



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.274 of 2023

Decided on: 16th June, 2023

M/s Sterkem Pharma Private Limited **.....Petitioner**

Versus

Symbiosis Pharmaceuticals Private Limited
and others **.....Respondents**

Coram

Ms. Justice Jyotsna Rewal Dua

Whether approved for reporting?¹ Yes.

For the Petitioner: Mr. Suneet Goel, Mr. Sunil Mohan Goel
and Mr. Raman Jamalta, Advocates.

For the Respondents: Mr. Y.P.S. Dhaulta and Mr. Rupinder
Singh Thakur, Additional Advocates
General with Ms. Seema Sharma,
Deputy Advocate General, for
respondent No.3.

Jyotsna Rewal Dua, Judge

Taking into consideration the controversy involved in the matter, the relief prayed for by the petitioner and the submissions made by learned counsel, notice of this petition is not required to be served upon respondents No.1 and 2 as their interests are not affected in any manner.

2. The matter pertains to the procedure adopted by respondent No.3-the Himachal Pradesh Micro Small

¹ Whether reporters of print and electronic media may be allowed to see the order? Yes.

Enterprises Facilitation Council (in short 'MSME Council') for supplying the arbitration award to the parties.

In the instant case, there is no challenge to any order passed by the learned Arbitrator. The arbitration proceedings are not under challenge. Prayer has been made only for supplying the signed copy of the arbitral award. In view of the nature of controversy raised in the petition, the facts pleaded by the petitioner and admission thereof by the MSME Council and also taking into consideration the general practice being adopted by the MSME Council, which is invariably resulting in non-supply of signed copies of the arbitral awards to the parties, this petition has been entertained for that limited purpose.

2. Genesis of problem leading to institution of instant petition:-

2(i). Respondent No.1 made Reference No.68/2021 before the MSME Council for recovery of certain amount from the petitioner in accordance with the provisions of Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter to be referred as the '2006 Act'). Efforts were made by the MSME Council for reconciliation. The parties failed to reconcile. Accordingly, the Council in its meeting held on 21.09.2021, decided to refer the matter for arbitration to the Arbitrator to be appointed as per the provisions of Section 18 of the 2006

Act. The Council authorized its Chairman to refer the matter to the Arbitrator out of the panel of Arbitrators notified by the State Government. The Chairman of the Council, vide order dated 22.10.2021, appointed respondent No.2 as the Sole Arbitrator.

2(ii). The Arbitrator entered upon the reference. Learned Arbitrator, it seems issued notices to both the parties by way of E-mail. Present petitioner (respondent before the learned Arbitrator) was proceeded ex-parte on 22.12.2021. Present respondent No.1 filed claim petition for recovery of Rs.6,02,468/- with future interest as provided in the 2006 Act alongwith costs. Award was announced by the learned Arbitrator on 12.04.2022. Respondent No.1 was held entitled to the amount claimed. Learned Arbitrator after signing the award, dispatched the entire case file including the original award to the Chairman of the MSME Council for supplying the copies of the award to the concerned parties.

2(iii). The petitioner feeling aggrieved against the award dated 12.04.2022, laid challenge to it by filing petition under Section 34 of the Arbitration and Conciliation Act, 1996 (in short '1996 Act') in the Court of learned District Judge, Shimla. The petition was not held to be duly constituted as the signed copy of the award dated

12.04.2022 was not placed on record by the petitioner. During the pendency of its challenge to the aforesaid award, the petitioner, through its counsel, vide a written communication dated 30.06.2022 (page 20 of the paper book), requested the Arbitrator for supplying the signed copy of the award. Since signed copy of the award was not received by the petitioner, it ultimately withdrew the petition filed under Section 34 of the 1996 Act on 21.10.2022.

2(iv). In the above factual background, instant petition has been preferred by the petitioner seeking direction to the respondents to issue signed copy of the award dated 12.04.2022 in Arbitration Reference No.68/2021 (M/s) Symbiosis Pharmaceuticals Pvt. Ltd. Versus M/s Sterkem Pharma Pvt. Ltd.).

