IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

FAO-CARB-16-2022(O&M)

Date of Decision:-10.05.2022

Punjab State Power Corporation Ltd.

......Appellant.

Versus

M/s Sangrur Industrial Corporation Ltd. & Anr.

......Respondents.

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Ms. Ekjot Sandhu, Advocate for the Appellant.

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JASJIT SINGH BEDI, J.

The present first appeal has been preferred against the order dated 09.02.2021 passed by the Additional District Judge, Patiala acting as Commercial Court-I, Patiala vide which the objection petition under Section 34 of the Arbitration & Conciliation Act, 1996 filed by the appellant-PSPCL against the award dated 27.08.2015 announced by the MSE Facilitation Council, Chandigarh has been dismissed.

2. The brief facts of the case are that appellant-PSPCL and the respondent no.1-company entered into several agreements in pursuance of which purchase orders were issued in favour of the respondent company and transactions were carried on between the parties. Over a period of time dispute arose between the parties regarding payment of interest on delayed payments. The Respondent company filed a Civil Suit for declaration to the effect that the respondent company was entitled to compound interest under the Delayed Payments to Small Scale and Ancillary Industries Undertaking, 1993 Act (herein after called as the Act of 1993). In the said suit, the Appellant filed an application under Section 8 of the Act for staying legal proceedings and referring the matter to the Arbitrator. The said application, filed by appellant-PSPCL, was allowed and the matter was referred to the Arbitrator to be appointed by PSPCL i.e. PSEB in accordance with terms and conditions of purchase orders/agreements executed between the parties. After the Arbitrator was appointed by PSPCL (PSEB), the respondent company filed its claim before the Arbitrator. Vide award dated 21.7.2008, the Arbitrator rejected the claim filed by the respondent company. Aggrieved by the said award, the respondent company filed a petition under Section 34 of the Act, praying for setting aside the impugned award and allowing the claim of respondent company or, in the alternative, for referring the matter to Micro and Small Enterprises Facilitation Council, office of Director, Department of Industries, Punjab Chandigarh, for final adjudication in view of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred known as MSMED Act, 2006).

3. Vide detailed judgment dated 18.12.2013, the objection petition filed by respondent company was allowed, the impugned award dated 21.7.2008 passed by the Sole Arbitrator was set aside and the matter was referred to the Industry Facilitation Council created under the Micro, Small and Medium Enterprises Development Act, 2006 to decide the matter as per law.

4. PSPCL i.e. PSEB assailed the judgment dated 18.12.2013 passed by the then learned Addl. District Judge, Patiala before the Hon'ble

High Court. Vide order dated 18.8.2015, passed in FAO no.2668 of 2014, the Hon'ble High Court upheld the judgment dated 18.12.2013 passed by the then learned Addl. District Judge, Patiala.

5. Meanwhile the parties lead their respective evidence before the Council. On the basis of the calculation submitted upto 30.04.2015 which were got verified from PSIDS, the Council passed an award of Rs.3,80,57,630/- upto 30.04.2015 along with interest at the rate of 21.75% with monthly rests w.e.f. 1.5.2015 till the date of realization.

6. Aggrieved by the said award the appellant-PSPCL filed a petition under Section 34 of the Arbitration & Conciliation Act, 1996 impugning the said Award which came to be dismissed by the impugned judgment dated 24.02.2021.

7. The learned Counsel for the PSPCL has argued that the respondents are not covered under the definition of Small/Medium Enterprises, as stipulated under Section 2(n), 7 & 8 of the Act of 2006, and that issue had been wrongly decided in favour of the claimant/respondent by the Courts below.

8. The learned Counsel for the PSPCL has assailed the locus standi of the Claimant/respondent company to invoke the provisions of the MSMED Act and put forth the plea that the Claimant company failed to attach any documentary proof to show that their company was covered under the statutory definition, as provided under Section 7 & 8 of the Act.

