

Allahabad High Court

Tbea (India) Transformer Private ... vs U.P. Micro And Small Enterprises ... on 22 April, 2020

Bench: Sudhir Agarwal, Rajeev Misra

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Reserved on 04.03.2020 (Court No. 34)

Delivered on 22.04.2020 (In Chamber)

In Chamber

Case :- WRIT - C No. - 8038 of 2020

Petitioner :- TBED (India) Transformer Private Limited

Respondent :- U.P. Micro And Small Enterprises And Another

Counsel for Petitioner :- Sarvanand Pandey, Alexander Iqbal

Hon'ble Sudhir Agarwal,J.

Hon'ble Rajeev Misra,J.

(Delivered by Hon'ble Sudhir Agarwal, J.)

1. Heard Sri Akshay Saprey, holding brief of Mr. Sarvanand Pandey, learned counsel for petitioner and perused the record.

2. This writ petition under Article 226 of Constitution of India has been filed by petitioner, TBEA (India) Transformer Private Limited having its registered Office at Revenue Survey No.745-Lot 3, TBEA Green Energy Park, N.H.-8, Village-Miyagam Karjan Vadodara, Gujarat (hereinafter referred to as 'petitioner') with a prayer to issue a writ of certiorari to quash order dated 23.12.2019 passed by respondent-1 i.e. U.P. Micro and Small Enterprises Facilitation Council (hereinafter referred to as "MASEF Council") having its Office at Udyog Bhawan, Kanpur Nagar and also to issue a writ of mandamus to call for record of Claim Petition No. 216 of 2019 on the ground that parties have agreed to settle their dispute through arbitration under the provisions of Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Act, 1996") and Council has no jurisdiction to

proceed with arbitration.

3. Facts in brief giving rise to this petition are that petitioner is a Private Limited Company incorporated under Companies Act, 2013 (hereinafter referred to as "Act, 2013"). It is engaged in the business of design, manufacture as well as service of Transformers and Reactors. Respondent-1 is a body established by Government of State of U.P. under Section 20 of Micro Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as "MSMED Act, 2006"). Respondent-2, M/S Osama Engineering Works having its registered office at 96B DAUD Nagar Naini, Prayagraj is also a Private Limited Company incorporated under Companies Act, 1956 (hereinafter referred to as "Act, 1956") and continued to function under Act, 2013 being an existing company. It is also allegedly registered as Micro Enterprise under MSMED Act, 2006 and engaged in the business of manufacture of Transformer tanks, Yoke clamp, RTCC panels and Marshaling box etc.

4. For supply of certain work components of Transformer being manufactured by respondent-2, a letter of intent was issued by petitioner vide E-Mail dated 16.10.2018. Respondent-2 was to supply 42 Transformer Tanks as per above letter of intent. The delivery was to be made by 05.12.2018. Respondent-2 committed default in supply of goods and thus committed breach of contract. Even the items supplied were not of requisite specifications or quality. Consequently, petitioner issued a cancellation order dated 21.12.2018 and terminated purchase order. Respondent-2 instead of realizing its mistake, issued a legal notice dated 12.03.2019 upon petitioner requiring it to pay Rs. 4,79,009.70 along with interest which was computed to Rs. 4,10,803/-. Petitioner submitted his reply dated 20.04.2019 to the aforesaid notice disputing claim of respondent-2.

5. Thereafter, respondent-2 moved an application/representation dated 26.07.2019 before MASEF Council stating that petitioner is liable to pay in respect of goods supplied by respondent-2 in terms of provisions of MSMED Act, 2006 and since payment has been delayed, therefore application under Section 18(1) is being filed by Supplier to direct petitioner to pay to pay Rs. 4,79,009/- and interest thereon.

6. The claim of respondent-2 was contested by petitioner by submitting reply dated 04.11.2019 stating that entire claim was false and in fact petitioner himself has suffered huge loss which are to be liquidated by respondent-2 and required respondent-2 to withdraw its claim which is based on erroneous presentation of facts. Reply was submitted by petitioner after receiving notice from respondent-1 for conciliation under Section 18(1) but after receiving reply of petitioner, respondent-1 concluded that parties have failed to conciliate the matter and thereafter by impugned order it has directed to proceed for arbitration.

