IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1901 OF 2015

1 NAMCO Industries Private Limited
a company incorporated under the
provisions of Companies Act, 1956,
having its registered office at Survey,
No. 44, 134, 135 and others, Village
Horale, Khapoli Pen Road, Post
Wawoshi, Horale, Khalapur,
Raigarh, Maharashtra-410202 and
Corporate office at
Pvt. Ltd. Kanika Building,
3rd Floor, 14/1, New Palasia,
Indore (MP)-452001.

2 Mr. Namit Soni, Director, Namco
Industries Pvt. Ltd. Kanika Building,
3rd Floor, 14/1, New Palasia,
Indore (MP)-452001 ….Petitioners

Vs.

1 State of Maharashtra, through
Ministry of Ministry of Micro, Small
& Medium Enterprises, Mantralaya,
Mumbai 400032.

2 Directorate of Industries, Micro,
Small Enterprises Facilitation
Council, Pune Division, Agriculture College,
Compound, Shivaji Nagar, Pune.

3 M/s. Ramelex Private Limited,
81/2, Ramlex House, dangat Industrial
Estate, Shivane, Pune-411023. ….Respondents.

Mr. Pradeep Mane a/w Ms. Vidhi Kothari i/by M/s. Crawford Bayley & Co. for the Petitioners.
Mr. N.C. Walimbe, AGP for Respondent No. 1.
Mr. N.M. Kamdar for Respondent No. 3.

CORAM : ANOOP V. MOHTA AND
A.S. GADKARI, JJ.
DATE : 14 DECEMBER 2016.

***ORAL JUDGMENT (PER ANOOP V. MOHTA, J.)*:-**

Rule. Rule made returnable forthwith.

Heard finally, by consent of the parties.

2 Upon hearing the learned counsel appearing for the respective parties, we are inclined to dispose of the present Writ Petition, basically in view of the order passed by the Division Bench of this Court (Nagpur Bench) in *M/s. Steel Authority of India Ltd. Vs. The Micro, Small Enterprise Facilitation Council & Ors. (Writ Petition No. 2145 of 2010 dated 27 August 2010)* whereby, after considering the scheme of Section 18 of the Micro Small and Enterprises Development Act, 2006 (for short, *"the Act"*), read with the Arbitration and Conciliation Act, 1996 (for short, *"the Arbitration Act"*), ultimately it is recorded in a given facts and circumstances, which in our view, can be extended in the present matter, as the similar facts and issues

are involved. The relevant paragraph 14 of the Judgment is as under:-

> *"In the circumstances, we hold that respondent no.1-Council is not entitled to proceed under the provisions of Section 18* (3) of the Act in view of independent arbitration agreement dated *23.09.2005 between the parties. The petitioners and respondent no.2 shall, however, participate in the conciliation, which shall be conducted by respondent no.1-Council under the provisions of Section 18 (1) and (2) of the Act. Respondent no.1-Council shall complete the process of conciliation within a period of two weeks from the date the parties appear before it. The parties are directed to appear before respondent no.1-Council on 25.10 .2010."*

3 Admittedly, the Petitioners have challenged the impugned action/notice issued by the Additional Divisional Commissioner (Revenue), and Chairman, Micro, Small Enterprise Facilitation Council, whereby the date was fixed for the conciliation, as there arose dispute between the Petitioners and Respondent No.3 (main Applicant). In impugned order dated 17 November 2014, it is recorded as under:-

> *"Applicants Ramalex Pvt. Ltd, Pune, and representatives on behalf of the Opponents were present. The Opponents filed an application for maintainability of the case and non-applicability of overriding effect as per Section 20. The Member Secretary pointed out that Section 20 does apply in the matter. The Learned Chairman directed the Applicant and the Opponent to commence the*

procedure for mutual settlement and submit the report of settlement of the Council within one month."

4 The impugned order/action, in our view, would not affect the rights of the parties, at this stage, as the whole intention appears to resolve the disputes between the parties, as early as possible, in view of the specific provisions of the Act. Therefore, the invocation of conciliation, which is even otherwise permissible under the Arbitration Act, no way affects and/or takes away the rights of the parties. However, if the parties able to resolve the disputes before the conciliator, the matter could be disposed of at the earliest. The Respondents and/or the contesting parties, in a given case, are not agreeable to the conciliation and/or order passed by the conciliator in view of the provisions and basically, the Arbitration agreement between the parties which is reflected in purchase orders, Commercial Terms and Conditions including clause 5.0-disputes & Arbitration, which is reproduced as under, can be resorted too.

"5.0 Disputes & Arbitration:

All disputes, differences, claims whatsoever between the parties arising under or relating to this Purchase Order shall be referred to arbitration of three arbitrators, one to be Nominated by seller, one to be nominated by purchaser and the third to be

> *nominated by the two arbitrators so appointed. The decision of the Arbitrators shall be final and binding on both the parties. The venue of arbitration proceedings shall be at Mumbai Maharashtra, India and conducted in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof."*

5 The contention of the learned counsel appearing for the Respondents that by the Memorandum of Declaration Cum Ratification Cum Waiver, dated 19 December 2012, has done away with the Arbitration clause, is not acceptable in view of the specific clause in this Memorandum itself which reads as under:-

> *"Commercial Terms conditions were also as appearing in the Purchase/Work Order said to be have been accepted by both the parties."*

This has re-affirmed the above commercial terms.

6 Even otherwise, at this stage, we are inclined to observe that whatever the defences and/or the issues, even if any, with regard to the existence of Arbitration clause, that can be resolved and/or decided at the appropriate stage. Therefore, there is no case made out by the Petitioners to interfere with the conciliation proceedings, so initiated at this stage. However, we are inclined to observe that the long pendency of such conciliation proceedings itself will affect the

purpose and object of the conciliation. Therefore, it is desirable that the concerned Department/conciliators, to dispose of the proceedings so initiated, as early as possible, in accordance with law, preferably within six months from today, as it is informed by both the counsel that the conciliators sit only once in a week and frequently unavailable. The hearing expedited accordingly.

7 The learned counsel appearing for Respondent No.3 makes statement that in such conciliation proceedings, there is no question of making any pre-deposit. Therefore, the apprehension of the learned counsel appearing for the Petitioners that the Department will insist to pre-deposit, is also unwarranted and will not affect the conciliation proceedings to continue and to dispose of at the earliest.

8 Writ Petition is accordingly disposed of, with liberty. All points are kept open. No costs.

(A.S. GADKARI, J.) **(ANOOP V. MOHTA, J.)**