

**THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN**  
**AND**  
**THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY**

**+ WRIT APPEAL No.734 of 2022**

% Date: 21.03.2023

# M/s. S.R.Technologies (Unit-II),  
Plot No.102, S.V.C.I.E.,  
Jeedimetla, Hyderabad – 500 055,  
Represented by its Proprietor Y.Balaji Balram Singh.

... Appellant

**v.**

\$ Micro and Small Enterprises Facilitation Council,  
Medchal-Malkajgiri,  
3<sup>rd</sup> Floor, A-Block, Collectorate Complex,  
ORR, Keesara – 501 301,  
And others.

... Respondents

! Counsel for the appellant : Mr. Suresh Dhole,  
Representing Mr. Gollakota Satya Jagannath

^ Counsel for respondents No.2 & 3: Mr.C.V.Mohan Reddy,  
learned Senior Counsel

< GIST:

> HEAD NOTE:

? CASES REFERRED:

1. (1994) 6 SCC 651
2. 2021 SCC OnLine SC 1257
3. 2015 SCC OnLine Hyd 494 : (2016) 3 ALD 588
4. 2019 SCC OnLine TS 2050 : (2020) 1 ALT 151
5. 2021 SCC OnLine SC 439
6. 1957 SCC OnLine Bom 15 : AIR 1957 Bom 178
7. (1961) 3 SCR 1020 : AIR 1961 SC 1285

8. (1996) 5 SCC 411
9. (2008) 4 SCC 755 : 2008 SCC OnLine SC 499
10. (2014) 11 SCC 53 : 2014 SCC OnLine SC 298
11. (2018) 10 SCC 826 : (2019) 1 SCC (Civ) 97 : 2018 SCC OnLine SC 554
12. (1983) 1 SCC 177 : 1983 SCC (Cri) 143
13. (2020) 15 SCC 533 : 2018 SCC OnLine SC 3245
14. (2020) 15 SCC 161 : 2019 SCC OnLine SC 1102
15. (2020) 2 SCC 540 : (2020) 1 SCC (Civ) 614 : 2020 SCC OnLine SC 13
16. 2022 SCC OnLine SC 1026
17. 2019 SCC OnLine SC 1154 : AIR 2019 SC 3558
18. 2022 SCC OnLine SC 1492
19. (2006) 5 SCC 658
20. (2006) 5 SCC 638
21. 2022 SCC Online SC 865
22. 2022 SCC Online SC 1322
23. AIR 2006 SC 450
24. (2020) 15 SCC 706

**THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN**  
**AND**  
**THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY**

**WRIT APPEAL No.734 of 2022**

**JUDGMENT:** *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. Suresh Dhole, learned counsel representing Mr. Gollakota Satya Jagannath, learned counsel for the appellant and Mr. C.V.Mohan Reddy, learned Senior Counsel for respondents No.2 and 3.

2. This intra-court appeal under Clause 15 of the Letters Patent has been filed against the judgment and order dated 14.09.2022 passed by the learned Single Judge allowing W.P.No.16918 of 2022 filed by respondents No.2 and 3 as the writ petitioners.

3. It may be mentioned that respondents No.2 and 3 had filed the related writ petition assailing the legality and validity of the award dated 28.10.2021 passed by the Micro and Small Enterprises Facilitation Council (briefly, "the Facilitation Council" hereinafter). By the judgment and

order dated 14.09.2022, learned Single Judge set aside the award dated 28.10.2021 by invoking jurisdiction under Article 226 of the Constitution of India.

4. Appellant before us is M/s. S.R. Technologies (Unit-II) (referred to hereinafter as, “claimant”, “supplier” or “appellant” as the case may be). Claimant is a small scale industrial unit bearing registration certificate dated 19.01.2007 issued by the District Industries Centre, Ranga Reddy, under the small manufacturing enterprises category. Claimant made a reference on 28.10.2015 under Section 18(1) of the Micro Small and Medium Enterprises Development Act, 2006 (briefly, “the MSME Act” hereinafter) to the Facilitation Council for acting as Conciliator and Arbitrator in respect of the amount claimed against M/s. India Glycols Limited (respondent No.2 herein). The amounts claimed by the claimant against respondent No.2 were as follows: Principal: Rs. 40,29,862.00 and Interest: Rs. 80,89,605.00 (as on the date of filing the reference). The reference was registered and admitted by the Facilitation Council on 28.10.2015.

4.1. According to the claimant, respondent No.2 had raised purchase order dated 17.03.2008 for supply of HVAC, doors, windows, false ceiling etc., including installation and commissioning at M/s. IGL site for their NHPS Dehradun Project for an amount of Rs.2,01,00,000.00 plus excise duty etc., with the terms and conditions of payment as under:

- a) 20% advance against acceptance of purchase order;
- b) 10% against submission of drawings;
- c) 50% payment as per the break up approved by M/s.IGL and on submission of dispatch documents on prorated basis;
- d) 10% payment will be released after mechanical completion at site to be certified by M/s.IGL representative;
- e) 10% payment shall be paid on submission of performance bank guarantee of equivalent amount as per IGL format valid for a period of 24 months from the date of successful commissioning;

4.2. According to the claimant, respondent No.2 had released 20% of the order value as advance on 08.05.2008 and further 10% of the order value as advance against submission of drawings on 31.05.2008. Thereafter, claimant started supply of goods from 04.06.2008 onwards and deputed erection team to the site. It submitted bill for supply/services on 21.03.2009. Respondent No.2 released 50% of the bills and retained balance amount. Claimant and respondent No.2 continued mechanical erection and submitted inspection report on 24.03.2009 whereafter claimant requested respondent No.2 to release 10% of the order value but the same was not responded to by respondent No.2 though respondent No.2 did not deny the fact that it owed 20% of the amount to the claimant. According to the claimant, it had deputed personnel for carrying out the necessary modifications as requested by respondent No.2 from time to time besides recording minutes of the meetings held on 14/15<sup>th</sup> October, 2009, 20<sup>th</sup> May, 2011 and 20<sup>th</sup> April, 2013, duly signed by both the parties.

4.3. Despite request by the claimant for release of the balance 20% of the purchase order amount, respondent No.2 had maintained silence without any payment. A series of correspondences were exchanged between the parties. Ultimately, claimant issued a legal notice to respondent No.2 on 18.09.2015 but received no reply. It was thereafter that the reference was made seeking the relief as indicated above.

4.4. Before the Facilitation Council both claimant and respondent No.2 were present. However, process of conciliation failed. Therefore, Facilitation Council took up the case for arbitration.

