

SECUR INDUSTRIES LTD.

v.

M/S. GODREJ AND BOYCE MFG. CO. LTD. AND ANR.

FEBRUARY 26, 2004

[RUMA PAL AND P. VENKATARAMA REDDI, JJ.]

*Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993—Section 6(2)—Claim Petition under Section making reference to the Council to act as arbitrator—Suit for declaration that claim petition **ultra vires** the provisions of the Act and also application for interim relief—Dismissal of application by Civil Court as it had no jurisdiction to stay the proceedings before the Council—Appeal—Application for interim relief during pendency of appeal—High Court staying arbitration proceedings before the Council only on the ground that no notice served by supplier on the buyer—On appeal—Held: Having regard to the scope of the authority of the Arbitral Tribunal, Court could not adjudicate upon the matter, thus, High Court erred in staying the proceedings before the Council—Hence order of High Court set aside—Further as issue of notice was not raised before High Court, it could not be made a ground for interfering with the Council's jurisdiction—Arbitration and Conciliation Act, 1996, Sections 16 and 21.*

The appellant filed a claim petition under section 6 of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 for referring its demand against the respondent to the State Industry Facilitation Council. The respondent No.1 then filed a suit in the Civil Court against the appellant and the Council for a declaration that the claim petition was **ultra vires** the provisions of the Act; and also filed an application for interim relief. The Civil Court granted an ad interim injunction but ultimately dismissed the application for interim relief holding that the Court could not intervene in arbitration proceedings except to the extent prescribed under the 1996 Act, under which the Court had no jurisdiction to stay the proceedings before the Council. The respondent No.1 then filed an appeal. During pendency, on an application filed for interim relief the High Court stayed arbitration proceedings before the Council only on the ground that no notice had been served by the appellant on the respondent No.1 under Section 21 of the 1996 Act. Hence the present appeal.

A Allowing the appeal, the Court

HELD: 1.1. The High Court erred in staying proceedings before the Council. It had no jurisdiction to do so. [711-F]

B 1.2. The proceedings before the Council are proceedings under the Arbitration and Conciliation Act, 1996, pursuant to a deemed agreement between the parties to the dispute. With the applicability of Part I of the 1996 Act in all its force, the extent of judicial intervention in arbitrations is limited by the non-obstante provisions of Section 5 of the 1996 Act. Therefore, the Civil Court rightly held that the Court could only intervene in respect of matters expressly provided for in the 1996 Act. [710-B-C]

C *Konkan Railways Corporation Ltd. v. Rani Construction Pvt. Ltd.*, [2002] 2 SCC 388, referred to.

D 1.3. Under the 1996 Act, the Arbitral Tribunal has been given a very wide area of operation and it is the Court's powers which have been statutory curtailed. Having regard to the scope of the authority of the Arbitral Tribunal under Section 16 of the 1996 Act, the validity of the proceedings before the Arbitral Tribunal is an issue which the Council could adjudicate upon, and not the Court. Therefore, the Council can go into the question whether its authority had been wrongly invoked by the appellant and it is open to it to hold that it had no jurisdiction to proceed with the matter. Indeed it is incumbent on the Court to refer the parties to arbitration under Section 8(1) of the 1996 Act if a suit is filed in a matter which is the subject matter of an arbitration agreement. Furthermore, even while this question is pending decision before a Court, the Arbitral Tribunal may proceed with the arbitration under Section 8(3) and make its award. [711-C; 710-F-G]

F 1.4. The submission that Section 16 of the 1996 Act does not apply to the instant case because the reference is a statutory one cannot be accepted. [710-H]

G *Rohtas Industries Ltd. and Anr. v. Rohtas Industries Staff Union and Ors.*, [1976] 2 SCC 82, distinguished.

H 1.5. The High Court stayed the proceedings before the Council, only on the ground of failure of the appellant to serve notice on the respondent No.1 under Section 21 of the 1996 Act. The point was not raised before the High Court at all by the respondent No.1. Whether the notice was a notice

under Section 21 and whether the giving of notice under Section 21 is to be construed as a pre-condition to the exercise of jurisdiction by the Council are questions to be decided by the Council and could not be a ground for the High Court interfering with the Council's jurisdiction and staying proceedings before it. [711-D-F] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1417 of 2004. B

From the Judgment and Order dated 21.1.2003 of the Bombay High Court in C Appln. No. 89/2003 in Appeal from Order No. 70 of 2003.

Rajiv Tyagi, Ajit Kumar Singh and Ms. Bandana Agarwal for the Appellant. C

C.A. Sundaram, Sridhar Y. Chitale and Abhijit P. Medh for the Respondents.

