VERDICTUM.IN

2025:DHC:1080

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 13.02.2025
Pronounced on : 20.02.2025

\+ **O.M.P. (COMM) 53/2025, I.A. 2636/2025, I.A. 2637/2025**

UNISON HOTELS PVT LTD .....Petitioner

Through: Mr.Anil K. Airi, Sr. Advocate with Mr.Gaurav Bahl, Mr.Mudit Ruhella, Mr.Vishal, Ms.Sadhna and Ms.Bindiya, Advocates.

versus

KNM CHEMICALS PVT LTD .....Respondent

Through: Counsel for respondent (presence not given)

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of present petition filed under Section 34 of the Arbitration & Conciliation Act, 1996 (hereafter referred to as 'A&C Act'), the petitioner seeks to set aside the impugned award dated 20.11.2024 passed by the learned Arbitral Tribunal (hereafter referred to as 'AT').

2. Vide the impugned award, the AT allowed the respondent's/claimant's claims to the following extent:

(i) Award amount of Rs.40,70,271.17/- (Rs.17,06,492/- + Rs.23,63,779.17/-) towards services rendered including interest, plus

(ii) future interest on the award amount of Rs.40,70,271.17/- as per same interest rate as awarded above in accordance with provisions of Sec.

VERDICTUM.IN

16 MSMED Act, 2006, w.e.f. from the date of passing of award by this tribunal till realization.

Pertinently, the counterclaims filed by the petitioner were rejected.

3. The facts, in a nutshell, are that the petitioner claims to be running a Five-Star Hotel under the name and style of 'The Grand' at Vasant Kunj, New Delhi. The respondent is stated to be in the business of trading of various types of chemicals for industrial use. The petitioner used to place orders from time to time for supply of different chemicals to be used for cleaning air-conditioners, cooling towers, boilers and for treating hard water etc. in order to minimize the damage to the appliances/machinery used by the petitioner.

4. Disputes having arisen, the respondent/claimant claims itself to come under the Micro and Small Entrepreneur Facilitation Council ('MSEFC'), Delhi under Section 18 of the MSMED ACT. The conciliation proceedings under the MSMED ACT having failed, the disputes were subsequently referred to Delhi Arbitration Centre (now 'DIAC') under Section 18(3) of the MSMED ACT for statutory arbitration. The learned AT enters reference. In its statement of claim, the respondent/claimant claimed that the supply of material was made by it against which bills were raised from time to time. As the petitioner had a running account maintained with the respondent, the goods were supplied and the payments were made by the petitioner bill-wise, but from time to time. It was claimed that the last payment made by the petitioner was on 22.08.2019 vide cheque for a sum of Rs.3 lacs. The respondent/claimant further claimed that on account of supply of material, a sum of Rs.99,56,397.41/- was payable by the petitioner to it towards various outstanding bills raised by it. It was further claimed that the goods were last

VERDICTUM.IN

supplied by the respondent to the petitioner on 12.06.2019 vide three invoices bearing no. T1/19-20/151, T1/19-20/152 and T1/19-20/153 for a sum of Rs.1,08,324.00, Rs.80,122.00 and for Rs.52,967/-. It was claimed that the petitioner had already taken the GST claim on the bills raised by it.

5. Apparently, during the pendency of the arbitral proceedings, the present petitioner preferred an application under Section 16 of the A&C Act and against its rejection vide order dated 08.08.2022, approached this Court vide writ petition being W.P.(C) No.12270/2022. The said writ petition came to be disposed of, thereby holding that the respondent was entitled to claim benefit under the MSMED ACT. It was further clarified that the respondent would be entitled to claim benefit under the MSMED ACT for the bills raised after the date of its registration i.e. from 13.02.2019.

6. In pursuance of the aforesaid order, the respondent filed the amended statement of claim thereby raising a claim of Rs.20,06,492/- alongwith pendent lite and future interest @ 24% from August, 2019 till its realization along with other ancillary reliefs. The petitioner also filed its statement of claim along with counterclaim for Rs.1,22,16,944/-, reimbursement of Rs.9,49,774/- being amount paid by it and Rs.50,00,000/- towards damages for loss suffered at the hands of the respondent. The respondent in support of its claim of Rs.20,06,492/- placed on record the respective bill dated 12.06.2019, including towards goods supplied on 12.06.2019. The petitioner resisted the claims by submitting that the respondent's services and the goods supplied by it were substandard for which the contract was terminated. In this regard, the petitioner filed a test report from Shriram Institute for Industrial Research for the chemical supplied by the respondent. It further alleged that though the respondent had systematically supplied

