I have not opined on this issue one way or the other and the court hearing the Section 34 petition shall decide the same on its own merits and in accordance with law.

(B.P. COLABAWALLA, J.)