

2022 LiveLaw (SC) 893

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
UDAY UMESH LALIT; CJI., BELA M. TRIVEDI; J.
31.10.2022

Micro, Small and Medium Enterprises Development Act, 2006; Section 17, 18 - Arbitration and Conciliation Act, 1996; Section 80 - No party to a dispute with regard to any amount due under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Micro and Small Enterprises Facilitation Council, though an independent arbitration agreement exists between the parties - Chapter-V of the MSMED Act, 2006 would override the provisions of the Arbitration Act, 1996 - The Facilitation Council, which had initiated the Conciliation proceedings under Section 18(2) of the MSMED Act, 2006 would be entitled to act as an arbitrator despite the bar contained in Section 80 of the Arbitration Act - Such proceedings would be governed by the Arbitration Act, 1996 -The Facilitation Council / institute /centre acting as an arbitral tribunal would be competent to rule on its own jurisdiction as also the other issues. (Para 34)

Micro, Small and Medium Enterprises Development Act, 2006; Section 2(n) - A party who was not the 'supplier' as per the definition contained in Section 2(n) of the MSMED Act, 2006 on the date of entering into contract cannot seek any benefit as the 'supplier' under the MSMED Act, 2006. If any registration is obtained subsequently the same would have an effect prospectively and would apply to the supply of goods and rendering services subsequent to the registration. (Para 34)

Legal Maxims - "*Leges posteriores priores contrarias abrogant*" (the later laws shall abrogate earlier contrary laws) - "*generalia specialibus non derogant*" (General laws do not prevail over Special laws). When there is apparent conflict between two statutes, the provisions of a general statute must yield to those of a special one. (Para 17, 18)

Interpretation of Statutes - Meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the court as to what is just and expedient - While interpreting a statute, if two interpretations are possible, the one which enhances the object of the Act should be preferred than the one which would frustrate the object of the Act. (Para 27)

Interpretation of Statutes - Legal Fiction - Legal fiction presupposes the existence of the State of facts which may not exist and then works out the consequences which flow from that state of facts. (Para 26)

CIVIL APPEAL NO. OF 2022 (Arising out of SLP (C) No. 12884/2020)
GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD. *versus* MAHAKALI FOODS PVT. LTD. (UNIT 2) & ANR.

CIVIL APPEAL NO. 127 OF 2018
M/S. RAMKRISHNA ELECTRICALS LTD. *versus* MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD. & ANR.

CIVIL APPEAL NO. 6167 OF 2013
M/S VIDARBHA CERAMICS PVT. LTD. *versus* M/S STEEL AUTHORITY OF INDIA & ORS

CIVIL APPEAL NO. OF 2022 (Arising out of SLP (C) NO. 31227 OF 2018)
GUJARAT STATE PETRONET LTD. *versus* KRUNAL ENGINEERING WORKS & ORS.

CIVIL APPEAL NO. OF 2022 (Arising out of SLP (C) NO. 7375 OF 2020)
BHARAT ELECTRONICS LTD. & ANR. *versus* IBEX INTEGRATED BUSINESS EXPRESS PRIVATE LTD. & ORS.

CIVIL APPEAL NO. OF 2022 (Arising out of SLP (C) NO. 2135 OF 2021)
UNION OF INDIA *versus* M/S SIRUS GLOBAL PVT. LTD.

(Arising out of impugned final judgment and order dated 13-11-2019 in FA No.3613/2019 passed by the High Court of Gujarat at Ahmedabad)

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J U D G M E N T

BELA M. TRIVEDI, J.

1. Leave to appeal is granted in SLP(C) No. 12884/2020, SLP(C) No. 31227/2018, SLP(C) No. 7375/2020, SLP(C) No. 2135/2021 and SLP(C) No. 6166/2021.
2. All these seven appeals though factually different, involve certain common questions of law and therefore were heard together.
3. The broad outline of the impugned orders in each appeal may be stated as under:

(I) C.A. No of 2022 (@ SLP (C) No. 12884/2020)

The appellant Gujarat State Civil Supplies Corporation Ltd. (Original Petitioner), has challenged the Order dated 13.11.2019 passed by the Gujarat High Court in the First Appeal No. 3613/2019, whereby the High Court has dismissed the said appeal filed by the appellant under Section 37 of the Arbitration and Conciliation Act, 1996 (Hereinafter referred to as “the Arbitration Act, 1996”). In the said First Appeal, the appellant had challenged the Order dated 20.08.2018 passed by the Commercial Court, Ahmedabad in Commercial Civil Misc. Application No. 54/2016 filed under Section 34 of the Arbitration Act read with Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as “the MSMED Act, 2006”), whereby the commercial court had confirmed the award made by the Madhya Pradesh Micro and Small Enterprises Facilitation Council, Bhopal in Reference No. NSEFC 442/2012, holding that the provisions of MSMED Act, 2006 had an effect overriding the provisions of the Arbitration Act and that the Facilitation Council at Bhopal had the jurisdiction to adjudicate upon the disputes between the parties.

(II) C.A. No. 127/2018

The appellant M/s. Ramkrishna Electricals Ltd. (Original Respondent No. 2) has challenged the Order dated 27.06.2017 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur, in W.P. No. 4435/2011, whereby the High Court has allowed the said petition, holding that the Micro, Small Enterprises Facilitation Council, Nagpur, did not have the jurisdiction to decide the Original Application No. 24/2010 filed by the appellant herein. In the impugned order, the High Court followed its earlier decision in case ***Steel Authority Vs. MSE Facilitation Council***¹, in which it was held that the

¹ AIR 2012 Bom. 178

Facilitation Council would not be entitled to proceed under the provisions of Section 18(3) of MSMED Act, 2006 when there is an independent arbitration agreement between the parties.

(III) C.A. No. 6167/2013

The appellant M/s. Vidarbha Ceramics Pvt. Ltd. (Original Respondent No. 2) has challenged the Order dated 27.08.2010 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur, in W.P. No. 2145/2010 (AIR 2012 Bom. 178) whereby the High Court has allowed the said petition holding that the Facilitation Council, Nagpur, was not entitled to proceed under Section 18(3) of the MSMED Act, 2006 in view of an arbitration agreement executed between the parties.

(IV) C.A. of 2022 (@ SLP (C) No. 31227/2018)

The appellant Gujarat State Petronet Ltd. (Original Petitioner) has challenged the Order dated 06.08.2018 passed by the High Court of Judicature at Bombay, in W.P. No. 5459/2015, whereby the High Court disposed of the Writ Petition by holding that despite independent arbitration agreement between the parties, the respondent Facilitation Council, Thane had the jurisdiction to entertain the reference made by the Respondent No. 1 Krunal Engineering Works (Original Respondent No. 3) under Section 18 of the MSMED Act, 2006, however the High Court held that the respondent Facilitation Council itself having conducted the conciliation proceedings, could not have taken up the disputes for arbitration in view of Section 80 of the Arbitration Act, 1996. The High Court directed the Facilitation Council to refer the disputes between the parties to any institution or centre providing alternative dispute resolution services for arbitration.

(V) C.A. of 2022 (@ SLP (C) No. 7375/2020)

The appellant Bharat Electronics Ltd. & Anr. (Original Petitioners) have challenged the Order dated 20.01.2020 passed by the High Court of Judicature at Bombay in W.P. No. 7899/2017, whereby the High Court has dismissed the said petition along with the W.P. No. 9356/2018, holding that when the Facilitation Council had conducted the arbitration proceedings and passed an award under Section 18(3) of the MSMED Act, 2006 the remedy of the aggrieved party would be to take recourse to Section 34 of the Arbitration Act. The High Court relied upon the ratio in case of ***SBP & Company Vs. Patel Engineering Ltd.***² which disapproved the practice of High Courts entertaining petitions under Article 226/227 of the Constitution of India challenging the orders passed by the Arbitration Tribunal.