7. Petitioner pleaded before respondent-1 that since there is an arbitration clause in the agreement and parties themselves have resolved to refer the matter to arbitration to the person nominated by petitioner, respondent-1 has no jurisdiction to proceed under Section 18 but that issue has not been decided, hence present writ petition.

8. It is not disputed before us that there is an arbitration clause, i.e., Clause-10 in the purchase order whereby dispute, if any, was to be referred to an Arbitrator appointed by petitioner, but respondent-2 did not avail the aforesaid remedy and moved application under Section 18(1) before respondent-1.

9. Learned counsel for petitioner submitted that once parties have agreed to have their dispute, if any, resolved through an arbitration, respondent-1 in such a case will have no jurisdiction to enter into a dispute either for conciliation or for arbitration and Section 18 shall not prevail over agreement between the parties whereby parties have mutually chosen a Forum for settlement of their dispute. Hence respondent-1 has proceeded illegally and failing to decide this objection of petitioner has committed manifest error.

10. However, we find no force in the submission.

11. In our view, remedy under Section 18 read with Section 24 of MSMED Act, 2006 has been given overriding effect over any other law enforced for the time being in force. The arbitration clause, if any, in the agreement between the parties will not prevail over the provisions of Section 18 and respondent-1 is well within its jurisdiction.

12. We hereby formulate the question, which is to be adjudicated by us, as under:

"Whether MASEF Council can act as 'Arbitrator' for adjudication of dispute between the parties or must direct parties to relegate remedy of arbitration settled between them in an agreement and Section 18(3) read with Sub-section (4) will have to sub-serve to such private agreement of the parties?"

13. For promoting, developing and also enhancing competitiveness of Micro, Small and Medium Enterprises, MSMED Act, 2006 was enacted by Parliament and came into force on 02.10.2006.

14. The Statement of Object and Reasons show that "Small Scale Industry" was defined by Notification issued under 11(b) of Industries Development and Regulation Act, 1951 (hereinafter referred to as "IDR Act, 1951"). Section 29-B of IDR Act, 1951 provided for notifying reservation of items for excluding manufacture in Small Scale Industry Sector. Besides above, there existed no legal framework to deal with the Small Scale Industry Sector, which played major role in the economy of the Country. Time to time need for a comprehensive Central enactment to provide an appropriate legal framework in the sector to facilitate its growth and development was felt necessary, particularly, when in many other Countries, similar Statutes were already framed.

15. Keeping with the pace of globalization and showing due concern for the development of Small and Medium Enterprises, MSMED Act, 2006 was enacted with an intention to provide Statutory definition of "Small Enterprises and Medium Enterprises"; for establishment of a National Small and Medium Enterprise Board, High Level Forum consisting Stake Holders for participative revenue and making recommendations on the policies and programmes for development of Small and Medium Enterprises; for classification of Small and Medium Enterprises on the basis of

investment in plant machinery or equipment and establishment of an Advisory Committee to recommend in the related matter; empower Central Govt. to notify programmes, guidelines or instructions for facilitating promotion and development and enhancing competitiveness of Small and Medium Enterprises; to empower State Govt. to specify by notification that provision of Labour Laws specified in Clause 9(2) will not apply to Small and Medium Enterprise employing up to 50 employees with a view to facilitate upgradation of Small Enterprises into Medium Enterprises; make provisions for ensuring timely smooth flow of credit to Small and Medium Enterprises to minimize the instances of sickness amongst the industries and enhance competitiveness of such Enterprises in accordance with guidelines or instructions of Reserve Bank of India (hereinafter referred to as "RBI"); empowers Central and State Governments to notify preference policies in respect of procurement of goods and service products of profits by Small Enterprises by the Ministry/Department and public sector enterprises; empower Central Govt. to create fund or funds for facilitating promotion and development and enhancing competitiveness of Small Enterprises and Medium Enterprises; to prescribe harmonious example of stream line procedures for inspection of Small and Medium Enterprises under Labour Laws enumerated in Clause-15 having regard to the need of permitting self registration or self certification by such enterprise; prescribe for maintenance of records and filing of return of Small and Medium Enterprises with a view to reduce multiplicity of even overlapping type return be filed; and further improvement in interest of delayed payments to Small Scale Ancillary undertaking Act, 1993 and making that enactment part of proposed legislature and to repeal that enactment.