3. I have heard Sh. Raman Jamalta, learned counsel for the petitioner, Sh. Y.P.S. Dhaulta, learned Additional Advocate General and S/Sh. Suneet Goel and Sunil Mohan Goel, learned Advocates, who assisted the Court.

Learned Additional Advocate General supplied written instructions on facts from respondent No.3, which read as under:-

“Himachal Pradesh Micro Small Enterprises Facilitation Council” (HPMSEFC) supplied the certified

copy of Award passed by Sole Arbitrator Sh. J.N. Barowalia to petitioner (Buyer) as well as Supplier on 22.04.2022. The certified copy of the supplied award has been duly received by the supplier. As per the prevailing practice, the arbitrator supplies "Arbitration Award" to HPMSEFC, which is then supplied to both the parties. However, again the copy of Award duly verified by undersigned is again enclosed herewith, which can be supplied to Petitioner in open court.

On 14.06.2022, Ld. Arbitrator Sh. Barowalia was requested to provide certified copy of Award passed by him, but he expressed his inability to do so on the plea that now entire record stands submitted to HPMSEFC by him.

The signed copy of Award alongwith entire record is being supplied through the dealing official Sh. Akash Sharma, Investigator of Industries Department HP with the request to apprise the Hon'ble Court accordingly."

4. Observations:-

Before discussing the factual aspects of the matter, it would be appropriate to first refer to the provisions of the applicable Acts and the settled legal principles.

4(I). Statutory Provisions:-

4(I)(a). Section 18 of the 2006 Act, being relevant, is extracted hereinafter:-

"18. Reference to Micro and Small Enterprises Facilitation Council.-

(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for

conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the disputes as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference."

The above section provides that any eligible party to the dispute with regard to the amount due to it under Section 17 of the Act may make a reference to the MSME Council under Section 18(1) of the Act. In terms of Section 18(2) of the Act, on receipt of such reference, the Council can either itself conduct conciliation in the matter or seek the assistance of any institution/centre providing alternate dispute resolution service by making a reference to such institution/centre. The conciliation proceedings are to be conducted as per the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act. It has been

specifically mentioned in the sub-section that Sections 65 to 81 of the Arbitration and Conciliation Act will apply to such a dispute as if the conciliation was initiated under Part III of the Act.

In view of the nature of dispute involved in the instant petition, noticing Section 18(3) of the 2006 Act is more important. This sub-section provides that where the conciliation initiated under Section 18(2) of the 2006 Act fails and is terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution/centre providing alternate dispute resolution services for such arbitration. In case of adoption of procedure under Section 18(3), all provisions of the 1996 Act become applicable. The 1996 Act will then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in Section 7(1) of that Act.

4(I)(b). Once the provisions of 1996 Act become applicable, obviously provisions of Section 31 of that Act would also become applicable. Section 31 of the 1996 Act pertains to form and contents of arbitral award. The section runs as under:-

“31. Form and contents of arbitral award.— (1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(3) The arbitral award shall state the reasons upon which it is based, unless—

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Explanation.—The expression “current rate of interest” shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).

(8) The costs of an arbitration shall be fixed by the arbitral tribunal in accordance with section 31A.”

Sub-Section (5) of the above extracted Section 31 unambiguously provides for supplying the signed copy of the arbitral award to each party after the arbitral award is made.

4(II). **Legal position** in respect of significance and requirement of delivery of signed copy of the award to the parties may now be noticed:-

4(II)(a). In **(2005) 4 SCC 239 (Union of India Versus Tecco Trichy Engineers & Contractors)**, it was held that delivery of an arbitral award under Section 31(5) is not a matter of mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be 'received' by the party. This delivery by the Arbitral Tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside the award under Section 34(3) and so on. The delivery of the copy of award has the effect of conferring certain rights on the parties as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation, which would be calculated from that date, the delivery of the copy of award by the Tribunal and receipt

thereof by each party constitutes an important stage in the arbitral proceedings.