4.5. Respondent No.2 submitted its statement of defence. According to respondent No.2, claimant could complete mechanical installation only in the month of April, 2009, though the date of completion of mechanical installation was 30.06.2008. There was thus delay of nine months. Of course, respondent No.2 acknowledged that it had paid

80% of the total invoices to the claimant. However, it was alleged that key mechanical machineries supplied by the claimant were undersized and of subdued capacities. Because of faulty installations, respondent No.2 could not take up the production as planned. Making counter claim, respondent No.2 requested the Facilitation Council to direct the claimant to pay an amount of Rs.8,92,04,900.00 to respondent No.2 for financial loss as well as loss of business opportunity and also on account of damage to reputation.

4.6. This was contested by the claimant by filing reply whereafter surrejoinder and reply to surrejoinder were filed and exchanged.

4.7. After considering the claims and counter claims and after hearing the parties, Facilitation Council framed the following four issues for consideration:

- i) Is the claim of the claimant supported by invoices and documentary proof related to the claim;



- ii) Can the claimant claim interest on delayed payment and applicability of delayed payments as per provisions of the MSME Act and whether respondent No.2 was liable for such interest on delayed payment;
- iii) Is respondent No.2 eligible for counter claim?
- iv) Is the claim barred by limitation?

4.8. Insofar issue No.1 is concerned, Facilitation Council held that there was no lapse on the part of the claimant. Claimant is entitled to the claim of 20% which would be Rs.40,29,862.00. As regards issue No.2, Facilitation Council held that claimant's claim of interest is in accordance with provisions of the MSME Act, more particularly Section 16 thereof. Therefore, claimant is entitled to the same. Third issue pertained to counter claim of respondent No.2. Facilitation Council firstly observed that MSME Act is a beneficial legislation enacted to protect the interest of micro and small enterprises. Scope of MSME Act is limited only to recovery of amounts due from the buyer and in this context MSME Act provides jurisdiction to Facilitation Council to act as a conciliator or

arbitrator in respect of matters referred to in Section 17 of the MSME Act. On merit, Facilitation Council found that calculations and projections made by respondent No.2 in the counter claim were not supported by any documentary evidence. Therefore, the same could not be allowed. As to the question regarding the claim being barred by limitation, Facilitation Council held that question of the claim being barred by limitation does not arise. Sections 15 to 18 of the MSME Act have been enacted to facilitate promotion, development and enhancing the competitiveness of micro, small and medium enterprises. Primary object of the MSME Act is to protect the interest of such enterprises. Being a special legislation, Sections 15 to 18 give right to recover amounts from the buyers and confers jurisdiction on the Facilitation Council. Provisions of the MSME Act override any law in force contradicting its provisions which would mean that the supplier would have the right to recover the amount from the buyer irrespective of any other law. Provisions of Sections 15 to 18 would override provisions of the Limitation Act, 1963. As a

matter of fact, claim of the claimant was admitted in the proceedings held on 20.02.2019.

4.9. In view of such findings rendered by the Facilitation Council, award was passed on 28.10.2021 directing respondent No.2 to pay to the claimant a sum of Rs.40,29,862.00 towards principal amount; interest with monthly rests at three times the bank rate prevailing as on the date of the award as notified by Reserve Bank of India on the amount adjudicated in terms of Section 16 of the MSME Act from the date of the appointed day till full and final payment is made. Facilitation Council further directed that principal and interest amount be paid by respondent No.2 to the claimant within a period of one month from the date of receipt of the award.

5. Aggrieved by the said award dated 28.10.2021, respondents No.2 and 3 filed the related writ petition.

6. Learned Single Judge vide the judgment and order dated 14.09.2022 held that the writ court can interfere

with the award passed by the Facilitation Council under Article 226 of the Constitution of India. Section 34 of the Arbitration and Conciliation Act, 1996 (briefly, 'the 1996 Act' hereinafter) is not an effective alternative and efficacious remedy. Facilitation Council had not followed the procedure laid down under Section 18(2) of the MSME Act and also Sections 65 to 81 of the 1996 Act which are mandatory requirements. Holding that the writ petition is maintainable and that the award passed by the Facilitation Council was in violation of Section 18(2) of the MSME Act read with Sections 65 to 81 of the 1996 Act, learned Single Judge set aside the award dated 28.10.2021. Learned Single Judge further held the claim to be barred by limitation and also faulted the Facilitation Council for not considering the counter claim of respondent No.2.

7. Learned counsel for the appellant has referred to the provisions of the MSME Act as well as to the 1996 Act and submits that learned Single Judge committed a manifest error in entertaining the writ petition and setting aside the award passed by the Facilitation Council. When

respondent No.2 had the remedy to assail the award under Section 34 of the 1996 Act, it was not at all justified for the learned Single Judge to have entertained the writ petition and allowed the same. Learned Single Judge examined the award passed by the Facilitation Council like an appellate court which is not permissible.

7.1. Adverting to Section 19 of the MSME Act, he submits that respondents No.2 and 3 did not deposit 75% of the awarded amount while filing the writ petition. Learned Single Judge completely overlooked this aspect.

7.2. Setting aside of the award passed by the Facilitation Council in favour of the appellant has caused grave prejudice to the appellant. Appellant being a micro, small and medium enterprise is entitled to the full protection under the MSME Act.

7.3. Learned counsel for the appellant further submits that Facilitation Council had earlier passed an award on 20.02.2016 in favour of the appellant which was

challenged by respondent No.2 before this Court by filing W.P.No.15230 of 2016. On the ground that it was not a reasoned award, this Court had set aside the award vide the order dated 16.06.2016 and had remanded the matter back to the Facilitation Council for passing a fresh award by recording reasons and also to deal with the counter claim of respondent No.2. He submits that at no stage it was the case of respondent No.2 that there was no conciliation between the parties at the instance of the Facilitation Council and therefore the arbitral proceedings are *void ab initio*.

7.4. In the facts and circumstances of the case and in view of the earlier order of this Court dated 16.06.2016, question of setting aside the award on the ground of limitation does not arise.

7.5. In support of his submissions, learned counsel for the appellant has filed a compilation of judgments comprising the following decisions:

- i) **Tata Cellular v. Union of India<sup>1</sup>;**
- ii) **Jharkhand Urja Vikas Nigam Limited v. State of Rajasthan<sup>2</sup>;**
- iii) **Indur District Cooperative Marketing Society Ltd. v. Microplex (India), Hyderabad<sup>3</sup>;**
- iv) **M/s. Indu Projects Limited v. Telangana Micro & Small Enterprises Facilitation Council<sup>4</sup>;**
- v) **M/s. Vijeta Construction v. M/s. Indus Smelters Ltd.** (Civil Appeal No.5934 of 2021, dated 23.09.2021);
- vi) **M/s. Silpi Industries v. Kerala State Road Transport Corporation<sup>5</sup>;**
- vii) **Savitra Khandu Beradi v. Nagar Agricultural Sale and Purchase Co-operative Society Ltd., Ahmednagar<sup>6</sup>;**
- viii) **Dhanrajamal Gobindram v. Shamji Kalidas and Co.<sup>7</sup>;**
- ix) **Punjab State Electricity Board, Mahilpur v. Guru Nanak Cold Storage & Ice Factory, Mahilpur<sup>8</sup>;**