16. The term "Board" has been defined in Section 2(c) of MSMED Act, 2006 and it reads as under :-

(c)"Board" means the National Board for Micro, Small and Medium Enterprises established under section 3;

17. Other relevant terms defined in Section 2 are, 'Buyer', 'Enterprise', 'Medium Enterprise', 'Micro Enterprise', 'Small Enterprise' and 'Supplier' and the relevant provisions of MSMED of Act, 2006 defining above terms in clauses (d), (e), (g), (h), (m), and (n) read as under:-

(d) "Buyer" means whoever buys any goods or receives any services from a supplier for consideration;

(e) "Enterprise" means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry pacified in the First Schedule to the Industries (Development and Regulation) Act/ 1951 or engaged in providing or rendering of any service or services;

(g) "Medium Enterprise" means an enterprise classified^{1a} such under sub-clause (ii) of clause (a) or sub-clause (iii) of clause (b) of sub-section (1) of section 7;

(h) "Micro Enterprise" means an enterprise classified as such under sub-clause (1) of clause (a) or sub-clause (1) of clause (b) of sub-section (1) of section 7;

(m) "Small Enterprise" means an enterprise classified as such under sub-clause (it) 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 sub-section (1) of section 8, and includes,

18. Section 3 provides for establishment of Board by Central Government by Notification known as "National Board for Micro, Small and Medium Enterprises" (hereinafter referred to as "NBMSME"). Head office of the Board is to be at Delhi. Constitution of the Board is provided in Section 3(3), which we are skipping for the time being.

19. Functions of the Board are provided in Section 5, which reads as under:-

"5. Functions of Board - The Board shall, subject to the general directions of the Central Government, perform all or any of the following functions, namely:-

(a) examine the factors affecting the promotion and development of micro, small and medium enterprises and review the policies and programmes of the Central Government in regard to facilitating the promotion and development and enhancing the competitiveness of such enterprises and the impact thereof on such enterprises;

(b) make recommendations on matters referred to in clause (a) or on any other matter referred to it by the Central Government which, in the opinion of that Government, is necessary or expedient for facilitating the promotion and development and enhancing the competitiveness of the micro, small and medium enterprises; and

(c) advise the Central Government on the use of the Fund or Funds constituted under section 12."

20. With regard to delayed payment of Micro and Small Enterprises, Chapter 5 contains Sections 15 to 25, imposing an obligation upon Buyer to pay. It also provides an adjudicatory forum in case of a dispute between Buyer and Supplier.

21. Section 15 deals with liability of buyer to make payment; Section 16 provides the date from which rate of interest shall be payable; Section 17 makes the buyer liable to pay amount with interest for any goods or services rendered by Supplier and Section 18 deals with 'Reference' a dispute for adjudication to MASEF Council.

22. Section 18 is relevant for the controversy in present writ petition and is reproduced as under:

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

(1) Reference : 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) Conciliation : 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 shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Arbitration : 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." (Emphasis added)

23. Composition of MASEF Council is provided in Section 21 of MSMED Act, 2006. The aforesaid Council is to be established by State Government by Notification as provided in Section 20. Both Sections 20 and 21 read as under:

"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. Composition of Micro and Small Enterprises Facilitation Council - (1) The Micro and Small Enterprises Facilitation Council shall consist of not less than three but not more than five members to be appointed from amongst the following categories, namely:-

(i) Director of Industries, by whatever name called, or any other officer not below the rank of such Director, in the Department of the State Government having administrative control of the small scale industries or, as the case may be, micro, small and medium enterprises; and

(ii) one or more office-bearers or representatives of associations of micro or small industry or enterprises in the State; and

(iii) one or more representatives of banks and financial institutions lending to micro or small enterprises; or ·

(iv) one or more persons having special knowledge in the field of industry, finance, law, trade or commerce.

(2) The person appointed under clause (i) of sub-section (1) shall be the Chairperson of the Micro and Small Enterprises Facilitation Council.

(3) The composition of the Micro and Small Enterprises Facilitation Council, the manner of filling vacancies of its members and the procedure to be followed in the discharge of their functions by the members shall be such as may be prescribed by the State Government."

