



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2874/2012.

1.Morarjee Textiles Limited and another.

-VERSUS-

Union of India and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

CORAM : S.C.DHARMADHIKARI
AND M.T. JOSHI, JJ.

DATED : JULY 05, 2012.

Heard Shri Ravi Kadam, learned Senior
Counsel with Shri Rohit Sharma, learned Counsel for
petitioners and Shri Suresh Dhole, learned Counsel for
respondent no.3.

After hearing the learned counsel and
perusing the impugned order we are of the opinion
that arguable questions arise in the matter, therefore
the Writ Petition deserves to be admitted. Hence,
Rule.



Learned Counsel appearing for the respondent waives notice.

We have extensively heard the learned counsel on the point of interim relief.

Shri Kadam, learned Senior Counsel submits that the claim has been entertained in terms of the Micro, Small and Medium Enterprises Development Act, 2006. He invites our attention to Section 18 of the same and submits that what the reference to the Council contemplates is, that the Council has to make an attempt to facilitate resolution of the dispute by adopting a conciliatory role. It is in the event the conciliation fails, then the Council has to resort to other alternate dispute resolution, namely by Arbitration. In this case the Arbitration is also done by the same Council (Conciliatory Body) and therefore, what has been attempted is to award several claims which are ex-facie time barred. Even in terms of Section 16 which provides for the date from which the rate at which the interest is payable, exorbitant sums have been awarded and therefore, although Section 19 of the Act provides for deposit of 75% of the amount in



terms of the decree, award or the order as the case may be, there is enough scope for a writ court to dilute the rigor of Section 19.

In the instant case, if time barred claims are awarded, prima facie, then the entire sum as awarded should not be taken into consideration for determining the demand and in any event, the deposit should not be to the extent indicated in Section 19 for securing the claim of respondent no.3, amount awarded to it. On instructions Shri Kadam, learned Senior Counsel states that the petitioners are ready and willing to secure 60% of the principal amount under the Award by giving Bank guarantee of a Nationalized Bank.

On the other hand, the learned counsel appearing for the contesting respondent states that the object and purpose of the Act will be defeated if the rigor is diluted, merely because the parties resort to writ jurisdiction. In Writ Petition factual disputes are not required to be gone into. What is now attempted is to undertake an exercise of finding out whether time barred claims are awarded or not. The Act itself



provides for the claims to be awarded and to determine the liability of the buyer to make the payments.

The manner in which the Council has proceeded, it is apparent that it has taken into account Sections 15, 16, 17 and 18 of the Act, and therefore, when the payment was due, but the balance did not suffice to meet the entire liability and on the deficit interest is computed, then, none of the claims can be said to be time barred. In view of this, the learned counsel submits that as far as the interim relief is concerned, nothing should be taken away from the entitlement of the contesting respondent and the provisions of Section 19 cannot be ignored.

Having given our anxious consideration to the arguments on both the sides and having perused the petition and the annexures with the assistance of the learned Counsel for the parties, as also the award and some of the claims to which our attention is invited, we are of the opinion that while the claims were entertained by the Council in terms of the Act, until this Court determines whether the Council lacks jurisdiction, as contended or the order is vitiated on



account of non compliance with the principles of natural justice or otherwise, it would not be proper to dilute the rigor of Section 19 of the Act. However, since several claims are being awarded including that of interest and the operative award would demonstrate this fact, we are of the opinion that interest of justice would be served if the petitioners deposits in this Court a sum equivalent to 75% of Rs. 13,40,00,000/- (Rs. Thirteen Crores and Fourty lacs) within a period of three months as a condition for stay of the Impugned Award. It is made clear that for a period of three months from today, no coercive measure shall be initiated so as to enable the petitioners to comply with the orders passed by this Court. The Executing Court shall also not undertake any execution proceedings nor initiate any coercive measure to recover the sum under award, against the petitioners. Needless to state that in default the entire awarded amount with interest can be recovered in accordance with law.

JUDGE

JUDGE

Rgd