(VI) C.A. of 2022 (@ SLP (C) No. 2135/2021)

The appellant Union of India (Original Appellant) has challenged the Order dated 23.08.2019 passed by the Delhi High Court in LPA 42/2019, whereby the High Court while dismissing the said LPA held that despite the arbitration clause in the agreement between the parties, if the MSMED Act, 2006 is applicable to the party, Facilitation Council would have the jurisdiction under Section 18(3) to either take up the matter for arbitration itself or refer the matter for arbitration to any institution or centre providing alternative dispute resolution services.

(VII) C.A. of 2022 (@ SLP (C) No. 6166/2021)

The appellant JITF Water Infrastructure Ltd. (Original Petitioner) has challenged the Order dated 24.07.2020 passed by the Gujarat High Court in LPA 1667/2019, whereby the High

² (2005) 8 SCC 618.

Court while dismissing the said LPA and confirming the order passed by the Single Bench, held that Respondent No. 2 M/s. Aquafil Polymers Company Pvt. Ltd. and M/s. Wintech Engineering Pvt. Ltd. being integral part of the joint venture, any contract signed by the joint venture would be a contract for the benefit and on behalf of its constituents/components; and that if one of the components of the joint venture (in this case M/s Aquafil Polymers) had filed its memorandum under Section 8 of the MSMED Act, 2006 it cannot be denied the status of the supplier, even though joint venture had not filed such memorandum. The High Court further held that the respondent no. 2 Aquafil Polymers, who was the supplier had rightly applied to the Facilitation Council under Section 18(1) of the MSMED Act, 2006 and that the Facilitation Council having conducted the Conciliation process and the same having failed, the Facilitation Council had no option left but to refer it to the institution or centre providing alternative dispute resolution services for carrying out the matter further in accordance with the provisions of Arbitration Act, 1996.

4. In the background of afore-stated spectrum of cases, following common questions of law arise for consideration:

(i) Whether the provisions of Chapter-V of the MSMED Act, 2006 would have an effect overriding the provisions of the Arbitration Act, 1996?

(ii) Whether any party to a dispute with regard to any amount due under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Micro and Small Enterprises Facilitation Council under sub-section (1) of Section 18 of the said Act, if an independent arbitration agreement existed between the parties as contemplated in Section 7 of the Arbitration Act, 1996?

(iii) Whether the Micro and Small Enterprises Facilitation Council, itself could take up the dispute for arbitration and act as an arbitrator, when the council itself had conducted the conciliation proceedings under sub-section (2) of the Section 18 of the MSMED Act, 2006 in view of the bar contained in Section 80 of the Arbitration Act, 1996?

5. Before advertent to the afore-stated questions of law, beneficial would be to glance through the legislative history and the objects and reasons as also the relevant provisions of the MSMED Act, 2006 and of the Arbitration Act, 1996. So far as the legislative history of MSMED Act, 2006 is concerned, it appears that in order to promote and strengthen the small, tiny and medium scale industrial undertakings, the “Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993” (hereinafter referred to as “The Delayed Payments Act”) was enacted by the Parliament. The object of the said enactment was to provide for and regulate the payment of interest on delayed payments to the small scale and ancillary industrial undertakings. Though Sections 4 and 5 of the Delayed Payments Act, made the provisions of the recovery of amount and computation of compound interest and section 10 thereof provided for the effect overriding the other laws for the time being in force, it did not provide for any dispute resolution mechanism through which a small enterprise could avail of its remedies. The small enterprises, therefore, had to file a suit or to follow the contractual terms as contained in the arbitration agreement for the recovery of their dues. The Government of India, Ministry of Industry, the Department of Small-Scale Industries and Argo and Rural Industries, realizing the need for reforms in the then existing policies and to design new policies for the development of small and medium enterprises constituted “an expert committee on small enterprises” vide the Order dated 29.12.1995. The committee recommended for enacting an Act for the inclusion of stringent provisions for non-payment of dues to the small-scale industries. This was followed by the Small and Medium Enterprises Development Bill,

2005 in August, 2005. The said Bill was referred to the Parliamentary Standing Committee on Industry, which submitted its 176th report on the said Bill of 2005. The recommendations of the said committee culminated into the MSMED Bill, which sought to achieve following amongst other objects: -

- to make provisions for ensuring timely and smooth flow of credit to small and medium enterprises to minimize the incidence of sickness among and enhancing the competitiveness of such enterprises, in accordance with the guidelines or instructions of the Reserve Bank of India;
- to make further improvements in the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 and making that enactment a part of the proposed legislation and to repeal that enactment.

6. The MSMED Bill having been passed by both the Houses of Parliament, received the assent of the President on 16th June, 2006 and came into the Statute Book as the MSMED Act, 2006, (27 of 2006). The long title of the Act states that the said Act has been enacted to provide for facilitating the promotion and development, and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto. The Act has been divided into Six Chapters, and Chapter-V pertains to the 'Delayed payments to micro and small enterprises.'

7. Some of the definitions and provisions contained in the MSMED Act, 2006 being relevant for the purpose of deciding these appeals are reproduced hereunder: -

"2. Definitions. —In this Act, unless the context otherwise requires, —

- (a)
- (b) "appointed day" means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.

Explanation. —For the purposes of this clause, —

- (i) "the day of acceptance" means, —
 - (a) the day of the actual delivery of goods or the rendering of services; or
 - (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;
 - (ii) "the day of deemed acceptance" means, where no 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 of the actual delivery of goods or the rendering of services;
- (c)
- (d) "buyer" means whoever buys any goods or receives any services from a supplier for consideration;
- (e) (f)
- (g)
- (h) "micro enterprise" means an enterprise classified as such under sub-clause (i) of clause (a) or sub-clause (i) of clause (b) of sub-section (1) of section 7;
- (i)

- (j)
- (k)
- (l)

(m) “small enterprise” means an enterprise classified as such under sub-clause (ii) of clause (a) or sub-clause (ii) of clause (b) of sub-section (1) of section 7;

(n) “supplier” means a micro or small enterprise, which has filed a memorandum with the authority referred to in subsection (1) of section 8, and includes, —

(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956);

(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;”

Section 8(1) pertaining to the filing of Memorandum of micro, small and medium enterprises reads as under: -

“(1) Any person who intends to establish, -

- (a) a micro or small enterprise, may, at his discretion; or
- (b) a medium enterprise engaged in providing or rendering of services may, at his discretion; or
- (c) a medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), shall file the memorandum of micro, small or, as the case may be, of medium enterprise with such authority as may be specified by the State Government under sub-section (4) or the Central Government under sub-section (3):

Provided that any person who, before the commencement of this Act, established-

- (a) a small-scale industry and obtained a registration certificate, may, at his discretion; and
- (b) an industry engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), having investment in plant and machinery of more than one crore rupees but not exceeding ten crore rupees and, in pursuance of the notification of the Government of India in the erstwhile Ministry of Industry (Department of Industrial Development) number S.O. 477(E), dated the 25th July, 1991 filed an Industrial Entrepreneur's Memorandum, shall within one hundred and eighty days from the commencement of this Act, file the memorandum, in accordance with the provisions of this Act.”

8. Chapter-V of the MSMED Act, 2006 pertaining to the “delayed payments to micro and small enterprises” contains Sections 15 to 25, out of which Sections 15 to 20 and 24 being relevant are reproduced herein below:

“15. Liability of buyer to make payment. —Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day: Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

16. Date from which and rate at which interest is payable.—Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall,

notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

17. Recovery of amount due. —For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.

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 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.

