IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6533-2019(O&M)
Date of Order:-10.01.2024

Union of India

...Appellant

Versus

M/s CMI Ltd. and others

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present :- Mr.Sandeep Bhatia, Advocate for the appellant.

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SUVIR SEHGAL, J.

1. Instant appeal has been filed by the Union of India assailing judgment dated 06.05.2019 passed by the learned Additional District Judge, Faridabad, whereby objection petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the A & C Act") filed by the appellant against award dated 07.11.2016 passed by the Arbitrator, has been dismissed.

2. Facts in brief may be noticed.

3. Appellant placed purchase orders dated 16.05.2014 and 16.07.2014 for supply of Railways signaling cable copper conductor on claimant - respondent No.1, Annexures A1 and A2 for Rs.10,37,14,709.51 and Rs.1,66,97,527.65 and the items were duly supplied. Payment was made against the two purchase orders. Respondent No.1 was registered under the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as "the

MSMED Act") and filed an application, Annexure A4, before the Haryana Micro and Small Enterprises Falicitation Council (for short "the Council") at Chandigarh, claiming interest at the rate of 27% per annum on account of abnormal delay in the payment. After the conciliation proceedings did not fructify, matter was assigned to an Arbitrator, who passed an award dated 07.11.2016 awarding an amount of Rs.21,61,393/-in favour of the claimant – respondent No.1. While depositing 75% of the awarded amount (Rs.16,21,045/-) with the learned Additional District Judge, appellant filed objections under Section 34 of the A & C Act, which have been rejected vide order impugned herein.

4. Counsel for the appellant has urged that respondent No.1 never disclosed that it was registered under the MSMED Act and it was bound by the terms and conditions laid down in the contract between the parties. It is his argument that respondent No.1 could not approach the Council under Section 18 of the MSMED Act and rather under Clause 64(i) of the general conditions of contract, an application was required to have been made before the General Manager of the North Western Railway for appointment of an Arbitrator. By placing reliance upon the judgment of the Supreme Court in ***State of Haryana Versus M/s S.L. Arora & Company, 2010(3) SCC 690***, it has been contended that the Arbitrator could not award compound interest.

5. I have heard counsel for the appellant and examined the record with his able assistance.

6. Dealing with the first argument, it deserves to be mentioned that the counsel for the appellant has failed to point out any column in

the contract agreement, which made it obligatory for the claimant-respondent No.1 to disclose that it was registered under the MSMED Act. Merely non-mentioning about its registration or its status does not imply that respondent No.1 had played a fraud with the appellant. This argument therefore deserves to be rejected.

7. Before dealing with the second argument raised on behalf of the appellant, Section 18 of the MSMED Act deserves to be noticed and is reproduced hereunder:

> "**18. Reference to Micro and Small Enterprises Facilitation Council**.-
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> *(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.*
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> *(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 to it 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."

8. A perusal of Section 18(1) of the MSMED Act shows that it starts with the words *"notwithstanding anything contained in any other law for the time being in force ..."*. The section starts with a non-obstante clause. Even Sub-Section (4) of Section 18 starts with a similar rider. A provision beginning with non-obstante clause has to be given primacy over other statutory provisions and enactments. This is the settled position in law. In ***Gujarat State Civil Supplies Corporation Ltd. Versus Mahakali Foods Pvt. Ltd. (Unit 2) and another (2023) 6 SCC 401***, Supreme Court has held that MSMED Act being a special law and the A & C Act being a general law, the provisions of MSMED Act would have precedence and prevail over the A & C Act. Interpreting Section 18 of the MSMED Act, Supreme Court has held that no party to a dispute, with regard to any amount due under Section 17 of the MSMED Act would be precluded from making a reference to the Council, though an independent arbitration agreement exists between the parties. A private agreement between the parties cannot obliterate the statutory provisions. Once the statutory mechanism under Section 18(1)

is triggered by any party it would overide any other agreement independently entered into between the parties in view of the non-obstante clauses contained in sub sections (1) and (4) of Section 18, ibid. In view of the clear enunciation of the law by the Supreme Court, the second argument raised by the counsel for the appellant, deserves to be rejected.

9. Insofar as the third contention pertaining to grant of interest is concerned, in its stand before the Arbitrator, appellant has admitted that there was a delay of 142 days and 101 days, respectively, in the making of the final payment under the two purchase orders. The stand taken is that the remaining amount could not be released because of shortage of funds as it had to be sanctioned by the Railway Board. Even the calculation- sheet placed before the Arbitrator has not been disputed by the appellant. The award of interest under the MSMED Act is governed by Section 16 ibid, which provides that the interest is to be granted at three times of the bank rate notified by the Reserve Bank. Therefore, no fault can be found with the award of interest of 27% per annum awarded by the Arbitrator. It may also be noticed here that the judgment relied upon by the appellant in **S.L. Arora's** case (supra) has been overruled by the Supreme Court in ***M/s Hyder Consulting (UK) Ltd. Versus Governor, State of Orissa through Chief Engineer (2015) 2 SCC 189*** and it has been held that Section 31 (7) (a) of the A & C Act contemplates that an award, inclusive of interest for pre-award period, may be passed. The sum awarded may be the principal sum and such interest as the Arbitral Tribunal deems fit. If no interest is awarded, the "sum" comprises only the principal. In view thereof, there is no merit in

any of the arguments raised by the appellant.

10. It would be apposite at this stage to refer to the judgments of the Supreme Court in ***P.R. Shah, Shares and Stock Brokers (P) Ltd. Versus M/s B.H.H. Securities (P) Ltd. & others, (2012) 1 SCC 594*** and ***Swan Gold Mining Limited Versus Hindustan Copper Limited (2015) 5 SCC 739***, wherein it has been held that the Court does not sit in appeal over the award of an Arbitral Tribunal by re-assessing the re-appreciating evidence. An award can be challenged only on the grounds stipulated in Section 34(2) of the A & C Act. The consistent ratio of the various judgments rendered by the Supreme Court leaves no manner or doubt that the scope of interference in an Arbitrator's award, while hearing in appeal under Section 34 of the A & C Act, is very limited and an award cannot be normally interfered with. This Court does not find any illegality or perversity in the reasons given by the Arbitrator in his award nor is anything to suggest that the Arbitrator did not have the jurisdiction to pass the award.

11. For the foregoing reasons, this Court does not find any reason to interfere with the award or to set aside the impugned judgment passed by the learned Additional District Judge, Faridabad.

12. Appeal sans merit and is hereby dismissed.

13. Pending miscellaneous application(s), if any, stand disposed of.

(SUVIR SEHGAL)
JUDGE

10.01.2024
Brij
Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No