9. The counsel contends that the Courts below had allowed the claim of the claimant company on the basis of incorrect data filed by the claimant company. The calculations submitted by PSPCL had not been considered and interest has been awarded on a much higher side and not as per the prevalent rate of interest of the RBI.

10. The learned Counsel for the appellant also assailed the orders of the Courts below on the grounds that even time barred entries had been considered by calculating the interest, thereby, making the entire award illegal and against public policy. It was stated that the claim of the respondent/complainant company was not within limitation and therefore, no interest could have been awarded.

11. It was lastly argued that the Courts below had failed to appreciate that there is no provision for paying the interest on interest (Capitalisation of Interest) as per Interest on Delayed Payments Act, 1993/MSMED Act, 2006 for the period beyond the date of payment of principal amount.

12. We have heard the learned Counsel for the appellant at some length.

13. Before proceeding further it would be pertinent to examine Section 34 of the Arbitration and Conciliation Act which reads as under:-

> " **34. Application for setting aside arbitral award-** *(1) Recourse to a Court, against an arbitral award, may be made only by an application for setting aside such award in accordance with subsection (2) and sub-section (3).*
>
> *(2) An arbitral award may be set aside by the Court only if-*
>
> *(a) the party making the application furnishes proof that-*
>
> *(i) a party was under some incapacity, or*
>
> *(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or*
>
> *(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*
>
> *(iv) the arbitral award deals with a dispute not*

contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate or, failing such agreement, was not in accordance with this Part; or (b) the Court finds that---

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India law.

Explanation 1.*- For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,--*

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions or morality or justice.

Explanation 2- *For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.*

2-A An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.

14. An examination of the aforementioned provision would show that under sub Section (2) of Section 34 of the Act, an arbitral award is to be set-aside only on the grounds mentioned in sub clause (a) and (b) of sub Section (2) or on the ground provided in sub Section 2-A of Section 34 of the Act. In the instant case, it is not the case of either the Appellant-PSPCL or the respondent that either of the parties was under some incapacity or that proper notice was not given to either of the parties of the appointment of the arbitrator or of the arbitral proceedings. It is also not the case of the appellant that passing of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81 of the Act of 1996 nor is it the case of the appellant that the award is in conflict with the basic notions of morality or justice.

15. The main thrust of the learned counsel for the PSPCL has been on the fact that the claimant is not a small scale industry and therefore, could not invoke the provisions of MSMED Act, 2006 as it was not covered as such under the Act.

16. The argument that the complainant/respondent-company is not a small scale company is without merit. In fact after the promulgation of the MSMED Act, 2006 the respondent/complainant company got itself registered under the said Act under the Registration No.03/16/12/00258 and thus became an SSI Unit. This fact was conceded that under Section 18(4) of the Act the Council had the jurisdiction to try and decide the petition.

17. The Counsel for the appellant argued that the complainant/respondent-company had accepted full and final payment without protest and, therefore, was estopped from seeking interest on delayed payment. It was also argued that the interest had not been properly calculated either by the Council or by the PSIDS.

18. With respect to the plea of estoppel raised by the learned Counsel for the appellant on the ground that the claimant company had accepted full and final payment without protest and was therefore estopped from seeking interest on delayed payment. Reference to the proposition of law laid down by the Hon'ble Apex Court in the case of **M/s Purbanchal Cables and Conductors Pvt Ltd. vs. Assam State Electricity Board and another <u>2012(7) SCC 462</u>** may be made wherein it has been held that *even if any amount is received by supplier under protest, even then he is entitled to file claim only for interest under the provisions of MSMED Act and that the act does not create any embargo against the supplier, not to accept principal amount at any stage and thereafter file a suit for the recovery of interest only on delayed payments.* With respect to the compensation clause being relied upon by PSPCL, clearly the said clause cannot override the statutory provisions of MSMED Act nor can the same bar the right of a buyer to claim interest under Section 16 of the MSMED Act.

