

Bombay High Court

Snehadeep Structures Private ... vs The Maharashtra Small Scale ... on 24 November, 2006

Equivalent citations: 2007 (1) ARBLR 333 Bom

Author: S Bobde

Bench: R Lodha, S Bobde

JUDGMENT S.A. Bobde, J.

1. This is an appeal against the order of a learned single Judge of this Court dismissing the appellants petition under Section 34 of the Arbitration and Conciliation Act, 1996 against the interim award dated 16.6.2005 and the final award dated 9.8.2005 passed by the Arbitrator. The Arbitrator has denied the appellants claim for interest based on the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, hereinafter referred to as the "Interest Act".

2. The appellant is a private limited company and is registered as a small scale industry. The respondent is a company wholly owned by the Government of Maharashtra incorporated, inter alia, with the object of promoting small scale industries. In the usual course of business, the respondent was awarded a tender by Maharashtra State Electricity Board, for short "MSEB". MSEB placed three Work Orders upon the respondent as follows:

1. Work Order No. 1166 dated 4th April 1991.
2. Work Order No. 3602 dated 13th December 1991.
3. Work Order No. 583 dated 24th February 1992.

In turn, under the Marketing Assistance Scheme, the respondent placed corresponding supply orders for supply, transportation and laying of ash disposal pipelines along with allied civil work from Bhusawal Thermal Power Station to Ash Disposal Area. The supply orders were as follows:

1. Supply Order No. 706 dated 24th June, 1989;
2. Supply Order No. 262/391 dated 25th April 1991;
3. Supply Order No. 450/3576 dated 31st December 1991; and
4. Supply Order No. 533/4659 dated 10th March 1992.

The aggregate value of the supply order is Rs. 4,18,04,825/-.

3. Both the contracts between MSEB and the respondent and the respondent and the appellant are on a principal to principal basis. According to the appellant, the respondent delayed payment in terms of the Interest Act, though payment was made by the respondent soon after receipt of

payment from MSEB, and is, therefore, liable to claim interest under Section 3 of that Act which reads as follows:

Liability of buyer to make payment.--Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed one hundred and twenty days from the day of acceptance or the day of deemed acceptance.

According to the appellant, the payment was not made on the appointed date which is defined by Section 2(b) of the Interest Act which reads as follows:

2. Definitions.--In this Act, unless the context otherwise requires,--

(a) ...

(b) "appointed day" means the day following immediately after the expiry of the period of thirty days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier;

Explanation.--For the purposes of this clause,--

(i) "the day of acceptance" means,--

(a) the day of the actual delivery of goods or the rendering of services; or

(b) ...

ii) ...

4. The appellant made a claim of interest on account of delayed payment which was denied by the respondent in the correspondence between them. The appellant had attempted to make the claim by way of Writ Petitions which were dismissed as not being appropriate proceedings for the purpose. The appellant then invoked the arbitration clause and made the claim before the Sole Arbitrator, who heard the matter and denied the appellant the claim for interest.

5. By the interim award dated 16.6.2005, the learned Arbitrator held that the Interest Act is applicable to the supply orders in question which were in the nature of works contract and that the appellants claim is not barred by limitation. The Arbitrator also held that the respondent is a "buyer" as defined by the Interest Act. For deciding the appellants eligibility to interest, the Arbitrator divided the period in question into three parts:

(i) Before 23.9.1992: This is the date on which the Interest Act came into force. The Arbitrator held that the Act was not retrospective in operation. The Arbitrator took note of the supply orders which were prior to this date.

(ii) Between 23.9.1992 and 10.8.1998: The second terminus of this period was the date when the amending Act came into force on 10.9.1998, and provided that in no case, the period of payment agreed upon between the supplier and the buyer shall exceed 120 days from the date of acceptance of the goods and/or services. As regards the claim for interest during this period, the learned Arbitrator referred to Clause 25 which reads as follows:

The price of the goods delivered and accepted by the consignee and when received from the consignee will be paid to the supplier by the Corporation subject to deductions of advances, if any, paid by the Corporation and the service charges and other monies payable to the Corporation by the supplier. No advance payment will be made for any supply of the goods unless otherwise agreed to by the Corporation.

Relying on that clause, the Arbitrator held that the respondents obligation to pay the appellant arose only upon receipt of payment from MSEB. Since the respondent had made payment soon after receiving the corresponding payment from MSEB, there was no delay and, therefore, there is no question of paying any interest.

