IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA NO.63 OF 2022(O&M)

Decided on : 10.02.2022

Indian Drugs & Pharmaceuticals Ltd. ....Appellant

versus

State of Haryana and others ....Respondents

CORAM HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present Mr.Subhash Ahuja, Advocate for the appellant.

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SANDEEP MOUDGIL, J

The appellant has challenged the order dated 07.12.2021, passed by the learned Single Judge, vide which the Civil Writ Petition No. 13051 of 2020 filed by the petitioner, appellant herein, was dismissed holding that the Award dated 30.12.2017 (Annexure P-2) came into existence after the petitioner had duly participated in the Arbitration proceedings and thereafter he was entitled to raise objections under Section 19 of the Micro Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'MSMED Act') read with Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as Act of 1996). Learned Single Bench has returned the finding that the petitioner failed to avail the remedy under the aforesaid Act and ventured filing of

Civil Writ Petition wherein the notice of motion was issued only on submission with regard to chances of amicable resolution of the dispute.

The factual dispute leading to the filing of intra court appeal arises from an agreement dated 24.08.2008 between the petitioner–Government of India Undertaking and M/s Siemen Laboratories India, Gurugram–respondent no.3. It was on account of reports of the State Drugs Controller Licensing Authority, Panchkula for poor quality of medicines, the supply from respondent no.3 was stopped. According to the report dated 08.01.2016, a sum of Rs.17,99,833/- (Rupees Seventeen lacs Ninty Nine Thousand Eight Hundred and Thirty Three only) was found to be still pending, however, the petitioner–appellant claimed to have deposited Rs.2,50,000/- (Rupees Two Lacs Fifty Thousand only) to respondent no.3, vide cheque dated 22.02.2016, out of net payable amount of Rs.3,74,000/- (Three Lacs Seventy Four Thousand only), the aforesaid amount has been calculated by the appellant–petitioner by deducting the amount of Rs.14,75,000/- (Rs. Fourteen Lacs Seventy Five Thousand only) as costs of expired veterinary stock and allopathic medicines.

It is, in this background, the respondent no.3–Company raised a claim, before the Micro and Small Enterprises Facilitation Council (hereinafter referred to as 'Council'), amounting to a sum of Rs.20,22,763.42/- (Rupees Twenty Lacs Twenty Two Thousand Seven Hundred Sixty Three and Forty Two Paise only) as principle amount, apart from Rs.1,75,22,908/- (Rupees One Crore Seventy Five Lacs Twenty Two Thousand Nine Hundred and Eight only) towards interest making it a total of Rs.1,95,45,671/- (Rupees One Crore Ninty Five Lakh Forty Five Thousand

Six Hundred and Seventy One only).

On notice to the petitioner–appellant, a reply was filed controverting the claim raised by respondent no.3–Company. After the efforts for settlement had failed, the Council–respondent no.1 had dropped the reference and referred the parties to the Arbitrator. The claim was accepted by the Arbitrator vide its Award dated 30.12.2017 (Annexure P-2) to the tune of Rs.18,45,264/- (Rupees Eighteen Lacs Forty Five Thousand Two Hundred and Sixty Four only) with interest ranging between at the rate of 18.75% to 30.75% with monthly rests in terms of Section 16 of the MSMED Act and directed the petitioner–Company to pay a sum of Rs.1,80,42,168/- (Rupees One Crore Eighty Lacs Forty Two Thousand One Hundred and Sixty Eight only).

The appeal preferred by the petitioner–appellant under Section 19 of the Act of 2006 read with Section 34 of the Act of 1996 was dismissed being barred by limitation vide order dated 14.02.2019 (Annexure P-3). It was after the aforesaid dismissal of appeal, the petitioner company received the summons (Annexure P-14) from the Executing Court to implement the decree.

It is again the aforesaid Award dated 30.12.2017 (Annexure P-2), order dated 31.08.2017 (Annexure P-1) and order dated 14.02.2019 (Annexure P-3) have been impugned along with execution proceedings alleging the same to be erroneous and without jurisdiction with a further prayer seeking direction to respondent no.1 – Council to decide the claim of parties afresh after following the due procedure, as provided under Section 18 of the MSMED Act, 2006 and Rules of 2007 framed thereunder.

Mr. Ahuja, learned counsel for the appellant, has contended that the judgment dated 07.12.2021, passed by the learned Single Judge is contrary to the facts on record and also submitted that respondent no.1– Council had no jurisdiction to entertain and adjudicate upon the claim statement (Annexure P-4) filed by the Company– respondent no.3.

Learned counsel for the appellant has also argued that learned Single Judge has ignored the provisions of Rule 4(8) of the MSEFC Rules, 2007 whereby the Council has to record a finding that it has a jurisdiction over the matter prior to calling upon any buyer.

The finding qua the alternative remedy under Section 37 of the Act of 1996 has also been challenged contending the same to be untenable in law.

