

(2014) 11 CAL CK 0059

In the Calcutta High Court

Case No : C.R.M. No. 3242 of 2014, APO 375 of 2014 and W.P. No. 384 of 2014

Lloyd Insulations (India) Ltd.

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 03-11-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 65, 66, 67, 68 — Micro, Small and Medium Enterprises Development Act, 2006 - Section 16, 17, 18, 7

Citation : (2015) 1 CHN 41

Hon'ble Judges : Manjula Chellur, C.J.;Arijit Banerjee, J.

Bench : Division Bench

Advocate : Anirban Roy and C.M. Ghorawat, for the Appellant; Sarnrat Sen and S. Dhar, for the Respondent

Final Decision : Allowed

Judgement

1. Heard counsel for the appellant-writ petitioner and also the party respondent who was the complainant before the Council. We are concerned with the special enactment. The Micro, Small and Medium Enterprises Development Act, 2006 which indicates how a micro small and medium enterprise if involved in a litigation has to be dealt with. It is not in dispute on the complaint of the party respondent, the West Bengal State Micro and Small Enterprises Facilitation Council, (hereinafter referred to as Council) took up the matter to exercise the powers bestowed upon them under the aforesaid Act of 2006. The impugned order is Annexure D at page 53 of the paper book. Apparently reading of the said order would indicate that initially conciliation was attempted on the part of the Council which ultimately resulted in impugned order dated 10-2-2012. It is also not in dispute, this order of 10-2-2012 came to be challenged only in the year 2014 when the party respondent/complainant attempted to execute the same as an award. In order to appreciate the contentions raised, it would be just and proper to refer to section 18 of the Act of 2006 which indicates procedure to be adopted by the Council while proceeding with the conciliation and if it was to deviate from conciliation to arbitration proceeding and the same reads as under:

"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 7 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."

2. It is not in dispute, by virtue of sub-section (2) of section 18, conciliation was attempted by the Council initially on the reference of the complaint made by the party respondent. As it appears from the last paragraph of the impugned order at page 53, on 4-11-2011 the Council took up the matter for conciliation and heard representatives and learned advocate appearing for the buyer-unit in the meeting. Though it says, the Council perused all the documents and decided to give an award in the next meeting, its intention to give an award in the next meeting is not clearly disclosed. Was it made on 4-11-2011? Was it indicated in the proceedings recorded in the meeting on 4-11-2011 or they just reflected such intention in the award impugned dated 10-12-2012?

3. It is also pertinent to mention that once the conciliation fails, there has to be an order of terminating the conciliation and intimation of initiation of arbitration proceedings to the opposite party so as to allow the parties to know the intention of the Council that conciliation proceedings initiated on the reference made by the complainant was unsuccessful, therefore, they would proceed with the matter in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as indicated in sub-section (3) of section 18 of the Act of 2006.

4. Learned Judge till paragraph 14 of the impugned order discussed several other issues, that is, another litigation pertaining to the very appellant but ultimately opined that the Council did not proceed with the matter in accordance with the provisions contained in section 18 of the 2006 Act. According to the learned counsel for the appellant, in the absence of noncompliance of the procedure several defects have occurred in the impugned order and according to him, the outcome of the impugned order is an award which is non-est in the eye of law.

He further contends, if it is non-est in the eye of law, he could not have preferred an application under section 34 of the Arbitration and Conciliation Act, 1996 challenging the award.

5. As against this, learned advocate for the party respondent/complainant submits, if proceedings under section 34 of the Arbitration and Conciliation Act was not possible complaining non-compliance of the procedure, they ought to have filed a writ petition immediately on being notified of the impugned order. It is also submitted by him that section 34 application ought to have been filed by them wherein all the contentions raised herein could have been taken. Therefore, the delay and laches on the part of the appellant disentitles the appellant to have any concession.

6. Noticing the consequences of the impugned order we note that section 16 deals with rate of interest at which the amount found due is to be paid by the appellant herein. It says compound interest with monthly rests to the supplier on due 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. In other words, the failure imposes a liability on the appellant not only to pay compound interest with monthly rests but also three times of the bank rate of interest notified by the Reserve Bank.

7. In the present case, the ultimate result is, Rs. 9 or 10.00 lakhs due by the appellant herein would compel it to pay Rs. 92.00 lakhs interest on the said amount due. If ultimately after giving an opportunity to contest the proceedings the appellant has to pay interest, as indicated in paragraph 16, on the strength of an award in an arbitration proceedings, it has to pay the same as procedure contemplates so. In another proceeding challenging the vires of the Act, it had already failed as the Court upheld the legality of the enactment, but the fact remains whether it had an opportunity to contest the matter in an arbitration proceeding after termination of conciliation proceedings initiated. No doubt, the appellant had an opportunity to challenge the Council's order much earlier way back in 2012 instead of challenging the same when execution of the same is sought by the private respondent/complainant. According to him, such award is non-est and as he did not have the opportunity as contemplated in sub-section (2) of section 18, the procedural lapses on the part of the Council goes to the root of the matter. Therefore, even if there is delay and laches on his part, the same has to be given concession as the respondent No. 4 would not be prejudiced in any manner. As against this, learned counsel for the private respondent contends, a right has accrued to him by virtue of an award to be executed, therefore, at this point of time, the same cannot be unsettled.

8. Looking at the consequences of an award, wherein the appellant had no opportunity of taking part in the said proceeding, we are of the opinion, no prejudice would be caused to the private respondent No. 4 if the impugned order is set aside directing the Council to proceed with the matter in accordance with the procedure contemplated in sub-section (3) of section 18 of the 2006 Act.

However, the parties have to be put on terms, that is,

a) the entire procedure contemplated has to be completed within 3 months from the date of receipt of copy of this order and the appellant shall not make any delay tactics and it has to cooperate with the Council for disposal of the matter,

b) The inconvenience caused, if any, to the respondent No. 4, according to us, can be compensated by way of costs for keeping the party respondent No. 4 under the impression that the appellant would not be challenging the impugned order for about two years.

c) The costs of Rs. 1,00,000/- is to be paid by the appellant to the party respondent No. 4 within three weeks from today.

d) The appellant shall also furnish bank guarantee for a sum of Rs. 9,50,000/- before the Council within three weeks from date. The appellant shall have the benefit of above concession only if it complies with the above directions within the time prescribed.

9. With the above observations we allow the appeal and the order impugned herein is set aside. It is made clear that the Council shall proceed with the matter in accordance with sub-section (3) of section 18 of the 2006 Act intimating the appellant herein as contemplated under the said section. Both the appeal and the application are disposed of accordingly.