

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2671 OF 2018

The Commissioner of Income Tax ... Petitioners

Versus

The Micro and Small Enterprises Facilitation
Council, Govt of NCT of Delhi and Ors. ... Respondents

Mr. Anil Singh, Addl. Solicitor General a/w Mr. Sham Walve and
Ms. Carina Xavier for the Petitioner.

Ms. P.H. Kantharaia, AGP for the respondent State.

Mr. Chaitanya Nikte a/w Ms. Sneha Bhange for R. No. 2.

**CORAM : B.P. DHARMADHIKAKRI &
REVATI MOHITE DERE, JJ.**

DATE : JANUARY 07, 2019

P.C.:

Heard learned Additional Solicitor General for the petitioner,
Mr. Nikte for respondent no. 2 and AGP for respondent no. 1 state.
Nobody is present for respondent no. 3.

2. The only question raised in this petition is about the
propriety of selection of agency namely Delhi International
Arbitration Centre (formerly Delhi High Court Arbitration Centre,
DAC) for conducting the arbitration proceedings. This appointment
is ordered by respondent no. 1 under section 18 after noticing that

the conciliation is not possible. Petitioners rely on the decision of Division Bench of this Court reported in the case of M/s. Steel Authority of India Ltd. And anr Vs. Micro, Small Enterprises Facilitation Council¹ and identical findings relied upon by the learned Single Judge adhering to it in the judgment of M/s. Hindustan Wires Limited Vs. Mr. R. Suresh and Ors.²

3. Respondent nos. 1 and 2 submit that the competency of respondent no.1 to take cognizance of prayer for reference under section 18 is not in dispute. That authority has in exercise of statutory obligations cast upon it, chosen one of the recognized arbitrators and accordingly reference has been made. The agreement between the parties for appointing a particular person as arbitrator or restricting the jurisdiction for arbitration proceedings to particular territory does not survive after reference is made under section 18. It is also urged that the judgment of the Division Bench of this court in the case of Steel Authority of India Ltd (supra) is not found laying down good law by latter Division Bench judgment in the case of Gujarat State Petronet Ltd. Vs. Micro and Small Enterprises Facilitation Council³. It is submitted that there the contrary view reached by Allahabad High

1 AIR 2012 Bom 178

2 2013 SCC Online Bom 547

3 2018 SCC Online Bom 2039

Court and Gujarat High Court has been considered. The fact that the view taken by the Gujarat High Court has been maintained by the Hon'ble Apex Court on 5/7/2017 is also taken a note of. The respective counsel therefore, submit that the reliance upon the judgment in the case of Steel Authority of India Limited (supra) is unwarranted.

4. Without prejudice, they also point out that the impugned reference to arbitration is made by respondent no. 1 herein which has seat at Delhi and reference is also to an agency at Delhi. The writ petition therefore, at the most could have been filed before the High Court at Delhi and this court therefore, lacks territorial jurisdiction.

5. Fairly our attention is also invited to the objection on the same lines raised by the Petitioners before the respondent no. 3 agency and an order passed by the sole arbitrator on 10/7/2018 framing the preliminary issue. They submit that as the very same issue is being looked into by the sole arbitrator and petitioners have raised it there, the challenge in the present petition is only with a view to stall the further proceedings and progress of the matter.

6. We have considered the relevant rulings. We find that the

present matter has been filed sometime after 08/08/2018. The sole arbitrator appears to have framed the preliminary issue which reads as under :

“Whether this Arbitral Tribunal has jurisdiction to entertain the present claim filed by the claimant in the present form? (OPR).”

7. It is therefore, apparent that all contentions being raised before us by the petitioner, can be looked into by the respondent no. 3. As the petitioners have already raised the same before the sole arbitrator and has approached this court after sole arbitrator framed the preliminary issue, we are not inclined to intervene in the writ jurisdiction. We keep all contentions of parties open and accordingly dispose of the writ petition.

(REVATI MOHITE DERE, J.) (B.P. DHARMADHIKARI, J.)