
(2013) 06 BOM CK 0046

In the Bombay High Court

Case No : Arbitration Petition No. 1193 of 2012

M/s. Faridabad Metal Udyog Pvt. Ltd.

APPELLANT

Vs

Mr. Anurag Deepak and M/s. Bharat Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 17-06-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 12, 13, 14, 15
Micro, Small and Medium Enterprises Development Act, 2006 — Section 15, 16, 18, 18, 19

Citation : (2013) 7 BomCR 631

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : R.U. Singh, for the Appellant; Pankaj Sawant a/w P.U. Singh a/w Ms. Hemangi Kurne instructed by Vyas Bhalwal, for the Respondent

Final Decision : Dismissed

Judgement

R.D. Dhanuka, J.—By consent of parties, these five petitions alongwith other ten matters were heard finally together and are being disposed of by a common Judgment. By these petitions filed u/s 14 of the Arbitration and Conciliation Act, 1996 (for short herein after referred as "Arbitration Act 1996), the petitioners seek declaration that the mandate of the learned Arbitrator, respondent No. 1 herein stood terminated u/s 14 of the Arbitration Act 1996, and the petitioner is entitled to approach the Micro and Small Scale Enterprises Facilitation Council constituted under the provisions of the Micro, Small Medium Enterprises Development Act, 2006 (for short hereinafter referred as MSME Act) and the said Council is entitled in law to adjudicate the disputes between the parties.

2. Relevant facts in ARBP No. 1193 Of 2012:

(a) The petitioner is a small scale industry registered under the provisions of MSME Act with District Industries Centre, Faridabad, Haryana on 4th August 2009. The petitioner is a manufacturer of LPG cylinders of various capacity and

supply those cylinders to respondent No. 2 Corporation and other two oil companies.

(b) Since 1994, the second respondent had entered into yearly contract with the petitioner for supply of cylinders. Clause 17 of the agreement provides for resolution of dispute by arbitration which is extracted as under:

17. ARBITRATION:

(a) Any dispute and/or difference of any nature whatsoever any claim, cross-claim, counter claim or set off of the Corporation against the contractor or regarding any right, liability, act, omission on account of any of the parties hereto arising out of or in relation to this agreement shall be referred to the sole arbitration of the Director (Marketing) of the Corporation or of some Officer of the Corporation who may be nominated by the Director (Marketing). The Contractor will not be entitled to raise any objection to any such arbitration on the ground that the Arbitrator is an Officer of the Corporation or that he has dealt with the matters to which the contract relates or that in the course of his duties as an officer of the Corporation he had expressed views on all or any other matters in dispute or difference. In the event of the Arbitrator to whom the matter is originally referred being transferred or vacating this office or being unable to act for any reason the Director (Marketing) as aforesaid at the time of such transfer, vacation of office or inability to act any in the discretion of the Director (Marketing) designate another person to act as arbitrator in accordance with the terms of the agreement to the end and intent that the original Arbitrator shall be entitled to continue the arbitration proceedings notwithstanding his transfer or vacation of office as an officer of the Corporation if the Director (Marketing) does not designate another person to act as Arbitrator on such transfer, vacation of office or inability of original Arbitrator. Such persons shall be entitled to proceed with the reference from the point at which it was left by his predecessor. It is also a term of this contract that no person other than the Director (Marketing) or a person nominated by such Director (Marketing) of the Corporation as aforesaid shall act as arbitrator hereunder. The award of the arbitrator so appointed shall be final, conclusive and binding on all parties to the agreement subject to the provisions of the Arbitration Act, 1940 or any statutory modification or re-enactment thereof and the rules made there under for the time being in force shall apply to the arbitration proceedings under this clause.

(c) Vide letter dated 25th June 2003, petitioner invoked arbitration agreement and called upon the second respondent to appoint independent and impartial arbitrator. The said letter was received by respondent No. 2 on 31st March 2003. Respondent No. 2 vide letter dated 21st November 2003 appointed Mr. A.C. Sen, General Manager (Health, Safety & Environmental) as Sole Arbitrator. On 27th November 2003, Mr. A.C. Sen accepted the nomination to arbitrate the dispute between the petitioner and respondent No. 2 and fixed the schedule for filing pleadings. On 15th December 2003, petitioner filed application u/s 12 read with Section 14 of the Arbitration Act 1996 before the learned arbitrator. Parties took

various adjournments before the learned arbitrator. On 16th November 2005, the learned arbitrator extended the arbitration proceedings by 12 months. On 23rd January 2007, the learned arbitrator dismissed applications dated 15th December 2003 and 30th May 2003.