19. It would be apposite at this stage to reiterate the law settled by the Hon'ble the Apex Court in **State of Rajasthan vs. Puri Communication Company Ltd and another <u>1994(6) SCC 485</u> viz a viz the scope of interference by Courts under section 34 of the Arbitration Act** to the effect that "*in the anxiety to render justice to parties to arbitration, court should not reappraise the evidence intrinsically with close scrutiny for finding out that conclusion drawn from some fact by the arbitrator is, according to the understanding of the court, erroneous. Such exercise of power, which can be exercised by the Appellate Court to reverse the finding of fact, is alien to the scope and ambit of challenging the award under Arbitration Act. If the question of law is referred to the Arbitrator* *and the arbitrator comes to the conclusion, then it is not open to challenge the award on the ground that alternative view of law is possible. Even if it is assumed that, on the materials on the record, a different view could have been taken and Arbitrator has failed to consider the documents and materials on record, in their proper prospective, the award is not liable to be struck down in view of judicial decision referred to herein before. Error apparent on the face of record does not mean that on the closer scrutiny of the import of documents and materials on record, the finding made by the Arbitrator may be held to be erroneous and that an error of law or fact committed by the arbitrator by itself does not constitute misconduct warranting interference with the Award*". A similar view has been taken in **P.R.Shah, Shares & Stock Brokers (P) Ltd 13 Versus B.H.H. Securities (P) Limited <u>2012(4) RCR (Civil), 379, Supreme Court of India</u>**, and **National Highways Authority of India vs. Cementation India Ltd, <u>2015(5) Scale 554</u>** as per which it has been held that the court does not sit in appeal over the Award of the Arbitral Tribunal by reassessing and reappreciating the evidence and an Award could be challenged only on the ground mentioned under Section 34(2) of the Arbitration & Conciliation Act, 1996.

20. In the instant case also the Courts have acted within the terms of the MSMED Act, 2006. None of the conditions, as mentioned in Section 34(2) and 2A of the Arbitration Act, can be said to be made out so as to vitiate the award or to call for setting it aside. Though it has been argued that the calculations submitted by the respondent-Claimant company were arbitrarily accepted, it needs to be pointed out here that, the calculation sheets were attached with the claim and copies of the same were supplied to the appellant-PSPCL qua which no objection was raised nor any counter calculations submitted by PSPCL.

21. On the plea that time barred entries have been considered and interest has been wrongly calculated it may be pointed out that the Hon'ble Apex Court, in Civil Appeal no.8442-8443 of 2016 **M/s Shanti Conductors (P) Ltd and others vs. Assam State Electricity Board and others**, has held that provisions of Interest on Delayed Payments Act would apply to the supplies made after the date of commencement of Act i.e. 23.3.1992 and the period of limitation has to be considered from the last date of bill of purchase order. Further, while accepting the objection petition under Section 34 of the Act, filed by the respondent-Claimant company against the original award dated 21.7.2008 passed by the then Sole Arbitrator, the then learned Addl. District Judge, Patiala, on 18.12.2013, while allowing the said objection petition, had held the entries to be within limitation. The said observation was not assailed by the PSPCL while assailing the order dated 18.12.2013 before this Court.

22. So far as the plea regarding the calculation of wrong number of days in delay of payment raised by the appellant is concerned it may be reiterated here that the calculation sheets were part and parcel of the claim petition and copies of the same were supplied to the appellant. The objector-appellant however, did not raise any finger about the correctness of the same. Infact in the reply filed by the appellant before the Arbitrator not a word was stated about any inaccuracy in the calculation. Similarly, no counter calculation with respect to delay if any in payment was provided by the appellant. In fact the objections raised by the appellant with respect to calculation of the number of days and counter calculation were put to the respondent company which then filed fresh calculations after removing the objections raised by the appellant. The said calculations were verified by PSIDC and only then the Award was passed.

23. In view of the aforementioned discussion as also the law enunciated by the Hon'ble' Apex Court, we find that there is no merit in the instant appeal and it is therefore dismissed.

(JASJIT SINGH BEDI)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

May 10, 2022
Vinay

Whether speaking/reasoned	***Yes/No***
Whether reportable	***Yes/No***