

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.24306 of 2015
Date of decision:30.8.2016**

Haryana Power Generation Corporation Ltd.

...Petitioner

Versus

Haryana State Micro And Small Enterprises Facilitation Council and
another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.P.S.Rana, Advocate for the petitioner.
Mr.Sagar Deswal, Advocate for respondent No.2.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant writ petition is directed against the order dated 21.7.2015 (Annexure P-7), passed by the Haryana State Micro and Small Enterprises Facilitation Council (for short 'the Council'), whereby application submitted by the petitioner for rejecting the claim petition of 2nd respondent, was declined and the matter was referred to the empanelled arbitrator, notified by the Government under Rule 16 of the Haryana State Micro and Small Enterprises Facilitation Council Rules, 2007 (for short 'the Rules of 2007'), read with Section 18(3) of Chapter V of the Micro, Small and Medium Enterprises Development Act, 2006 (for short 'the Act of 2006'), for deciding the dispute between the petitioner-buyer and 2nd respondent-supplier.

Notice of motion was issued and in compliance thereof, reply on behalf of the only contesting respondent No.2, was filed.

Learned counsel for the petitioner submits that since there was

an arbitration clause in the agreement (Annexure P-2) between the parties, the Council- 1st respondent would not have any jurisdiction to entertain the claim application of 2nd respondent, either for its conciliation or for referring the matter to the empanelled arbitrator, notified by the Government under the Rules of 2007. He further submits that 2nd respondent was not entitled to invoke the provisions contained in Section 18 of the Act of 2006. In support of his contentions, learned counsel for the petitioner places reliance on a Division Bench judgment of Bombay High Court in *M/s. Steel Authority of India Limited and another Vs. Micro Small Enterprise Facilitation Council, AIR 2012 Bombay 178*. He would next contend that since the impugned order (Annexure P-7) passed by the first respondent was an order without jurisdiction, the same is liable to be set aside. He prays for quashing the impugned order (Annexure P-7), by allowing the present writ petition.

Per contra, learned counsel for 2nd respondent vehemently contended that the instant writ petition is without any merit on facts as well as in law. Controverting the arguments raised by the learned counsel for the petitioner, learned counsel for 2nd respondent-supplier would submit that respondent No.1 has rightly exercised its jurisdiction, while passing the impugned order. Petitioner has since already submitted to the jurisdiction of the 1st respondent-Council, by moving an application (Annexure P-6) and the said application was rightly declined by 1st respondent-Council, principle of estoppel would apply against the petitioner, who is not entitled to invoke the writ jurisdiction of this Court. He prays for dismissal of the writ petition with costs.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case in hand, the impugned order passed by 1st respondent-Council has been found factually correct and legally justified, which deserves to be upheld. The contentions raised by the learned counsel for the petitioner have been found wholly misplaced and the writ petition is liable to be dismissed, for the following more than one reasons.

Facts of the case are hardly in dispute. Petitioner comes within the definition of 'buyer' under Section 2(d) of the Act of 2006, which reads as under:-

“2(d) “buyer” means whoever buys any goods or receives any services from a supplier for consideration;

Similarly, 2nd respondent comes within the definition of 'supplier' as contained in Section 2(n) of the Act of 2006 and the same reads as under:-

“2(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,—

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

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

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

As per the agreement between the parties, petitioner purchased and 2nd respondent supplied the goods. Dispute arose between the parties regarding the payment of goods, received by the petitioner and supplied by 2nd respondent. When the petitioner failed to make the payment to the supplier-2nd respondent in time, 2nd respondent-supplier approached the Council- 1st respondent by a reference petition, invoking the jurisdiction of the respondent-Council under the Act of 2006. Respondent-council found the supplier-respondent No.2 as a small scale enterprise, who had made the supply under the contract, for which the buyer-petitioner was under legal obligation to make the payment. Thus, the Council had the jurisdiction in the matter.