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 the case, subject to such conditions as it deems necessary to impose.

20. Establishment of Micro and Small Enterprises Facilitation Council. —The State Government shall, by notification, establish one or more Micro and Small Enterprises Facilitation Councils, at such places, exercising such jurisdiction and for such areas, as may be specified in the notification.

21....

22.....

23.....

24. Overriding effect. —The provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

9. So far as the Arbitration Act, 1996 is concerned, its Bill, taking into account the United Nations Commission on International Trade Law (UNCITRAL) Model Law and Rules, sought to achieve following amongst other objects: -

- to comprehensively cover international and commercial arbitration and conciliation as also domestic arbitration and conciliation;
- to permit an arbitral tribunal to use mediation, conciliation or other procedures during the arbitral proceedings to encourage settlement of disputes;
- to provide that a settlement agreement reached by the parties as a result of conciliation proceedings will have the same status and effect as an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal.

10. The Arbitration and Conciliation Bill having been passed by both the Houses of Parliament received the assent of the President on 16th Aug. 1996, and came on the Statute Book as the Arbitration and Conciliation Act, 1996 (26 of 1996). It came into force on 22.08.1996. As per the long title of the Act, the said Act was enacted to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation, and for matters connected therewith and incidental thereto. The Act has been divided into five parts. Part-I pertains to Arbitration, Part-IA to Arbitration Council of India, PartII to Enforcement of certain Foreign Awards, Part-III to Conciliation and PartIV pertains to Supplementary Provisions.

11. Some of the relevant provisions of the Act are reproduced hereunder for ready reference: -

Section 2(1)(b) defines “arbitration agreement” to mean an agreement referred to in Section 7.

Section 2(4) reads as under:

“(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 agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.”

Section 7 reads as under:

“7. Arbitration agreement. —

- (1) In this Part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
- (2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (3) An arbitration agreement shall be in writing.
- (4) An arbitration agreement is in writing if it is contained in—
 - (a) a document signed by the parties;
 - (b) an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement; or
 - (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.”

Section 8(1) pertaining to the power of the judicial authority to refer parties to arbitration where there is an arbitration agreement, reads as under:

“8. Power to refer parties to arbitration where there is an arbitration agreement. —

(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.”

Chapter-IV pertains to the jurisdiction of arbitral tribunals. **Sections 16** thereof reads as under:

“16. Competence of arbitral tribunal to rule on its jurisdiction.

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose, —

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.”

Section 21 pertaining to the commencement of arbitral proceedings reads as under:

“21. Commencement of arbitral proceedings. —Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”

Section 42 pertaining to the jurisdiction of the courts reads as under:

“42. Jurisdiction. —Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.”

Section 43 pertaining to the Limitations reads as under:

“43. Limitations. — (1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in Court.

(2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred in section 21.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.”

12. The learned counsels appearing for the parties had made their submissions at length on various issues involved in their respective appeals. Since some of the appeals are filed by the Suppliers and some by the Buyers, for the sake of convenience, the learned counsels shall be referred to as the counsels for the Suppliers and the counsels for the Buyers instead of the counsels for the Appellants or the Respondents. Their respective submissions may be summarized as under.

13. The learned counsels for the Buyers submitted as under:

(i) The *non obstante* portion of Section 18 of the MSMED Act, 2006 does not include ‘agreement’ as expressly done in Section 16 of the said Act and therefore Section 18 cannot take precedence over an arbitration agreement executed between the parties.

(ii) The intention of the legislature not to supersede the contracts between the parties is clear, when the term “shall” in Section 16 is replaced with the term “may” in Section 18.

(iii) Section 18(1) and 18(4) have a *non obstante* clause, whereas Section 18(2), 18(3) and 18(5) do not have such *non obstante* clause. Therefore, Section 18(1) only gives an option to any party to a dispute, and does not compel the party to make a reference to the Facilitation Council. Similarly, Section 18(4) confers jurisdiction upon the Facilitation Council to act as an arbitrator or the conciliator in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(iv) As per the well settled principle of law, the Courts cannot supply *casus omissus* i.e., omission in a statute cannot be supplied by construction. In this regard, reliance is placed on the decision in case of **Shiv Shakti Cooperative Housing Society, Nagpur vs. Swaraaj Developers and Others**³ .

(v) Section 18 of MSMED Act, 2006 does not grant any substantive right to the supplier and it is merely a procedure/mechanism available to him under the Act to make reference with regard to the dispute to the Facilitation Council. The said remedy would be available only when there is no clause in the contract providing for the resolution of dispute by way of arbitration under the Arbitration Act, 1996.

³ (2003) 6 SCC 659

(vi) Sections 15, 16 and 17, though are substantive in nature, Section 18 is procedural, providing for an option to go to the Facilitation Council for the recovery of dues under Section 17.

(vii) Commercial contracts must be construed with care, since it not only affects the party's autonomy but also the country's economy. The parties to an arbitration agreement have the autonomy to decide not only on the procedural law to be followed but also the substantive law. In this regard, reliance is placed on various decisions of this Court in case of **Bharat Aluminum Company Vs. Kaiser Aluminum Technical Services⁴** & **Antrix Corporaton Limited Vs. Devas Multimedia Private Limited⁵** and **Amazon.com NV Investment Holdings LLC. Vs. Future Retail Limited and others⁶**.

(viii) The courts have to read the agreement as it is and cannot rewrite or create a new one. In this regard, reliance is placed in case of **Orissa State Financial Corporation vs. Narsingh ch. Nayak and Others⁷** and **Shin Satellite Public Co. Ltd. Vs. Jain Studios Ltd.⁸**

(ix) The doctrine of election is inbuilt in the concept of approbate and reprobate. One cannot take advantage of one part while rejecting the rest. A party cannot be allowed to have the benefit of an instrument, while questioning it at the same time.

(x) Both the Acts of 1996 and 2006 are special laws and operate in different fields. Therefore, where the agreement between the parties (one of which is micro or small enterprise) is silent about the mode of dispute resolution, then only the recourse to the provisions of Section 18 can be said to be valid. However, when the contract itself mentions about the dispute to be resolved through arbitration, then there is no occasion for invoking the provisions of MSMED Act, 2006.

(xi) The Facilitation Council cannot act as a conciliator and as an arbitrator over the same dispute, in view of the bar contained in Section 80 of the Arbitration Act, 1996.

(xii) Section 18 of 2006 Act does not override the contract entered into between the parties providing for referring the dispute to the arbitrator under the Arbitration Act, 1996. The reliance placed by the counsels for the Suppliers on the decision of this Court in **Silpi Industries etc. vs. Kerala State Road Transport Corporation and Anr.⁹** is misplaced as the observations made in the said decision with regard to the issue of effect of MSMED Act over the Arbitration Act, were *per incuriam*.

14. The learned counsels for the Suppliers made the following submissions: -

(i) The avowed object and purpose of Section 18 is to create a cost effective and expeditious dispute resolution mechanism for the recovery of an unpaid dues of a supplier under Section 17. Section 18 is not subject to a contract or an agreement to the contrary between the parties. It gives the parties a right to have their disputes adjudicated by approaching the Facilitation Council, even if there is a contractual provision setting out the manner by which the parties had to resolve their disputes.

