

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

TA-897-2018(O&M)

Date of decision:-24.4.2019

M/s PVR Metallurgicals Pvt. Ltd.

...Applicant

Versus

M/s Sanjeevani Gears & Transmission and another

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Argued by :Mr.Sourabh Goyal, Advocate
for the applicant.

Mr.K.K. Saini, Advocate
for the respondents.

H.S. MADAAN, J.

This petition under Section 24 of the Code of Civil Procedure, 1908 for transfer of Arbitration Case No.3 of 2017 pending before the learned District Judge, Panchkula to the Court of Additional District Judge, Chandigarh where Arbitration Case No.3 of 2017 filed by respondent on 2.1.2017 is pending adjudication, has been brought by applicant - M/s PVR Metallurgicals Pvt. Ltd., Panchkula.

As per the case of the applicant it had filed an application

under Section 18 of Micro Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as MSMED Act) before the Micro and Small Enterprises Facilitation Council (hereinafter referred to as MSEFC, Haryana) for recovery of delayed payment and interest from the respondent – M/s Sanjeevani Gears & Transmission, Chandigarh; that as the conciliation proceedings failed, the matter was referred to Sole Arbitrator, who vide Award dated 28.10.2016 had allowed the claim of the applicant, though interest as provided under the Act was not awarded; that the applicant filed a petition under Section 34 of the Arbitration Conciliation Act, 1996 (hereinafter referred to as the Act) before the Principal Civil Court i.e. Court of learned District Judge, Panchkula being aggrieved by the impugned award; that since the applicant is carrying on its business at Panchkula, Haryana and as per the provisions of the Act, an application under Section 18 of the Act could have been filed by the Supplier before the Facilitation Council, where it is registered, therefore, the petition was filed by the applicant before the Chairman, MSEFC, Haryana and arbitration was conducted by Sole Arbitrator at Panchkula; that the applicant had filed a petition under Section 34 of the Act on 27.1.2017 after giving due notice under Section 34(5) of the Act; that the respondent – buyer had also filed a petition under Section 34 of the Act before learned District Judge, Chandigarh on 2.1.2017; that adjudication of both the petitions is being unnecessarily delayed for want of record and reply from the respondent; that the respondent had not served the mandatory statutory notice under Section 34(5) of the Act; that as per the provisions of Section 42 of the Act, where with respect to an arbitration agreement any application

under Chapter VI of the Act has been made in the Court, then the Court shall have alone jurisdiction over the arbitration proceedings and all subsequent proceedings arising out of that agreement and the arbitral proceedings shall be made in that Court and no other Court; though the respondent had filed a petition in the Court of District Judge, Chandigarh prior in date but for complete and proper adjudication of the matter, it would be expedient if the petition filed by the applicant is transferred to Additional District Judge, Chandigarh where the petition filed by respondent is pending.

On notice, respondent No.1 put in appearance through counsel and filed written reply contesting the application. *Inter alia* it has raised preliminary objections that the application is not maintainable in the eyes of law and is liable to be dismissed; that the applicant has not approached the Court with clean hands and has intentionally suppressed the material facts; that the answering respondent had raised an objection before the Court at Panchkula that the said Court is not having territorial jurisdiction to entertain and decide the petition filed by the applicant and the petition is liable to be dismissed for that reason; that in terms of Section 42 of the Act, the jurisdiction vested with Courts at Chandigarh and by way of moving the present application that defect cannot be removed; though the applicant had having its business at Panchkula; the respondent is doing business at Chandigarh; the material was supplied at Chandigarh; the payments were released at Chandigarh, there was no arbitration clause between the parties; however, the applicant had filed the petition under MSMED Act, which is not applicable in Chandigarh and has filed the present application to avoid dismissal of the petition for

want of territorial jurisdiction; that the applicant had filed one execution petition No.1114 of 2018 at Chandigarh seeking execution of the award dated 26.10.2016, which is pending in Court at Chandigarh. On merits, the material assertions in the application had been controverted, whereas pleas taken in the preliminary objections were reiterated while craving for dismissal of the application.

I have heard learned counsel for the parties besides going through the record.

The respondent has taken up a specific plea in the written reply that it has raised an objection before the Court Panchkula that it lacks territorial jurisdiction to entertain and try the petition so filed by applicant M/s PVR Metallurgical Pvt. Ltd., which objection is yet to be decided.

According to the learned counsel for the respondent, it being so, the present application for transfer of the petition to the Court of Additional District Judge, Chandigarh is not maintainable. In support of his contention, he has referred to judgment **Hari Ram Versus Anil Kumar, AIR 1986 Punjab & Haryana 326**, wherein it was held that when the defendant had raised the question of want of territorial jurisdiction of the Court, he could not, pending suit seek transfer thereof to some other Court.

Since that question is yet to be decided by the trial Court at Panchkula, therefore, this application cannot proceed further and is dismissed accordingly.

However, it is observed that if the trial Court at Panchkula holds that it has got territorial jurisdiction to entertain and try the

petition under Section 34 of the Act, then the applicant may approach this Court again moving similar application in accordance with law.

24.4.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No