

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM.ARBITRATION PETITION NO.451 OF 2017

Maharashtra State Electricity Distribution
Company Ltd

.. Petitioners

vs

Prerna Cables Pvt.Ltd

.. Respondents

with

COMM.ARBITRATION PETITION NO.457 OF 2017

Maharashtra State Electricity Distribution
Company Ltd

.. Petitioners

vs

Reliance Cables and Conductors Pvt.Ltd .. Respondents

with

COMM.ARBITRATION PETITION NO.458 OF 2017

Maharashtra State Electricity Distribution
Company Ltd

.. Petitioners

vs

Pratik Conductors Pvt. Ltd

.. Respondents

with

COMM.ARBITRATION PETITION NO.463 OF 2017

Maharashtra State Electricity Distribution
Company Ltd

.. Petitioners

vs

Bombay Wire Products

.. Respondents

Mr.Mustafa Doctor Sr.Counsel with Mr.Yogesh Chawak, Ms.Nidhi Singh
and Ms.Anuja Desai I.b M/s Legasis Partners for Petitioner.
Mr.Suresh Dhole, Ms.Pushpa Shinde and Mr.Anil S.Diwate
for Respondents

Coram : G.S.KULKARNI, J

Date : 5.2.2019

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1. The challenge in these petitions, under section 34 of the

Arbitration and Conciliation Act, 1996 is to the awards which are made by the Micro and Small Enterprises Facilitation Council, Konkan established under the Micro, Small Medium Enterprises Development Act, 2006. By the impugned award, the claims as made by the respondent for the payment of interest on the delayed payment of the principal amount as received by the respondents have been awarded. It is not in dispute between the parties that common issues of law and facts arise in these petitions.

2. Mr. Mustafa Doctor learned senior counsel for the petitioner in assailing these awards, has principally urged the following issues :

(i) It is submitted that the Facilitation Council lacks the jurisdiction to award interest on interest under the provisions of section 4 read with section 5 of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertaking Act, 1993 as it stood prior to the repeal by the Micro, Small Medium Enterprises Development Act, 2006 (for short, 'the 2006 Act'). Further contention is that even under the provisions of the new Act, such a claim would not be maintainable under the provisions of section 15 read with section 16 of the said Act.

(ii) The respondents were precluded from claiming the interest when the principal amount was already paid in view of the consent terms dated 10.11.1997 entered between the association of the petitioners namely Maharashtra Conductor Association in Writ Petition No. 1244 of 1997 of which the petitioner admittedly is a member, when the association had reached an over-all settlement in terms of clause 9 of the

consent terms. which reads thus :

“The petitioners and their members shall have no claim of any kind including interest on compensation against Respondent no.2 in respect of or under the said contracts in connection with the supplies already made or to be made hereafter.”

In this context, Mr.Doctor learned senior counsel for the petitioner has also submitted that on the basis of the said consent terms the respondents secured from the petitioner the contract in question as awarded in the year 1999 which is clear from the schedule annexed to the impugned award referring to the work orders issued by the petitioner in 1999.

(iii) The claim as made by the respondent was time-barred inasmuch as the summary suits which were filed by the respondents in the year 2002 were withdrawn in the year 2011 to pursue the proceedings under the 2006 Act. It is submitted that the observations of the Facilitation Council as made in the impugned award on the issue of limitation are ex-facie in the teeth of the provisions of law and that the claim as made by the petitioner was time-barred.

3. Mr.Dhole learned counsel for the respondent has opposed the admission of these petitions and would submit that the claim as made by the respondent for interest on the delayed payment of the principal amount and the interest thereon would be maintainable under the provisions of the 2006 Act. As regards the consent terms, entered into between the respondent's association

and the petitioners it is submitted that it was not relevant for the future contracts. As regards limitation, it is submitted that the proceedings under the 2006 Act were continuation of the proceedings of the summary suit.

4. In my considered opinion, the petitioners have made out a *prima facie* case for admission of these petitions.

5. Hence, Admit. Hearing of these petitions is expedited.

6. In pursuance of the previous orders passed by this Court, the amounts under the impugned awards has already been deposited in this Court by the petitioners as per the requirement of section 19 of the 2006 Act.

(G.S.KULKARNI, J)