(iii) After 1998: The learned Arbitrator held that the appellant would be entitled to claim interest if the payment was made by the respondent beyond the period of 120 days provided by the amending Act.

6. The Arbitrator directed the parties to file their respective statements for ascertaining their claim for interest within the parameters set out above.

7. At the time of the final award, it was found that the appellant had not demonstrated that it was entitled to receive any interest for the period after August 1998. In the result, the appellants claim for interest was denied.

8. The appellant challenged the awards before the learned single Judge. The learned single Judge held that Clause 25 had been correctly construed by the Arbitrator and that the respondent was not bound to make payment to the appellant until it received payment from MSEB; there having been no delay in making the payment, after the respondent received payment from MSEB, the appellant was not entitled to any part of its claim. As regards the other clause, viz., Clause 47 which requires MSEB to make payment to the respondent within the specified time, the learned Judge observed that this clause did not have the effect of requiring the respondent to make payment to the appellant within the time stipulated therein.

9. In the appeal before us, the parties addressed us on the following questions:

(i) Whether the respondent is a "buyer" and the appellant is a "supplier" within the meaning of the Interest Act? The respondent submitted that it is not a buyer and the appellant is a supplier, if at all of MSEB.

(ii) Whether the Interest Act applies to the transactions between the appellant and the respondent? The appellant submitted that it applies and the respondent that it does not.

(iii) Whether the payment is made by the respondent without delay in accordance with Clause 25 of the supply orders or whether the payment is delayed with reference to the provisions of the Interest Act?

The appellant submitted that there is a delay and the respondent that there is none since the payment is in accordance with Clause 25.

10. Though the matter was heard at length, no emphasis whatsoever was placed on the facts constituting the basis of the claim and the position in law applicable to that basis. In other words, no emphasis was placed, even on behalf of the respondent, on the fact that all the supply orders issued by the respondent to the appellant were outside the purview of the Interest Act since they had been issued prior to its enactment on 23.9.1992. It is clear that the appellant is not entitled to any claim for interest under the Interest Act since each of the supply orders was prior to its enactment, vide Assam Small Scale Industries Development Corpn. Ltd. and Ors. v. J.D. Pharmaceuticals and Anr. . That was a case which arose in circumstances similar to the present case. In paragraphs 37 and 38, the Supreme Court observed as follows:

37. We have held hereinbefore that Clause 8 of the terms and conditions relates to the payments of balance 10%. It is not in dispute that the plaintiff had demanded both the principal amount as also the interest from the Corporation. Section 3 of the 1993 Act imposes a statutory liability upon the buyer to make payment for the supplies of any goods either on or before the agreed date or where there is no agreement before the appointed day. Only when payments are not made in terms of Section 3, Section 4 would apply. The 1993 Act came into effect from 23-9-1992 and will not apply to transactions which took place prior to that date. We find that out of the 71 suit transactions, Sl. Nos. 1 to 26 (referred to in the penultimate para of the trial court judgement), that is supply orders between 5-6-1991 to 28-7-1992, were prior to the date of the 1993 Act coming into force. Only the transactions at Sl.Nos.27 to 71 (that is supply orders between 22-10-1992 to 19-6-1993), will attract the provisions of the 1993 Act.

38. The 1993 Act, thus, will have no application in relation to the transactions entered into between June 1991 and 23-9-1992. The trial court as also the High Court, therefore, committed a manifest error in directing payment of interest at the rate of 23% upto June 1991 and 23.5% thereafter.

The Supreme Court thus held that the Act was not applicable to supply orders prior to the date of coming into force of the Act. It was, however, contended on behalf of the appellant before us that while supply orders may have been prior to the Interest Act, the Act still applied to a claim in respect of goods supplied and services rendered after the Act came into force under those supply orders.

This contention can only be rejected in view of the clear observations of the Supreme Court in para 37 of the case cited above. We find that the appellant is, therefore, not entitled to claim any interest whatsoever in respect of the supply orders in question which were issued by the respondent prior to the coming into force of the Interest Act.

11. In the view that we have taken, we see no reason to go into the other question reproduced earlier, since all those questions are liable to be considered only if the Interest Act is applicable to the transactions in question.

12. In this view of the matter, there is no merit in the appeal which is hereby dismissed.