

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

**FAO No. 69 of 2014 (O&M)
Date of Decision: 07.02.2019**

Delkon Textiles Private Limited

..... Appellant

VERSUS

Coirfoam (India) Pvt. Limited

..... Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sudhanshu Makkar, Advocate,
for the appellant.

None for the respondent.

JAISHREE THAKUR, J.

1. By way of instant appeal challenge has been made to the order dated 07.05.2013 passed by the Addl. District Judge, Faridabad dismissing the objections to the award dated 25.08.2010 passed by the Chairman, Haryana Micro and Small Enterprises Facilitation Council-cum-Director of Industries & Commerce, Haryana (for short 'MSEFC').

2. In brief the facts are, that the appellant who is a private limited Company incorporated as per law under the Indian Companies Act, 1956, is a small scale enterprise as defined under Section 7 of the Micro, Small and Medium Enterprises Development Act, 2006

(hereinafter referred to as the 'Act of 2006') and is registered as such. It is engaged in the business of manufacturing and selling polyester blended jacquard fabrics to the various units of Government undertakings as well as to private companies. It is alleged that the appellant company herein supplied goods to the respondent company w.e.f. July, 2004 upto December, 2005 and thereafter, the appellant herein raised bill-cum-invoices to receive payment. As the respondent did not make payment as prescribed under Payment of Interest on Delayed Payment to Small Scale Industries and Ancillary Industries undertaking Act, 1993, a legal notice dated 30.04.2006 was served upon the respondent – company. In spite of service of the said notice, no payment was received, which led to the appellant filing an application before the Sole Arbitrator, Director of the Industries and Commerce, Haryana, seeking recovery of the dues from the respondents. Since the Act, 2006 had come into force on 16.06.2006 a claim petition was filed before the Tribunal requesting for payment to be made by the respondent along with interest.

3. The respondent filed reply to the claim petition and stated that they are not liable to pay any interest. Rejoinder was filed thereto by the appellant herein and on hearing the parties, the Chairman, 'MSEFC' dismissed the claim petition on the ground that there was no enforcement contract between the parties. Against the said dismissal, objection petition under Section 34 of the Arbitration

and Conciliation Act, 1996 read with Section 19 of the 'MSEFC' Act, 2006 were preferred, which came to be dismissed by the impugned order.

4. The Addl. District Judge, Faridabad while taking note of all the contentions raised by the counsel appearing on behalf of the applicant-objector, dismissed the objection petition by holding that none of the grounds raised fell within Section 34(2) of the Arbitration and Conciliation Act, 1996.

5. Learned counsel for the appellant assails the said order on the ground that the Arbitrator has misconducted himself insofar as ignored the provisions as specified under Sections 15, 16, 17 & 18 of the Act of 2006. It is argued that the Arbitrator dismissed the claim by holding that there is no enforceable contract whereas Section 15 clearly stipulates that when a supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed date and when there is no date agreed upon between the supplier and the buyer in writing payment has to be made within a period of 45 days from the date of acceptance of the goods.

6. No appearance has been caused on behalf of the respondent company, though service is complete. Since the matter is pending in this Court since 2014, this Court is proceeding to hear the

matter on merits.

7. The short question that arises for consideration by this Court is “whether there is any illegality in the order so passed by the Arbitrator and consequently whether the order passed by the District Judge is liable to be set aside?

8. The appellant herein has supplied goods i.e. in the form of polyster woven jacquard fabric to the respondent company against invoices that have been raised. The invoices are available on the record as Annexure P-2 (Colly.). The Act of 2006 came into force on 16.06.2006 with an object to facilitate and promote development and enhancement of small and medium enterprises as well as to ensure timely and smooth flow of credit to such small and medium enterprises, to minimize the incidences of such units becoming sick on account of paucity of funds.

9. The appellants herein filed a claim before the Chairman stating that it was a small scale industry registered with the Department of Industries, Faridabad, Haryana and was a small scale industry within the meaning of the Act of 2006. It was engaged in the business of manufacturing and selling polyster blended woven jacquard fabrics which had been supplied to M/s Coirform (India) Pvt. Ltd. from time to time as and when orders were placed upon it and against supply made by the appellant respective invoices were raised. In the invoices, it was clearly mentioned that the purchaser

would remain under an obligation to make payment of interest @ 24% P.A. and since payments have not been received despite legal notice, a claim was filed. In the reply filed on 01.04.2008 by Coirfoam India Pvt. Ltd. they denied receiving of the material, however, plea was taken that the appellant herein was in the habit of supplying materials without orders and/ or in excess of written orders/ schedules released on them, while asking the appellant herein to submit copies of purchase orders placed upon them. However, despite the said admission made by them of receipt of materials, the Chairman, MSEFC, dismissed the said claim only on the ground that there was no enforceable contract between them.

10. In the opinion of this Court, Sections 15, 16 & 17 of the Act of 2006 have totally been ignored, wherein Section 15 specifically pertains of the liability of the buyer to make payment with or without a written agreement. Section 16 provides for the date from which interest is payable and Section 17 clearly stipulates that the buyer shall be liable to pay the amount with interest thereon. Merely on account of the fact that there is no contract between the parties, the claim could not have been dismissed, especially when there is a part admission on behalf of the respondent-company that they have been receiving goods and invoices were placed on the record. Resultantly, finding merit in the arguments that have been raised by learned counsel appearing on behalf of the appellant, the

appeal is allowed and both the orders i.e. of the Arbitrator and the District Judge, Faridabad are set aside. The matter is remanded back to the Chairman, 'MSEFC' to decide the matter afresh. The appellant herein is directed to appear before the Chairman, MSEFC on 15.03.2019, who in turn would issue fresh notice to the respondent-company and decide the matter in accordance with law. Records of the Addl. District Judge, Faridabad as well as that of the Arbitrator be sent back immediately along with the copy of this order.

07.02.2019

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes.

Whether reportable

Yes.