Referring to the provisions of Sections 18 and 24 of the Act of 2006, 1st respondent-Council found that since the petitioner has failed to reconcile the matter in spite of the opportunities having been granted, no chances for mutual settlement were left and the reconciliation process stood terminated. Having been left with no other option, the respondent-Council, after hearing both the parties, decided to refer the dispute to the empanelled arbitrator, notified by the Government under Rule 16 of the Rules of 2007 read with Section 18(3) of the Act of 2006. Hence this writ petition, at the hands of the buyer.

Before proceeding further, it is necessary to refer to the

statement of object and reasons of the Act of 2006 and the same read as under:-

“An Act to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matter connected therewith or incidental thereto.

WHEREAS a declaration as to expedience of control of certain industries by the Union was made under section 2 of the Industries (Development and Regulation) Act, 1951;

AND WHEREAS it is expedient to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto;

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:-

Statement of Objects and reasons - *Small scale industry is at present defined by notification under section 11-B of the Industries (Development and Regulation) Act, 1951. Section 29-B of the Act provides for notifying reservation of items for exclusive manufacture in the small scale industry sector. Except for these two provisions, there exists no legal framework for this dynamic and vibrant sector of the country's economy. Many Expert groups or Companies appointed by the government from time to time as well as the small scale industry sector itself have emphasised the need for a comprehensive Central enactment to provide an appropriate legal framework for the sector to facilitate its growth and development. Emergence of a large services sector assisting the small scale industry in the last two decades also warrants a composite view of the sector, encompassing both industrial units and related service entities. The world over, the emphasis has now been shifted from “industries” to “enterprises”. Added to this, a growing need is being felt to extend policy*

support for the small enterprises so that they are enabled to grow into medium ones, adopt better and higher levels of technology and achieve higher productivity to remain competitive in a fast globalisation area. Thus, as in most developed and many developing countries, it is necessary, that in India too, the concerns of the entire small and medium enterprises sector are addressed and the sector is provided with a single legal framework. As of now, the medium industry or enterprise is not even defined in any law.

2. In view of the above-mentioned circumstances, the Bill aims at facilitating the promotion and development and enhancing the competitiveness of small and medium enterprises and seeks to-

(a) provide for statutory definitions of “small enterprise” and “medium enterprise”;

(b) provide for the establishment of a National Board for Micro, Small and Medium Enterprises, a high level forum consisting of stake holders for participative view of and making recommendations on the policies and programmes for the development of small and medium enterprises;

(c) provide for classification of micro, small and medium enterprises on the basis of investment in plant and machinery, or equipment and establishment of an Advisory Committee to recommend on the related matter;

(d) empower the Central Government to notify programmes, guidelines or instructions for facilitating the promotion and development and enhancing the competitiveness of small and medium enterprises;

e) make provisions for ensuring timely and smooth flow of credit to small and medium enterprises to minimise the incidence of sickness among and enhancing the competitiveness of such enterprises, in accordance with

the guidelines or instructions of the Reserve Bank of India;

f) empower the Central and State Governments to notify preference policies in respect of procurement of goods and services, produced and provided by small enterprises by the Ministers, departments and public sector enterprises;

g) empowering the Central Government to create a Fund or Funds for facilitating promotion and development and enhancing the competitiveness of small enterprises and medium enterprises;

h) make further improvements in the interest on Delayed Payments to Small Scale and Ancillary Industrial Undertaking Act, 1993, and making that enactment a part of the proposed legislation and to repeal that enactment.

3. *The Bill seeks to achieve the above objects.”*

Chapter V of the Act of 2006 deals with delayed payments of micro and small enterprises. 2nd respondent-supplier is a small scale enterprise, as rightly observed by the respondent-Council. Learned counsel for the petitioner has not disputed the liability of the petitioner to make the payment for the goods supplied by the 2nd respondent. Although Sections 15 to 24 contained in Chapter V of the Act of 2006 are relevant, yet the focus would be only on Sections 18 and 24 of the Act of 2006.

It would be appropriate to reproduce these two Sections for ready reference and the same read as under:-

“18. Reference to Micro and Small Enterprises Facilitation Council.—

(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it 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.

