IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2813-2020(O&M)
Date of decision 23.03.2021

General Manager

.......Appellant

Versus

M/s Delkon Textile Private Limited and others

......Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Karminder Singh, Advocate for the appellant

Mr. Shushanshu Makkar, Advocate for respondent no.1

ANIL KSHETARPAL, J.

This appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996'), assailing the correctness of the order dated 14.12.2020, passed by District Judge, Gurugram, while dismissing the objection petition under Section 34 of the 1996 Act. The Arbitral Tribunal appointed under Section 18 (3) of the Micro Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the 'MSME Act') has directed payment of Rs.2,54,866/- alongwith future interest at the rate of 20.25% to be calculated on the total outstanding amount of Rs.2,54,866/-.

In substance, the learned Arbitrator has passed the award on the premise that there was a delay in payment of the amount to a small scale industry i.e respondent no.1. The Arbitrator after examining the provisions of Section 16 of MSME Act ordered the payment of interest in accordance with the provisions contained therein.

It is appropriate to note that MSME Development Act, 2006 has been enacted to facilitate the promotion, development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto. As per the prefatory note contained in the statement of objects and reasons, it is apparent that the Act was enacted to make provisions to ensure timely and smooth flow of credit to small and medium enterprises to minimize the incidents of sickness and to enhance the capacity of such enterprises to compete.

Chapter V of the Act makes a specific provision for payment of interest on the delayed payments to the micro and small enterprises. On careful reading of Section 16, it is apparent that the statute has used non-obstante provisions so as to give an overriding effect to it. Section 16 provides that notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, the buyer shall be liable to pay compound interest with monthly rest to the supplier on the due amount from the appointed day at three times of the bank rate notified by the Reserve Bank of India. Section 15 defines the appointed day. It has been stated that in no case the period agreed between the supplier and buyer in writing shall exceed 45 days from the date of acceptance or the date of deemed acceptance.

Section 18 again starts with a non-obstante provision so as to give a dominant effect. Section 18 (3) provides that if 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 the centre providing alternate dispute resolution services for such arbitration under the provisions of the Act of 1996 which shall apply as if the arbitration was in pursuance of an arbitration agreement referred to in sub section (1) of section 7 of that Act. Sub section (4) of Section 18 again uses the non-obstante provision so as to give an overriding effect to the arbitration proceedings conducted under the Act. Further, Section 24 again provides that the provisions of Section 15 to 23 shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force. Section 15, 16, 18 and 24 are extracted 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.
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> **16. Date from which and 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 time 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.

Section 17 xxxx

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 disputes 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.

Section 19 to 23 xxxx

24. Overriding effect.—The provisions of Sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

As noticed above, in this case, the only dispute is with reference to entitlement of the respondent, who is a supplier, to the interest as provided in Section 15 and 16 of the MSME Act.

Learned Arbitrator as already noted, has passed an award of Rs.2,54,866/- on account of interest on delayed payment of the amount due for the period prior to the arbitration proceedings and pendente lite interest and also future interest. The objection petition filed before the District Judge has been dismissed by a detailed judgment.

Heard learned counsel for the parties at length and with their able assistance perused the paper book. Learned counsel appearing for the appellant contends that the arbitration was required to be held as per the agreement between the parties and therefore, micro and small enterprises facilitation council had no jurisdiction to nominate the arbitrator. He further submitted that in the absence of a contract between the parties for payment of interest, the arbitrator erred in awarding the interest.

Learned counsel representing the appellant relies upon a judgment passed in **M/s Steel Authority of India vs. Micro, Small Enterprises, Facilitation Centre, through Joint Director of Industries, Nagpur region** AIR 2012 (Bombay) 178. Learned counsel has also drawn the attention of the Court to Civil Appeal no. 6163 of 2013 pending before the Hon'ble Supreme Court against the aforesaid judgment. He, hence, contends that the matter should be kept pending.

Per contra, learned counsel for the respondent submits that in view of the language employed by the statute in Section 15, 16, 18 and 24 of MSME Act, there is hardly any scope for debate. In the wake of statutory provision, the arbitral tribunal has correctly passed the award.

This Court has evaluated the arguments of the learned counsels and now, proceeds to consider the matter. No doubt, in Steel Authority (supra), a Division Bench of Bombay High Court, Nagpur Bench held that if the agreement between the parties provides for resolution of the dispute through arbitration then arbitration cannot be held under Section 18 of the MSME Act. However, with greatest respect, the aforesaid judgment does not appear to be the result of correct interpretation of statutory provisions. It may be noted here that subsequently Allahabad High Court while deciding writ petition no. 24343 of 2014 (Paper and Board Convertors vs. UP State Micro and Small Enterprises) held that the provisions of the Act have an overriding effect on the agreement. Subsequently, a Division Bench of Gujarat High Court while deciding FA no. 637 of 2016 on 5.7.2017 (Principal Chief Engineer vs. Mani Bhai and Brothers (Sleeper) disagreed with the view of the Bombay High Court in Steel Authority(supra). In 2018 another Division Bench of Bombay High in **Gujarat State Petroleum vs. Micro and Small Enterprises Facilitation Council** 2018 SCC Online (Bombay) 2039, again held that the judgment passed in Steel Authority (supra) is not a correct enunciation of law.

It is significant to note here that against the judgment of Gujarat High Court in Mani Bhai (supra) Special Leave Petition before the Supreme Court filed by Diary no. 16845 of 2017 was dismissed on 05.07.2017 and the Hon'ble Supreme Court held that the interpretation of law with regard to the enabling power of the micro and small enterprises facilitation council under the MSME Act is the correct enunciation of law. In view of the aforesaid interpretation with which this Bench is also in consonance, there is hardly any scope for interference in the present appeal.

In view of the non-obstante provision, even if there was a provision for resolution of disputes through an arbitrator to be appointed by the Railways, the Micro and Small Enterprises Facilitation Council in exercise of its powers under Section 18 (3) of the MSME Act has not erred in nominating the Arbitrator. Still further, after 23.10.2015 on account of the amendment in the Act of 1996, the party to the agreement has lost the right to act as an arbitrator or nominate an arbitrator. Reference in this regard can be made to the judgment of the Supreme Court in T**RF Ltd. Vs. Erergo Engg. Projects Ltd. (2017) 8 SCC 377 and Perkins Eastman Architects DPC and another vs. HSCC (India) Ltd. 2019 SCC Online SC 1517.**

As regards the argument of learned counsel that in the absence of any agreement to award of interest on delayed payment, no interest could be awarded, it may be noted that on conjoint reading of Section 15 and 16 of the MSME Act, it is apparent that even in the absence of an agreement, the interest is payable as per the provisions of the Act, which have a predominant effect. Section 16 specifically provides that irrespective of any agreement between the buyer and supplier, the liability to pay compound interest with monthly exists if there is a delay in the payment of the amount due to such industry.

Keeping in view the aforesaid analysis, there is no merit in the appeal. Hence, dismissed.

23.03.2021 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned Yes /No
Whether Reportable Yes / No