(d) On 16th April 2007, petitioner filed application u/s 14 before the learned arbitrator contending that period of two years plus one year under Clause 17(b) for making an award has expired. The learned arbitrator vide letter dated 26th April 2007 informed the parties that if parties so desire, time could be extended up to 21st December 2007 and if he did not hear from the parties on or before 17th May 2007 confirming extension of time, he shall consider that his mandate had come to an end. On 21st May 2007, the learned arbitrator Mr. A.C. Sen tendered his resignation.

(e) On 25th June 2007 respondent No. 2 nominated Mr. Anurag Deepak as Sole Arbitrator to arbitrate the dispute between the petitioner and respondent No. 2. Vide letter dated 10th July 2007, the petitioner objected to the appointment of the said arbitrator. Vide letter dated 21st July 2007, respondent No. 2 advised the petitioner to address their grievance before the learned arbitrator. On 13th September 2007, respondent No. 1 accepted his appointment and fixed the schedule for completing the pleadings.

(f) On 3rd October 2007, petitioner filed application u/s 13 & 14 read with Section 16 of the Arbitration Act before the learned arbitrator. On 10th October 2007, learned arbitrator issued directions to the parties to complete pleadings. Respondent No. 2 filed its reply on 28th December 2007. Petitioner filed its rejoinder on 4th February 2008. On 2nd May 2008, respondent No. 2 filed sur-rejoinder. On 14th May 2008, the learned arbitrator directed the petitioner to submit written arguments by 25th May 2008 in respect of the said application made by the petitioner. The application was thereafter argued on 30th September 2008. On 15th October 2008, the learned arbitrator rejected the said application filed by the petitioner u/s 13, 14 and Section 16 of the Arbitration Act 1996.

(g) By application dated 10th November 2008, petitioner stated that they shall be participating in the proceedings under protest as they did not agree with the order dated 15th October 2008 passed by the learned arbitrator. On 10th November 2008, petitioner made an application before the learned arbitrator inter alia praying for a direction to respondent No. 2 to file/furnish documents/information as set out in the said application. On 19th November 2008, the learned arbitrator directed the respondent to file reply to the application and directed the petitioner to file re-joinder.

(h) By an order dated 10th June 2009, the learned arbitrator dismissed the said application dated 10th November 2008 filed by the petitioner. On 26th August 2009, petitioner filed its Statement of Claim. On 20th November 2009, respondent No. 2 filed its reply to the Statement of Claim. On 22nd September

2010, petitioner filed application u/s 18 & 24 for inspection and discovery of documents relied by respondent No. 2. On 16th November 2011, petitioner filed affidavit of witness. On 10th October 2012, the learned arbitrator issued directions for cross examination of the witness proposed to be examined by the petitioner and fixed a meeting on 31st October 2012. On 20th October 2012, the petitioner filed present petition u/s 14 read with Section 11 of the said Arbitration Act.

3. Relevant facts in ARBP No. 55 of 2013:

(a) The petitioner is a small scale industry registered with District Industries Centre, Faridabad on 8th February 2008. On 1st April 1999 and 31st March 2000, contracts were entered into between the petitioner and respondent No. 2 for supply of cylinders. On 21st March 2003, petitioner invoked arbitration agreement calling upon respondent No. 2 to appoint an independent and impartial arbitrator. On 30th January 2003, respondent No. 2 appointed Mr. A.C. Sen, General Manager (Health, Safety & Environmental) as Sole Arbitrator. On 7th February 2003, Mr. A.C. Sen accepted his nomination to arbitrate the disputes between the petitioner and respondent No. 2 and fixed the schedule for pleadings. On 12th February 2003, petitioner filed an application before the learned arbitrator u/s 12 & 14 of the said Arbitration Act. On 10th November 2005, the learned arbitrator extended the time by one year. On 23rd January 2007, the learned arbitrator rejected the application dated 12th February 2003 filed by the petitioner. On 26th March 2007, petitioner filed another application u/s 14 of the said Arbitration Act before the learned arbitrator contending that the time prescribed under Clause 17(b) of the contract to make an award had expired and thus the mandate of the arbitrator had been terminated by efflux of time.