24. Section 24 says that Sections 15 to 23 shall have effect notwithstanding anything contained in any other law for the time being in force and this provision is also of utmost importance in this petition, hence reproduced as under:-

"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." (Emphasis added)

25. Act, 1996 was enacted to consolidate and amend the laws 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 or incidental thereto. The Scheme of Act shows that it has four Parts; i.e. Part-I dealing with Arbitration; Part-II dealing with Enforcement of Certain Foreign Awards; Part-III Conciliation and Part-IV having Supplementary Provisions.

26. Part-I is further divided in ten Chapters, while Part-II has two Chapters and Part-III and IV have no Chapters separately.

27. Part-I, Chapter-I has Sections 2 to 6; Chapter-II has Sections 7 to 9; Chapter-III contains Sections 10 to 15; Chapter-IV has Sections 16 and 17; Chapter-V has Sections 18 to 27; Chapter-VI deals with Sections 28 to 33; Chapter-VII has single Section, i.e., 34; Chapter-VIII deals with Sections 35 and 36; Chapter-IX has single Section 37 and Chapter-X has within its ambit Sections 38 to 43. Similarly, Part-II Chapter-I deals with Sections 44 to 52 and Chapter-II deals with Sections 53 to 60. Part-III deals with Sections 61 to 81 and Part-IV deals with Sections 82 to 86. There are three Schedules appended to Act, 1996. The First Schedule deals with "Convention on the Recognition and Enforcement of Foreign Arbitral Awards". The Second Schedule deals with "Protocol on Arbitration Clauses" and Third Schedule deals with "Convention of the Execution of Foreign Arbitral Awards". Further details of Act, 1996, we propose to consider at later stage whenever it would be appropriate.

28. Now reverting back to MSMED Act, 2006, we propose to deal with Section 18 threadbare to find out the scope and ambit of aforesaid provision and the extent to which provisions of Act, 1996 have been made applicable thereto or are superseded by MSMED Act, 2006 due to "non-obstante" clause contained in Section 18(1) and (4) as also Section 24.

29. Interestingly, we find that there are two sub-sections in Section 18 which commence with non-obstante clause.

30. First of all Sub-section (1) of Section 18 begins with non-obstante clause. It says that irrespective of anything contained in any other law for the time being in force, any party to a dispute with regard to any amount due under Section 17 can make a Reference to MASEF Council. It confers a right upon a party, who is entitled to claim certain amount under Section 17, which is not being paid by other party, who is liable to pay, to raise dispute by making a Reference to MASEF Council. The right under Section 17 talks of right of Supplier to claim payment in respect of goods supplied and services rendered and also lays a corresponding obligation upon buyer that he is liable to pay such amount as due, to Supplier along with interest which is to be computed as per Section 16 of MSMED Act, 2006. This right of making a Reference has been given an overriding effect on any contrary available law.

31. When a Reference is made under sub-section (1) of Section 18; then sub-section-(2) provides procedure, which shall be followed by MASEF Council. Sub-section (2) of Section 18 of MSMED Act, 2006 shows that Council either shall itself proceed with the Reference by conducting 'Conciliation' in the matter or seek assistance of any Institution or Centre providing alternate dispute resolution services. Where such assistance is sought by MASEF Council from any Institution or Centre, it shall make a 'Reference' to such Institution or Centre for conducting Conciliation.

32. Therefore, sub-section (2) of Section 18 leaves it open to discretion of MASEF Council to either itself proceed on the Reference by first conducting Conciliation or refer the matter to an Institution or Centre providing alternate dispute resolution services to conduct Conciliation. In either case, Reference made under sub-section (1) shall first proceed for conciliation and when such Conciliation is proceeded, for the purpose of procedure, Sections 65 to 81 of Act, 1996 shall apply as if conciliation was initiated under Part-III of Act, 1996. As we have already said, Part-III of Act, 1996 deals with 'Conciliation'. It takes into its ambit Sections 61 to 81. For the purpose of sub-section (2), entire Part-III has not been made applicable and it is only Sections 65 to 81, which have been made applicable by virtue of sub-section (2) of Section 18 of MSMED Act, 2006. The obvious reason is that these provisions deal with the procedure for Conciliation after application for Conciliation is made and Conciliators are appointed under Act, 1996. This procedure has been applied by conciliation which is to be made under Section 18(2) of MSMED Act, 2006. This is called legislation by Reference. Sections 65 to 81 of Act, 1996 have been made applicable for conciliation under Section 18(2) of MSMED Act, 2006 by making provision of Act, 1996 applicable by legislative reforms.