---

<sup>1</sup> (1994) 6 SCC 651

<sup>2</sup> 2021 SCC OnLine SC 1257

<sup>3</sup> 2015 SCC OnLine Hyd 494 : (2016) 3 ALD 588

<sup>4</sup> 2019 SCC OnLine TS 2050 : (2020) 1 ALT 151

<sup>5</sup> 2021 SCC OnLine SC 439

<sup>6</sup> 1957 SCC OnLine Bom 15 : AIR 1957 Bom 178

<sup>7</sup> (1961) 3 SCR 1020 : AIR 1961 SC 1285

- x) **Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.**<sup>9</sup>;
- xi) **T.N. Generation & Distribution Corpn. Ltd. v. PPN Power Generating Co. (P) Ltd.**<sup>10</sup>;
- xii) **Madhya Pradesh Rural Road Development Authority v. L.G. Chaudhary Engineers and Contractors**<sup>11</sup>;
- xiii) **T. Barai v. Henry Ah Hoe**<sup>12</sup>;
- xiv) **General Manager (Project), National Highways & Infrastructure Development Corpn. Ltd. v. Prakash Chand Pradhan**<sup>13</sup>;
- xv) **National Highways Authority of India v. Sayedabad Tea Company Limited**<sup>14</sup>;
- xvi) **State of Gujarat through Chief Secretary v. Amber Builders**<sup>15</sup>;
- xvii) **Satyender v. Saroj**<sup>16</sup>; and
- xviii) **M/s. Sterling Industries v. Jayprakash Associates Ltd.**<sup>17</sup>

---

<sup>8</sup> (1996) 5 SCC 411

<sup>9</sup> (2008) 4 SCC 755 : 2008 SCC OnLine SC 499

<sup>10</sup> (2014) 11 SCC 53 : 2014 SCC OnLine SC 298

<sup>11</sup> (2018) 10 SCC 826 : (2019) 1 SCC (Civ) 97 : 2018 SCC OnLine SC 554

<sup>12</sup> (1983) 1 SCC 177 : 1983 SCC (Cri) 143

<sup>13</sup> (2020) 15 SCC 533 : 2018 SCC OnLine SC 3245

<sup>14</sup> (2020) 15 SCC 161 : 2019 SCC OnLine SC 1102

<sup>15</sup> (2020) 2 SCC 540 : (2020) 1 SCC (Civ) 614 : 2020 SCC OnLine SC 13

<sup>16</sup> 2022 SCC OnLine SC 1026

<sup>17</sup> 2019 SCC OnLine SC 1154 : AIR 2019 SC 3558



8. Mr. C.V.Mohan Reddy, learned Senior Counsel for respondents No.2 and 3 submits that the question as to whether the arbitration proceedings were preceded by conciliation is a jurisdictional issue. It strikes at the root of the matter. As was found by the learned Single Judge, there was no conciliation. In the absence of conciliation, the award passed by the Facilitation Council would be null and void. If the award is null and void, a party cannot be relegated to the forum of alternative remedy. Question of depositing 75% of the award would also not arise.

8.1. Since the above issue is a jurisdictional one, it is immaterial whether the same had been urged by respondent No.2 in any prior proceedings.

8.2. He submits that judgment of the learned Single Judge is a well reasoned one and no case for interference is made out.

8.3. Mr. C.V.Mohan Reddy, learned Senior Counsel has elaborately referred to the award passed by the Facilitation

Council as well as to the order of the learned Single Judge and submits that learned Single Judge, as a matter of fact, had perused the original record and thereafter had come to the definite conclusion that there was no conciliation as mandatorily required under Section 18(2) and (3) of the MSME Act. In such circumstances, the award passed by the Facilitation Council is null and void and has been rightly set aside by the learned Single Judge.

8.4. He also supports the judgment and order of the learned Single Judge on the point of limitation and non-consideration of the counter claim of respondent No.2 by the Facilitation Council.

9. Submissions made by learned counsel for the parties have received the due consideration of the Court.

10. Before adverting to the order passed by the learned Single Judge, it would be apposite to briefly dilate on the MSME Act.

11. The Micro, Small and Medium Enterprises Development Act, 2006 (already referred to as, “the MSME Act”) has been enacted by the Parliament to provide for facilitating the promotion, development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto. As per the statement of objects and reasons, at the time of introduction of the related Bill in Parliament there were only two provisions viz., Section 11B and Section 29B in the Industries (Development and Regulation) Act, 1951 which dealt with small scale industrial sector. It may be mentioned that medium industry or enterprise was not even defined in any law. While Section 11B provided for definition of small scale industry by way of notification, Section 29B provided for notifying reservation of items for exclusive manufacture in the small scale industrial sector. Except these two provisions there existed no legal framework for this dynamic and vibrant sector of the country’s economy. Following suggestions by many expert groups or committees it was emphasised that there should be a comprehensive central legislation to provide for an

appropriate legal framework for the micro, small and medium enterprises to facilitate its growth and development. Therefore, to address the concerns of the entire small and medium enterprises sector, the related Bill was introduced in Parliament providing for a single legal framework.

11.1. Section 2 under Chapter I defines various words and expressions finding place in the MSME Act. Chapter II deals with establishment of a national board for micro, small and medium enterprises. While Chapter III provides for classification of enterprises, advisory committee and memorandum of micro, small and medium enterprises, Chapter IV focuses on measures for promotion, development and enhancement of competitiveness of micro, small and medium enterprises.

11.2. Chapter V deals with delayed payments to micro and small enterprises. Sections 15 to 25 of the MSME Act form part of Chapter V. As per Section 15 of the MSME Act, where any supplier i.e., a micro or small enterprise

supplies any goods or renders 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. As per the proviso, in no case the period agreed upon shall exceed forty five days from the day of acceptance or the day of deemed acceptance.

11.3. Section 16 of the MSME Act deals with payment of interest and rate of interest. It says that 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.

11.4. Section 17 of the MSME Act clarifies that 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.

11.5. Section 18 of the MSME Act is relevant for the present discourse. It deals with reference to Micro and Small Enterprises Facilitation Council (already referred to hereinabove as, 'the Facilitation Council'). Section 18 comprises of five sub-sections. Sub-section (1) starts with a *non obstante* clause. It says that 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 Facilitation Council. Sub-section (2) deals with the procedure to be followed on receipt of a reference under sub-section (1). The Facilitation 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, in which

event provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (already referred to hereinabove as, 'the 1996 Act') shall apply to such a dispute as if the conciliation was initiated under Part III of the 1996 Act comprising of Sections 65 to 81. As per sub-section (3), where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Facilitation 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. In such a case, provisions of the 1996 Act would 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 1996 Act. Sub-section (4) clarifies that notwithstanding anything contained in any other law for the time being in force, the Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an arbitrator or conciliator under Section 18 in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India. Finally, sub-section (5)

provides that every reference under Section 18 shall be decided within a period of ninety days from the date of making such reference.