The Judgment of the Court was delivered by D

**RUMA PAL, J.** Leave granted.

This appeal has been preferred from an interim order granted by the Division Bench of the Bombay High Court staying the arbitration proceedings before the Uttar Pradesh Industry Facilitation Council (referred to as 'the Council') set up under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (referred to as 'the Act'). E

We are not concerned with the merits of the proceedings initiated by the appellant before the Council. The only question is whether the High Court had the jurisdiction to pass the impugned order. F

The chronology of events which are relevant for the purposes of this appeal, commenced with a notice dated 11th September 2001 served by the appellant on the respondent raising a demand. The notice also contained the following paragraph: G

"You may also treat this as a notice under the provisions of the 'Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993'. Failure or non-payment will force us to move our claims as mentioned above to the appropriate authorities H

A for recovery of our dues as mentioned above.”

B In October, 2001 the appellants filed a claim petition before the Council. The Council forwarded the claim petition to the respondent No. 1 under cover of its letter dated 27th December 2001 asking the respondent No. 1 to respond to the same within a period of one month. The receipt of the claim petition was acknowledged by the respondent by letter dated 25th January 2002 and requested for time to submit its reply by six weeks. The prayer for extension of time was, however, made without prejudice to the respondent’s “legal rights and contentions relating to the impugned notice dated 27th December and the claim purported to be made under Section 6 of the said Act”.

C On 12th February 2002 the respondent No. 1 filed a suit in the City Civil Court at Bombay against the appellant who was named as the defendant No. 1 and the Council which was named as the defendant No. 2. The prayers in the plaint are, inter-alia, for a declaration that the claim petition filed by D the appellant before the Council was ultra-vires the provisions of the Act and, therefore, illegal, null and void. A permanent order of injunction was also asked for restraining further proceedings before the Council. An application was filed in the suit for interim relief by the respondent No. 1. By an order dated 5th February 2002 the City Civil Court granted an ad-interim injunction staying the proceedings under the Act. The application for interim relief was, E however, ultimately dismissed by the City Civil Court on 28th November 2002 principally on the ground that the claim had been filed by the appellant under Section 6(2) read with Section 8(1) of the Arbitration and Conciliation Act, 1996 (which we will refer to as the 1996 Act) and in view of Section 5 of the 1996 Act no Court could intervene in arbitration proceedings except F to the extent prescribed under the 1996 Act. According to the City Civil Court, the reliefs claimed for the respondent No. 1 in its suit did not fall within the ambit of those situations where interference by Court was permissible and consequently the Court had no jurisdiction to stay the proceedings before the Council.

G The respondent No. 1 preferred an appeal from the decision of the City Civil Court before the High Court. The appeal is pending. On an application for interim relief filed by the respondent No. 1 pending the appeal, the High Court by its order dated 21st January 2003 stayed the proceedings before the Council only on the ground that no notice had been served by the appellant on the respondent No. 1 under Section 21 of the 1996 Act. The High Court H rejected the appellant’s application for expediting the appeal on 2nd May

2003. Both these orders of the High Court are questioned before us in these A  
appeals.

Section 6 of the Act provides as follows:

**“Recovery of amount due**

- (1) The amount due from a buyer, together with the amount of B  
interest calculated in accordance with the provisions of Sections  
4 and 5 shall be recoverable by the supplier from the buyer by  
way of a suit or other proceedings under any law for the time  
being in force.
- (2) Notwithstanding anything contained in sub-section (1), any party C  
to a dispute may make a reference to the Industry Facilitation  
Council for acting as an arbitrator or conciliator in respect of  
the matters referred to in that sub-section and the provisions of  
the Arbitration and Conciliation Act 1996 (26 of 1996) shall D  
apply to such disputes as if the arbitration or conciliation were  
pursuant to an arbitration agreement referred to in sub-section  
(1) of section 7 of that Act.

Sub-section (2) of Section 6 expressly incorporates the provisions of  
the 1996 Act. Apart from such express incorporation, sub-section (2) of  
Section 6 goes further and creates a legal fiction whereby disputes referred E  
are to be deemed to have been made pursuant to an arbitration agreement as  
defined in Section 7 of sub-section (1) of the 1996 Act.

