

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

CWP No.28522 of 2017 (O&M)

Date of decision:16.05.2019

Controller of Store Eastern Railway ... Petitioner

Vs.

M/s CMI Limited and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. G.S.Bal, Senior Advocate with
 Ms. Mandeep Kaur, Advocate
 for the petitioner.

Mr. Gaurav Chopra, Advocate
for respondent No.1.

Mr. Rohit Arya, AAG, Haryana.

AMIT RAWAL J.

Controller of Store Eastern Railway has invoked the extra jurisdiction of this Court under Articles 226/227 of the Constitution of India seeking quashing of the order dated 09.08.2017 (Annexure P-1) whereby respondent no.2 while entertaining application of respondent no.1 appointed respondent No.3 as an Arbitrator.

As per averments, respondent no.1 entered into agreement with petitioner resulting into issuance of purchase order dated 18.01.2016 and modification dated 13.6.2016 in respect of certain items i.e. electric wires and cables to be provided on certain terms and conditions and the payment. The delivery period was extended suitably. However, on 25.3.2017

respondent no.1 filed the claim petition before respondent no.3 in respect of delayed period on account of supply of electric wires.

Mr. G.S.Bal, learned Senior counsel assisted by Ms. Mandeep Kaur, learned counsel appearing on behalf of the petitioner submitted that as per the terms and condition no.2900 of the Contract, application of respondent no.1 before respondent no.2 could not have been entertained as in case of any dispute, differences, the matter was required to be referred to the Sole Arbitrator of a Gazetted Railway Officer and the General Manager is empowered to appoint the Sole Arbitrator i.e. Gazetted Railway Officer. The petitioner released the payment after the delay of 85 days and therefore, sought claim of Rs.34,82,690/- including the interest @ 18% per annum from 29.12.2016 to 25.03.2017 under the provisions of Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as “2006 Act”). The petitioner explained to respondent no.2-Council that there was no such any delay then raised dispute qua jurisdiction but despite that appointed respondent no.3-S.S.Dahiya as Arbitrator.

The order is not sustainable as respondent no.1 did not comply with the provisions of Sections 2(e) and 8(4) of 2006 Act. The contract was entered with respondent no.1 at Kolkatta and therefore, alleged dispute did not fall within the jurisdiction of Ludhiana and the State Council constituted under the Act. There was no time line for payment of the amount, thus, cause of action was pre-mature. The provisions of 2006 Act cannot override the terms and conditions of the contract. The condition no.2900 of the Contract would oust the jurisdiction of the Council constituted under the

Act.

Mr. Bal, learned senior counsel to buttress his arguments referred to provisions of Section 15 under Chapter 5, as it only pertains to the payment of interest and not the principal.

Per contra, Mr. Gaurav Chopra, learned counsel appearing on behalf of respondent no.1 submitted that writ petition is totally mis-conceived and un-tenable as controversy regarding jurisdiction of the Council has already been decided in three judgments i.e. **Chief Materials Manager Vs. M/s CMI Limited and others, 2016 (1) PLR 566; CWP No.24753 of 2015 titled as General Manager Northern Central Railway Vs. Rational Business Corporation, decided on 28.11.2015; and Principal Chief Engineer Vs. M/s Manibhai and brothers (Sleeper) and another 2016(4) GLR 3349.**

He drew the attention of this Court to the provisions of Sections 17 and 22 of 2006 Act where the expression 'amount with interest would include both principal and interest. In support of aforementioned contention, referred to various other judgments i.e. Division Bench judgment of Bombay High Court in **Gujarat State Petronet Ltd. vs. Micro and Small Enterprises Facilitation Council and others AIR 2018 (Bombay) 265** and thus, urged this Court for dismissal of the petition.

I have heard learned counsel for the parties and appraised paper book. It would be apt to reproduce the provisions of Sections 15, 17, 18 and 22 of 2006 Act, same read as under:-

15. Liability of buyer to make payment.—Where any 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 day: Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

17. Recovery of amount due.—For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.

18. Reference to Micro and Small Enterprises Facilitation Council.—(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council. (2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a

dispute as if the conciliation was initiated under Part III of that Act. (3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act. (4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India. (5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference .

22. Requirement to specify unpaid amount with interest in the annual statement of accounts.— Where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts,

namely:— (i) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year; (ii) the amount of interest paid by the buyer in terms of section 16, along with the amount of the payment made to the supplier beyond the appointed day during each accounting year; (iii) the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this Act; (iv) the amount of interest accrued and remaining unpaid at the end of each accounting year; and (v) the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under section 23.”

The expression “**amount with interest**” in Sections 17 and 22 “**any amount due**” envisages an obligation upon buyer to reflect in annual accounts under any other law the principal amount and interest due thereon do not lead any confusion as expressed by Mr. Bal, that claim can only be confined to interest.

Para No.6.2 of **Principal Chief Engineer (supra)** and para 10 and 12 of **Gujarat State Petronet Ltd.** read thus:-

6.2. Considering the aforesaid decisions of the Hon'ble

Supreme Court and the law laid down by the Hon'ble Supreme Court, the Council acting under Section 19 of the Act, 2006 cannot be said too be "Judicial Authority" performing judicial function or quashi judicial functions. As observed herein above, after conciliation failed, thereafter once the Council act as an Arbitrator itself, therefore, the Council had no jurisdiction to entertain the application under Section 8 of the Act. On fair reading of sub section (3) of Section 18 only in a case where the Council itself does not act as an Arbitrator and decide to refer the parties, centre or institution providing alternate dispute resolution services as observed in subsection (3) of Section 18 of the provision of Arbitration Act shall then apply to the dispute if the arbitration is in pursuance of the Arbitration Act refer to subsection (1) of Section 7 of that Act. However, in any case, the application under Section 8 of the Arbitration Act would not be maintainable before the Council who itself take up issue as Arbitrator."