VERDICTUM.IN

substandard material from 2010 to 2015, the respondent with the connivance of the petitioner's three employees got the records to disappear. The petitioner had further stated that the need for seeking the test report was premised on the fact that the petitioner had received numerous complaints from its customers/guests. The petitioner further claimed that the respondent breached warranties by supplying the defective products which led to financial losses as well as requirement of third party intervention to rectify the damages. The AT held the respondent to fall within the definition of supplier under the MSMED Act, 2016 and thus held the dispute to fall within the ambit of MSMED Act. AT noted that the petitioner had not disputed the supplies but only claimed them to be of substandard quality. While taking note of Section 42 of the Sale of Goods Act, 1930, it observed that the acceptance of the goods is deemed to have occurred if the buyer retains the goods without raising objection within a reasonable time. AT noted that the goods were supplied vide last invoice dated 12.06.2019, however the petitioner raised objections for the first time vide emails dated 25.10.2019, 05.11.2019, 11.11.2019 and 28.11.2019 and nearly after four and a half months. AT further noted that though the complaints were premised on the ground that the same was on account of receipt of complaints from guests, no such complaint was ever produced. AT also noted that though the petitioner had claimed that the respondent had connived with the petitioner's three employees, however none of those employees were produced to support the allegations. On the aspect of test report submitted by Shriram Institute, the AT noted that the sampling was not done by the Institute and the test report was on the basis of sample supplied by the petitioner, which in AT's view diminished the evidentiary

VERDICTUM.IN

value of the report. Considering the respondent's claim of Rs.20,06,492/-, AT took note of payment of Rs.3,00,000/- made by the petitioner and accordingly after adjusting the same, awarded a sum of Rs.17,06,492/- to the respondent/claimant towards the outstanding principal amount payable. Having held so, the AT rejected the petitioner's counterclaim being devoid of merit. AT while considering award of interest, took note of Sections 16 and 17 of the MSMED Act and held that the interest would be payable from 27.07.2019 upto the date of award as the MSME interest rate compounded monthly. AT also awarded future interest till realisation.

7. Before this Court, it is urged on behalf of the petitioner that the AT erred in awarding the sum of Rs.17,06,492/- to the respondent by not taking the petitioner's submission that it had advanced a sum of Rs.9,49,774/-. Though benefit of Rs.3 lacs was granted, there is no discussion of the remaining Rs.6,10,430/-. It is further contended that the award is unreasoned and the dismissal of counterclaim is in teeth of Section 12(3) of the Sale of Goods Act. Reference was also made to Section 59 and Section 63 of the said Act.

8. Lastly, it was contended that the AT erred in discarding the test report of Shriram Institute submitted by the petitioner.

9. The scope of interference under Section 34 of the A&C Act being well defined and the challenge to an award being confined to it being patently illegal and/or against the public policy, this Court sets out to deal with the contentions raised on behalf of the petitioner. The arbitral record reveals that the parties had business dealings with each other for supply of chemicals since 2004. Though the petitioner had claimed that prior to the disputes raised before the AT, it had assessment record showing the material

VERDICTUM.IN

supplied by the respondent to be below standard, however no such material was placed before the AT. The petitioner claimed conspiracy by its own staff for the alleged disappearance of records, however this contention before AT was not substantiated by way of any oral or documentary evidence. The AT rightly observed that this contention was not supported by any oral or documentary evidence.

10. Learned Senior Counsel appearing for the petitioner placed reliance on the provisions of Sale of Goods Act to state that the respondent committed breach of warrantee and as such, its counterclaims were maintainable and that the claims were liable to be rejected and counterclaims ought to have been allowed. At this juncture, the Court takes note of Section 2 (i) (b) of the MSMED Act, which provides as under:-

> ***Section 2 (i) (b)***
> …
> *"where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier"*

11. Section 42 of the Sale of Goods Act reads as under:

> *"42. Acceptance.—*
> *The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them…"*

12. From the above, the AT after taking of the aforesaid provisions,

VERDICTUM.IN

observed that the petitioner ought to have aired its objections with regards to the quality of the goods within 15 days of receipt of the same.

13. This Court notes that as per the admitted case of the parties, the goods were lastly supplied vide invoice dated 12.06.2019, however the objections for the first time were put on record vide emails dated 25.10.2019, 05.11.2019, 11.11.2019 and 28.11.2019 i.e. after nearly four and a half months. To claim that the goods supplied by the respondent were substandard, the petitioner had relied upon the complaint received by it from its customers/guests, the test report from Shriram Institute as well as invoices showing replacement of goods that were alleged to have been damaged for the substandard chemicals supplied by the respondent. AT noted that the petitioner did not place any complaint on record of any customer/guest with regards to the same. The report from the Shriram Institute was also rightly disregarded by the AT for the sample not being collected by the Institute, rather having been supplied by the petitioner itself.

14. Apparently, the goods were last supplied by it to the petitioner on 12.06.2019 and the samples were statedly received by Shriram Institute on 18.10.2019. The invoices relied upon by the petitioner in support of its counterclaims while seeking damages are of the year 2022. AT rightly held that no documentary evidence was filed in support of the counterclaims.

15. Lastly, it is submitted on behalf of the petitioner that the AT failed to discuss a sum of Rs.6 lacs is also misplaced as AT while granting benefit of Rs.3 lacs to the petitioner, also noted the documents submitted by the respondent and rightly recorded that the parties were maintaining a running account.

16. For all of the aforementioned reasons, I find no ground to entertain

VERDICTUM.IN

the present petition and the same is accordingly dismissed along with pending applications.

MANOJ KUMAR OHRI
(JUDGE)

FEBRUARY 20, 2025/*rd/js*