Incorporation of the provisions of the 1996 Act into Section 6(2) of the  
Act has also been effected by sub-sections (4) and (5) of Section 2 of the F  
1996 Act which say:

(4) This Part except sub-section (1) of section 40, sections 41 and 43  
shall apply to *every arbitration under any other enactment for the*  
*time being in force, as if the arbitration were pursuant to an arbitration*  
*agreement and as if that other enactment were an arbitration* G  
*agreement, except in so far as the provisions of this Part are*  
*inconsistent with that other enactment or with any rules made*  
*thereunder.*

(5) Subject to the provisions of sub-section (4), and save in so far as  
is otherwise provided by any law for the time being in force or in any H  
agreement in force between India and any other country or countries,

A this Part shall apply to all arbitrations and to all proceedings relating thereto”.

(emphasis added)

B The “Part” referred to in this sub-section is Part I of the 1996 Act which deals with domestic arbitrations. The proceedings before the Council, therefore, are proceedings under the 1996 Act, pursuant to a deemed agreement between the parties to the dispute. With the applicability of Part I of the 1996 Act in all its force, the extent of judicial intervention in arbitrations is limited by the non-obstante provisions of Section 5 of the 1996 Act, which stipulate:  
C “Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part”. The City Civil Court was right in its approach when it said that the Court could only intervene in respect of matters expressly provided for in the 1996 Act. The validity of the proceedings before the Arbitral Tribunal is an issue which the Council, and not the Court,  
D could decide under Section 16 of the 1996 Act. Sub-section (1) of Section 16 opens with the words “ The Arbitral Tribunal may rule on its jurisdiction...”. It has been held by this Court that the Arbitral Tribunal’s authority under Section 16 is not confined to the width of its jurisdiction but goes to the very root of its jurisdiction. (*Konkan Railways Corporation Ltd. v. Rani Construction Pvt. Ltd.*, [2002] 2 SCC 388. Therefore, the Council can go into  
E the question whether its authority had been wrongly invoked by the appellant and it is open to it to hold that it had no jurisdiction to proceed with the matter.

F The arguments which have been raised before us by the learned counsel on behalf of the respondent to a large extent related to the merits of the appellant’s claim before the Council. Having regard to the scope of the authority of the Arbitral Tribunal under Section 16, this is not a matter which the Court can adjudicate upon. Indeed it is incumbent on the Court to refer the parties to arbitration under Section 8(1) of the 1996 Act if a suit is filed  
G in a matter which is the subject matter of an arbitration agreement. Furthermore, even while this question is pending decision before a Court, the Arbitral Tribunal may proceed with the arbitration under Section 8(3) and make its award. The High Court could not, therefore, have stayed the proceedings before the Council.

H We are also unable to accept the submission of the respondent No. 1 that Section 16 of the 1996 Act does not apply to the present case because

the reference is a statutory one. The decision relied upon by the respondent No. 1 in support of this submission, namely, *Rohtas Industries Ltd. and Anr. v. Rohtas Industries Staff Union and Ors.*, [1976] 2 SCC 82 related to a voluntary reference of an industrial dispute under Section 10A of the Industrial Disputes Act. Section 10A of the Industrial Disputes Act, 1947 permits the employer and the workmen to agree to refer the dispute to the arbitration to a Labour Court or a Tribunal for adjudication "where any industrial dispute exists or is apprehended". Therefore, if there was no such industrial dispute there could be no arbitral reference. This Court therefore held that the disputes spilt 'into areas where the arbitrator deriving authority under Section 10A has no jurisdiction'. The provisions of Section 10A are entirely different from the provisions of Section 16 of the 1996 Act. There is in this case, no question of dispute spilling into areas where the Arbitral Tribunal does not have jurisdiction. Under the 1996 Act, the Arbitral Tribunal has been given a very wide and deep area of operation and it is the Court's powers which have been statutory curtailed.

This brings us to the ground on which the High Court stayed the proceedings before the Council, namely, the alleged failure of the appellant to serve notice under Section 21 of the 1996 Act. The point was not raised before the High Court at all by the respondent No. 1. This was candidly stated by the learned counsel for the respondent No. 1. Our attention was not drawn to any other legal proceeding which requires a notice to be given prior to commencing proceedings apart from Section 21 of the 1996 Act. Whether the notice was a notice under Section 21 and whether the giving of notice under Section 21 is to be construed as a pre-condition to the exercise of jurisdiction by the Council are questions which the Council will have to decide. This debate could not be a ground for the High Court interfering with the Council's jurisdiction and staying proceedings before it.

To sum up: The High Court erred in staying proceedings before the Council. It had no jurisdiction to do so.

Having regard to our conclusion, and as has been agreed by the parties, the appeal before the High Court has really become infructuous. We, therefore, set aside the decision of the High Court and treat the appeal of respondent No. 1 before the High Court as having been decided by this order. The decision of the City Civil Court is confirmed and the appeal is allowed with costs.