(b) On 12th April 2007, the learned arbitrator directed the parties to extend the time. By letter dated 14th May 2007, learned arbitrator returned all the papers to respondent No. 2 and tendered his resignation.

(c) On 25th June 2007, respondent No. 2 appointed Mr. Anurag Deepak, respondent No. 1 herein as Sole Arbitrator. By letter dated 13th September 2007, the learned arbitrator fixed the schedule of completion of pleadings. On 3rd October 2007, petitioner objected to appointment of respondent No. 1 as arbitrator. Parties took various adjournments before the learned arbitrator for filing various pleadings in furtherance of the said application. It is the case of the petitioner that petitioner had made it clear that it would be participating in the proceedings under protest.

(d) On 26th August 2009, petitioner filed its Statement of Claim before the learned arbitrator. On 24th November 2009, respondent No. 2 filed its reply. On 17th November 2011, petitioner filed re-joinder and Affidavit of evidence. On 25th May 2012, learned arbitrator fixed a meeting on 11th June 2012 to decide further course of action. Counsel for the petitioner sought time as he was not

available due to vacation. On 25th August 2012, petitioner addressed a letter to the learned arbitrator requesting not to proceed further in the matter and informed that petitioner would be approaching this Court for appropriate reliefs. On 10th September 2012, petitioner filed this petition u/s 14 read with Section 11 of the Arbitration Act 1996.

4. Relevant facts of ARBP No. 51 of 2013:

(a) The petitioner is a small scale industry registered with District Industries Centre, Faridabad on 9th August 2007. On 1st April 1999 and 31st March 2000, the petitioner and respondent No. 2 entered into contracts for supply of cylinders. On 3rd January 2003, petitioner invoked arbitration agreement and requested respondent No. 2 to appoint an independent and impartial arbitrator. On 22nd January 2003, respondent No. 2 appointed Mr. A.C. Sen General Manager (Health, Safety & Environmental) as Sole Arbitrator. On 7th February 2003, Mr. A.C. Sen accepted his nomination as Sole Arbitrator. On 13th February 2003, 30th May 2003 and 2nd December 2003, petitioner filed applications under Sections 12, 13, 14 and 16 before the learned arbitrator. On 10th November 2005, the learned arbitrator extended arbitration proceedings by 12 months. On 2nd June 2006, the learned arbitrator rejected petitioner's application dated 2nd December 2003. On 27th April 2007, the arbitrator rejected petitioner's applications dated 13th February 2003 and 30th May 2003.

(b) On 20th January 2007, petitioner filed another application u/s 14 contending that the time to make an award prescribed under Clause 17(b) of the contract had expired. On 20th June 2007, the learned arbitrator tendered his resignation.

(c) On 26th June 2007, respondent No. 2 nominated Mr. Anurag Deepak, respondent No. 1 herein as Sole Arbitrator. On 10th July 2007, petitioner objected to appointment of respondent No. 1 as Sole Arbitrator. On 13th September 2007, the learned arbitrator accepted his appointment and fixed the schedule for completing the pleadings. On 3rd October 2007, the petitioner filed an application u/s 13 & 14 read with Section 16 of the said Arbitration Act. On 10th October 2007, the learned arbitrator issued directions to the parties to complete pleadings. Respondent No. 2 filed reply to the application on 26th December 2007. The petitioner filed rejoinder on 23/29 January 2008. The learned arbitrator fixed a hearing on 9th September 2008. As the authorized designate of the petitioner was sick, the learned arbitrator adjourned the proceedings. Application made by the petitioner was heard on 16th October 2008 by the learned arbitrator. The arbitrator directed the petitioner to submit written arguments in 10 days and directed respondent No. 2 to submit written arguments within 10 days thereafter. On 30th June 2009, learned arbitrator dismissed the application filed by the petitioner u/s 13 & 14 read with Section 16 of the Arbitration Act 1996. By letter dated 12th July 2009, petitioner informed that petitioner would be participating in the proceedings under protest and did not agree with the orders dated 30th June 2009.