Having heard learned counsel for the appellant and on perusal of the record in the instant intra court appeal, it is apparent on the face of it that the learned Single Judge issued notice of motion only on 28.08.2020 by considering the submissions made on behalf of the petitioner-appellant that still there are chances of arriving at some amicable settlement among the parties, who also offered to pay an amount of Rs.20,00,000/- (Rupees Twenty Lacs only) as per the initial claim raised by the Company– respondent no.3. It would be appetite in the fittest of things to have a glance of the order dated 28.08.2020, which is reproduced hereinbelow:-

> *"Today at the very outset, learned counsel for the petitioner submits that there still are chances of some amicable settlement amongst the parties and that the petitioner has offered to pay an amount of Rs.20,00,000/-*

which was the initial claim of respondent no.3.

Notice of motion to respondent no.3 only at this stage to probe the possibility of some amicable settlement.

The petitioner would be at liberty to serve the respondent no.3 by way of 'Dasti' process as well."

On 08.09.2020, the Company–respondent no.3 at the time of its first appearance outrightly stated that it is not willing to compromise the matter for Rs.20,00,000/- (Rupees Twenty Lacs only) and at that stage, again learned counsel for the petitioner also sought time to have instructions as to whether the petitioner is willing to make better offer higher than the earlier offer amounting to Rs.20,00,000/- (Rupees Twenty Lacs only).

If the proceedings conducted before the learned Single Judge during the course of hearing are minutely considered, the order dated 27.10.2021, is also necessary to be noticed here, which reads as under:-

> *"Notice of motion was issued on the basis of readiness and willingness of the petitioner for amicably resolving the dispute. At that time, learned counsel for petitioner offered to pay an amount of Rs.20 lakhs which was stated to be the initial claim of respondent no.3. The matter was deliberated thereafter even before the Committee constituted for that purpose. The parties could not strike any amicable resolution of dispute due to difference in claim as agreed and projected by the parties. Vide order dated 17.03.2021, the matter was listed for arguments.*
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> *Perusal of Award dated 30.12.2012 would show that the petitioner was directed to pay an amount of Rs.1,80,42,168/- to*

respondent no.3 towards principal and interest upto 31.03.2017. There cannot be any doubt that the total amount as on date has attained figure of more than Rs.4 crores. Respondent no.3 is a small industry and is covered under the Micro, Small and Medium Enterprises Development Act, 2006 and Rules of 2007 framed by the Haryana Government namely Haryana Micro and Small Enterprise Facilitation Council Rules, 2007. The Award was a duly contested Award. The petitioner remained unsuccessful in its objections under Section 34 of the Arbitration and Conciliation Act, 1996. No further appeal has been preferred under Section 37 of the Act. Instead of challenging the order, declining the objections under Section 34 of the Act, the petitioner has preferred the present writ petition.

Though the settlement has not been arrived at between the parties so far, but one more effort has been made in the consultation with learned counsel for parties.

Learned counsel for respondent no.3 has very fairly stated at the Bar that his client would be satisfied in case the total amount of Rs.1 crore is paid within 15 days towards full and final settlement of the entire claim. His client would withdraw all the pending litigation on receipt of the said amount.

Learned counsel for the petitioner seeks a week's time to have further instructions.

Adjourned to 03.11.2021."

The Hon'ble Supreme Court in **Hindustan Petroleum Corporation Limited v. M/s Pinkcity Midway Petroleums, 2003(3) RCR (Civil) 686** and **Swiss Timing Ltd. v. Organising Committee Commonwealth Games, 2010, Delhi 2014 (6) SCC 677,** has held that *Arbitrator is competent and has jurisdiction to adjudicate upon and decide* *upon its jurisdiction, validity and existence of arbitration agreement with reference to arbitrability of the subject matter*. It has further been observed by the Apex Court that *Arbitral Tribunal is empaneled under Section 16 of the Act of 1996 to rule about its own jurisdiction.*

The petitioner/appellant, in the instant case, has duly participated in the arbitration proceedings, which had liberty to raise objections under Section 19 of the MSMED Act read with Section 34 of the Act of 1996, once the Award came into being. But in those objections, no objections as regards jurisdiction of Sole Arbitrator before the learned Additional District Judge-cum-Presiding Judge, Special Commercial Court at Gurugram, and to non compliance of Section 18 of the MSMED Act, were raised.

This Court is also sanguine of the proposition that Arbitration Act in itself is a complete Code, which envisages of Forums of adjudication in the light of judgment rendered by the Hon'ble Supreme Court in **M/s. Reva Electric Car Co. P. Ltd. vs. M/s. Green Mobil 2012 (2) SCC 93,** The appeal, therefore, deserves to be dismissed only on the ground that the appellant has approached this High Court by invoking the writ jurisdiction without having availed the alternative regular remedy provided under the Act of 1996.

Apart from the above, the conduct of the appellant in itself speaks volumes which made a serious attempt of hoodwinking with the Court to get notice of motion issued from the learned Single Judge by making an averment with regard to possibility of amicable settlement which was never actually existing and subsequent thereto also, the appellant failed to demonstrate his intention to that effect.

In the light of the aforesaid discussions, we do not find any infirmity and illegality in the judgment dated 07.12.2021, passed by the learned Single Judge. Hence, the present appeal stands dismissed.

Pending misc. application(s), if any, shall also stand dismissed, in view of the dismissal of the main appeal.

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

10.02.2022
mamta

Whether speaking / reasoned Yes
Whether reportable Yes