

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 7491 of 2023
(Arising out of SLP (C) No 9899 of 2023)

M/s India Glycols Limited and Another

Appellants

Versus

**Micro and Small Enterprises Facilitation
Council, Medchal - Malkajgiri and Others**

Respondents

ORDER

- 1 Leave granted.
- 2 The second respondent, M/s S R Technologies (Unit II), which is governed by the provisions of the Micro Small and Medium Enterprises Development Act 2006¹, filed a claim before the Micro and Small Enterprises Facilitation Council, Medchal - Malkajgiri.

¹ "MSMED Act"

- 3 On 28 October 2021, the Facilitation Council decreed the claim in the principal sum of Rs 40,29,862, on which interest with monthly rests at three times the bank rate prevailing as on the date of the award was granted under Section 16 from the appointed day till final payment.
- 4 The award of the Facilitation Council was challenged in a petition under Articles 226/227 of the Constitution. By a judgment and order dated 14 September 2022, a Single Judge of the High Court of Telangana allowed the writ petition and set aside the award on the ground that the claim was barred by limitation.
- 5 In an appeal by the second respondent, the Division Bench by its judgment dated 21 March 2023, reversed the view of the Single Judge. The Division Bench has come to the conclusion that the writ petition instituted by the appellant was not maintainable in view of the specific remedies which are provided under the special statute. The High Court held that the appellant ought to have taken recourse to the remedy under Section 34 of the Arbitration and Conciliation Act 1996² and having failed to do so, a writ petition could not be entertained. The observations of the High Court are set out in paragraph 38 of the impugned judgment which is extracted below:

“38. Insofar maintainability of the writ petition is concerned, when respondents No.2 and 3 had an adequate, efficacious and

² “Act of 1996”

alternate remedy under Section 34 of the 1996 Act, learned Single Judge ought not to have entertained the writ petition. While maintainability of a writ petition is one aspect, entertainability is the relevant question. Considering the objective of the MSME Act and the provisions of Sections 15 to 23 thereof, learned Single Judge erred in entertaining the writ petition.

6 Having held that the petition was not maintainable, the High Court has nonetheless inquired into whether the claim was barred by the limitation and has come to the conclusion, following the decision of this Court in **Gujarat State Civil Supplies Corporation Limited vs Mahakali Foods Private Limited (Unit 2) and Another**³, that the claim was time barred.

7 We have heard Mr Parag P Tripathi, senior counsel appearing on behalf of the appellant and Dr S Muralidhar, senior counsel appearing on behalf of the second respondent.

8 Section 18⁴ of the MSMED Act provides for a reference to the Facilitation

³ (2023) 6 SCC 401

⁴ 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)

Council. Sub-section (2) of Section 18 provides for the conduct of conciliation proceedings. Sub-section (3) empowers the Council to thereafter take up the dispute for arbitration or to refer it to an institution or centre providing for Alternative Dispute Resolution services “for such arbitration”. Sub-section (3) of Section 18 stipulates that the provisions of the Act of 1996 “shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of that Act”.

- 9 Section 19 provides recourse against an award of the Facilitation Council in the following terms:

“19. Application for setting aside decree, award or order

— No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent. of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of

shall then apply to the dispute 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 case, subject to such conditions as it deems necessary to impose.”

10 In terms of Section 19, an application for setting aside an award of the Facilitation Council cannot be entertained by any court unless the appellant has deposited seventy-five per cent of the amount in terms of the award. In view of the provisions of Section 18(4), where the Facilitation Council proceeds to arbitrate upon a dispute, the provisions of the Act of 1996 are to apply to the dispute as if it is in pursuance of an arbitration agreement under sub-section (1) of Section 7 of that Act. Hence, the remedy which is provided under Section 34 of the Act of 1996 would govern an award of the Facilitation Council. However, there is a super added condition which is imposed by Section 19 of MSMED Act 2006 to the effect that an application for setting aside an award can be entertained only upon the appellant depositing with the Council seventy-five per cent of the amount in terms of the award. Section 19 has been introduced as a measure of security for enterprises for whom a special provision is made in the MSMED Act by Parliament. In view of the provisions of Section 18(4), the appellant had a remedy under Section 34 of the Act of 1996 to challenge the award which it failed to pursue.

