IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.31580 of 2019(O&M)
Date of Decision: January 06, 2022

M/s. Northland Rubber Mills

...... Petitioner(s)

Versus

State of Haryana and others

...... Respondent(s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Vikas Sharma, Advocate
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

Mr. Arpandeep Narula, Advocate
for respondent no.3.

*****

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

This writ petition has been filed for directing the respondents to conduct conciliation proceedings between the petitioner and respondent no.3 in terms of Section 18 of the Micro Small and Medium Enterprises Development Act, 2006 (hereinafter referred as, 'MSMED Act') and for quashing of order dated 11.09.2019 whereby the matter has been referred to the Arbitrator, allegedly without effecting proper conciliation proceedings. Petitioner also challenges order dated 17.10.2019, passed by the MSME Facilitation Council, Haryana whereby petitioner's application for referring the matter to an Arbitrator at Sonipat instead of Panchkula has been dismissed.

Brief facts as mentioned in the writ petition are that there were business dealings between the petitioner and respondent no.3. With dispute arising between the parties, claim petition was preferred by respondent no.3 before the MSME Facilitation Council in July 2019 (Annexure P-1), claiming an amount of Rs.78,37,865/- with interest of Rs.24,65,013/- . Notice was issued to the petitioner who appeared before the Council on 14.08.2019. It is duly noted in order dated 14.08.2019 that the present petitioner sought to reconcile the matter through mutual understanding, therefore, the matter was adjourned for 11.09.2019. However, as the petitioner failed to reconcile the matter, while observing that there was no chance of any mutual settlement, reconciliation process was terminated and the matter referred to an empanelled Arbitrator vide order dated 11.09.2019 passed by the Facilitation Council. Petitioner's application for referring the matter to an Arbitrator at Sonipat instead of Panchkula was dismissed by the Facilitation Council on 17.10.2019, while observing that work place of the claimant has to be kept in view and moreover there being no empanelled Arbitrator present at Sonipat, matter had been rightly referred to the Arbitrator at Panchkula, which was adjoining to Yamuna Nagar where the claimant was situated. Aggrieved therefrom, this writ petition has been filed.

Learned counsel for the petitioner vehemently argues that, in effect, no conciliatory efforts were made by the Facilitation Council and neither was the matter referred to any institution or centre providing alternate dispute resolution services before appointment of the empanelled Arbitrator. It is further submitted that order dated 11.09.2019 was signed only by the Member Secretary of the MSME Facilitation Council and order dated 17.10.2019 has been signed only by the Secretary and Chairman, therefore, the said orders in any case are a nullity, *nonest* and thus lacking any validity. Learned counsel for the petitioner also contends that the present petitioner in fact never got an opportunity to put forth the quantum of loss suffered by the petitioner due to sub-standard material supplied by the respondent. He refers to Section 65 of the Arbitration and Conciliation Act, 1996 to state that a conciliator should have been appointed and proper statements etc. invited from the parties and conciliation process followed and it is only thereafter that the matter may have been referred to an Arbitrator in case parties failed to arrive at a settlement. Learned counsel further contends that in such a situation, the haste with which an Arbitrator has been appointed has caused grave injustice to the petitioner as the provisions of the MSME Act are harsh and punitive. Petitioner's factory, it is submitted, at this point of time stands closed and petitioner faces grave hardship. Proper opportunity for conciliation, it is stated, is a sine qua non for appointment of Arbitrator. Learned counsel further submits that Arbitrator at Sonipat, instead of Panchkula should have been appointed. It is thus prayed that this writ petition be allowed.

Learned counsel for respondent No.3, while refuting the arguments on behalf of the petitioner argues that impugned orders have been correctly passed and call for no interference by this Court. It is submitted that the petitioner merely seeks to delay the proceedings and in effect has no intention to settle the matter amicably as reflected from past experience. Subsequent to appointment of the Arbitrator the petitioner alongwith the answering respondent, it is stated, had submitted to jurisdiction of the said Arbitrator as fees was deposited by both the parties. Learned counsel for respondent no.3 refers to Annexure R3/2 i.e. information which he has received under the Right to Information Act, 2005 in respect to the Coram for proceedings conducted on 14.08.2019 and 11.09.2019, to submit that three members of the Facilitation Council have appended their signatures on the said proceedings. Learned counsel further contends that there is no question of any undue haste in the appointment of Arbitrator by the Facilitation Council, which had in fact proceeded in accordance with the provisions of the Act. Learned counsel refers to communication dated 20.09.2019 from the Chairman HMSEFC-cum-Director of Industries and Commerce, Haryana to the Arbitrator. It is contended that claim of the answering respondent is very much available on record whereas the petitioner till date, has not come forward with any counter offer or counter claim as is being sought to be agitated at this stage. It is, thus prayed that this writ petition be dismissed.

Heard learned counsel for the parties and have gone through the file with their able assistance.

It is not in dispute the parties are governed by the provisions of the MSMED Act which provides for facilitating the promotion and development and enhancing the competitiveness of small and medium enterprises and for matters connected therewith or incidental thereto. Admittedly, the MSMED Act being a special Act, the procedure prescribed therein has to be followed in case of a dispute between the parties. The complete mechanism for resolution of the dispute has been provided in the MSMED Act. At this stage, it is relevant to refer to Sections 15 to 18 of the MSMED Act, which read 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.

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 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.

17. Recovery of amount due.—For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.

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 dispute 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."