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.”*

Bare reading of Section 18 would show that the Legislature has left no scope for entertaining any doubt, while making its legislative intent crystal clear. Section 18 starts with non-obstante clause. If still anything was left to be clarified, Section 24 of the Act of 2006 has taken care of. Having said that, this Court feels no hesitation to conclude that the purposeful and harmonious construction of the provisions of law, contained in Chapter V of the Act of 2006, is that these are mandatory in nature. Sections 15 to 23 of the Act of 2006 shall have effect notwithstanding anything inconsistent therewith, contained in any other law for the time being in force.

Giving due respect to the legislative intent, it is held that the provisions contained in Chapter V of the Act of 2006 would have overriding effect and are also mandatory in nature. Any other interpretation would run counter to the true intention of the legislature and shall defeat the above-said objects of the Act of 2006. The provisions of law, as and when fall for consideration of the courts, for the purpose of interpretation, the courts would always keep in view the legislative intent and objects of the Statute, so as to interpret in a manner that the aims and objects of the Statute are not defeated but achieved.

In view of what has been discussed hereinabove, the basic fallacy in the arguments raised by the learned counsel for the petitioner is that he wants this Court to ignore the above-said objects of the Act of 2006

and also the provisions of law contained in Chapter V thereof, which are having overriding effect. Thus, the contentions raised by the learned counsel for the petitioner, having been found wholly misconceived, the same are not worth acceptance. In fact, when a specific query was put by the Court to the learned counsel for the petitioner, during the course of hearing, referring to objects of the Act and provisions of law contained in Chapter V thereof, he had no answer and rightly so, it being a matter of record. In this regard, he had nothing to say except referring to the above-said judgment of Bombay High Court in the case of **M/s. Steel Authority of India Limited** (*supra*).

Coming to the judgment, relied upon by the learned counsel for the petitioner, there is no dispute about the observations made therein. However, a close perusal of the cited judgment makes it clear that it is of no help to the petitioner, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others**, 2002 (3) SCC 533.

Under exactly similar fact situation, issue of interpretation of the provisions of law contained in Chapter V of the Act of 2006, fell for consideration before a Division Bench of Madras High Court, in the case of **Eden Exports Company Vs. Union of India and others**, 2013 (7) RCR (Civil) 1441. After reproducing Sections 15 to 24 in para 9 of the

judgment, the Division Bench held that to deal with a situation, as in the instant case, provisions of Chapter V of the Act of 2006 would be attracted.

Following the relevant judgments of the Hon'ble Supreme Court on the validity of the provisions of the Act of 2006 and also objects thereof, the Division Bench of Madras High Court in paras 13 to 15 of its judgment in **Eden Exports Company's** case (supra), held as under:-

*“13. The learned single Judge, for rejecting the aforesaid contention, has sought help from the decision of the Supreme Court in **A.P. Transco v. Bala Conductors (P) Ltd. and Another, Civil Appeal No. 5597 of 2002 dated 23.9.2003.** The matter came up before the Supreme Court by way of appeal from the common order of the Andhra Pradesh High Court in C.A. Nos. 5599, 5606 of 2002, etc., batch at the instigation of the A.P. Transco challenging the MSMED Act. The MSMED Act was challenged on two grounds, namely, (i) that the Act was outside the legislative competence of Parliament and (ii) that the Act was otherwise violative of Article 14 of the Constitution of India since it operated in discriminatory manner. The contention relating to legislative competence was fairly conceded by the appellant therein by stating that the legislative competence of the Parliament cannot be questioned not only in view of Entry 33 of List-III but also because of the residuary Entry 97 in List-I of the Seventh Schedule to the Constitution. The second contention was also rejected by the Hon'ble Supreme Court by observing the Industries (Development and Regulation) Act has already created the class by specifying the particular industries in the First Schedule to that Act, the control of which is expedient in the public interest to be under/ by the Union of India. The Hon'ble Supreme Court was of the further view that the discrimination if any, would operate against other industries and not against the buyer as all of them are similarly situated.*

14. In view of the aforesaid decision of the Supreme Court on the point, we do not find any reason to entertain the contention of the learned counsel for the appellants on this score. Moreover, the reasons stated by the learned single Judge for upholding Section 17 of the MSMED Act to the effect that a person who commits default and suffers an order or award or decree from the Facilitation Council alone is bound to pay such interest and such order, if found erroneous, can be corrected by judicial review, cannot be brushed aside.