(d) On 10th July 2009, the learned arbitrator directed the petitioner to file Statement of Claim by 11th September 2009 and directed respondent No. 2 to file reply by 25th September 2009. Petitioner requested for extension of time by four weeks which was granted by the learned arbitrator. On 10th December 2009, petitioner filed Statement of Claim. On 18th January 2010, petitioner filed an application for inspection of documents relied upon by respondent No. 2 in their reply and stated that petitioner would file re-joinder only after inspection of those documents was furnished by respondent No. 2. Respondent No. 2 filed their reply on 8th February 2010 to the application objecting to petitioner's right to inspect the documents in their possession. Petitioner filed re-joinder on 4th August 2010 in the said application. By order dated 14th October 2010, the arbitrator allowed the petitioner to inspect the records of respondent No. 2. It is the case of the petitioner that respondent No. 2 did not provide inspection for about six months. It is the case of the respondents that petitioner did not contact respondent No. 2 for taking inspection. On 16th May 2011, arbitrator again directed respondent No. 2 to allow inspection of the documents to the petitioner. On 1st July 2011, petitioner took inspection of the documents. On 3rd August 2011, respondent No. 2 provided copies of the documents to the petitioner. On 18th October 2011, the arbitrator directed the parties to file their admission/denial statements and Affidavits of the witnesses. On 3rd November 2011, respondent No. 2 filed their admission/denial statement and Affidavit on 8th December 2011. On 8/14 November 2011, petitioner filed its admission/denial statement and also Affidavit of witnesses.

(e) By letter dated 3rd January 2012, the arbitrator fixed the date of cross examination of the petitioner on 28th March 2012. On 24th March 2012, the petitioner filed its application u/s 14 of the Arbitration Act contending that the learned arbitrator had become functus officio as time prescribed for making an award had expired. On 9th April 2012, the arbitrator directed respondent No. 2 to file reply to the said application and directed the petitioner to file re-joinder and fixed the next date of hearing on 3rd May 2012. Respondent No. 2 filed reply on 18th April 2012. On 26th April 2012, petitioner filed rejoinder. The learned arbitrator fixed the next date of hearing on 1st June 2012. On 29th May 2012, petitioner requested the arbitrator to postpone the hearing to 15th June 2012. On 1st June 2012, the arbitrator directed respondent No. 2 to file sur-rejoinder and re-fixed the next date of hearing on 15th June 2012. Both the parties relied upon their respective pleadings to make submissions on the applications made by the petitioner. By order dated 19th July 2012, learned arbitrator dismissed the said application dated 24th March 2012 and fixed the hearing on 13th August 2012. The said hearing was adjourned to 27th August 2012 and thereafter on 3rd September 2012. On 21st August 2012, petitioner informed the arbitrator that they would be filing arbitration petition in this Court and requested to keep the proceedings in abeyance.

(f) On 3rd September 2012, the learned arbitrator directed the petitioner to produce its witness on 20th September 2012 for cross examination. On 10th

September, petitioner filed this petition u/s 14 read with Section 11 of Arbitration Act 1996.

5. Relevant facts in ARBP (L) No. 1219 of 2012:

(a) The petitioner is a small scale industry registered with District Industries Centre, Faridabad on 3rd October 1991. On 1st April 1999 and 31st March 2000, the petitioner and respondent No. 2 entered into contracts for supply of cylinders. On 31st October 2003, petitioner invoked arbitration agreement and requested respondent No. 2 to appoint an independent and impartial arbitrator. On 21st November 2003, respondent No. 2 appointed Mr. A.C. Sen General Manager (Health, Safety & Environmental) as Sole Arbitrator. On 27th November 2003, Mr. A.C. Sen accepted his nomination as Sole Arbitrator. On 15th December 2003, petitioner filed application u/s 12 & 14 of the Arbitration Act before the learned arbitrator. The learned arbitrator granted adjournments to parties for filing various pleadings at their requests. On 10th November 2005, the learned arbitrator extended arbitration proceedings by 12 months. On 27th April 2007, learned arbitrator dismissed all the three applications filed by the petitioner. On 15th May 2003, petitioner filed another application u/s 14 contending that time to make an award as prescribed under Clause-17(b) of the contract had lapsed. On 21st May 2007, arbitrator sought consent of parties to extend time for completing arbitration proceedings by 31st December 2007. On 20th June 2007, respondent No. 2 nominated Mr. Anurag Deepak, respondent No. 1 herein as Sole Arbitrator. On 5th July 2007, petitioner objected to appointment of respondent No. 1 as Sole Arbitrator. On 13th September 2007, respondent No. 1 accepted his nomination as arbitrator.