(ii) Section 18 is consistent with Section 2(4) of the Arbitration Act, 1996 inasmuch as Section 18(3) deems the reference to statutory arbitration as the arbitration agreement for

⁴ (2012) 9 SCC 648

⁵ (2014) 11 SCC 560

⁶ (2022) 1 SCC 209

⁷ (2003) 10 SCC 261

⁸ (2006) 2 SCC 628

⁹ 2021 SCC Online SC 439

the purposes of Section 7(1) of the Arbitration Act, 1996 and therefore, once availed, the reference under Section 18 would override any agreement including arbitration agreement between the parties. The observations made in **M/s. Silpi Industries** (supra) clinches the issue that the MSMED Act, 2006 being the special legislation to protect the MSME's by setting out the statutory mechanism for the payment of interest on delayed payments, the said Act would override the provisions of the Arbitration Act 1996, which is a general legislation.

(iii) In view of the specific mandate under Section 24 of the MSMED Act 2006, the provisions of Sections 15 to 23 would have an effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

(iv) Section 18 of the MSMED Act, 2006 provides the party a statutory right to approach the council, and such right cannot be obliterated on account of an arbitration agreement entered into between the parties.

(v) Section 18(3) of the MSMED Act, 2006 creates a deeming fiction consistent with Section 2(4) of the Arbitration Act, and sets out that if conciliation is not successful and parties move to arbitration, the provisions of the Arbitration Act 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 the Act. Hence, once the mechanism under Section 18 is triggered, then it would override any agreement between the parties to arbitrate. In this regard, reliance is placed on the decision of this Court in case of **Secur Industries Ltd. Vs. Godrej & Boyce Mfg. Co. Ltd. And Anr**¹⁰.

(vi) The MSMED Act, 2006 being a special statute ought to prevail over the Arbitration Act, 1996 which is a general statute. Even if, the Arbitration Act is also treated as a special statute, the MSMED Act, 2006 would still prevail, since a special statute enacted subsequently in time prevails in case of any conflict. In this regard, reliance is placed in case of **Solidaire India Ltd. Vs. Fairgrowth Financial Services Ltd. & Ors**¹¹ and **Maruti Udyog Ltd. Vs. Ram Lal & Ors**¹².

15. The learned counsel appearing for the MSE Facilitation Council in support of the submissions made by the learned counsels for the Suppliers, made further following submissions: -

(i) Sections 15 to 19 of the MSMED Act, 2006 are interlinked and dependent on each other, which prescribe a special scheme under the Act. A cumulative effect of the said provisions would clearly override an arbitration agreement independently entered into between the parties.

(ii) Section 18 is a substantive law and not a procedural law, as it provides a right and the remedy on the MSE for resolution of disputes.

(iii) Beneficial or welfare statutes should be given a liberal and not a strict interpretation. If the words used in the beneficial statute are capable of two constructions, the one which is more in consonance with the object of the Act, and the interpretation for the benefit of the persons for whom the Act is made, should be preferred. In this regard, reliance is

¹⁰ (2004) 3 SCC 447.

¹¹ (2001) 3 SCC 71

¹² (2005) 2 SCC 638

placed on decision of this Court in case of **Union of India Vs. Prabhakaran Vijaya Kumar and Ors**¹³ and in case of **Regional Provident Fund Commr. Vs. Hoogly Mills Co. Ltd.**¹⁴.

16. Now, the first and foremost issue involved in these appeals is whether the provisions contained in Chapter V of the MSMED Act, 2006 with regard to the Delayed Payments to Micro and Small Enterprises would have the precedence over the provisions contained in the Arbitration Act, 1996, more particularly when the parties by execution of an independent agreement as contemplated in Section 7 of the Arbitration Act had agreed to submit to arbitration the disputes arising between them? In other words, whether the provisions contained in Chapter V of the MSMED Act, 2006 would have an effect overriding the provisions contained in the Arbitration Act, 1996?

17. It is trite to say that the provisions of the special statute would override the provisions of the general statute. It is also well settled that while determining the effect of a statute overriding the other statute, the purpose and policy underlying the two statutes and the clear intendment conveyed by the language of the relevant provisions therein would be the relevant consideration. This Court in **Commissioner of Income Tax, Patiala Vs. Shahzada Nand & Sons**¹⁵, while stating the fundamental rule of construction, had observed that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the court as to what is just and expedient.

18. One of principles of statutory interpretation relevant for our purpose is contained in the Latin maxim "*leges posteriores priores contrarias abrogant*" (the later laws shall abrogate earlier contrary laws). Another relevant rule of construction is contained in the maxim "*generalia specialibus non derogant*" (General laws do not prevail over Special laws). When there is apparent conflict between two statutes, the provisions of a general statute must yield to those of a special one.

19. As observed in **Kaushalya Rani Vs. Gopal Singh**¹⁶, a "Special Law" means a law enacted for special cases, in special circumstances, in contradiction to the general rules of law laid down, as applicable generally to all cases with which the general law deals.

20. Keeping in view the aforesaid principles of statutory interpretations as also the proposition of law laid down by this Court with regard to the general rules of construction, let us proceed to examine whether the MSMED Act, 2006 is a special enactment having an effect overriding the Arbitration Act, 1996 which is perceived to be a general enactment? As stated earlier, the very object of enacting MSMED Act, 2006 was to facilitate the promotion and development, and enhance the competitiveness of micro, small and medium enterprises. The Act also aimed to ensure timely and smooth flow of credit to the micro, small and medium enterprises, and to minimize the incidence of sickness. One of the main objects of the Act was to delete the Interest on Delayed Payments to Small Scale and Ancillary Industry Undertakings Act, 1993, and to include stringent provisions as also to provide dispute resolution mechanism for resolving the disputes of non-payment of dues to the micro and small enterprises. Thus, the seed of MSMED Act, 2006 had sprouted from the need for a comprehensive legislation to provide an appropriate legal framework and extend statutory support to the micro and small enterprises to enable them to develop and grow into medium ones.

¹³ (2008) 9 SCC 517

¹⁴ (2012) 2 SCC 489

¹⁵ AIR 1966 SC 1342

¹⁶ AIR 1964 SC 260

21. Section 15 to 25 contained in Chapter-V of the MSMED Act, 2006 pertain to the 'delayed payments to micro and small enterprises.' A bare perusal of the said provisions contained in Chapter-V shows that a strict liability is fastened on the buyer to make payment to the supplier who supplies any goods or renders any services to the buyer, prescribing the time limit in Section 15. Section 16 further fastens the liability on the buyer to pay compound interest if any buyer fails to make payment to the supplier as required under Section 15. Such compound interest is required to be paid at three times of the bank rate notified by the Reserve Bank, notwithstanding contained in any agreement between the buyer and supplier or in any law for the time being in force. An obligation to make payment of the amount with interest thereon as provided under Section 16 has been cast upon the buyer and a right to receive such payment is conferred on the supplier in Section 17. Thus, Section 17 is the ignition point of any dispute under MSMED Act, 2006. Section 18 thereof provides for the mechanism to enable the party to the dispute with regard to any amount due under Section 17, to make a reference to the Micro and Small Enterprises Facilitation Council.