11.6. Pausing here for a moment, we find that as per the scheme of Section 18 of the MSME Act, once a reference is made to the Facilitation Council with regard to any amount due under Section 17, the Facilitation Council shall first conduct conciliation either by itself or through the assistance of any institution or centre providing alternate dispute resolution services. During conciliation proceedings, provisions of Sections 65 to 81 of the 1996 Act would be applicable. If the conciliation proceedings are not successful, the Facilitation Council shall proceed for arbitration either by itself or through any institution or centre providing alternate dispute resolution services, in which event, provisions of the 1996 Act would be applicable as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of the 1996 Act. Such a reference is required to



be decided expeditiously; the time limit provided is a period of ninety days from the date of making such a reference.

11.7. This brings us to Section 19 of the MSME Act which deals with application for setting aside decree, award or order. As per Section 19, no application for setting aside any decree, award or other order made either by the Facilitation Council or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Facilitation Council shall be entertained by any court unless the appellant (not being a supplier) has deposited with the court 75% of the amount in terms of the decree, award or other order. As per the proviso, once such deposit is made and during pendency of the application for setting aside decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier i.e., micro and small enterprise as may be considered reasonable.

11.8. From a careful analysis of Section 19 of the MSME Act, it is evident that Parliament has used the expression

“shall” to make the provision a mandatory one. Therefore, it is crystal clear that no application for setting aside any decree, award or order made by the Facilitation Council or by any institution providing alternate dispute resolution services under Section 18 of the MSME Act shall be entertained by any court unless the appellant has deposited with the court 75% of the decretal or awarded amount. It is clarified that this provision will not be applicable, if the appellant is a micro or small enterprise. The proviso further mandates that once such a deposit is made, it is obligatory for the court to order such percentage of the amount deposited as may be considered reasonable be paid to the supplier i.e., micro or small enterprise.

11.9. Sections 20 and 21 of the MSME Act deal with establishment and composition of Facilitation Council.

11.10. Section 22 of the MSME Act requires a buyer to furnish information pertaining to unpaid amount with interest to the supplier in the annual statement of accounts.

11.11. Section 23 of the MSME Act which again starts with a *non obstante* clause says that notwithstanding anything contained in the Income Tax Act, 1961, the amount of interest payable or paid by any buyer under or in accordance with the provisions of the MSME Act shall not be allowed as a deduction for the purposes of computation of income under the Income Tax Act, 1961.

11.12. Section 24 of the MSME Act clarifies that provisions of Sections 15 to 23 of the MSME Act, as discussed above, shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

11.13. Even in case of closure of business of micro, small and medium enterprises Section 25 of the MSME Act requires the Central Government to notify a scheme to facilitate such closure within one year from the date of commencement of the MSME Act.

12. Thus from a conjoint reading of Sections 15 to 25 of the MSME Act, it is evident that Parliament has bestowed special attention on this significant sector of the Indian economy. It is clear that focus of the legislation is to safeguard the interest of the micro, small and medium enterprises. While a buyer is mandated to make payment to the micro or small enterprise within a definite period not exceeding forty five days from the day of acceptance or deemed acceptance, failure to make such payment would make the buyer liable to pay compound interest at three times of the bank rate notified by the Reserve Bank. The idea is to encourage prompt payment by the buyer to the supplier by making default extremely expensive. To clarify the matter further, Section 17 makes it mandatory for the buyer to make payment with interest statutorily prescribed for any goods supplied or services rendered by the supplier. In case of any dispute with regard to any amount due under Section 17, a reference may be made to the Facilitation Council. Thus Facilitation Council gets the jurisdiction in case of a dispute with regard to any amount due under Section 17 and not otherwise. Facilitation

Council will first try conciliation and if that fails, will resort to arbitration. In both instances relevant provisions of the 1996 Act would be applicable. Such a reference is to be decided expeditiously within a period of ninety days. In case any application is filed to set aside such award, the same shall not be entertained by any court unless the appellant deposits 75% of the awarded amount before the court. However, if the appellant is a micro or small enterprise, it would be exempted from such deposit. All these indicate the focus of the legislation. After the deposit is made, the court shall order such percentage of the deposit to be paid to the supplier i.e., micro or small enterprise. Parliament has also made it abundantly clear that payment of interest by the buyer under the MSME Act would not be deducted for the purpose of computation of its income under the Income Tax Act, 1961. There is a rationale behind it. In order to incentivise payment by the buyer to the supplier under the MSME Act within the period specified in which event no further interest would be accrued, the said provision has been inserted. In other words, payment of compound interest by the buyer to a

micro or small enterprise on account of delayed payment of principal amount would not be allowed as a deduction while computing income under the Income Tax Act, 1961. To further clarify the matter, it is made clear that provisions of Sections 15 to 23 of the MSME Act would have overriding effect over anything inconsistent contained in any other law for the time being in force.

13. Earlier, on the reference made by the appellant, Facilitation Council had passed award dated 20.02.2016 (page No.465 of the paper book). From a perusal of the said award it is seen that the case was placed before the Facilitation Council on 02.01.2016 wherein both claimant and respondent No.2 were present. In paragraph 12 of the said award it was mentioned that as the process of conciliation had failed, Facilitation Council took up the case for hearing. During the arbitration proceedings which followed, respondent No.2 had filed statement of defence which was summed up by the Facilitation Council in paragraph 13 to which rejoinder was filed by the claimant. It was thereafter that respondent No.2 filed surrejoinder

which was referred to in paragraph 16. After examining the evidence on record and considering the rival contentions, Facilitation Council directed respondent No.2 to make the following payments:

A) Rs. 40,29,862/- (Rupees Forty Lakh Twenty Nine Thousand Eight Hundred and Sixty Two Only) towards principal & Rs.1,21,21,495 /- (Rupees One Crore Twenty One Lakh Twenty One Thousand Four Hundred and Ninety Five Only) towards interest totalling to Rs.1,61,51,357/- (Rupees One Crore Sixty One Lakh Fifty One Thousand Three Hundred and Fifty Seven only).

B) Further interest with monthly rests at three times bank rate prevailing as on date of the award as notified by RBI on the amount adjudicated in terms of Section-16 of MSMED Act 2006 till such date the respondent makes full and final payment.

14. We have carefully gone through the statement of defence and surrejoinder filed by respondent No.2 before the Facilitation Council. Nowhere in the statement of defence or in the surrejoinder was it pleaded that there was no conciliation. Of course, respondent No.2 pleaded that the claim was barred by limitation.

