OCD 15

ORDER SHEET
AP-COM/707/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

GITA REFRACTORIES PVT LTD
VS
TUAMAN ENGINEERING LIMITED

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 10th September, 2024.

Appearance:
Mr. Shayak Chakraborty, Adv.
Ms. Sanjukta Majumdar, Adv.
Mr. Rameez Alam, Adv.
. . .for the petitioner.

Mr. Amit Kumar Nag, Adv.
Ms. Pritha Bhaumik, Adv.
. . .for the respondent.

The Court: Learned counsel for the petitioner argues that although the petitioner unit has been registered as an MSME unit from the inception, the rigours of Section 18 of the Micro, Small & Medium Enterprises Development Act, 2006 (MSME Act) are not applicable. It is contended that under sub-Section (1) of Section 18, an option has been given to the parties either to opt for mediation and thereafter arbitration under the said Act or to seek its remedy elsewhere. It is argued that the expression “may” as used in the sub-Section is a sufficient indicator of the above proposition.

Secondly, the petitioner's claim is not restricted to the recovery of amount due as contemplated under Section 17 of the MSME Act, only in which case the same can be subject to Section 18.

The petitioner, in the present case, over and above the recovery of amount due for goods supplied, also has a further claim of a direction on the respondent to purchase the goods which were procured by the petitioner for supply to the respondent as per the agreement between the parties, in the alternative, for damages/compensation for not taking such goods.

Thus, the scope of the dispute is wider than that covered by Section 17.

Learned counsel for the respondent argues that the present application under Section 11 of the Arbitration and Conciliation Act, 1996 does not comply with the due procedure as enumerated under the Practice Directions of this Court in respect of Commercial Courts, enacted in 2021 and notified vide notification no.4187-G dated October 13, 2023.

It is argued that in particular, Clauses (a) and (e) of Clause 6(1) have not been adhered to.

Upon hearing learned counsel for the parties, insofar as the first proposition of the petitioner is concerned, the same is considered to be fully tenable in the eye of law.

The mandate and rigours of the *non obstante* clause preceding Section 18(1) of the MSME Act is only subject to the parties submitting to the jurisdiction of the said Act. The expression "may" as used in sub-Section (1) of Section 18 makes it abundantly clear that it is open for a party to have an election as to whether it chooses to take its dispute to the Facilitation Council under the MSME Act or to choose some separate remedy before a different forum.

Only when the party raising the dispute has chosen to submit to the jurisdiction of the Facilitation Council under Section 18 of the MSME Act does the rest of the provision become mandatorily applicable to the parties.

Insofar as the second component of the petitioner's argument is concerned, the same is also justified. Sub-Section (1) of Section 18 of the MSME Act envisages reference only of disputes coming under Section 17 of the said Act, which deals with recovery of amount due for any goods supplied or services rendered by the supplier.

In the present case, however, the claim of the petitioner is wider than a mere recovery of amount due for goods supplied and also extends to a direction being sought against the respondent for purchasing the goods procured by the petitioner for supply to the respondent and, in the alternative, for compensation/damages from the respondent for not purchasing such goods.

Hence, since the scope of the present dispute extends beyond Section 17, the petitioner cannot be compelled to be restricted to the relief contemplated in Section 18 of the MSME Act, which only covers disputes raised under Section 17.

In any event, Section 18 of the MSME Act does not envisage any substantive relief or creation of rights and liabilities but merely provides one of the available modalities for parties to resolve their disputes alternatively than a court proceeding. If the disputing party chooses to opt for arbitration independently under the Arbitration and Conciliation Act, 1996 on the strength of an arbitration clause in the agreement between the parties, there is nothing in the MSME Act to prevent the claimant from doing so.

Insofar as the objection of the respondent regarding non-compliance of the Practice Directions is concerned, since the present application is one under

Section 11 of the 1996 Act, which is merely a precursor for appointment of an Arbitrator, it is not required to undergo similar rigours as a plaint/statement of claim. Only when the Section 11 stage is over and an actual appointment of arbitrator has been made are the pleadings required to be filed by the parties in the form of a claim and a defence. Thus, it would be premature to apply the full rigours of pleadings akin to a plaint at this stage.

In fact, Clause 6(1) of the Practice Directions itself provides that the rules of pleadings shall be applicable "as far as practicable". Hence, I do not find any reason to hold that at this stage, the application under Section 11 of the 1996 Act should have been drafted in the format of a plaint and/or should have clearly disclosed the category under which the commercial dispute contemplated in the proposed arbitration would fall. The said stage would come only and if only the main dispute comes before this Court. Since a Section 11 application merely seeks to invoke the arbitration clause and an appointment of an Arbitrator, who in turn will be resolving the dispute on merits, there is no requirement under Section 6(1) for such an application to strictly adhere to the rules of pleadings under the Practice Directions as contemplated for a plaint under Order VI of the Code of Civil Procedure.

Hence, the said objection of the respondent is turn down.

Since the application is otherwise maintainable and there is an arbitration clause between the parties, within the ambit of which the present dispute comes, and as the dispute is otherwise arbitrable, there cannot be any hindrance in referring the matter to arbitration.

Accordingly, AP-COM 707 of 2024 is allowed on contest, thereby appointing Mr. Reetobroto Kumar Mitra, a member of the Bar Library Club, as

the sole Arbitrator to resolve the dispute between the parties, subject to a disclosure being obtained from the said learned Arbitrator under Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix his own remuneration in consultation with the parties, within the confines of the Arbitration and Conciliation Act, 1996 read with its Fourth Schedule.

Since affidavits were not called for, it is deemed that none of the allegations made in the application are admitted by the respondent.

(SABYASACHI BHATTACHARYYA, J.)

SP/