At the outset, it is to be mentioned that no dispute has been raised about the parties being admittedly governed by the provisions of MSMED Act for resolution of their dispute. In the present case, respondent No.3 filed a claim before the Haryana Micro and Small Enterprises Facilitation Council (for short, 'Facilitation Council'), Annexure P1, raising a claim of Rs.78,37,865/- as the payment due towards it from the petitioner since 10.10.2018, interest thereon as per the calculation sheet attached was also claimed taking the total amount to Rs.1,03,02,878/-. The petitioner appeared before the Facilitation Council on 14.08.2019. Claimant-respondent No.3 admittedly submitted a revised calculation sheet for interest. The matter was adjourned at request of the present petitioner on the ground that it sought to reconcile the matter through mutual understanding. It is specifically recorded in order dated 11.08.2019 passed by the Facilitation Council that present petitioner failed to reconcile the matter in spite of sufficient opportunity provided during the course of hearing held on 14.08.2019 as well as on 11.09.2019. It is only when the Facilitation Council felt that there is no chance of mutual settlement that reconciliation process stood terminated and matter was referred to the empanelled Arbitrator. Argument raised by learned counsel for the petitioner that it was incumbent upon the Facilitation Council to have sought the assistance of an institution or centre providing alternate dispute resolution by making a reference to such an institution was mandatory, is devoid of any merit as is the argument that a separate conciliator should have been appointed bearing in mind the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 and the parties should have been given an opportunity to submit their statements to the Conciliator, at the first instance and thereafter in case settlement was not possible, the matter could have been referred to an Arbitrator.

In the given factual matrix of the case, I do not find any merit in this argument. This is so for the reason that Section 18 (2) of the MSMED Act clearly provides that on receipt of a reference under Section 18(1) the Council shall either itself conduct conciliation in the matter or seek assistance of an institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre. It is not mandatory that the Council is obligated to refer the dispute for resolution to an institution or centre for conducting the conciliation. Furthermore, applicability of provisions of Section 65 to 81 of the Arbitration and Conciliation Act, 1996 by no stretch of imagination mandates the submission of a statement by the parties in each and every case for the purpose of conciliation. It is to be noted that Section 65 of the Arbitration and Conciliation Act confers a discretion upon the Conciliator also to request each party to submit a brief written statement. Moreover, in the present case a bare reading of impugned orders dated 11.09.2019 and 14.08.2019 reveals that an effort was indeed made by the Facilitation Council to effect reconciliation between the parties. Admittedly, the present petitioner at no point of time has submitted any offer, counter proposal or counter claim.

At this stage, it is relevant to note that an effort was made to amicably resolve the dispute between the parties before this Court as well. An opportunity was afforded to the petitioner to come forward with a counter offer or a counter claim, especially in view of the statement made on behalf of the petitioner that it has suffered loss due to sub-standard product supplied by respondent No.3. However, despite opportunities there was no response from the petitioner, except the argument that the matter should again be referred for conciliation as proper opportunity had not been afforded to the petitioner to put forth its case. Such conduct of the petitioner lends support to the stand taken by respondent No.3 that the petitioner only seeks to delay the proceedings as vide order dated 01.11.2019 passed in this writ petition, further proceedings before the Arbitrator were stayed and the petitioner is enjoying the said interim order. It is to be noted that not even an approximate figure has been set forth by the petitioner, either as a counter offer or a counter claim before this Court, despite numerous opportunities and pointed queries.

In this given factual matrix, observation of the Facilitation Council and its opinion that there is no chance of any mutual settlement, is justified and appropriate. Therefore, reconciliation process was rightly terminated. It cannot be laid down as a matter of principle that once the authority comes to the conclusion that conciliation may not be possible between the parties, it is still incumbent upon the authority to make further efforts for conciliation or to appoint a coordinator/conciliator in such a situation. In my considered opinion such an interpretation is definitely not called for and only amount to flogging a dead horse, leading to unnecessary and avoidable delay. In the present case, it is apparent that the petitioner has no intention, whatsoever, to amicably resolve the matter in issue as is clear from the fact that despite numerous opportunities afforded even before this Court, petitioner has not come forward either with a counter claim or a counter offer. At the cost of repetition, it is noted that despite pointed queries, even a tentative or a proximate figure was not set forth by the petitioner. Therefore, there is no infirmity or illegality in referring the dispute to the empanelled Arbitrator. In terms of Section 18 of the MSMED Act, the Facilitation Council is empowered to refer the dispute to the empanelled Arbitrator.

The objection raised by learned counsel for the petitioner that proceedings of the Facilitation Council are null and void as they have not been signed by the requisite number of members, is not borne out from the record as is apparent from the documents, Annexures R-3/2 placed on record by the respondents. It is clear from bare perusal of the said documents that the proceedings dated 14.08.2019 and 11.09.2019 have been duly signed by the three Members. This document(s) has/have not been denied by the petitioner and neither has any replication been filed.

Similarly, there is no merit in the argument that impugned orders should be set aside as an Arbitrator at Sonipat instead of Panchkula should have been appointed. This is for the reason that that it is clearly mentioned in order dated 17.10.2019 that there is no empanelled Arbitrator at Sonipat and while keeping in view the workplace of the claimant i.e., Yamunanagar the Arbitrator at Panchkula has been appointed.

Learned counsel for the petitioner is unable to point out any illegality, irregularity or infirmity in the impugned order dated 17.10.2019 (Annexure P5), which calls for interference by this Court in exercise of jurisdiction under Article 226/227 of the Constitution of India.

Accordingly, this writ petition, being devoid of any merit, is dismissed with no order as to cost.

06.01.2022 **(LISA GILL)**
Sunil/ 'om' **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No