(b) On 3rd October 2007, petitioner filed application u/s 13 & 14 read with Section 16 contending that time to make an award as prescribed under Clause 17(b) of the contract had expired. On 26th December 2007, respondent No. 2 filed reply to the application made by the petitioner. On 22/28 January 2008, petitioner filed re-joinder to reply of the respondents to its application. Learned arbitrator granted extension of time to respondent No. 2 to file sur-rejoinder. On 16th October 2008, learned arbitrator heard the application and directed the parties to submit their written arguments. On 29th December 2008, petitioner filed written arguments. Respondent No. 2 filed written arguments thereafter. On 9th February 2009, learned arbitrator fixed the hearing on 27th February 2009 for oral arguments. On 30th June 2009, the arbitrator dismissed the application dated 3rd October 2007. On 12th July 2009 petitioner raised objection to the dismissal order dated 30th June 2009. On 10th July 2009, the arbitrator directed the petitioner to file Statement of Claim. On 10th December 2009 petitioner filed Statement of Claim and Respondent No. 2 filed its reply to Statement of Claim on 1st January 2010.

(c) On 18th January 2010 petitioner filed application u/s 18 for inspection of documents relied upon by respondent No. 2 in its reply dated 1st January 2010. On 14th October 2010, learned arbitrator allowed application for inspection of

documents relied upon by respondent No. 2. It is the case of the respondents that petitioner did not contact the respondents for inspection of the documents. On 16th May 2011, learned arbitrator directed respondent No. 2 to provide documents for inspection and discovery. Respondent No. 2 accordingly furnished inspection of documents and also provided copies of documents.

(d) On 1st November 2011, learned arbitrator directed the parties to file their admission/denial statement and Affidavit of witness on 8th December 2011. On 10/14 November 2011, petitioner filed admission/denial statement and on 21/29 November 2011 and 30th November 2011 and 8th December 2011 filed Affidavit of witness.

(e) By letter dated 3rd January 2012, arbitrator fixed the date of cross examination of the witness of the petitioner on 28th March 2012. On 24th March 2012, petitioner filed an application u/s 14 contending that the learned arbitrator had become functus officio as the time prescribed for making an award had expired. On 9th April 2012, learned arbitrator directed respondent No. 2 to file reply to the application dated 24th March 2012 filed by the petitioner and directed the petitioner to file re-joinder to the said reply by 26th April 2012 and directed the petitioner to file its sur-rejoinder by 3rd May 2012 and fixed the next date hearing on 3rd May 2012. Respondent No. 2 filed its reply on 18th April 2012 and petitioner filed re-joinder on 26th April 2012. On 23rd May 2012, the learned arbitrator directed respondent No. 2 to file sur-joinder and fixed the next date of hearing on 1st June 2012. On 29th May 2012, petitioner requested the arbitrator to postpone the hearing to 15th June 2012. The learned arbitrator fixed the date of hearing on 15th June 2012. Hearing took place before the arbitrator on 15th June 2012. Respondent No. 2 did not file any rejoinder. Parties made their submissions in the said application. By an order dated 19th July 2012, the arbitrator dismissed application dated 22nd March 2012 filed by the petitioner and fixed the hearing for 13th August 2012 which was adjourned to 27th August 2012 and 30th September 2012. On 21st August 2012 petitioner informed the arbitrator that they would be filing arbitration petition in this Court and requested the arbitrator to keep the proceedings in abeyance. On 3rd September 2012, the arbitrator directed the petitioner to produce their witness on 20th September 2012 for cross examination. On 10th September 2012, petitioner filed this petition u/s 14 read with Section 11 of the Arbitration Act.

