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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1383 OF 2020

IN

ARBITRATION APPEAL NO.6 OF 2020

Maharashtra State Electricity Board (Now ...Appellant /
Maharashtra State Electricity Distribution Applicant
Co. Ltd.)
Mr. Sanjiv R. Bambal

Versus

Galaxy Transmissions Pvt. Ltd. & Ors. ...Respondents

Mr. Arsh Mishra, i/b. M.V. Kini for the Appellant.

Mr. Sudhir Voditel with Chetan Mhatre i/b. M/s. Utangale & Co.
for the Respondents.

CORAM : R.I. CHAGLA J.
DATE : 12 October 2021

ORDER :

1. Heard learned Advocate for the parties.
2. By this Interim Application the Applicant is seeking the stay of the operation, effect and execution of the impugned Award dated 12th October, 2011 in Petition No.7 of 2011 passed by the MSEF Council as well as the impugned judgment and order dated 11th November, 2019 passed by the Ad-hoc District Judge, Pune in Civil Miscellaneous Application No.257 of 2012.

Further relief is for directing the Respondent to renew the validity of the bank guarantee furnished to the District Court vide order dated 3rd July, 2012 in Exhibit Nos.10 and 11 and also for restraining the Respondent from withdrawing the balance amount of the 25% lying in District Court, Pune till hearing and disposal of the Arbitration Appeal by this Court.

3. There is a bunch of Arbitration Petitions filed by the Maharashtra State Electricity Distribution Company Ltd against various entities which are Commercial Arbitration Petitions Nos.451 of 2017, 457 of 2017, 458 of 2017 and 463 of 2017. The same issue arises in these Arbitration Petitions as in the present Arbitration Appeal and which is set out in paragraph 2 of the common order of this Court dated 5th February, 2019, passed in these Arbitration Petitions as under:-

2. Mr. Mustafa Doctor learned senior counsel for the petitioner in assailing these awards, has principally urged the following issues :

(i) It is submitted that the Facilitation Council lacks the jurisdiction to award interest on interest under the provisions of section 4 read with section 5 of the Interest on Delayed Payments to Small Scale and Ancilliary Industrial Undertaking Act, 1993 as it stood prior to the repeal by the Micro,

Small Medium Enterprises Development Act, 2006(for short, 'the 2006 Act'). Further contention is that even under the provisions of the new Act, such a claim would not be maintainable under the provisions of section 15 read with section 16 of the said Act.

(ii) The respondents were precluded from claiming the interest when the principal amount was already paid in view of the consent terms dated 10.11.1997 entered between the association of the petitioners namely Maharashtra Conductor Association in Writ Petition No. 1244 of 1997 of which the petitioner admittedly is a member, when the association had reached an over all settlement in terms of clause 9 of the consent terms. which reads thus :

“The petitioners and their members shall have no claim of any kind including interest on compensation against Respondent no.2 in respect of or under the said contracts in connection with the supplies already made or to be made hereafter.”

In this context, Mr.Doctor learned senior counsel for the petitioner has also submitted that on the basis of the said consent terms the respondents secured from the petitioner the contract in question as awarded in the year 1999 which is clear from the schedule annexed to the impugned award referring to the work orders issued by the petitioner in 1999.

(iii) The claim as made by the respondent was time barred inasmuch as the summary suits which were filed by the respondents in the year 2002 were withdrawn in the year 2011 to pursue the proceedings under the 2006 Act. It is submitted that the

observations of the Facilitation Council as made in the impugned award on the issue of limitation are ex-facie in the teeth of the provisions of law and that the claim as made by the petitioner was time barred.

4. In the present case also, the same contention has been taken by Maharashtra State Electricity Distribution Company Ltd. that when the consent terms were arrived at between the parties, dated 10th November, 1997 and the Respondent was precluded from claiming interest under the consent terms, the Facilitation Council lacked the jurisdiction to award interest on interest under the provisions of Section 4 read with Section 5 of the Interest on delayed payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 as it stood prior to the repeal by the Micro, Small Medium Enterprises Development Act, 2006. Further whether under the provisions of the Arbitration and Conciliation Act, 1996 as amended could such a claim be maintainable under the provisions of Section 15 read with Section 16 thereof. The issue of limitation also arises in the present case.

5. In view of the same issues arising in the present Arbitration Appeal as had arisen in the batch of Arbitration Petitions, it would be appropriate to list the Arbitration Appeal

No.6 of 2020 with Arbitration Petitions Nos.451 of 2017, 457 of 2017, 458 of 2017 and 463 of 2017.

6. The Applicant / Appellant would be entitled pending the hearing and final disposal of the Arbitration Appeal to the relief sought for in prayer clause (a) of the Interim Application. Hence the following order:-

(i) The operation, effect and execution of the impugned award dated 12th October, 2011 in Petition No.7 of 2011 passed by the MSEF Council as well as the impugned judgment and order dated 11th November, 2019 passed by the Ad-hoc District Judge, Pune in Civil Miscellaneous Application No.257 of 2012 is stayed.

(ii) The Respondent shall renew the validity of the bank guarantee furnished to the District Court, Pune vide order dated 3rd July, 2012 in Exhibit Nos.10 and 11 within a period of four weeks from the date of uploading of this order.

(iii) The Respondent is restrained from withdrawing the balance amount of 25% lying in District Court, Pune till the hearing and final disposal of the Arbitration Appeal No.6 of

2020.

(iv) The Interim Application is disposed of in the above terms.

[R.I. CHAGLA J.]