33. Section 61 of Part-III of Act, 1996 deals with "Application and scope" of Part-III. It says that save as otherwise provided by any law for the time being in force and unless the parties have otherwise agreed, Part-III shall apply to conciliation of disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto. Sub-section (2) further says that if under some other law for the time being in force certain disputes are not to be submitted to conciliation then Part-III shall not be applicable. Part-III in general, on its own has application subject to any other law and also to the extent, parties have not agreed otherwise. It saves the procedure, otherwise

provided, under any law or by parties by mutual agreement and subject to that only, Part-III of Act, 1996 is applicable in general. For the purpose of Section 18(3) of MSMED Act, 2006, however, Section 61 has not been applied, therefore, the subsequent procedure of Part III is not to be read for the purpose of Section 18(3) of MSMED Act, 2006.

34. Section 62 deals with Commencement of conciliation proceedings and provides that the party initiating conciliation shall send to the other party a written invitation to conciliate under Part-III, briefly identifying the subject of dispute. As per sub-section (2) Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate. If other party refuses or rejects invitation, there will be no conciliation proceedings. Sub-section (4) deals with situation where other party fails to submit reply either way. In such a case, after thirty days from the date on which invitation was sent by one party, it shall have an election either to treat failure of reply as 'rejection of invitation' and if he so elects, information shall be given to other party. Then Section 63 deals with number of conciliators providing that one conciliator is mandatory but if the parties so agree there may be 2 or 3 conciliators. Section 64 deals with appointment of 'Conciliators'. These provisions of Act, 1996 have also not been made applicable for conciliation under Section 18(2) of MSMED Act, 2006.

35. Sections 61 to 64 have not been made applicable to the Conciliation proceedings as contemplated in Section 18(2) of MSMED Act, 2006 for the reason that when a Reference is made, MASEF Council shall proceed with the conciliation either itself or refer the matter to an Institution or Centre and therefore, stage up to appointment of 'Conciliator' is already covered by Section 18 sub-sections (1) and (2). That is why, only further procedure provided under Sections 65 to 81 has been made applicable for Conciliation under Section 18(2) of MSMED Act, 2006. Sections 65 to 81 have been made applicable by Section 18(2) of MSMED Act, 2006 with respect to Conciliation as contemplated under sub-section (2) and not for arbitration contemplated by sub-section (3). Therefore, applicability of Sections 65 to 81 will be confined only to the Conciliation proceedings under Section 18(3) and not beyond that.

36. Sub-section (3) will come into operation when Conciliation initiated under sub-section (2) remains unsuccessful and stands terminated without any settlement between the parties. Meaning thereby, when parties fail to reach a settlement in Conciliation proceedings under sub-section (2) the conciliation proceedings shall stand terminated. It is thereafter that the next stage of arbitration will arise. For this purpose, sub-section (3) provides that arbitration can be taken up by MASEF Council itself or it may refer it to any Institution or Centre providing alternate dispute resolution services. Here also we find that sub-section (3) of Section 18 of MSMED Act, 2006 empowers MASEF Council to itself act as an 'Arbitrator' to take up the arbitration and adjudicate or it may refer the same to be adjudicated by any Institution or Centre providing alternate dispute resolution services.

37. For such arbitration, whether taken up by Council itself or referred to any Institution or Centre, for the purpose of procedure, the entire Act, 1996 has been made applicable as if arbitration was pursuant to an arbitration agreement referred to in Section 7 of Act, 1996. Sub-section (4) re-enforces and makes the authority to enter upon arbitration. Sub-section (3) is made mandatory

by providing that notwithstanding anything provided in any other law otherwise, MASEF Council itself or Centre or Institution providing alternate dispute resolution services shall have jurisdiction to act as an 'Arbitrator' or 'Conciliator' under Section 18 in a dispute between 'Supplier' located within its jurisdiction and a 'Buyer' located anywhere in India, Therefore in the contingencies referred to in sub-section 4 of Section 18 of MSMED Act, 2006, jurisdiction to act as arbitrator has been conferred upon Council as well as an Institution, as the case may be. This provision prevails over any otherwise provision in any other law. The only condition to attract sub-section (4) is that Supplier is located within the jurisdiction of the Council or the Institution or Centre, which enter upon the dispute as an Arbitrator and Buyer is located in India.

