IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

235

CWP-13367-2021
Date of decision: 15.01.2024

MICA INDUSTRIES LTD. ......Petitioner

VERSUS

HARYANA MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL OF HARYANA AND ANOTHER
.......Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

*****

Present: - None for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Ms. Kajal, Advocate for Mr. Akshay Jain, Advocate for respondent No.2.

*****

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present writ petition is to the ex-parte award dated 20.09.2018 (Annexure P-5) passed by the Arbitrator, Faridabad under Section 18 (3) of the Micro Small and Medium Enterprises Development Act, 2006 alongwith all consequential proceedings arising therefrom.

2. As there is no representation on behalf of the petitioner for the last four dates successively, this Court has examined the merits of the present case and the pleadings instead of waiting any further.

3. It is averred that the petitioner is a company engaged in the business of manufacturing and supply of high quality metal wires including Spring steel wires, need wires etc. The respondent No.2 is a proprietary concern and is engaged in the business of manufacturing and selling of PP HDB Bags/Rolls. The petitioner Firm had purchased packaging material from respondent No.2 during 20.12.2014 to 28.08.2017 and payments were made against Invoices so raised by the respondent No.2 from time to time. However due to CGST proceedings against the petitioner-Company, no transaction took place on account of seizure by CGST Department in September, 2018 alongwith arrest of one of the Directors in case bearing COMA No. 137 of 2018, *"DGGI, Gurugram versus M/s MICA Industries Ltd. and others."*. The petitioner-company was thus helpless in figuring out its liability towards the parties from whom the company had made the purchases. The respondent No.2 also approached the petitioner and asked for the payment of dues of Rs. 13,15,593/-. The petitioner apprised respondent No.2 about the current situation then and expressed its inability to clear the dues on account of ongoing proceedings pertaining to CGST demand raised by the CGST Department. There was thus no mala fide on the part of the petitioner-company and it was on account of genuine difficulty that the payment in question could not be made. The respondent No.2, however, initiated proceedings vide claim application No. 456/2018 before respondent No.1-Micro & Small Enterprises Facilitation Council of Haryana for a sum of Rs. 13,15,593/-.

4. On receipt of the said notice, the petitioner had apprised during the conciliation proceedings that already a payment of Rs. 8,83,208/- had been made and that the company did not intend to go into any litigation and

would make the remaining payment expeditiously. Notwithstanding the aforesaid assurance, an award was passed without any further notice and without taking recourse to the proceedings under Section 18 (3) of the Micro Small and Medium Enterprises Development Act, 2006. The petitioner was, however, surprised and apprised of the above said award only on receipt of demand notice dated 03.07.2019 under Section 8 (2) (a) of the Insolvency and Bankruptcy Code, 2016. Hence, the present petition was filed.

5. Reply dated 25.10.2021 has been filed on behalf of contesting respondent No.2 wherein the award is sought to be justified averring that the outstanding amount as well as its status is not disputed. The reasons for non payment/delay are not valid in law. There is thus no illegality in passing of the award.

6. Be that as it may, it is not disputed that the award has not been passed by the Facilitation Council and has been passed by Sole Arbitrator-cum-Facilitator. The issue as regards the status of the Arbitrators/Facilitators appointed under Section 18 (3) of the MSMED Act, 2006 has already been examined by this Court in the matter of ***"Indian Oil Corporation Ltd. versus Haryana Micro and Small Enterprises Facilitation Council and another" bearing CWP-12338 of 2019*** decided on 01.08.2023 after referring to the judgments of the Hon'ble Supreme Court. The stand of the respondent-State was to the effect that only the Facilitation Council is competent to pass an award and that award can't be passed by Sole Arbitrator who is required to only reports as an experts/facilitators. It was held that a mere nomenclature should not be construed as conferring any jurisdiction upon such Facilitator to act as an Arbitrator who is authorized to pass the award under Section 18(3) of the Micro Small and Medium

Enterprises Development Act, 2006. After noticing the above said contention and stand of the respondent-State, the above said writ petitions were decided and the matters where such Facilitators/experts had passed an award, were set aside and the matter was remanded to Facilitation Council to treat the aforesaid award as a report by the Facilitator and to thereafter proceed in terms with the provisions of the MSMED Act, 2006 and the Rules framed by the State of Haryana in exercise of the powers conferred upon it and pass a final award.

7. The present writ petition is accordingly allowed in terms of the judgment passed by this Court in ***Indian Oil Corporation Ltd.*** (supra). The impunged ex-parte award dated 20.09.2018 passed by Sole Arbitrator, Faridabad is set aside. The matter, is remanded to the Facilitation Council. The parties shall appear before the Facilitation Council on **08.02.2024** whereupon the Facilitation Council shall proceed further in the matter after treating the above said award as a report by the Facilitator and to pass a final award after granting an opportunity of hearing to the respective parties.

8. Let the exercise of passing of final award be carried out by the Facilitation Council within a period of three months of the parties entering appearance before the Facilitation Council.

(VINOD S. BHARDWAJ)
JUDGE

JANUARY 15, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No