6. Relevant facts in ARBP No. 1196 of 2012:

(a) On 1st April 1999 and 31st March 2000, the petitioner and respondent No. 2 entered into contracts for supply of cylinders. On 4th September 2003, petitioner invoked arbitration agreement and requested respondent No. 2 to appoint an independent and impartial arbitrator. On 24th October 2003, respondent No. 2 appointed Mr. A.C. Sen General Manager (Health, Safety & Environmental) as Sole Arbitrator. On 1st November 2003, Mr. A.C. Sen accepted his nomination as Sole Arbitrator. On 12th November 2003, petitioner filed application under Sections 12 and 14. On 16th November 2005, the learned arbitrator extended

arbitration proceedings by 12 months. On 23rd January 2007, the learned arbitrator rejected petitioner's application dated 12th November 2003. On 26th March 2007, petitioner filed another application u/s 14 contending that time to make an award by the learned arbitrator had expired. On 12th April 2007, learned arbitrator asked the parties to consider if they so desire to extend the time. On 14th May 2007 Mr. A.C. Sen resigned as arbitrator. Respondent No. 2 thereafter nominated Mr. Anurag Deepak, respondent No. 1 herein as sole arbitrator in the year 2007. On 4th October 2007 petitioner filed application u/s 13, 14 and 16 of the Act before the learned arbitrator contending that time to make an award has expired. On 15th October 2008, arbitrator dismissed application filed by the petitioner. On 10th November 2008, petitioner informed the arbitrator that petitioner would be participating in arbitration proceedings under protest. On 10th June 2009, arbitrator rejected the application of petitioner for direction to respondent No. 2 for furnishing documents. On 26th August 2009, petitioner filed Statement of Claim. On 2nd December 2009, respondent No. 2 filed reply to Statement of Claim. Petitioner, thereafter filed application for inspection of documents. After admission/denial by the parties, the arbitrator directed the parties to file Affidavit of Evidence. On 18th November 2011, petitioner filed affidavit of Evidence. On 10th October 2012, the arbitrator directed the petitioner to make his witness available for cross examination on 31st October 2012. On 20th October 2012, petitioner filed this petition u/s 14 read with Section 11 of the Arbitration Act 1996.

(b) Mr. R.U. Singh, the learned counsel appearing for petitioner in all these petitions made following submissions.

(i) On expiry of two years and a further period of one year as prescribed under Clause 17(b) of the contract, arbitrator can not publish the award as his mandate is terminated u/s 14 of the Arbitration Act 1996.

(ii) In view of Section 24 of the MSME Act, provisions of Sections 15 to 23 shall have overriding effect over the provisions of Arbitration Act 1996. Petitioners being registered enterprises under the provisions of the said Act, disputes between the parties have to be referred to Micro and Small Scale Enterprises Facilitation Council u/s 18 of the said MSME Act 2006. The said Act being a special enactment, provisions of the said Act would have overriding effect on the provisions of Arbitration Act 1996. Mr. R.U. Singh placed reliance upon the Judgment of Supreme Court in case of N.B.C.C. Ltd. Vs. J.G. Engineering Pvt. Ltd., , Judgment of learned Single Judge of this Court in case of Teltech Instrumentation Pvt. Ltd. Vs. Bharat Petroleum Corporation Ltd., , Judgment of learned Single Judge delivered on 2nd September 2011 in case of Verny Containers Pvt. Ltd. Vs. Hindustan Petroleum Corporation Ltd. in ARBP No. 248 of 2006, Judgment of Division Bench of this Court delivered on 2nd May 2012 in case of Bharat Oman Refineries Ltd. Vs. M/s. Mantech Consultants, and Judgment of Delhi High Court in case of M.L. Dalmiya and Company Ltd. Vs. The Chairman and Managing Director, National Building Construction Corporation

Limited and Others, .