22. Section 18 starts with a *non obstante* clause i.e., 'notwithstanding anything contained in any other law for the time being in force'. It means that the said provision has been enacted with the aim to supersede other laws for the time being in force. Further a dedicated statutory forum i.e., the Micro and Small Enterprises Facilitation Council (As established under Section 20 of the MSMED Act, 2006), has been provided to which a reference could be made by any party to the dispute. Sub-section (2) of Section 18 empowers the Facilitation Council, on receipt of such reference made under sub-section (1), to conduct Conciliation in the matter or seek assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting Conciliation, as contemplated in Section 65 to 81 of the Arbitration Act, 1996. If the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council is further empowered under sub-section (3) to either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration. The provisions of Arbitration Act, 1996 are then made applicable to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996. Sub-section (4) of Section 18 again starts with a *non obstante* clause i.e., 'notwithstanding anything contained in any other law for the time being in force', and confers jurisdiction upon the Facilitation Council to act as an arbitrator or a conciliator in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India. Sub-section (5) of Section 18 fixes the time limit of ninety days to decide such reference. Section 19 prescribes the procedure to be followed when any application is made in the court for setting aside any decree, award or other order made either by the Council itself or by any institution or centre to which reference is made by the Council. Section 24 of the MSMED Act, 2006 states that the provisions of Section 15 to 23 shall have an effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

23. Having regard to the purpose, intention and objects as also the scheme of the MSMED Act, 2006 and having regard to the unambiguous expressions used in Chapter-V thereof, following salient features emerge:

(i) Chapter-V is "party-specific", in as much as the party i.e. the 'Buyer' and the 'Supplier' as defined in Sections 2(d) and 2(n) respectively are covered under the said Chapter.

- (ii) A specific provision is made fastening a liability on the buyer to make payment of the dues to the supplier in respect of the goods supplied or services rendered to the buyer, as also a liability to pay compound interest at three times of the bank rate notified by the Reserve Bank, if the buyer fails to make payment within the prescribed time limit. The said liability to pay compound interest is irrespective of any agreement between the parties or of any law for the time being in force.
- (iii) A dedicated statutory forum i.e., Micro and Small Enterprises Facilitation Council is provided to enable any party to a dispute with regard to any amount due under Section 17, to make reference to such Council.
- (iv) A specific procedure has been prescribed to be followed by the Facilitation Council after the reference is made to it by any party to the dispute.
- (v) The Facilitation Council or the centres providing alternative dispute resolution services have been conferred with the jurisdiction to act as an Arbitrator or Conciliator under Section 18(4), notwithstanding anything contained in any law for the time being in force, in a dispute between the supplier located within its jurisdiction.
- (vi) The provisions of Arbitration Act, 1996 has been made applicable to the dispute only after the Conciliation initiated under sub-section (2) does not succeed and stands terminated without any settlement between the parties.
- (vii) Sub-section (1) and sub-section (4) of Section 18 starting with *non obstante* clauses have an effect overriding the other laws for the time being in force.
- (viii) As per Section 24, the provisions of Sections 15 to 23 have an effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

24. As against the above position, if the purpose, objects and scheme of the Arbitration Act, 1996 are considered, as stated hereinabove, the said Act was enacted to consolidate and amend the law relating to the domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards and also to define the law relating to Conciliation. It was enacted taking into account the UNCITRAL Model Law on international commercial arbitration. The main objectives amongst others of the said Act were to make provision for an arbitral procedure which was fair, efficient and capable to meet the needs of the specific arbitration and to minimize the supervisory role of courts in the arbitral process, as also to permit arbitral tribunal to use mediation, conciliation or other procedures during the arbitral proceedings in the settlement of disputes etc¹⁷. The Arbitration Act, 1996 focuses and covers the law relating to the Arbitration and Conciliation, providing for the requirements of the arbitration agreement, composition of arbitral tribunal, conduct of arbitration proceedings, finality and enforcement of domestic arbitral awards as well as of certain foreign awards, and covers the law relating to Conciliation. Having regard to the entire scheme of the Arbitration Act 1996, it appears that it is a general law relating to the domestic arbitration, international commercial arbitration and for conciliation. It does not specify any specific dispute or specific class or category of persons to which the Act shall apply, as has been specified in the MSMED Act, 2006.

25. Thus, the Arbitration Act, 1996 in general governs the law of Arbitration and Conciliation, whereas the MSMED Act, 2006 governs specific nature of disputes arising

¹⁷ *Bharat Sewa Sansthan Vs. U.P. Electronics Corporation*; AIR 2007 SC 2961.

between specific categories of persons, to be resolved by following a specific process through a specific forum. Ergo, the MSMED Act, 2006 being a special law and Arbitration Act, 1996 being a general law, the provisions of MSMED Act would have precedence over or prevail over the Arbitration Act, 1996. In **Silpi Industries** case (supra) also, this Court had observed while considering the issue with regard to the maintainability and counter claim in arbitration proceedings initiated as per Section 18(3) of the MSMED Act, 2006 that the MSMED Act, 2006 being a special legislation to protect MSME's by setting out a statutory mechanism for the payment of interest on delayed payments, the said Act would override the provisions of the Arbitration Act, 1996 which is a general legislation. Even if the Arbitration Act, 1996 is treated as a special law, then also the MSMED Act, 2006 having been enacted subsequently in point of time i.e., in 2006, it would have an overriding effect, more particularly in view of Section 24 of the MSMED Act, 2006 which specifically gives an effect to the provisions of Section 15 to 23 of the Act over any other law for the time being in force, which would also include Arbitration Act, 1996.

26. The court also cannot lose sight of the specific *non obstante* clauses contained in sub-section (1) and sub-section (4) of Section 18 which have an effect overriding any other law for the time being in force. When the MSMED Act, 2006 was being enacted in 2006, the Legislature was aware of its previously enacted Arbitration Act of 1996, and therefore, it is presumed that the legislature had consciously made applicable the provisions of the Arbitration Act, 1996 to the disputes under the MSMED Act, 2006 at a stage when the Conciliation process initiated under sub-section (2) of Section 18 of the MSMED Act, 2006 fails and when the Facilitation Council itself takes up the disputes for arbitration or refers it to any institution or centre for such arbitration. It is also significant to note that a deeming legal fiction is created in the Section 18(3) by using the expression 'as if' for the purpose of treating such arbitration as if it was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996. As held in **K. Prabhakaran v. P. Jayarajan**¹⁸, a legal fiction presupposes the existence of the State of facts which may not exist and then works out the consequences which flow from that state of facts. Thus, considering the overall purpose, objects and scheme of the MSMED Act, 2006 and the unambiguous expressions used therein, this court has no hesitation in holding that the provisions of Chapter-V of the MSMED Act, 2006 have an effect overriding the provisions of the Arbitration Act, 1996.

27. The submissions made on behalf of the counsel for the Buyers that a conscious omission of the word "agreement" in sub-section (1) of Section 18, which otherwise finds mention in Section 16 of the MSMED Act, 2006 implies that the arbitration agreement independently entered into between the parties as contemplated under Section 7 of the Arbitration Act, 1996 was not intended to be superseded by the provisions contained under Section 18 of the MSMED Act, 2006 also cannot be accepted. A private agreement between the parties cannot obliterate the statutory provisions. Once the statutory mechanism under subsection (1) of Section 18 is triggered by any party, it would override any other agreement independently entered into between the parties, in view of the *non obstante* clauses contained in sub-section (1) and sub-section (4) of Section 18. The provisions of Sections 15 to 23 have also overriding effect as contemplated in Section 24 of the MSMED Act, 2006 when anything inconsistent is contained in any other law for the time being in force. It cannot be gainsaid that while interpreting a statute, if two interpretations are possible, the one which enhances the object of the Act should be preferred than the one which would frustrate the object of the Act. If submission made by

¹⁸ (2005) 1 SCC 754

the learned counsel for the buyers that the party to a dispute covered under the MSMED Act, 2006 cannot avail the remedy available under Section 18(1) of the MSMED Act, 2006 when an independent arbitration agreement between the parties exists is accepted, the very purpose of enacting the MSMED Act, 2006 would get frustrated.

