Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 130 OF 2021

WITH

STM NO. 844 OF 2020 (FILING), STM NO. 845 OF 2020 (FILING), STM NO. 846 OF 2020 (FILING), STM NO. 996 OF 2020 (FILING), WRIT PETITION NO. 123 OF 2021, WRIT PETITION NO. 124 OF 2021, WRIT PETITION NO. 125 OF 2021, WRIT PETITION NO. 126 OF 2021, WRIT PETITION NO. 127 OF 2021, WRIT PETITION NO. 129 OF 2021 AND WRIT PETITION NO. 131 OF 2021

The Executive Engineer, Division XVII, Mapusa …Petitioners

Versus

Bharat Conductors Pvt. Ltd. …Respondents

Mr. Manish Salkar, Government Advocate *for the Petitioners.*
Mr. Ryan Menezes, *Ms. Gina Almeida and Mr. Nigel Fernandes, Advocates for the Respondents.*

CORAM: MANISH PITALE, J

DATED: 9th December 2021

ORAL ORDER

1. These Writ Petitions have arisen out of orders passed by the Court of Principal District Judge, North Goa, whereby orders were passed by the said Court in Execution Proceedings.

2. The present Writ Petitions have arisen out of proceedings that were undertaken between the Petitioner on the one hand and the Respondent M/s. Bharat Conductors Pvt. Limited on the other. The said proceedings were initiated under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the *MSMED Act*). As per the provisions of the said Act, the dispute raised by the Respondent pertaining to the liability of the Petitioner to pay interest on amounts paid beyond the period statutorily provided under the MSMED Act was considered by the Goa Micro, Small Enterprises Facilitation Council in terms of the provisions of the MSMED Act.

3. In such proceedings, the aforesaid Council passed Awards holding that there was indeed delay on the part of the Petitioner in releasing principal amount payable to the Respondent. It was held that the delay was beyond the maximum period of 45 days provided under Section 15 of the MSMED Act. Thereupon, it was directed that the Petitioner shall pay interest to the Respondent for the delayed period beyond 45 days as per the MSMED Act. There is no dispute about the fact that in all the cases before this Court, although there was a delay on the part of the Petitioner to pay the amounts due to the Respondent, such amounts were indeed paid after a delay ranging from one month twenty days to four months three days in various cases.

4. The operative portion of the award in one such case, from which Writ Petition no. 125 of 2021 arises, reads as follows :

> *"There is a delay on part of Respondent no.2 for release of the principal amount to Applicant beyond 45 days as mandated under Section 15 of Chapter V Delayed Payments to Micro, Small Enterprises of MSMED Act, 2006.*

> *The Respondent no.2 is liable to pay the interest to the Applicant for the delayed period beyond 45 days as per MSMED Act, 2006.”*

5. Although there are minor differences in the operative portions of the awards in other cases, the direction to the Petitioner to pay interest for the delayed period beyond 45 days as per the MSMED Act, is found in all cases.

6. The said Awards were put to execution before the Executing Court i.e. the Court of Principal District Judge, North Goa. The said Execution Applications were allowed and in most cases, it was directed that the Petitioner shall pay the principal amount along with accrued interest to the Respondent within sixty days. The proceedings were closed. The Petitioner moved Review Applications before the Executing Court to point out that the principal amount was already paid after delay beyond the period of 45 days and that, therefore, there was an error apparent on the face of the record in the orders passed while closing the Execution Proceedings. Review Applications were allowed and while dropping the words "*principal amount*", the Executing Court instead directed the Petitioner to pay "*accrued interest*" in terms of Chapter V Section 22(IV) and (V) of the MSMED Act, till the time the amount is actually paid.

7. The Petitioner filed the present Writ Petitions being aggrieved by the said orders passed in Review Applications filed on behalf of the Petitioner. It was submitted that the Executing Court had committed an error by directing that the accrued interest will have to be paid till the amount is actually paid. Apart from this, it was contended with reference to Section 22 of the MSMED Act was wholly misplaced. This Court issued notices in these Writ Petitions and granted ad-interim stay of Execution Proceedings, subject to the Petitioner depositing the amounts as per Awards in this Court. It is undisputed that in all these Writ Petitions, the Petitioner indeed deposited the amounts.

8. Mr. Salkar, learned Government Advocate appearing for the Petitioners, invited attention of this Court to Sections 15 and 16 of the MSMED Act to contend that the interest payable was only for the "*delayed period*" as specified in the award i.e. for the period between the expiry of 45 days as per Section 15 of the MSMED Act till payments of the principal amounts were actually made on different dates in the individual cases. On this basis, it was submitted that the Executing Court had committed an error in directing that the interest would have to be paid till the amount is actually paid. It was further submitted that Section 22 of the MSMED Act pertains to the requirement to specify unpaid amount with interest in the annual statement of accounts, which has nothing to do with the controversy in the present Writ Petitions. It was submitted that the Petitioner had calculated the amount of interest payable as per Section 16 of the MSMED Act for the delayed period specified in the Award and that, therefore, the impugned orders, deserve to be set aside. It was submitted that if there was any dispute about the actual calculation of the amount, the amounts deposited by the Petitioner in these Writ Petitions could be transferred to the Executing Court for verification of the calculations so that the Execution Proceedings could be finally closed.