7. Mr. Pankaj Sawant, learned counsel appearing on behalf of respondent No. 2 on the other hand submits that in view of the petitioners filing several applications before the learned arbitrator under one or the other provisions of the Arbitration Act, 1996, there was gross delay in disposal of arbitration proceedings. It is submitted that petitioners themselves have filed Statement of Claim in December 2009 though the first arbitrator was appointed as far back as in the month of December 2002. It is submitted that petitioners had thereafter filed statement of admission/denial of documents, Affidavit of witnesses and participated all through out in the proceedings before the learned arbitrator. The learned arbitrator had fixed the date of cross examination of the witnesses proposed to be examined by the petitioners in September 2012. It is submitted that though the petitioners had filed application u/s 14 as far back as on 15th May 2007 and 3rd October 2007 contending that the time to make an award had expired, did not file the present proceedings till October 2012. It is submitted that petitioners thus have come to the Court belatedly without explaining such gross delay. The petitioners having participated before the learned arbitrator by filing various pleadings and Affidavit of witnesses and statement of admission/denial, have deemed to have waived their right of defence in view of Section 4 of the Arbitration Act 1996 and cannot be allowed to take a plea that mandate of the arbitrator stood terminated u/s 14 of the Arbitration Act 1996. On the issue as to whether the provisions of the said MSME Act would have overriding effect over the provisions of Arbitration Act 1996 or not, and whether such provisions would at all be attracted to the facts of this case or not and in so far as judgment relied upon by the petitioners referred to aforesaid, Mr. Sawant placed reliance upon the Judgment of this Court (R.D. Dhanuka, J.) delivered on 4th April 2013 in case of M/s. Hindustan Wires Limited Vs. Mr. R. Suresh And Anr. in Arbitration Petition No. 56 of 2013.

8. Mr. Sawant, learned counsel for respondent No. 2 submits that in view of the petitioners filing various applications before the learned arbitrator with a view to delay the outcome of arbitration proceedings, petitioners cannot be allowed to allege delay on the part of the arbitrator to dispose of the proceedings within the time prescribed under contract. Mr. Sawant pointed out that this issue also has been dealt with by this Court in the Judgment of this Court in case of Hindustan Wires Ltd. (supra). It is also pointed out that against the Judgment of this Court in case of Mascon Multiservices and Consultants Pvt. Ltd. Vs. Bharat Oman Refineries Ltd. and Another, ; which was relied upon by the respondents before this Court in case of M/s. Hindustan Wires Ltd. (supra), SLP has been also rejected by the Supreme Court.

9. On the issue as to whether provisions of MSME Development Act 2006 would be at all attracted to the facts of this case or not, Mr. Sawant submits that in all these aforesaid petitions, supply was to be made by the petitioners much prior to October 2006 when the said Act came into force. The dispute itself had arisen

between the parties in the month of June 2003. Learned counsel also pointed out that all the petitioners were admittedly registered under the provisions of the said Act much after the said Act having come into force. Mr. Sawant invited my attention to definition of "Appointed day" defined in Section 2(b), definition of "Supplier" defined in Section 2(n) of the said Act which read thus:

2. (b) "Appointed day" mean the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.

(n) "Supplier" means a micro or small enterprises, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes,-

(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956);

(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;

10. Mr. Sawant, learned counsel also invited my attention to Sections 15, 16, 17 and 18(1) of the said Act which read as under:

15. Liability of buyer to make payment:-Where any supplier, supplies nay goods or renders any services to any buyer. The buyer shall make payment therefore on or before the date agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

16. Date from which and rate at which interest is payable:-Where any buyer fails to make payment of the amount to the supplier, as required u/s 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that 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.

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 u/s 16.

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 u/s 17, make a reference to the Micro and Small Enterprises Facilitation Council.