28. There cannot be any disagreement to the proposition of law laid down in various decisions of this Court, relied upon by the learned counsel for the buyers that the Court has to read the agreement as it is and cannot rewrite or create a new one, and that the parties to an arbitration agreement have an autonomy to decide not only on the procedural law to be followed but also on the substantive law, however, it is equally settled legal position that no agreement entered into between the parties could be given primacy over the statutory provisions. When the Special Act i.e., MSMED Act, 2006 has been created for ensuring timely and smooth payment to the suppliers who are the micro and small enterprises, and to provide a legal framework for resolving the dispute with regard to the recovery of dues between the parties under the Act, also providing an overriding effect to the said law over any other law for the time being in force, any interpretation in derogation thereof would frustrate the very object of the Act. The submission therefore that an independent arbitration agreement entered into between the parties under the Arbitration Act, 1996 would prevail over the statutory provisions of MSMED Act, 2006 cannot countenanced. As such, sub-section (1) of Section 18 of the MSMED Act, 2006 is an enabling provision which gives the party to a dispute covered under Section 17 thereof, a choice to approach the Facilitation Council, despite an arbitration agreement existing between the parties. Absence of the word 'agreement' in the said provision could neither be construed as *casus omissus* in the statute nor be construed as a preclusion against the party to a dispute covered under Section 17 to approach the Facilitation Council, on the ground that there is an arbitration agreement existing between the parties. In fact, it is a substantial right created in favour of the party under the said provision. It is therefore held that no party to a dispute covered under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Facilitation Council under Section 18(1) thereof, merely because there is an arbitration agreement existing between the parties.

29. The aforesaid legal position also dispels the arguments advanced on behalf of the counsel for the buyers that the Facilitation Council having acted as a Conciliator under Section 18(2) of the MSMED Act, 2006 itself cannot take up the dispute for arbitration and act as an Arbitrator. Though it is true that Section 80 of the Arbitration Act, 1996 contains a bar that the Conciliator shall not act as an Arbitrator in any arbitral proceedings in respect of a dispute that is subject of conciliation proceedings, the said bar stands superseded by the provisions contained in Section 18 read with Section 24 of the MSMED Act, 2006. As held earlier, the provisions contained in Chapter-V of the MSMED Act, 2006 have an effect overriding the provisions of the Arbitration Act, 1996. The provisions of Arbitration Act, 1996 would apply to the proceedings conducted by the Facilitation Council only after the process of conciliation initiated by the council under Section 18(2) fails and the council either itself takes up the dispute for arbitration or refers to it to any institute or centre for such arbitration as contemplated under Section 18(3) of the MSMED Act, 2006.

30. When the Facilitation Council or the institution or the centre acts as an Arbitrator, it shall have all powers to decide the disputes referred to it as if such arbitration was in pursuance of the arbitration agreement referred to in subsection (1) of Section 7 of the Arbitration Act, 1996 and then all the trappings of the Arbitration Act, 1996 would apply to such arbitration. It is needless to say that such Facilitation Council/institution/centre acting as an arbitral tribunal would also be competent to rule on its own jurisdiction like any other

arbitral tribunal appointed under the Arbitration Act, 1996 would have, as contemplated in Section 16 thereof.

31. One of the submissions made by the Ld. Counsels for the Buyers was that if the party Supplier was not the “supplier” within the meaning of Section 2(n) of the MSMED Act, 2006 on the date of the contract entered into between the parties, it could not have made reference of dispute to Micro and Small Enterprises Facilitation Council under Section 18(1) of the MSMED Act, 2006 and in such cases, the Council would not have the jurisdiction to decide the disputes as an arbitrator.

32. At this juncture, a very pertinent observations made by this Court in *Silpi Industries* case (supra) on this issue are required to be reproduced: -

“**26.** In our view, to seek the benefit of provisions under MSMED Act, the seller should have registered under the provisions of the Act, as on the date of entering into the contract. In any event, for the supplies pursuant to the contract made before the registration of the unit under provisions of the MSMED Act, no benefit can be sought by such entity, as contemplated under MSMED Act. While interpreting the provisions of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, this Court, in the judgment in the case of *Shanti Conductors Pvt. Ltd. v. Assam State Electricity Board* has held that date of supply of goods/services can be taken as the relevant date, as opposed to date on which contract for supply was entered, for applicability of the aforesaid Act. Even applying the said ratio also, the appellant is not entitled to seek the benefit of the Act.....

....by taking recourse to filing memorandum under subsection (1) of Section 8 of the Act, subsequent to entering into contract and supply of goods and services, one cannot assume the legal status of being classified under MSMED Act, 2006, as an enterprise, to claim the benefit retrospectively from the date on which appellant entered into contract with the respondent. The appellant cannot become micro or small enterprise or supplier, to claim the benefits within the meaning of MSMED Act 2006, by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods and services. If any registration is obtained, same will be prospective and applies for supply of goods and services subsequent to registration but cannot operate retrospectively. Any other interpretation of the provision would lead to absurdity and confer unwarranted benefit in favour of a party not intended by legislation.”

33. Following the above-stated ratio, it is held that a party who was not the “supplier” as per Section 2 (n) of the MSMED Act, 2006 on the date of entering into the contract, could not seek any benefit as a supplier under the MSMED Act, 2006. A party cannot become a micro or small enterprise or a supplier to claim the benefit under the MSMED Act, 2006 by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods or rendering services. If any registration, is obtained subsequently, the same would have the effect prospectively and would apply for the supply of goods and rendering services subsequent to the registration. The same cannot operate retrospectively. However, such issue being jurisdictional issue, if raised could also be decided by the Facilitation Council/Institute/Centre acting as an arbitral tribunal under the MSMED Act, 2006.

34. The upshot of the above is that:

(i) Chapter-V of the MSMED Act, 2006 would override the provisions of the Arbitration Act, 1996.

(ii) No party to a dispute with regard to any amount due under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Micro and Small Enterprises Facilitation Council, though an independent arbitration agreement exists between the

parties.

(iii) The Facilitation Council, which had initiated the Conciliation proceedings under Section 18(2) of the MSMED Act, 2006 would be entitled to act as an arbitrator despite the bar contained in Section 80 of the Arbitration Act.

(iv) The proceedings before the Facilitation Council/institute/centre acting as an arbitrator/arbitration tribunal under Section 18(3) of MSMED Act, 2006 would be governed by the Arbitration Act, 1996.

(v) The Facilitation Council/institute/centre acting as an arbitral tribunal by virtue of Section 18(3) of the MSMED Act, 2006 would be competent to rule on its own jurisdiction as also the other issues in view of Section 16 of the Arbitration Act, 1996.

(vi) A party who was not the 'supplier' as per the definition contained in Section 2(n) of the MSMED Act, 2006 on the date of entering into contract cannot seek any benefit as the 'supplier' under the MSMED Act, 2006. If any registration is obtained subsequently the same would have an effect prospectively and would apply to the supply of goods and rendering services subsequent to the registration.

35. Though afore-stated discussions and conclusions cover all the issues involved in the appeals, it would be appropriate to deal with each of the Appeals individually.

(I) C.A. No of 2022 (@ SLP(Civil) No. 12884 of 2020)

(i) In this case, the Gujarat State Civil Supplies Corporation Ltd. had challenged the award made by the Facilitation Council, Bhopal before the Commercial Court, Ahmedabad, under Section 34 of the Arbitration Act, 1996 and the commercial court vide Order dated 20.08.2018 had confirmed the said award. The appeal being the F.A. No. 3613/2019 filed by the appellant-Gujarat State Civil Supplies Corporation under Section 37 of the Arbitration Act, 1996 before the High Court of Gujarat was dismissed by the High Court vide the impugned Order dated 13.11.2019.