15. Be that as it may, after the aforesaid award was passed by the Facilitation Council, the same was assailed by respondent No.2 before the combined High Court at Hyderabad in W.P.No.15230 of 2016. In the writ affidavit the primary ground of challenge to the award dated 20.02.2016 was that it was an unreasoned one and thus in violation of the principles of natural justice. Nowhere was it pleaded that there was no conciliation. On the other hand, there was a clear finding by the Facilitation Council in paragraph 12 of the award dated 20.02.2016 that as the process of conciliation had failed, Facilitation Council took up the case for hearing. By the order dated 16.06.2016, a learned Single Judge of this Court disposed of W.P.No.15230 of 2016 by setting aside the award dated 20.02.2016 and remanded the matter back to the Facilitation Council for passing a proper award.

15.1. From a perusal of the order dated 16.06.2016, it is seen that learned Senior Council who had appeared on behalf of respondent No.2 (petitioner in W.P.No.15230 of 2016) had argued that the award did not contain any



reasons as envisaged in Section 31 of the 1996 Act. Learned Single Judge concurred with the said submission and found that no reasons were recorded. After setting aside the award, the matter was remanded back to the Facilitation Council for passing a proper award by recording reasons. When learned Senior Counsel for respondent No.2 (petitioner in W.P.No.15230 of 2016) had submitted that it had filed counter claim which was not considered, learned Single Judge directed that Facilitation Council should deal with the counter claim in accordance with law while passing the award.

16. After the matter was remanded by the High Court to the Facilitation Council, respondent No.2 filed an application for amendment of counter claim on 05.04.2019. While elaborating on the counter claim and liquidated damages for delay in delivery, there was no whisper that there was no conciliation.

17. We have already noted the substance of the claim made by the appellant and that of statement of defence by

respondent No.2. We have also noted the issues framed by the Facilitation Council for consideration following the remand.

18. In paragraphs 11 and 13 of the impugned award dated 28.10.2021 we find that the parties were present before the Facilitation Council on 02.01.2016 and as the process of conciliation had failed, Facilitation Council took up the case for hearing under arbitration. The matter was heard thereafter on a number of dates which would be evident from the impugned award dated 28.10.2021. Objections were raised by respondent No.2 as to jurisdiction of the Facilitation Council in view of the purchase order which provided for arbitration. Overruling the objection as to jurisdiction of the Facilitation Council when the purchase order dated 17.03.2008 provided for an arbitration clause, Facilitation Council referred to Section 18 of the MSME Act more particularly to sub-section (4) thereof and recorded that provisions of the MSME Act from Sections 15 to 23 have got overriding effect over any other law for the time being in force, including the 1996 Act.

Therefore, Facilitation Council itself decided to conduct conciliation and on its failure arbitration proceedings on its own.

18.1. Thereafter Facilitation Council framed four issues for consideration which we have already noted in paragraph 4.7 above.

18.2. On issue No.1 pertaining to the merit of the claim of the claimant, Facilitation Council held as follows:

The claimant had submitted his claim along with an affidavit with details of the accounts and with actual date of payments made by the respondent. These documents were supplied to the respondent and all these documents are on record of the claim statement. The Members of the Council have carefully examined all the said documents and found that there was no dispute. It was observed by the Council that these documents were also not denied by the respondent and are treated as a part and parcel of the claim. As per the terms of the payment the respondent company retained 20% of the payment without there being any reason and there was no whisper from the respondent company within 45 days from the date of supply of material that the said material was defective in nature, The respondent failed to make the payments as

contemplated under the above said section, therefore the claimant is entitled to the recovery of the 20% of the balance amount from the respondent within 45 days from the date of acceptance or the day of deemed acceptance. The entire material supplied are as per the specifications, custom made as per the annexure to the purchase order. It is to be noted that the claimant and respondent met several times and recorded the minutes of the meeting, no alleged discrepancies and defects in various supplies made by the claimant were recorded as issues. The minutes of the meetings recorded and signed by the representatives of claimants and the respondents on various dates are evidence for carrying out the modifications/relocation and even the claimant executed additional works out of the scope of the purchase order for which not paid any amounts by the respondents. It is further to be noted that the mechanical check report dated 23-03-2009 is of submission of mechanical completion report and the delay is due to non completion of civil works and non availability of site clearance at the project which is clear in the recorded minutes of the meetings. Therefore there is no lapse on the part of the claimant and the claimant is entitled to the claim of 20% to the tune of Rs.40,29,862/- and the above claim is supported by invoices, documentary proof relating to the supplies and erection of the same at the site. Therefore this issue is decided in favour of the claimant.

18.3. Thereafter Facilitation Council dealt with the claim of interest made by the claimant on the delayed payment whereafter it has been held as follows:

- i) As per section 16 of the MSMED Act 2016, the claimant is entitled for the interest on the non payments/delayed payments. The buyer is 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 as per sections 16 and 17 of MSMED Act.
- i) The claim amount was Rs.40,29,862/- along with interest on delayed payment as per the provisions of the MSMED Act of 2006.
- ii) As per section 16 of the MSMED Act the claim was admitted so the interest accumulating till this date is also admissible as per provisions of the MSMED Act of 2006:

Therefore the claimant's claim of interest is in accordance with the provisions of the MSMED Act and therefore it is entitled for the same. Hence the issue No.2 is answered in favour of the claimant.

18.4. On the counter claim of respondent No.2 view taken by the Facilitation Council is that MSME Act is a beneficial legislation enacted to protect the interest of micro and small enterprises. Scope of the MSME Act is limited only

to recovery of amounts due from the buyer. Facilitation Council has the jurisdiction only in respect of matters referred to in Section 17 of the MSME Act. That apart, the counter claim of respondent No.2 was found to be not supported by any documentary evidence. It has been held as follows:

That the calculations and projections made by the respondent in terms of the counter claim were not supported by any documentary evidence and their claim is based on surmises and conjectures. Hence the counter claim of the respondent is not allowed. It is pertinent hereto mention here that the MSMED Act 2006 is being a beneficial legislation enacted to protect the interest of micro small enterprises and the scope of the said act is limited only to recovery of amounts due from the buyer and provisions of the said act provides jurisdiction to MSEF Council to act as an arbitrator conciliator in respect of the matters referred to in section 17 of MSMED Act.

18.5. A separate issue, being issue No.4, was framed on the objection raised by respondent No.2 that the claim lodged by the appellant was barred by limitation. It has been held by the Facilitation Council as follows:

The respondents raised the plea of limitation stating that the claim is hopelessly barred by limitation. In this aspect, this Council observes that sections 15 to 18 of the MSMED Act 2006 is enacted for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith for incidental thereto. The primary object of the above Act is to protect the interest of the enterprises covered under the Act and it being a special legislation specifically provided securities to the suppliers from the buyers a bare perusal of sections 15 to 18 gives a right to recover amounts from the buyers and conferred jurisdiction on the councils established under the said Act. The provisions of the MSMED Act 2006 overrides any law in force which contradicts the provisions of MSMED Act 2006, this means the supplier is having right to recover the amounts from the buyer irrespective of any stand under other laws. These provisions from 15 to 18 even overrides the Limitation Act 1963. Hence this issue is answered accordingly in favour of claimant. Even otherwise also, the respondent admitted his claim in the proceedings of 20-02-2019 and the same were recorded by the Council. Hence the question of barring by limitation does not arise.