9. Mr. Ryan Menezes, learned Counsel appearing for the Respondents-M/s. Bharat Conductors Pvt. Limited, in these Writ Petitions, submitted at the outset, that reference to Section 22 of the MSMED Act in the impugned orders passed in Review Applications by the Executing Court, was indeed misplaced and that, therefore, he was not joining issue on the said aspect of the matter. The learned Counsel further submitted that a proper interpretation of Sections 15 and 16 of the MSMED Act would indicate that since there is a reference to liability to pay compound interest with monthly rests, merely because the principal amount stood paid on behalf of the Petitioner, it would not absolve the Petitioner of its liability to pay interest till the amount is actually paid. It was submitted that the liability on a proper interpretation of Sections 15 and 16 of the MSMED Act was continuous and did not stop at the point when the principal amount was paid.

10. Heard learned Counsel appearing for the rival parties and perused the material on record. Since the issue raised in the present Writ Petitions is common, all the Writ Petitions have been heard and are taken up for disposal together. It is further found on appreciation of the contentions raised by the rival parties, that reference to Sections 15 and 16 of the MSMED Act would be necessary. The said provisions read as follows :

> *"**Section 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.*
>
> ***Section 16. Date from which and the rate at which interest is payable**.—Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank."*

11. A perusal of the above-quoted provisions clearly shows that the Petitioners in the present case ought to have made timely payment to the Respondent and that the payment ought not to have been beyond the period of 45 days. It is an admitted position that the Petitioner indeed failed to abide by the aforesaid outer limit of 45 days. It is also an admitted position that the Petitioner did make payment of the amount due which could be referred to as the principal amount in all these cases after a delay which varied in the cases before this Court.

12. It is in the backdrop of the admitted position on facts that the Petitioner indeed made payments to the Respondent that the controversy as regards liability to pay interest became the subject matter of proceedings before the aforesaid Council under the provisions of the MSMED Act. A perusal of the operative portion of the award in one of such cases, which is quoted above, shows that the Council found as a matter of fact that there was a delay in release of the principal amount beyond 45 days as mandated under Section 15 of the MSMED Act. Thereafter, the awards stipulate that the Petitioner is liable to pay interest to the Respondent for the "*delayed period*" beyond 45 days as per the MSMED Act.

13. Section 16 of the MSMED Act is relevant for the purpose of interest payable when there is a failure to make payment of the amount as specified under Section 15 of the MSMED Act. Much emphasis is placed on behalf of the Respondents on the stipulation under Section 15 of the MSMED Act that the buyer i.e. the Petitioner in the present case, is liable to pay compound interest with monthly rests. It is submitted that even though the principal amount was indeed paid in all the cases before this Court, the liability to pay compound interest with monthly rests would continue to operate because of the dates on which the principal amount was paid by the Petitioner, the entire liability was still not satisfied. It was submitted that the component of interest that the Petitioner was liable to pay at the end of each month, was to be added for calculation of interest for the next month and since the payment of the amount on behalf of the Petitioner did not take into account the aforesaid component of interest, the liability would not stop under Section 16 of the MSMED Act, merely because the principal amount was released in favour of the Respondent. In other words, it was submitted that the liability would continue till the actual payment of the entire liability as interpreted on behalf of the Respondent.

14. This Court in these cases is concerned with orders passed in Execution Proceedings initiated by the Respondent. The Execution Proceedings are concerned with awards that were passed by the Council under the provisions of the MSMED Act. Therefore, the Execution Proceedings cannot go beyond the awards passed in favour of the Respondent.

15. Although there are minor differences in the operative portions of the awards passed in the present case, there is no serious dispute about the fact that the tenor of the awards is similar to the above quoted operative portion of one such award. The Council while passing the awards in favour of the Respondent has specified that the Petitioner is liable to pay interest to the Applicant for the "*delayed period*" beyond 45 days as per the MSMED Act. This Court has perused the material on record and in terms of the award, "*delayed period*" is clearly the period in these cases starting on the day when the 45 days period specified under Section 15 of the MSMED Act expired and the dates when actual payment of the principal amount was made by the Petitioner to the Respondent. It is also significant that Section 16 of the MSMED Act uses the words "*liable to pay compound interest with monthly rests to the supplier on that amount*". The use of the words "*on that amount*", is relatable to the liability of the Petitioner to make payment of the amount as required under Section 15 of the MSMED Act.

16. Reading the aforesaid words in conjunction with the operative portions of the award, the execution of which is sought by the Respondent, makes it clear that the liability to pay interest in terms of the MSMED Act on the Petitioner, would be only for the delayed period i.e. in each case, the date when the period of 45 days specified under Section 15 of the MSMED Act expired and the payment of the principal amount was actually made by the Petitioner.

17. Therefore, this Court is of the opinion that there is indeed an error committed by the Executing Court in these cases by directing that the Petitioner would have to pay accrued interest till the time the amount is actually paid. It is made clear that the liability of the Petitioner to pay interest would be only for the delayed period as indicated above.

18. The Petitioner has calculated amounts in these terms in each individual case and as per the interim orders granted by this Court, the amounts have been deposited before this Court. Yet, the Respondent may have a different version of the amount actually payable even in terms of what is held by this Court herein above and, therefore, an opportunity deserves to be granted to the Respondent to place its contentions before the Executing Court in that regard.

19. In view of the above, the Writ Petitions are allowed. The impugned orders are quashed and set aside. The parties are relegated to the Executing Court for further proceedings on the basis of the interpretation of Sections 15 and 16 of the MSMED Act indicated herein above, particularly in the backdrop of the awards passed by the Council in favour of the Respondent.

20. The amounts deposited by the Petitioner in this Court shall be transferred forthwith to the Executing Court i.e. the Court of Principal District Judge, North Goa, Panaji, in each of the Execution Applications filed by the Respondent herein.

21. The parties shall appear before the Executing Court on 10.01.2022 at 2.30 p.m.

22. Writ Petitions stand disposed of.

MANISH PITALE, J

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA Date: 2021.12.09 19:10:03 +05'30'