4(II)(b). In **(2011) 4 SCC 616 (State of Maharashtra and others Versus ARK Builders Private Limited)**, the Apex Court while interpreting the provisions of Section 31 of the Arbitration and Conciliation Act, held that “Section 31(1) obliges the members of the Arbitral Tribunal/arbitrator to make the award in writing and to sign it and sub-section (5) then mandates that a signed copy of the award would be delivered to each party. A *signed copy of the award would normally be delivered to the party by the arbitrator himself.* The High Court clearly overlooked that what was required by law was the delivery of a copy of the award signed by the members of the Arbitral Tribunal/arbitrator and not any copy of the award.”

4(II)(c). When a copy of the signed award is not delivered to the party itself, it would not amount to compliance with the provisions of Sub-Section (5) of Section 31 of the 1996 Act. Proper compliance with Sub-Section (5) of Section 31 would mean the delivery of a signed copy of the arbitral award on the party itself. The expression ‘party’ as defined under Section 2(1)(h) of the 1996 Act indicates a person who is a party to an arbitration agreement. The said

definition is not qualified in any way so as to include the agent of the party to such an agreement. Any reference, therefore, made in Section 31(5) and Section 34(2) of the 1996 Act can only mean the party himself and not his or her agent, or Advocate empowered to act on the basis of a 'vakalatnama'. In such circumstances, proper compliance with Section 31(5) would mean delivery of a signed copy of the arbitral award on the party himself and not on his Advocate, which gives the party concerned the right to proceed under Section 34(3) of the aforesaid Act. [Re: **(2012) 9 SCC 496 (Benarsi Krishna Committee and others Versus Karmyogi Shelters Private Limited)**].

4(II)(d). (2021) 7 SCC 657 (Dakshin Haryana Bijli Vitran Nigam Limited Versus Navigant Technologies Private Limited), *inter-alia*, holds that there can be no finality of the award, except after it is signed, since signing of the award gives legal effect and validity to it. The making and delivery of the award are different stages of an arbitration proceeding. The award is made when it is authenticated by the person who makes it. The statute makes it obligatory for each of the members of the Tribunal to sign the award to make it a valid award. Section 31(5) enjoins upon the Arbitrator/Tribunal to provide the signed copy of the arbitral award to the parties. The receipt of a

signed copy of the award is the date from which the period of limitation for filing objections under Section 34 would commence. Hon'ble Apex Court in this judgment reiterated that on a harmonious construction of Section 31(5) read with Section 34(3), period of limitation prescribed for filing the objections would commence only from the date when the signed copy of the award is delivered to the party making the application for setting aside the award. There is only one date recognized by law, i.e. the date on which a signed copy of the final award is received by the parties, from which the period of limitation for filing objections would start ticking.

4(III). Coming back to the **facts of the case:-**

4(III)(a). In the instant case, the conciliation initiated by the MSME Council under Section 18(2) of the 2006 Act between the contesting parties was not successful. The Council did not take up the dispute for arbitration itself. It referred the dispute for arbitration to an Arbitrator (respondent No.2). Since the dispute was referred to the Arbitrator in terms of Section 18(3) of the 2006 Act, the complete Arbitration and Conciliation Act, 1996 became applicable.

4(III)(b). The award passed by the learned Arbitrator (respondent No.2) on 12.04.2022 contains following endorsements:-

- “(i) Each page of the Award has been signed by me.*
- “(ii) The Award, alongwith the entire record file, is being dispatched to the Chairman of the Facilitation Council to supply the copies of the award to the concerned parties with its covering letter etc., in view of the letter No.Ind/Dev/F(19)/HPMSFC-Policy/2020-7040 dated 17th August, 2021.”*

The above endorsements read with the written instructions supplied by respondent No.3 and the submissions made by learned counsel make the factual position clear, i.e. after signing the award, learned Arbitrator sent the entire record file of the case alongwith the original duly signed award to the MSME Council. The MSME Council then supplied certified copy of the award (certified by MSME Council) to the parties vide its forwarding letter dated 22.04.2022 (Annexure P-2). Though according to the petitioner, only a photocopy of the award was supplied to it by respondent No.3.