18.6. Thus, according to the Facilitation Council, Sections 15 to 18 of the MSME Act have been enacted to facilitate promotion and development of micro and small enterprises and in the process to enhance their competitiveness; primary objective is to protect the interest of the enterprises covered by the MSME Act. Sections 15 to 18 confer a right on the supplier i.e., the micro and small enterprise to recover amounts from the buyer and in the event of default confers jurisdiction on the Facilitation Council to initiate conciliation and arbitration. Provisions of the MSME Act override any other law for the time being in force which are in contradiction to the provisions of the MSME Act. Therefore, Facilitation Council has held that Sections 15 to 18 of the MSME Act override the provisions of the Limitation Act, 1963. It was thereafter that the impugned award was passed.

19. We may now advert to the pleadings in W.P.No.16918 of 2022 whereby the award dated 28.10.2021 was challenged. There is no averment in the entire writ affidavit to the effect that there was no conciliation and without any



attempt at conciliation the Facilitation Council proceeded for arbitration. Without any such pleading, oral submissions were made on behalf of respondent No.2 (as recorded by the learned Single Judge) that there was no conciliation proceedings which is mandatory. Without any conciliation proceedings Facilitation Council passed the impugned award which is therefore illegal.

20. Learned Single Judge in the judgment and order dated 14.09.2022 after referring to the provisions of the 1996 Act as well as the MSME Act came to the conclusion that Facilitation Council had not conducted any conciliation in terms of Section 18(2) of the MSME Act which is mandatory. However, learned Single Judge held that as per procedure laid down in the 1996 Act, a conciliator cannot act as an arbitrator in the same dispute.

Learned Single Judge held as follows:

7. xxx xxx xxx xxx

x) Perusal of the impugned award and the record of respondent No.1 in the impugned award would reveal that respondent No.1 has not conducted any conciliation in terms of Section 18 (2) of the Act, 2006,

which is mandatory. It is also relevant to note that prior to adjudicating the matter, respondent No.1 has to refer the matter to conciliation mandatorily as prescribed by the Statute. If the conciliation is failed, respondent No.1 will adjudicate upon the matter on merits. As discussed above, in the present case, respondent No.1 failed to conduct conciliation proceedings before adjudicating the reference. Thus, there is violation of the mandatory procedure laid down under the Act, 2006. Contrary to the same, respondent No.1 in the impugned award mentioned that conciliation is failed. The said finding of respondent No.1 in the impugned award is contrary to the record and not supported by any documentary evidence.

xi) It is also relevant to note that as per the procedure laid down under the Act, 1996, Conciliator cannot act as an Arbitrator in the same dispute. In the impugned award, it is stated that Members of respondent No.1 Council have conducted conciliation and arbitration proceedings on their own. The same is impermissible. Viewed from any angle, the impugned award is contrary to the procedure laid down under the Act, 2006, more particularly, Section 18(2).

\* \* \*

xv) As discussed above, perusal of the original record in the impugned award and the impugned award would reveal that respondent No.1 has not followed the said mandatory procedure under Sections 18 (2) and 18 (3) of the Act, 2006 and also Sections - 65 to 81 of the Act,

1996. Thus, in the absence of the same, the impugned award is a nullity.

21. Pausing here for a moment, learned Single Judge overlooked the fact that the impugned award dated 28.10.2021 is a continuation of the award or continuation of the proceedings which had culminated in the award dated 20.02.2016. In that award it was clearly mentioned, *“as the process of conciliation was failed, the council took up the case for hearing”*. When this award was assailed before this Court in W.P.No.15230 of 2016, the challenge was on the ground that it was not a reasoned award. Therefore, learned Single Judge had set aside the award and relegated the parties to the forum of Facilitation Council for passing proper award by recording reasons, further directing the Facilitation Council to deal with the counter claim in accordance with law. Facilitation Council was directed to complete the entire exercise of passing award within four weeks. This was what was held by a learned Single Judge of this Court vide the order dated 16.06.2016 while disposing of W.P.No.15230 of 2016:

A perusal of the impugned award goes to show that no reasons are recorded as envisaged under Section 31 of the Arbitration Act. Without going into the merits of the case, the impugned award is set aside, and the matter is remanded to the first respondent for passing proper award, in accordance with law, by recording reasons, as envisaged under Section 31 of the Arbitration Act. It is stated by the learned counsel for the petitioner that the petitioner filed counter claims. Needless to mention that the first respondent shall deal with the counter claims in accordance with law while passing the award. The first respondent is directed to complete the entire exercise of passing award within a period of four weeks from the date of receipt of a copy of this order.

22. Learned Single Judge did not advert to the aforesaid order of this Court dated 16.06.2016. The direction was to pass a reasoned award and also to deal with the counter claim of respondent No.2 which could be done only at the stage of arbitration post conciliation. When this Court had directed the Facilitation Council to pass a fresh award by recording reasons, question of reverting back to conciliation did not arise. That apart, there was no pleading at all at any stage either before the Facilitation Council or before this Court in W.P.No.15230 of 2016 that

there was no conciliation or that conciliation had ended in failure. In the absence of any such pleading only on an oral submission made on behalf of respondent No.2 that there was no conciliation proceedings, learned Single Judge set aside the award; though learned Single Judge recorded that he had perused the record, he did not mention whether he had perused the record which led to passing of the award dated 20.02.2016 which had clearly mentioned that there was conciliation but it had ended in failure.

23. That being the position, learned Single Judge fell in error in holding that there was no conciliation and in the absence of conciliation the impugned award is a nullity.

24. Learned Single Judge further fell in error by holding that under the 1996 Act a conciliator cannot act as an arbitrator. But in the impugned award Facilitation Council conducted conciliation and arbitration proceedings on its own which has been held to be impermissible.

25. The aforesaid finding that Facilitation Council had conducted both conciliation and arbitration is in contradiction to the finding rendered by the learned Single Judge that there was no conciliation proceedings. Learned Single Judge has held that there was no conciliation which is mandatory. Therefore conducting arbitration and passing the award is illegal. If that be so, learned Single Judge could not have held that Facilitation Council had conducted both conciliation and arbitration which is not permissible under the 1996 Act.

