

Gaikwad RD

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 86 OF 2023

Donum Dieu Engineers Pvt Ltd	...Petitioner
<i>Versus</i>	
Thane Janata Sahakari Bank Ltd	...Respondent

WITH
WRIT PETITION NO. 10047 OF 2022

CG Power and Industrial Solutions Ltd	...Petitioner
<i>Versus</i>	
Union of India & Ors	...Respondents

Mr Zal Andhyarujina, Senior Advocate, with Ishani Khanvilkar,
Vineet Bhansali, Vaidehi Chande, i/b Cyril Amarchand
Mangaldas, for the Petitioner in WP-10047-2022.
Mr Abhishek Bhadang, for Respondent No.7 (UOI).
Mr Vivek Punjabi, with Pranhita Singh, for the Petitioner in
WP/86/2023 & for Respondent No.3 in WP/10047/2022.

CORAM G. S. Patel &
Neela Gokhale, JJ.
DATED: 18th July 2023

PC:-

1. Although we had heard both sides extensively and at length, there is now an agreement that the impugned award dated 26th July

2022 passed by the Micro and Small Enterprises Facilitation Council (“**MSEF Council**”) under the Micro, Small and Medium Enterprises Development Act, 2005 (“**MSMED Act**”) be quashed and set aside without assigning reasons.

2. Both sides have agreed between themselves that their disputes and differences may be referred to the sole arbitration of Mr Justice Akil Kureshi, former Chief Justice of the Tripura and Rajasthan High Courts.

3. Parties also agree that between them there were two contracts dated 22nd June 2010 and 11th April 2016. As such, there will need to be two references to Mr Justice Kureshi’s Arbitration. Both sides clarify that the 2010 and 2016 agreement each have an arbitration clause. This agreement today between the parties is pursuant to and under these arbitration clauses.

4. It is however open to the Learned Sole Arbitrator in his sole discretion to allow common evidence and hearings on both references together and even to make a single award.

5. CG Power and Industrial Solutions Ltd will be the claimant under the 2016 agreement. Donum Dieu Engineers Pvt Ltd will be the claimant under the 2010 agreement. Each side will be at liberty to not only reply but to enter a counter claim in the claim of the other party.

6. Both sides will be at liberty to make appropriate applications under Section 16 or Section 17 of the Arbitration and Conciliation Act, 1996, as the case may be, before the Learned Sole Arbitrator.

7. It is obviously open to the Learned Sole Arbitrator to issue the appropriate directions regarding completion of pleadings etc. We clarify that the parties are not confined to the claims or responses as they had entered them before the Council in question.

8. No interim reliefs are presently sought before us.

9. We have noted the agreement between the parties in disposing of the Petitions. We have not ourselves appointed the Learned Sole Arbitrator but have merely recorded the agreement on the nomination of the Learned Sole Arbitrator. Thus, the fees of the Learned Sole Arbitrator will not be governed by Schedule IV of the Arbitration and Conciliation Act, 1996.

10. We have also taken the liberty and exercised our discretion under Article 226 of the Constitution of India in making this order because the Petition was directed against an award made by a statutory Council, i.e., the Arbitration Council functioning under a statute. We have done so in order to save parties' time and cost and to avoid needless and protracted further litigation under the Arbitration and Conciliation Act, 1996. We have done so in an endeavour to ensure that both sides are able to get their claims fully adjudicated before an arbitral forum of their choice.

11. Lastly, we clarify that the entire time spent by both sides not only before this Court but before the MSEF Council is excluded for the purposes of limitation.

12. The Petitions are disposed of in these terms. In the facts and circumstances of the case, there will be no order as to costs.

13. All contentions of parties are kept open.

(Neela Gokhale, J)

(G. S. Patel, J)

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