11 In the judgment of this Court in **Gujarat State Civil Supplies Corporation Limited** (*supra*), a two-Judge Bench of the Court has observed, in the course of drawing its conclusions, that:

“The proceedings before the Facilitation Council/institute/centre acting as an arbitrator/Arbitral Tribunal

under Section 18(3) of the MSMED Act 2006 would be governed by the Arbitration Act, 1996.”

- 12 The appellant failed to avail of the remedy under Section 34. If it were to do so, it would have been required to deposit seventy-five per cent of the decretal amount. This obligation under the statute was sought to be obviated by taking recourse to the jurisdiction under Articles 226/227 of the Constitution. This was clearly impermissible.
- 13 For the above reasons, we are in agreement with the view of the Division Bench of the High Court that the writ petition which was instituted by the appellant was not maintainable.
- 14 Mr Parag P Tripathi, senior counsel appearing on behalf of the appellant sought to urge that the view of the Facilitation Council to the effect that the provisions of the Limitation Act 1963 have no application, which has been affirmed by the Division Bench in the impugned judgment, suffers from a perversity, and hence a petition under Article 226 of the Constitution ought to have been entertained. We cannot accept this submission for the simple reason that Section 18 of the MSMED Act 2006 provides for recourse to a statutory remedy for challenging an award under the Act of 1996. However, recourse to the remedy is subject to the discipline of complying with the provisions of Section 19. The entertaining of a petition under Articles 226/227 of the Constitution, in order to obviate compliance with the requirement of pre-deposit under Section 19, would defeat the object and

purpose of the special enactment which has been legislated upon by Parliament.

- 15 For the above reasons, we affirm the decision of the Division Bench by holding that it was justified in coming to the conclusion that the petition under Articles 226/227 of the Constitution instituted by the appellant was not maintainable. Hence, it was unnecessary for the High Court, having come to the conclusion that the petition was not maintainable, to enter upon the merits of the controversy which arose before the Facilitation Council.
- 16 Mr Parag P Tripathi, senior counsel then submitted that the appellant would move proceedings under Section 34 of the Act of 1996 and this Court may direct that they may be disposed of expeditiously. Having come to the conclusion that the remedy which was adopted by the appellant was thoroughly misconceived, it is not necessary for this Court to make any observation on what course of action should be adopted by the appellant. Were the appellant at this stage to take recourse to the proceedings under Section 34 of the Act of 1996, it would be open to the second respondent to object on all counts which are available in law.
- 17 For the above reasons, we affirm the impugned judgment of the High Court of Telangana dated 21 March 2023 by affirming the finding that the petition which was instituted by the appellant to challenge the award of the Facilitation Council was not maintainable, in view of the provisions of Section

34 of the Act of 1996.

18 The appeal is accordingly disposed of.

19 Pending applications, if any, stand disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[J B Pardiwala]

.....J.
[Manoj Misra]

New Delhi;
November 6, 2023
CKB

ITEM NO.1

COURT NO.1

SECTION XII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No.9899/2023

(Arising out of impugned final judgment and order dated 21-03-2023 in WA No.734/2022 passed by the High Court for The State of Telangana at Hyderabad)

M/S INDIA GLYCOLS LIMITED & ANR.

Petitioner(s)

VERSUS

MICRO AND SMALL ENTERPRISES FACILITATION
COUNCIL MEDCHAL MALKAJGIRI & ORS.

Respondent(s)

(With IA No.214813/2023 - STAY APPLICATION)

Date : 06-11-2023 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. Parag Tripathi, Sr. Adv.
Mr. Atul Shankar Mathur, Adv.
Mrs. Priya Singh, Adv.
Mr. Shubhankar, Adv.
Mr. Sarvapriya Makkar, Adv.
M/s. Khaitan & Co.

For Respondent(s) Mr. K.M. Natraj, ASG
Mr. Kanu Agarwal, Adv.
Mr. Sharath Nambair, Adv.
Mr. Yashraj Singh Bundela, Adv.

Mr. Annirudh Sharma (II), Adv.
Mr. Chitransh Sharma, Adv.
Mr. Amrish Kumar, AOR

Mr. S. Muralidhar, Sr. Adv.
Mr. Suresh Dhole, Adv.
Ms. Pushpa Shinde, Adv.
Dr. Sushil Balwada, AOR
Mr. Kaushal Yadav, Adv.
Mr. Nandlal Kumar Mishra, Adv.
Mr. Abhishek Yadav, Adv.
Dr. Ajay Kumar, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 Leave granted.
- 2 The appeal is disposed of in terms of the signed order.
- 3 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar
(Signed order is placed on the file)