



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ARBITRATION APPLICATION NO. 5 OF 2024

Pebplus Global Pvt. Ltd

...Applicant

Versus

Gshan Infrabuild Llp

...Respondent

...

Mr. S. B. Joshi a/w Mr. M. D. Swami i/by J. P. Legal
Associates, Advocates for Applicant

Mr. H. S. Adwant h/f Mr. S. V. Adwant, Advocate for
Respondent

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CORAM : R.M. JOSHI, J

DATE : JULY 25, 2024

PER COURT :

1. This application is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short '**the Act of 1996**') for appointment of Arbitrator on the ground that there exist dispute between parties, which is referable to the Arbitrator.

2. Applicant claims itself to be a private limited company and is in business of manufacturing and fabrication of steel, pre-engineered buildings, sheeting, purlin etc. Respondent is also a Private Limited Company having its factory at village Anantpur, Lasur, Tq. Gangapur, Dist. Chhatrapati Sambhajinagar.

It is further averred that the Respondent's factory unit was available for manufacturing and, therefore, Respondent approached Applicant with a proposal to enter into manufacturing agreement. Accordingly, parties have entered into manufacturing agreement dated 22.09.2021. As per the said agreement, Respondent has handed over the factory unit situated at Gut No. 69, village Anantpur, Lasur, Tq. Gangapur, Dist. Chhatrapati Sambhajinagar along with land, building plant and machinery for the use of Applicant for manufacturing of fabrication of steel. In the agreement, Respondents agreed to install fully operational machines such as, H Beam welding line (PTW Machine) at the time of actual handing over the plant, crane in 1 bay within two months from date of the agreement. It is claimed that it was also agreed that after actual handing over of the plant, Respondent shall install and commission CNC Drilling (subject to execution of 1000 tons order) and punching machine and CNC plasma PUG cutting machine within six months. It is alleged that Respondent did not install the agreed equipment and made additional demand of money. It is claimed that the Respondent has committed breach of the

mandatory conditions of the agreement and as such, the dispute arose between them. It is further claimed that Applicant has approached to Respondent with the said dispute and for appointment of the arbitrator. For want of positive response, present application is filed.

3. Respondent by filing affidavit-in-reply opposed the contentions of the Applicant. Though dispute is not made with regard to the execution of agreement, but it is the contention of the Respondent that the Applicant has no cause of action to file application under the provisions of the Act. It is claimed that Applicant as well as Respondent are duly registered under the Micro, Small and Medium Enterprises development (MSMED) Act, 2006 (for short '**MSMED Act**'), and in view of provisions of the MSMED Act, no arbitration can be held except before the facilitation council under the said Act and as such, provisions of the Act of 1996 are not applicable to the present case.

4. Learned Counsel for the Applicant submits that in view of the arbitration clause in the agreement between Applicant and the Respondent, application under

Section 11(6) of the Act is maintainable. In response to the submissions made on behalf of Respondent to the effect that provisions of the MSMED Act would prevail upon Arbitration Act, reference is made to the judgment of Calcutta High Court in *Essar Oil and Gas Exploration and Production Limited vs. Gargi Travels Private Limited, A.P. No. 73/2023* and judgment of this Court in *National Textile Corporation Limited vs. Elixir Engineering Private Limited and Others, 2023 DGLS (Bom.) 1751* to argue that irrespective of the registration of both companies under the MSMED Act, the application under Section 11 of the Act is maintainable.

5. These contentions are opposed by learned Counsel for Respondent on the ground that the provisions of MSMED Act which has come on statute book later in point of time would prevail upon the Act of 1996. It is his further submission that in view of admitted facts that both companies are registered under the MSMED Act, the procedure laid down under the said Act only would apply. To support his submissions, he placed reliance on the judgment of Hon'ble Supreme

Court in case of *Gujarat State Civil Supplies Corporation Limited vs. Mahakali Foods Private Limited and Anr, (2023) 6 SCC 401*. He also drew attention of the Court to order dated 18.06.2024 passed by this Court wherein it is held that the provisions of MSMED Act would have overriding effect over the Act.

6. There is no dispute about the fact that the agreement dated 22.09.2021 entered into between Applicant and Respondent, contains arbitration clause. Further, there is no dispute that both companies are registered under the MSMED Act. The question arises for determination of this Court is whether having regard to the nature of dispute between the parties, the provisions of MSMED Act or Act of 1996 would apply to the case in hand.

7. At this stage, it would be relevant to take note of relevant provisions of MSMED Act. Section 18 of the MSMED Act needs to be considered at this stage, which reads thus:

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) xxx

(3) xxx

(4) xxx

(5) xxx

8. It is thus clear that notwithstanding anything contained in any other law for the time being in force, any dispute covered only by Section 17, is referable to Micro and Small Enterprises Facilitation Council. Section 17 of the Act which reads thus:

Section 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.

9. This provision shows that the recovery of amount due for any goods supplied or services rendered by the supplier, the buyer is said to be liable to pay the amount with interest thereon as provided under Section 16. It is thus clear that when there is a dispute between the buyer and seller with regard to the

amount payable by the buyer to the seller, Section 17 would come into play and in consequence Section 18 would apply. *Prima facie* perusal of the record indicates that the dispute between parties is not in the nature of recovery of money between buyer and seller. Apparently, dispute relates to non performance of the terms of the contract and specific performance of the contract seems to be asked for. In respectful view of this Court having regard to the nature of dispute involved between the parties, judgment in case of Gujarat State Civil Supplies Corporation Limited (supra) has no application to the present case.

10. As far as the order sought to be relied upon by this Court in Writ Petition No. 5757/2024 is concerned, the said order is passed at ad-interim stage, on the basis of the submissions made across the bar by the learned Counsel for the Petitioner therein and a general proposition that the provisions of the MSMED Act would have overriding effect is accepted. This order however would certainly not apply in a case wherein dispute is not covered by Section 17 of the Act. Said order, therefore, would not come to aid of

Respondent in any manner.

11. Aforestated discussion clearly shows that there is arbitrable dispute between the parties under Act of 1996. Though it is sought to be argued on behalf of Respondent that there is non-compliance of Section 21 of the Act, however, neither in reply to the notice nor affidavit-in-reply before this Court any such objection is raised in this regard. This Court, therefore, is of the view that there is no impediment in appointment of arbitrator.

12. In view of the above, application is allowed in terms of prayer clause 'A'. Hon'ble Shri Justice. (Retd.) S. P. Deshmukh is appointed as Arbitrator.

(R. M. JOSHI, J.)

Malani