(ii) In the said First Appeal, the appellant had raised the issue with regard to the jurisdiction of the Facilitation Council, Bhopal, M.P. to decide the disputes between the appellant and respondent no. 1- Mahakali Foods Pvt. Ltd. The High Court following its earlier decision in ***Principal Chief Engineer Vs. M/s. Manibhai & Brothers (Sleeper) & Anr***¹⁹ held that Section 18 of the MSMED Act, 2006 would have an overriding effect over any other law for the time being in force including the Arbitration Act, 1996. The High Court also held that the contention with regard to the jurisdiction having not been raised at the time of filing the statement of defence or reply, the said contention raised subsequently could not be accepted.

(iii) As already held in the earlier part of this judgement, the provisions contained in Chapter-V of the MSMED Act, 2006 have an effect overriding any other law for the time being in force including the Arbitration Act. We therefore do not find any infirmity in the impugned order passed by the High Court.

The appeal stands dismissed accordingly.

(II) Civil Appeal No. 127 of 2018

(i) This appeal filed by the Maharashtra State Electricity Distribution Company challenging the impugned order dated 27.06.2017 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Writ Petition No. 4435 of 2011 also involves the

¹⁹ AIR 2016 Guj 151

issue as to whether the respondent Facilitation Council had the jurisdiction to decide the original application filed by the present appellant- M/s. Ramkrishna Electricals Ltd. (the Supplier under the Act) under Section 18(1) of the MSMED Act. The High Court placing reliance on its earlier decision in the case of ***M/s. Steel Authority of India & Anr. vs. MSE Facilitation Council*** (supra) has held that the Facilitation Council would not be entitled to proceed under the provisions of Section 18 of the MSMED Act, 2006 in view of the independent agreement existing between the parties.

(ii) The impugned order of the High Court deserves to be set aside in view of the foregoing conclusion arrived at by us to the effect that the Facilitation Council shall have the jurisdiction to proceed with the reference made by the party in respect of the dispute covered under Section 17 of the MSMED Act, 2006 despite the existence of an independent arbitration agreement between the parties.

The appeal stands allowed accordingly.

(III) Civil Appeal No. 6167 of 2013

(i) The present appeal is arising out of the judgment dated 21.08.2010 passed by the Division Bench of Bombay High Court, Nagpur Bench. In the said case, the present appellant (original respondent no. 2) had supplied certain goods to the respondent M/s Steel Authority of India under a contract. However, some disputes arose between the parties, and therefore the appellant invoked an arbitration clause-22 contained in the agreement and proposed to appoint Justice C.P. Sen (retired) as the arbitrator to settle the disputes through arbitration. However, the respondent Steel Authority, invoking Clause 23 of the General Conditions of Contract appointed one Mr. S. K. Gulati as an arbitrator. The said arbitrator issued notices to the parties asking them to submit their respective claims. M/s Vidarbha Ceramics instead of filing a statement of claim before the arbitrator, raised objection to the arbitration by stating that the matter be either referred to Justice C.P. Sen (retired) or be referred to the Micro and Small Enterprise Facilitation Council established under the MSMED Act, 2006. The respondent Steel Authority did not agree to the said proposition. The supplier i.e M/s Vidarbha Ceramics thereafter filed a reference before the Facilitation Council under Section 18(1) of the Act. The respondent Steel Authority filed objections before the Facilitation Council contending that the matter could not be entertained by it in view of the arbitration agreement existing between the parties. The respondent Steel Authority thereafter invoked the jurisdiction of the High Court by filing the writ petition for restraining the Council from entertaining the reference. The High Court vide impugned Order dated 28.08.2010 allowed the said writ petition by holding that the MSMED Facilitation Council was not entitled to proceed further under the provisions contained in Section 18 (3) of the MSMED Act, 2006 in view of an independent arbitration agreement having entered into between the parties.

(ii) In view of the detailed discussion and conclusions arrived at by us, hereinabove, holding that Chapter-V of the MSMED Act, 2006 has an overriding effect over the provisions contained in the Arbitration Act 1996, the Facilitation Council would be entitled to proceed further with the reference made by the party (supplier) under Section 18 (1) of the MSMED Act, 2006 despite an independent arbitration agreement existing between the parties. As a consequence, thereof, the impugned order of the High Court deserves to be set aside and the appeal deserves to be allowed.

The Appeal stands allowed accordingly.

(IV) C.A. of 2022 (@ SLP (C) No. 31227 of 2018

(i) In this appeal, the appellant Gujarat State Petronet Ltd. (original petitioner) has challenged the order dated 06.08.2018 passed by the High Court of Bombay, whereby the High Court held that the reference made to the Facilitation Council was maintainable in spite of the independent arbitration agreement. The High Court also held that the Facilitation Council having itself conducted the conciliation proceedings, it could not have decided to initiate arbitration proceedings under Section 18 (3) of the MSMED Act, 2006.

(ii) In the instant case, the respondent no.1 i.e., Krunal Works (original respondent no.3) had invoked Section 18 (1) of the MSMED Act, 2006 by approaching the Micro and Small Enterprises Facilitation Council. In the said reference, the appellant GSPL had raised an objection with regard to the jurisdiction of the Facilitation Council to entertain the reference in view of an arbitration agreement existing between the parties. The Facilitation Council had initiated conciliation proceedings between the parties, however the same having failed, the Council vide the Order dated 29.04.2015, decided to take up the dispute for arbitration. The said order was challenged by the GSPL before the Bombay High Court.

(iii) In our view, both the issues have been elaborately discussed and concluded hereinabove by holding that the reference to Facilitation Council by a party to a dispute with regard to any money due under Section 17 would be maintainable despite an independent arbitration agreement existing between the parties and that the Facilitation Council could also take up the dispute for arbitration and act as an arbitrator as contemplated under Section 18 (3) of the MSMED Act, 2006 despite the bar contained in Section 80 of the Arbitration Act 1996.

(iv) The impugned order passed by the High Court, therefore to the extent it records the finding that the Facilitation Council could not have decided to initiate arbitration proceedings by itself under Section 18 (3) of the MSMED Act, 2006 deserves to be set aside and is accordingly set aside.

(v) The arbitration proceedings before the Facilitation Council shall be proceeded further as per the Arbitration Act, 1996.

The Appeal stands disposed of accordingly.

(V) C.A. of 2022 (@ SLP (C) No. 7375 of 2020)

(i) The appeal is directed against the judgment and order dated 20.01.2020 passed by the High Court of Judicature at Bombay, whereby the High Court dismissed the writ petitions filed by the appellants (original writ petitioners) holding that the party aggrieved by the order passed by the Arbitral tribunal has to challenge the same in accordance with the provisions of the Arbitration Act, 1996. In the said case, the present respondent no.1 IBEX Integrated Business Express Private Limited (original respondent no.1– supplier) had approached the Facilitation Council for the recovery of its dues against the appellants. The appellants appeared before the Council and raised a preliminary objection with regard to the maintainability of the reference on the ground that there was an arbitration clause contained in the agreement executed between the parties.

(ii) The said preliminary objection was rejected by the Facilitation Council vide the Order dated 20.12.2014. The Council thereafter proceeded further with the reference in which the appellants filed their reply on merits to the claim made by the respondent IBEX, and the Facilitation Council eventually passed an award on 31.03.2017, allowing the said reference filed by the IBEX. Being aggrieved by the said award as well as the earlier order dated 20.12.2014 passed by the Facilitation Council, the appellants approached the High

Court by filing two writ petitions. The High Court dismissed both the petitions vide the impugned order holding that when the Facilitation Council had conducted the arbitration proceedings and passed an award, the remedy of the party aggrieved would be to take recourse to Section 34 of the Arbitration Act, 1996.