26. That apart, from a reading of Section 18 of the MSME Act, more particularly sub-sections (2) and (3) thereof, the Facilitation Council is mandated either to itself conduct conciliation and on its failure to take up the dispute for arbitration or to refer such conciliation or arbitration to an institution or centre providing alternate dispute resolution services. Section 24 of the MSME Act makes it abundantly clear that provisions of Sections 15 to 23 of the MSME Act would have effect notwithstanding anything inconsistent contained in any other law for the time being in force which

would include the 1996 Act. Therefore, Facilitation Council is competent to conduct both conciliation and arbitration under Sections 18(2) and (3) of the MSME Act.

27. Supreme Court in **Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd.**<sup>18</sup> examined the following questions of law for consideration:

- i) Whether the provisions of Chapter V of the MSME Act would have an effect overriding provisions of the 1996 Act?
- ii) Whether any party to a dispute with regard to any amount due under Section 17 of the MSME Act would be precluded from making a reference to the Facilitation Council under sub-section (1) of Section 18 of the MSME Act, if an independent arbitration agreement existed between the parties as contemplated in Section 7 of the 1996 Act?
- iii) Whether the Facilitation Council itself could take up the dispute for arbitration and act as an arbitrator, when the Facilitation Council had conducted the conciliation proceedings under sub-section (2) of Section 18 of the MSME Act in view of the bar contained in Section 80 of the 1996 Act?

---

<sup>18</sup> 2022 SCC OnLine SC 1492

27.1. After a threadbare analysis of the provisions of the MSME Act as well as the 1996 Act, Supreme Court came to the conclusion that MSME Act is a special enactment governing specific nature of disputes arising between specific categories of persons. On the other hand, the 1996 Act focuses and covers the law relating to arbitration and conciliation. Thus, it is a general law relating to domestic arbitration, international commercial arbitration and conciliation. Supreme Court held that MSME Act being a special legislation would override the provisions of the 1996 Act which is a general legislation. Otherwise also, the MSME Act having been enacted subsequently i.e., in the year 2006, it would have an overriding effect over the 1996 Act enacted prior in point of time, more particularly in view of Section 24 of the MSME Act which specifically gives an effect to the provisions of Sections 15 to 23 of the MSME Act over any other law for the time being in force. Thus, Supreme Court has held in no uncertain terms that Chapter V of the MSME Act would have an effect overriding provisions of the 1996 Act. Supreme Court has held as follows:



**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 etc (***Bharat Sewa Sansthan v. U.P. Electronics Corporation*** (AIR 2007 SC 2961). The Arbitration Act, 1996 focuses and covers the law relating to 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 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 ***M/s. Silpi Industries etc. v. Kerala State***

**Road Transport Corporation** (2021 SCC OnLine SC 439) 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 MSMEs 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 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*** ((2005) 1 SCC 754), 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.

27.2. Insofar the second question is concerned, Supreme Court following on its answer to the first question held that a private agreement between the parties as contemplated under Section 7 of the 1996 Act cannot obliterate statutory provisions. Once the statutory mechanism under sub-section (1) of Section 18 of the MSME Act is triggered by any party, it would override any other agreement independently entered into between the parties.

27.3. Answering the third question, Supreme Court held that the Facilitation Council which had conducted conciliation proceedings under Section 18(2) of the MSME Act would be entitled to act as an arbitrator despite the bar contained in Section 80 of the 1996 Act. Thus, Supreme Court summed up its conclusions in the following manner:

**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.

28. That being the position, the aforesaid finding returned by the learned Single Judge is wholly unsustainable in law and is therefore liable to be set aside.

29. Learned Single Judge then proceeded to deal with the issue of limitation and held that reference made by the appellant was barred by limitation.

30. Facilitation Council while deciding issue No.4 held that provisions of Sections 15 to 18 of the MSME Act overrides any law in force which contradicts provisions of

the MSME Act which includes the Limitation Act, 1963. The MSME Act is a special legislation, the primary object of which is to protect the interest of the micro, small and medium enterprises. The supplier under the MSME Act has the right to recover the amount due under Section 17 irrespective of any stand taken by the buyer under other laws. That apart, respondent No.2 had presented its claim in the proceedings of the Facilitation Council on 20.02.2019 and which was recorded by the Facilitation Council. Therefore, question of the claim being barred by limitation does not arise.

31. As against this, the only averment made by respondents No.1 and 2 in the writ affidavit was in paragraph 42 wherein it was contended that provisions of the Limitation Act, 1963 would apply to arbitration proceedings under Section 18(3) of the MSME Act. It was contended that cause of action arose on 18.04.2011 whereas appellant lodged the claim before the Facilitation Council only on 26.10.2015 beyond the period of three years. Therefore, the claim was barred by limitation.



Facilitation Council should have dismissed the claim on the point of limitation.

32. Learned Single Judge first held in paragraph 7(xvi) that under Section 43(1) of the 1996 Act, limitation would apply to arbitration. Adverting to Article 137 of the Limitation Act, 1963, it has been held that in so far the subject reference is concerned period of limitation is three years. Learned Single Judge held in paragraph 7(xix) that respondents No.2 and 3 had not pleaded limitation before the Facilitation Council. Learned Single Judge went on to hold that there is no finding with regard to limitation in the impugned award. This is contrary to the record as the Facilitation Council had specifically framed an issue on limitation and rendered a finding thereon. However, according to the learned Single Judge, being a legal ground, point of limitation can be raised at any time and at any stage. Thereafter, learned Single Judge proceeded and rendered a finding of fact that appellant had not made the reference within the limitation period of three years and

therefore, was barred by limitation; thus, the award was liable to be interfered with on that ground as well.

33. We are afraid, learned Single Judge has committed a grave error in deciding the issue of limitation as a finding of fact in a writ proceeding under Article 226 of the Constitution of India. As mentioned above, only statement of respondents No.2 and 3 on the point of limitation was that cause of action arose on 18.04.2011 whereas the claim was lodged only on 26.10.2015 after a lapse of more than three years. Nothing was mentioned or averred as to how cause of action arose on 18.04.2011. It is not understood on what basis learned Single Judge decided on the starting point of limitation. In the absence of adequate pleadings and evidence, learned Single Judge ought not to have adjudicated this aspect.

34. Supreme Court in **Balalaria Construction (P) Ltd. v. Hanuman Seva Trust**<sup>19</sup> in the context of an application filed under Order VII Rule 11(d) of the Civil Procedure Code,

---

<sup>19</sup> (2006) 5 SCC 658

1908 (CPC) for rejection of plaint on the ground of being barred by limitation, opined that the related suit could not be dismissed as barred by limitation without proper pleadings, framing of issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact.

34.1. This position was reiterated by the Supreme Court in **Ramesh B. Desai v. Bipin Vadilal Mehta**<sup>20</sup> wherein Supreme Court held that a plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact; further reiterating that a plea of limitation is a mixed question of law and fact.