4(IV). Conclusion:-

The procedure adopted by respondent No.3 for supplying the copies of the arbitral award to the parties is not in consonance with the procedure mandated under the Arbitration and Conciliation Act. It is admitted case of respondent No.3 that signed copy of the arbitral award was

not supplied to the petitioner and only a copy of the award certified by it (MSME Council) was supplied. Hence, there is no escape from the conclusion that provisions of Section 31(5) of the 1996 Act have not been complied with. ◊

During hearing of the case, while showing the record, it was candidly admitted on behalf of respondent No.3 that same procedure is being adopted by it for supplying the arbitral award in other cases as well. Such practice, being not in consonance with the mandate of the 2006 Act as well as the 1996 Act, cannot be countenanced. The parties are to be provided signed copies of the arbitral award. The arbitral award is to be made available to the parties by the Arbitrator himself in accordance with the provisions of Section 31(5) of the 1996 Act. Learned Additional Advocate General made a reference to notification dated 16.04.2018 issued by the State of Himachal Pradesh in exercise of the powers conferred by Section 30 read with Section 21 of the 2006 Act. In terms of this notification, Himachal Pradesh Micro and Small Enterprises Facilitation Council Rules, 2018 have been framed, Rules 4(ix) and (x) whereof read as under:-

“(ix) Where the conciliation is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for further action, i.e. arbitration or refer it to an ‘institution’ for the same.

- (x) *The Council, after finalizing the award or receiving the award from the Institution, shall consider the case and pass an appropriate final order in the matter.”*

No advantage can be derived by the Council from the above extracted rules. Rule 4(ix) speaks of a situation where the conciliation is not successful. In that eventuality, the Council can either itself take up the dispute for arbitration or refer it for arbitration to an institution. Rule 4(x) provides for two eventualities. One where the Council after itself entering into the arbitration, finalizes the award and the other where it receives the award from the institution. As per Rule 4(x), in both the cases, the Council is to “pass an appropriate final order in the matter”. Passing of appropriate final order in the matter cannot be construed to mean that the Council is to pass an order different from the award passed by the learned Arbitrator. The MSME Council cannot sit over the award passed by the Arbitrator. Harmonious construction of provisions of the 1996 Act, the 2006 Act and 2018 Rules would lead to only one conclusion that where the award is passed by the Arbitrator, then, upon receiving a communication in that regard from the Arbitrator, the MSME Council is to pass appropriate order regarding conclusion of the arbitral proceedings and nothing more than that. The 2018 Rules cannot be construed and

interpreted to mean that the MSME Council or for that matter the appointed Arbitrator can sit over the mandate of Section 31(5) of the 1996 Act to deny supply of signed copies of the arbitral award to the parties. The legal position, the requirement and significance of supply of signed copy of arbitral award to the parties has been settled by the Hon'ble Apex Court in its various authoritative pronouncements, some of which have been enumerated above.

5. Result:-

In the net result of the above discussion, following directions are issued:-

(i). It is the bounden duty of the Arbitrator appointed by the MSME Council to issue signed copies of the arbitral award to the parties irrespective of the fact whether the parties have contested the proceedings or were proceeded ex-parte.

(ii). The Arbitrator besides sending the duly signed copies of the arbitral award to the parties, is also required to send a communication in that regard alongwith a copy of the award so passed by him for the record of MSME Council in order

to enable it to formally conclude the proceedings.

(iii). The record of the Arbitrator after passing of the award is to be retained by the Arbitrator himself.

It is not required to be sent to the MSME Council.

(iv). In the instant case, there shall be a direction to respondent No.3-the MSME Council to call for duly signed copies of the award dated 12.04.2022 passed by the learned Arbitrator (respondent No.2) in Arbitration Case No.51/2021 in Reference No.68/2021 and supply the same to the parties within two weeks from today.

The petition stands disposed of in the above terms, so also the pending miscellaneous application(s), if any. Fair and valuable assistance rendered by all the learned appearing counsel is appreciated.

June 16, 2023
Mukesh

Jyotsna Rewal Dua
Judge