(iii) As held earlier, the proceedings before the Facilitation Council/institute/centre acting as an arbitrator are governed by the Arbitration Act, 1996 and therefore any order passed or award made by such council/institute/centre has to be challenged as per the Arbitration Act. The Appeal therefore deserves to be dismissed and is dismissed.

(VI) C.A. No..... of 2022(@ SLP (C) No. 2135 of 2021)

(i) The appeal filed by the Union of India is directed against the judgment and order dated 23.08.2019 passed by the High Court of Delhi at New Delhi in L.P.A. No. 42 of 2019. So far as the facts of the appeal are concerned – the appellant and the respondent had entered into an agreement for Annual Maintenance Contract for all equipment's at all UTS, PRS and UTS-cum-PRS locations and all equipment at the location under the control of Chief Commercial Manager (CCM)/Passenger Marketing (PM)/ Eastern Railways. When the dispute arose between the parties, the respondent instead of invoking an arbitration clause containing the agreement, approached the Micro and Small Enterprises Facilitation Council under Section 18 of the MSMED Act, 2006. The conciliation process having failed, the Facilitation Council in exercise of the powers conferred under Section 18(3) of the MSMED Act, 2006 referred the dispute between the parties to the Delhi International Arbitration Centre. The appellant challenged the said order by filing the Writ Petition being Writ Petition No. 2273 of 2018 before the Delhi High Court on the ground that the said order was without any jurisdiction, and even otherwise the respondent was not registered as the Micro and Small Enterprises under the MSMED Act, 2006 at the material point of time and, therefore, the respondent being not the supplier under the MSMED Act, 2006 the provisions of the said Act were not applicable. The Single Bench of the Delhi High Court dismissed the said petition holding that by virtue of the provisions contained in Section 24 of the MSMED Act, 2006 the provisions of the said Act would have the effect notwithstanding anything inconsistent in any other law or instrument and, therefore, the provisions of Section 18(3) of the MSMED Act, 2006 would be applicable notwithstanding the arbitration agreement in terms of Section 7 of the Arbitration Act, 1996. Being aggrieved by the said order, the appellant had preferred the appeal before the Division Bench of the Delhi High Court, which by the impugned order dated 23.08.2019 dismissed the same. The aggrieved appellant has preferred the appeal before this Court.

(ii) In view of the conclusions arrived at by us in the earlier part of the judgment, it is held that the High Court has rightly held that despite an arbitration clause in the agreement between the parties, if MSMED Act, 2006 is applicable to them, the Facilitation Council has the power, jurisdiction and authority under Section 18(3) to either take up the matter for arbitration itself or refer the matter for arbitration to any institution or centre providing alternative dispute resolution services, once the conciliation proceedings before the Facilitation Council fails. As held earlier, the Facilitation Council or the Institution or Centre to whom the disputes have been referred under Section 18(3) of the MSMED Act, 2006 would be an Arbitral Tribunal for deciding the disputes as if such arbitration was in pursuance of the arbitration agreement referred to under Section 7(1) of the Arbitration Act, 1996 and accordingly would have the jurisdiction to rule on its own jurisdiction. In that view of the matter, the present appeal deserves to be dismissed and is, accordingly, dismissed.

(VII) C.A. No..... of 2022 (@ SLP(C) No. 6166 of 2021)

(i) The appeal arises out of the judgment and order dated 24.07.2020 passed by the Division Bench of the Gujarat High Court in L.P.A. No. 1667 of 2019, whereby the Division Bench while dismissing the L.P.A held that the Respondent No. 2- M/s. Aquafil Polymers Company Pvt. Ltd. – Supplier had rightly applied under Section 18(1) of the MSMED Act, 2006 to the Respondent No. 1- MSME Commissionerate- Facilitation Council, and on the conciliation process having failed, the Facilitation Council had no option left but to refer the disputes between the parties to the Respondent No. 3- Gujarat Chambers of Commerce and Industry.

(ii) Broadly stated the facts of the case are that the appellant- JITF Water Infrastructure Limited was an Infrastructure Company which had entered into the agreement with the joint venture consisting of the Respondent No. 2 – M/s. Aquafil Polymers Company Private Limited and one Wintech Engineering Pvt. Ltd. in respect of an order issued in favour of the appellant under Guwahati Water Supply Project. The joint venture did not perform its work as per the agreement and, therefore, the appellant terminated the Contract by Notice dated 08.01.2018. In view of the Arbitration Clause contained in the agreement, the joint venture vide letter dated 08.02.2018 proposed the name of a retired Supreme Court Judge for being appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties. In response to the said letter, the appellant vide the letter dated 14.02.2018 replied that as per the relevant clause of Arbitration, only the appellant had right to appoint the Arbitrator and such right was not available to the joint venture. Accordingly, the appellant appointed another retired Supreme Court Judge as the Sole Arbitrator. The said Arbitrator appointed by the appellant directed the parties to appear for preliminary hearing, and at that stage, the respondent no. 2, i.e., the constituent of the joint venture filed an application before Respondent No. 1- Facilitation Council invoking the provisions of the MSMED Act, 2006. The Respondent No. 1- Facilitation Council undertook the process of conciliation, however, same having failed, the Respondent No. 1 referred the disputes to Respondent No. 3- Gujarat Chambers of Commerce and Industry in exercise of the powers conferred under Section 18(3) of the MSMED Act, 2006 vide order dated 30.06.2018. The said order came to be challenged by the appellant by filing a writ petition before the Gujarat High Court. The Single Bench vide its order dated 09.09.2019 dismissed the said writ petition. The aggrieved appellant preferred the L.P.A. which also came to be dismissed by the Division Bench vide order dated 24.07.2020 against which the present appeal has been filed.

(iii) The issues raised and the submissions made by the learned counsel appearing for the appellant with regard to the overriding effect of the MSMED Act, 2006 over the Arbitration Act, 1996 jurisdiction of Facilitation Council, the parties autonomy to enter into an agreement *qua* the statutory provisions, the issue of *causus omissus* etc. have been discussed and decided hereinabove which need not be reiterated or repeated. Accordingly, it is held that the reference made to the Facilitation Council would be maintainable in spite of an independent arbitration agreement existing between the parties to whom the MSMED Act, 2006 is applicable, and such Council would be entitled to proceed under sub-section (2) of Section 18 of the MSMED Act, 2006 as also to act as an Arbitrator or to refer the disputes to the institution or Centre as contemplated under Section 18(3) of the MSMED Act, 2006. As held earlier, such Facilitation Council/Institute/Centre acting as an Arbitral Tribunal would have the jurisdiction to rule over on its own jurisdiction as per Section 16 of the Arbitration Act, 1996. In that view of the matter, the present appeal also deserves to be dismissed and is, accordingly, dismissed.

36. In the aforesaid premises,

- (I) C.A. No.....of 2022 (@ SLP(c) No. 12884 of 2020) is dismissed,
- (II) C.A. No. 127 of 2018 is allowed,
- (III) C.A. No. 6167 of 2013 is allowed,
- (IV) C.A. No.....of 2022 (@ SLP(c) No. 31227 of 2018) is disposed of,
- (V) C.A. No.....of 2022 (@ SLP(c)No. 7375 of 2020) is dismissed, (VI) C.A. No.....of 2022 (@ SLP(c)No. 2135 of 2021) is dismissed and
- (VII) C.A. No.....of 2022 (@ SLP(c)No. 6166 of 2021) is dismissed.

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