11. Learned counsel thus submits that in view of the fact that the transaction between the petitioners and respondent No. 2 was much prior to the day on which the said Act itself came into force and the registration of the petitioners under the provisions of the said Act was much after the said transaction between the parties, petitioners would not be entitled to make any application for referring the dispute to the Micro and Small Scale Enterprises Facilitation Council. Mr. Sawant also placed reliance upon the Judgment of this Court and Supreme court which were considered by this Court while deciding the matter in case of M/s. Hindustan Wires Ltd. (supra). This Court in case of M/s. Hindustan Wires (Ltd.), after considering the Judgments relied upon by the parties held that when parties raise question as to jurisdiction it would be legitimate to draw an inference that they themselves have given a go-bye to the stipulation as to the time within which the award has to be made. Considering the fact that petitioners in that matter had filed various applications under Sections 12, 13 and 14, this Court held that the petitioner could not be allowed to raise plea that arbitrator had become functus officio on expiry of two years or that his mandate stood terminated due to delay on the part of the arbitrator. As far as issue as to whether MSME Act would have overriding effect over the provisions of Arbitration Act 1996, this Court referred to the Judgment of this Court in case of M/s. Steel Authority of India (Ltd.) and held that provisions under the arbitration agreement existing between the parties would not be affected by enactment of said Act and the dispute would be governed by the provisions of the existing arbitration agreement between the parties and would be governed by the provisions of the Arbitration Act 1996. I do not propose to take any different view than the view already taken by this Court in case of M/s. Hindustan Wires Ltd. (supra) as the said Judgment, in my view on these issues raised by the petitioners in this case squarely apply to the facts of this case.

12. As far as Judgment of Delhi High Court in case of M.L. Dalmiya & Co. Ltd. (supra) relied upon by the petitioners is concerned, in that matter respondents had committed default in filing its counter-claim. Petitioners were pressing for hearing before the learned arbitrator which the learned arbitrator failed. In the facts of that case, Delhi High Court terminated the mandate of learned arbitrator appointed by the respondents and appointed another arbitrator. In my view, facts of that case are clearly distinguishable with the facts of this case. On perusal of the facts of this case and on conjoint reading of definition of Section 2(b) and (n) of the MSME Act, it is clear that dispute between the parties to these proceedings arose much prior to the said Act having come into force. In my view, remedy u/s 18 to refer the dispute to Micro and Small Scale Enterprises Facilitation Council would not apply to the dispute arising out of existing arbitration agreement between the parties. Similarly, the said provisions also cannot be invoked in respect of the dispute having arisen between the parties prior to the said Act having come into force and prior to the "Supplier" having filed the memorandum

and is registered u/s 8 of the said Act. Admittedly these first four petitioners were registered as micro small enterprises much after the dispute had arisen between the parties. In my view, the said provisions would not apply with retrospective effect to the past transaction and thus provisions of the said MSME Act have no applicability to the facts of this case. Even otherwise reliefs u/s 14 and 11 cannot be claimed in the same proceedings. Proceedings filed u/s 14 are filed before Court whereas application filed u/s 11 is not before the Court. In any event, since mandate of arbitrator is not terminated, question of appointment of any other arbitrator did not arise.

13. On perusal of the record filed by both the parties, it is clear that though the petitioners had filed application u/s 14 along with other provisions as far back in 2003 and thereafter in 2007, petitioners filed these proceedings for a declaration that mandate of the arbitrator has terminated u/s 14 only in the month of October 2012 after the petitioners already having filed pleadings, statement of admission/denial, affidavit of witnesses and the learned arbitrator already having fixed the dates for cross examination of the witnesses to be examined by the petitioners. In my view, in view of such unexplained delay in filing these petitions for such relief, no indulgence can be granted to the petitioners for such relief at this stage.

14. During the course of hearing, this Court inquired with both the parties repeatedly that if parties agree, hearing before the learned arbitrator would be directed to be completed between a period of 4-6 months in view of the parties having already completed pleadings and have filed affidavit of witnesses. Though the learned counsel appearing for respondents agree to this suggestion, the petitioner declined to accept. In my view, it would be more appropriate if the arbitrator is directed to dispose of arbitration proceedings itself within a period of not more than six months from the date of first meeting with a direction to both the parties to co-operate with learned arbitrator and with each other. In my view, there is not merit in any of the aforesaid petitions and the same are accordingly rejected. I therefore pass the following order.

(a) Arbitration petitions are rejected.

(b) Mandate of the learned arbitrator is not terminated. The learned arbitrator is directed to dispose of the arbitration proceedings within a period of six months from the date of first meeting. Both the parties are directed to co-operate with the learned arbitrator and with each other.

(c) There shall be no order as to costs.