

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

CWP No.35800 OF 2019

Date of Decision:12.12.2019

THAUMAS INFRASTRUCTURE LTD.

...Petitioner

Versus

**HARYANA MICRO AND SMALL ENTERPRISES FACILITATION
COUNCIL AND ANOTHER ..Respondents**

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Tejeshwar Singh, Advocate
for the petitioner.

Mr. Sanjeev Sharma, Sr. Advocate with
Mr. Umesh Gulati, Advocate
for respondent No. 2.

DEEPAK SIBAL, J. (ORAL)

Four agreements were entered into between the petitioner and respondent No.2 with the description of work detailed in each of them. On disputes having arisen between the contracting parties, on 22.11.2017, respondent No.2 filed a reference under Section 18(1) of the Micro Small & Medium Enterprises Development Act, 2006(for short-the Act) before the Haryana Micro and Small Enterprises Facilitation Council (for short-the Council) through which claims were made by it against the petitioner. After conducting conciliation proceedings between the parties the dispute between them was referred to be adjudicated upon by an Arbitrator before whom the parties presented their respective claims after consideration of

which, as also the evidence led by them, the Arbitrator gave its report dated 04.12.2018. Since as per Rule 4 (19) of the Haryana Micro and Small Enterprises Facilitation Council Rules, 2007 (for short-the Rules), such report given by the Arbitrator was required to be ratified by the Council to give it the shape of an award within the meaning of Section 31 of the Arbitration and Conciliation Act, 1996 (for short-the 1996 Act), both the parties applied to the Council for the same. Through its order dated 23.10.2019 the Council ratified the report of the Arbitrator with effect from the date of such report i.e. 04.12.2018. Such order of the Council has been challenged in the present proceedings.

Learned counsel for the petitioner has raised a solitary issue which is that by giving retrospective effect to the report of the Arbitrator, the Council has passed an award in terms of the Section 31 of the 1996 Act, with retrospective effect and thus taken away the right of the petitioner to challenge such award under Section 34 of the 1996 Act as such challenge can be made only within 3 months from the date of passing of the award or 30 days thereafter only if the Competent Court, where such challenge is made, is satisfied that the applicant before it was prevented by sufficient cause in not making its application for setting aside the award within the said period of 3 months. According to him, the Council, by retrospectively passing the award, could not have taken away the statutory remedy available to the petitioner to challenge the award in terms of the Section 34 of the 1996 Act.

Mr. Sanjeev Sharma, learned Senior counsel appearing for the contesting respondent No.2 fairly submitted that the right of the petitioner

could have not been taken away by the Council by accepting the report of the Arbitrator with retrospective effect and that the limitation for the petitioner to raise a challenge, to the said award would and should only start running from the date when a copy of the award is delivered to the petitioner.

In view of the afore fair stand taken on behalf of respondent No.2 as also the law laid down by the Supreme Court in “ State of Maharashtra and others vs. M/s Ark Builders Pvt. Ltd.” (2011) 4 SCC 616, wherein it has been held that the limitation to raise a challenge to an award starts running only from the date when a copy of the award is delivered to/received by the aggrieved party, without commenting on the merits of the case, the present petition is disposed of with a clarification that in case the petitioner does challenge the aforesaid award, the limitation to make such challenge would start running only from the date when a copy of the award is delivered to/received by the petitioner.

No costs.

(DEEPAK SIBAL)

JUDGE

December 12, 2019

Whether speaking/reasoned Yes/No Whether Reportable Yes/No

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