38. Even otherwise, by virtue of Section 61 of Act, 1996 the provisions of Part-III would be applicable so long as otherwise it is not provided by any other law or parties have decided or agreed and therefore, the provisions of Part-III will not prevail over otherwise provisions of MSMED Act, 2006 and, on the contrary, will have to sub-serve and surrender to the provisions of MSMED Act, 2006.

39. In the present case, it is not in dispute that respondent-2 is Supplier and he is located in the jurisdiction of MASEF Council and petitioner, the Buyer, is located in State of Gujarat, satisfying the requirement of sub-section (4) of Section-18 so as to make it applicable in case in hand.

40. Both sub-sections 3 and 4 of Section 18 of MSMED Act, 2006, when read together, even otherwise, make it abundantly clear and mandatory that MASEF Council, if itself has entered into dispute as an Arbitrator, it shall have jurisdiction to do so and if it refers the matter to any Institution or Centre that will also have jurisdiction irrespective of otherwise law provided in any other Statute and that will also override Section 80 of Act, 1996.

41. Moreover, Section 80 of Act, 1996 by virtue of Section 61 of said Act, cannot override provisions of MSMED Act, 2006 and therefore, it cannot be said that Section 80 of Act, 1996 will exclude MASEF Council to act as Arbitrator, since it has been Conciliator in the dispute and arbitration therefore cannot be proceeded by it. This argument in fact suppresses and goes contrary to what has been specifically provided in Section 18(3) and (4) of MSMED Act, 2006.

42. When read conjointly Section 24 is further clarificatory and fortifies what we have said earlier. Again it provides that Sections 15 to 23 of MSMED Act, 2006 shall have effect over any otherwise law. This is an overall overriding effect given by Section 24 to Section 18 of MSMED Act, 2006 and in that view of matter Section 18 of MSMED Act, 2006 cannot be read so as to render subordinate to Section 80 of Act, 1996. The counsel for petitioner advancing argument otherwise, in our view, is not correct and the same is accordingly rejected.

43. Learned counsel for petitioner has placed reliance on Supreme Court's judgment in Swastik Gases Private Limited Vs. Indian Oil Corporation (2013) 9 SCC 32 and Indus Mobile Distribution Private Limited Vs. Datawind Innovations Private Limited and others (2017) 7 SCC 678 but having gone through the aforesaid judgments carefully, we find no application of the same to the dispute involved in the present matter. The provisions of MSMED Act, 2006 were not at all involved in both

the aforesaid authorities, therefore, the general provisions of Act, 1996 read with C.P.C. have been examined which have no application to the present case. Both the judgments, therefore, do not help the petitioner in any manner.

44. Learned counsel for petitioner also placed reliance on a Division Bench judgment of Bombay High Court delivered by Hon'ble S.A. Bobde, J. (as His Lordship then was) in M/s Steel Authority of India Limited and another Vs. Micro, Small Enterprises Facilitation Council, Nagpur AIR 2012 Bob. 178. Having gone through the same, we find that therein Section 18 is applicable only when there is delay in payment in respect to supply made or service rendered by Supplier but if there is any other dispute, Section 18 is not applicable and the matter will be covered by arbitration clause, if any, existing in agreement between the parties. This judgment also does not help the petitioner for the reason that in the present case, respondent-2 delayed payment and no other dispute has been raised, therefore, dispute raised in the present case is squarely covered by Section 18(1) read with Section 17 of MSMED Act, 2006 and hence the aforesaid authority also does not help the petitioner in any manner.

45. In view of above discussion, we are clearly of the view that MASEF Council having acted as Conciliator is not barred from working as Arbitral Tribunal to arbitrate the dispute under Section 18(3) and such jurisdiction of MASEF Council has been given overriding effect by virtue of Section 18(4) and Section 24 which have to be given complete swing in the area covered by same. The argument, therefore, advanced otherwise by learned counsel for petitioner is hereby rejected. The question, formulated above, is answered against petitioner and we hold that MASEF Council is not prohibited from working as Arbitrator itself for adjudication of dispute between the parties and it is not obliged to refer the matter to any other body.

46. No other point has been argued.

47. The writ petition lacks merits. Dismissed, accordingly.

Order Date :- 22.04.2020 YK/PS