Para 10 and 12 of Gujarat State Petronet Ltd

"10. [Section 24](#) of the Act gives an overriding effect to the provisions of [Sections 15](#) to [23](#) which provide statutory framework for micro, small and medium enterprises to address the issues of delayed payment. Sub-section (1) of [Section 18](#) contains non-obstante clause which enables the party to a dispute to make a reference to MSEFC. Similarly, sub-section

(4) of [Section 18](#) which also contains a non- obstante clause provides for arbitration to be conducted by MSEFC or any institution or a centre providing alternate dispute resolution services. It is thus evident that the act does not contemplate arbitration through an arbitrator appointed by the parties but provides for special forum in the form of MSEFC or under the aegis of any institution or a centre providing alternate dispute resolution services as referred by MSEFC. Furthermore, [Section 19](#) which mandates pre-deposit of 75% of awarded amount ensures expedient recovery of the dues and thus safeguard the interest of micro, small and medium enterprises. [The Arbitration Act](#) 1996 and/or the arbitration agreement entered into by the parties does not contain such provisions.

12. In Steel Authority of India Ltd. (supra), there was an agreement between the buyer and the seller and clause 22 of the agreement contained the arbitration clause. The supplier invoked clause 22 of the agreement and proposed to appoint Justice C.P. Sen (Retired) as Arbitrator to settle the dispute through arbitration. The buyer, however, in pursuance of clause 23 of the general conditions of contract, appointed one Mr. S. K. Gulati as an Arbitrator for resolving the disputes between the parties. The Arbitrator appointed by the buyer

issued notices to the parties asking them to submit their claim. However, the supplier, instead of filing claim before the Arbitrator, objected the arbitration stating that the matter may be either referred to Justice C.P. Sen (Retired) or it should go before the Micro and Small Enterprises Facilitation Council established under the 2016 Act. The buyer declined to enter into another mode of settlement of dispute before the Council, since it had already appointed an Arbitrator. The supplier went ahead and filed a reference under [Section 18](#) of the 2016 Act. The buyer raised an objection before the Council objecting its jurisdiction. The Council, however, decided to proceed with the matter. The buyer approached the High Court questioning the jurisdiction of the Council. The Division Bench of this Court, in paragraph 11, held as under :-

"11. Having considered the matter, we find that [Section 18 \(1\)](#) of the Act, in terms allows any party to a dispute relating to the amount due under [Section 17](#) i.e. an amount due and payable by buyer to seller; to approach the facilitation Council. It is rightly contended by Mrs. Dangre, the learned Addl. Government Pleader, that there can be variety of disputes between the parties such as about the date of acceptance of the goods or the deemed day of acceptance, about schedule of supplies

etc. because of which a buyer may have a strong objection to the bills raised by the supplier in which case a buyer must be considered eligible to approach the Council. We find that [Section 18](#) (1) clearly allows any party to a dispute namely a buyer and a supplier to make reference to the Council. However, the question is; what would be the next step after such a reference is made, when an arbitration agreement exists between the parties or not. We find that there is no provision in the Act, which negates or renders an arbitration agreement entered into between the Shubhada S Kadam 13/24 wp 5459.15.doc parties ineffective. Moreover, [Section 24](#) of the Act, which is enacted to give an overriding effect to the provisions of [Section 15](#) to [Section 23](#) including [Section 18](#), which provides for forum for resolution of the dispute under the Act-would not have the effect of negating an arbitration agreement since that section overrides only such things that are inconsistent with [Section 15](#) to [Section 23](#) including [Section 18](#) notwithstanding anything contained in any other law for the time being in force. [Section 18\(3\)](#) of the Act in terms provides that where conciliation before the Council is not successful, the Council may itself take the dispute for arbitration or refer it to any institution or centre

providing alternate dispute resolution and that the provisions of the Arbitration and Conciliation Act, 1996 shall thus apply to the disputes as an arbitration in pursuance of arbitration agreement referred to in Section 7(1) of the Arbitration and Conciliation Act, 1996. This procedure for arbitration and conciliation is precisely the procedure under which all arbitration agreements are dealt with. We, thus find that it cannot be said that because Section 18 provides for a forum of arbitration an independent arbitration agreement entered into between the parties will cease to have effect. There is no question of an independent arbitration agreement ceasing to have any effect because the overriding clause only overrides things inconsistent therewith and there is no inconsistency between an arbitration conducted by the Council under Section 18 and arbitration conducted under an individual clause since both are governed by the provision of the Arbitration Act, 1996."

The cumulative reading of findings and the provisions of the Act, the expression "non-obstante clause" in Section 18 do not oust the jurisdiction of respondent no.2 to decide the claim under Section 18. Even this Court while noticing aforementioned provisions in judgment in a matter between the same parties, Annexure R-3, in CWP No.24753 of 2015

decided on 28.11.2015 answered the question in favour of supplier.

Division Bench of Bombay High Court also noticed that judgment in **M/s Steel Authority of India Limited and another vs. Micro, Small Enterprise Facilitation Council AIR 2012 Bombay 178** ousting the jurisdiction of the Micro Small Enterprise had not taken into consideration the non-obstante clause, *ibid*.

It is a matter of record that ratio decidendi culled out in Principal Chief Engineer' case has already been upheld by the Hon'ble Supreme Court in case bearing diary no.16845 of 2017 decided vide order dated 5.7.2017.

Thus the order under challenge cannot be said to be illegal, fallacious and does not fall within the realm of judicial review.

Resultantly, the writ petition stands dismissed.

(AMIT RAWAL)
JUDGE

May 16, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No