34.2. In **Principal Secretary, Revenue Department v. B.Rangaswamy**<sup>21</sup>, it was for the first time contended before the Supreme Court that the suit was barred by limitation. It was contended that since limitation was a mixed question of fact and law, the appellate Court should frame

---

<sup>20</sup> (2006) 5 SCC 638

<sup>21</sup> 2022 SCC Online SC 865

an issue and remit it to the trial court to render a finding on the same. However, Supreme Court brushed aside such contention on the ground that the said question cannot be considered in the abstract without reference to the facts.

34.3. Again in **Sukhbiri Devi v. Union of India**<sup>22</sup> Supreme Court held that though limitation is a mixed question of law and facts it would become a question of law only when foundational facts determining the starting point of limitation is vividly and specifically made in the plaint.

35. In **M/s. Silpi Industries** (supra), one of the issues considered by the Supreme Court was whether provisions of the Indian Limitation Act, 1963 would be applicable to arbitration proceedings initiated under Section 18(3) of the MSME Act. Supreme Court held that provisions of the Limitation Act, 1963 would apply to arbitrations covered by Section 18(3) of the MSME Act. However, insofar the question as to whether the claims/counter claims were within limitation or not, it was left open to the primary

---

<sup>22</sup> 2022 SCC Online SC 1322

authority to record its own findings on merit. We may mention that this two judge bench decision of the Supreme Court was rendered on 29.06.2021. It was also held that counter claim is maintainable under the MSME Act.

36. While the two judge bench of the Supreme Court in **M/s. Silpi Industries** (supra) held that provisions of the Limitation Act, 1963 would apply to arbitrations covered by Section 18(3) of the MSME Act, a subsequent two judge bench of the Supreme Court in **Gujarat State Civil Supplies Corporation Ltd.** (supra) held in clear terms that provisions of Sections 15 to 23 of the MSME Act would have overriding effect over any other law for the time being in force which would include the 1996 Act.

36.1. The law of limitation was introduced into arbitrations *qua* the 1996 Act by virtue of Section 43 of the 1996 Act. If that be so, the view taken by the Facilitation Council that provisions of Sections 15 to 18 of the MSME Act would override the Limitation Act, 1963 would be in tune with the judgment of the Supreme Court in **Gujarat State Civil Supplies Corporation Ltd.** (supra).

36.2. At this stage, we may mention that both **M/s. Silpi Industries** (supra) and **Gujarat State Civil Supplies Corporation Ltd.** (supra) are judgments delivered by benches of two judges of the Supreme Court. While the decision in **M/s. Silpi Industries** (supra) was rendered on 29.06.2021, the decision in **Gujarat State Civil Supplies Corporation Ltd.** (supra) was rendered on 31.10.2022; in other words, it is a later judgment.

37. Be that as it may, without entering into this aspect of the matter what is evident is that without adequate pleadings and without any evidence, learned Single Judge determined the question of limitation like a fact-finding forum and thereafter rendered a finding of fact. This is not permissible.

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

39. A three judge bench of the Supreme Court in **Sterling Industries** (supra) examined the decision of the High Court in entertaining a writ petition under Article 227 of the Constitution of India against an order passed under Section 20 of the 1996 Act read with Section 19 of the MSME Act. The application was made to the District Judge by Jayprakash Associates Ltd., against a partial award made under Section 16 of the 1996 Act. Supreme Court observed that when such an application was not tenable, the High Court ought not to have set aside the partial award in a writ petition which is clearly contrary to law. Reference in this connection was made to paragraph 44 of the judgment of the Supreme Court in **SBP and Co. v. Patel**

**Engineering Ltd.**<sup>23</sup>. In the aforesaid judgment, Supreme Court in no uncertain terms disapproved interference in arbitral awards under Articles 226 or 227 of the Constitution of India. Following the same, judgment of the High Court was set aside.

40. Again, a three judge bench of the Supreme Court in **Deep Industries Limited v. Oil and Natural Gas Corporation Limited**<sup>24</sup> examined the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India when it comes to matters that are decided under the 1996 Act. In that context, Supreme Court observed that if petitions were to be filed under Articles 226/227 of the Constitution of India against orders passed in appeals under Section 37 of the 1996 Act, which grants a constricted right of first appeal against certain judgments and orders and no other, the entire arbitral process would be derailed and would not come to fruition for many years. However, having regard to the fact that Article 227 is a constitutional provision and therefore petitions can still be filed under the said article

---

<sup>23</sup> AIR 2006 SC 450

<sup>24</sup> (2020) 15 SCC 706



against judgments allowing or dismissing first appeals under Section 37 of the 1996 Act, it has been held that the High Courts should be extremely circumspect in interfering with the same so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.

41. This is more so when there was no compliance to the mandate of Section 19 of the MSME Act inasmuch as 75% of the awarded amount was not deposited by respondents No.2 and 3 before the Registry of this Court at the time of filing the writ petition. It is true that Article 226 of the Constitution of India being a constitutional provision would not be subject to the rigor of Section 19 of the MSME Act. Nonetheless, having regard to the specific objective of the MSME Act and the fact that respondents No.2 and 3 had not availed the statutory remedy and that the award is in the nature of a money decree, entertaining the writ petition without insisting on any deposit of the awarded amount was not at all justified.

42. Finally, we find that though learned Single Judge had taken great pains in deciding the writ petition, from a perusal of the judgment and order passed by the learned Single Judge it is seen that learned Single Judge had clearly exceeded the bounds of judicial review and had transgressed into the domain of facts and factual determination without any pleadings and evidence.

43. Learned Single Judge also held that there was no consideration of the counter claim of respondent No.2 by the Facilitation Council while passing the award though directed by this Court vide the order dated 16.06.2016 passed in W.P.No.15230 of 2016. On this ground also the award was faulted. Learned Single Judge failed to note that this aspect was considered and decided by the Facilitation Council under issue No.3 by holding that Facilitation Council has the mandate only to decide a matter referred to it under Section 17 of the MSME Act which does not include a counter claim of the buyer. Though such a finding may run contrary to the decision of the Supreme Court in **M/s. Silpi Industries** (supra), Facilitation Council

however found as a matter of fact that the counter claim of respondent No.2 was not supported by any documentary evidence, rather it was based on surmises and conjectures. Therefore, it would not be correct to say that Facilitation Council did not consider the counter claim of respondent No.2.

44. Thus for the aforesaid reasons, we are of the unhesitant view that learned Single Judge fell in error in not only entertaining the writ petition but also in allowing the same by setting aside the award dated 28.10.2021 passed by the Facilitation Council.

45. Consequently, judgment and order dated 14.09.2022 passed by the learned Single Judge in W.P.No.16918 of 2022 is set aside.

46. Writ appeal is accordingly allowed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

---

**UJJAL BHUYAN, CJ**

---

**C.V.BHASKAR REDDY, J**

21.03.2023

Note: LR copy be marked.  
(By order)  
vs