15. Coming to the challenge in respect of 75% pre-deposit contemplated under Section 19 of the MSMED Act, we have no hesitation in confirming the conclusion arrived at by the learned single Judge in this regard, in view of the decisions of the Supreme Court and this Court. The Hon'ble Supreme Court in **Snehadeep Structures Private Limited v. Maharashtra Small Scale Industries Development Corporation Limited (2010) 3 SCC 34** has categorically held that the introduction of pre-deposit clause is a disincentive to prevent dilatory tactics employed by the buyers against whom the small-scale industry might have procured an award. The aforesaid decision has been followed by the Kerala High Court in **K.S.R. T.C. v. Union of India and Others (2010) 1 KLT 65** and this Court in **Goodyear India Limited, rep. by its Zonal Manager v. Nortan Intech Rubbers (P) Ltd. and Another 2011-3-L.W. 626**. Therefore, the appellants/writ petitioners no more cannot contend that the condition of pre-deposit imposed in Section 19 of the MSMED Act is arbitrary.”

The Division Bench of Madras High Court had a detailed deliberation on the ambit and scope of the provisions of law, contained in Section 18 of the Act of 2006 and observed as under in para 21 of its judgment:-

“21. A cursory reading of the aforesaid provision makes

*it clear that a conciliator could not act as an arbitrator. It is no doubt true that Sections 18(2), 18(3) and 18(4) have given dual role for the Facilitation Council to act both as Conciliators and Arbitrators. According to the learned counsel for the appellants, the Facilitation Council should not be allowed to act both as Conciliators and Arbitrators. This contention, though prima facie appears to be attractive, it is liable to be rejected on a closer scrutiny. Though the learned counsel would vehemently contend that the Conciliators could not act as Arbitrators, they could not place their hands on any of the decisions of upper forums of law in support of their contentions. As rightly pointed out by the learned single Judge, Section 18(2) of MSMED Act has borrowed the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act for the purpose of conducting conciliation and, therefore, Section 80 could not be a bar for the Facilitation Council to conciliate and thereafter arbitrate on the matter. Further, the decision of the Supreme Court in **Institute of Chartered Accountants of India v. L.K. Ratna (1986) 4 SCC 537**, on this line has to be borne in mind. One should not forget that the decision of the Facilitation Council is not final and it is always subject to review under Article 226 of the Constitution of India and, therefore, the appellants are not left helpless.”*

In fact, the Division Bench was hearing the writ petition as well as writ appeals against the judgment rendered by the learned Single Judge of Madras High Court. The Division Bench also considered the scope of judicial intervention in the arbitration proceedings and held that it should be minimal.

Again, referring to the relevant judgment of the Hon’ble Supreme Court and also to the provisions of the Constitution, the Division Bench of Madras High Court in paras 23 to 25 of its judgment in **Eden**

Exports Company's case (supra) held as under:-

“23. Coming to the question of formation of Facilitation Council, we are in full agreement with the conclusion arrived at by the learned single Judge. The contention of the learned counsel for the appellants/petitioners that the members preside over the Facilitation Council should have legal background and a Judicial Member has to preside over the Facilitation Council cannot be accepted. When the Facilitation Council is not a Tribunal constituted in exercise of power granted under Articles 323-A and 323-B of the Constitution, the appellants cannot be heard to contend that a Judicial Member has to preside over the Council or the members should have legal background. However, we cannot fully brush aside the aforesaid contention of the learned counsel for the appellant. Considering the issues involved in all these matters, in order to avoid the Companies /Corporation in approaching the Court in large numbers, in future, we observe that while appointing the Members for the Council, the Government may bear in mind this aspect and appoint the Members having judicial background.

24. Coming to the writ petitions, in W.P. Nos. 27319, 27888 of 2010, 39, 7805, 11234, 15065, 15733, of 2011, the concerned writ petitioner has challenged the award passed by the Facilitation Council, dated 20.9.2010, 20.9.2010, 29.7.2010, 31.7.2010, 7.1.2011, 29.4.2011, 29.3.2011 respectively. The appellant in WA. No. 2199 of 2010, who had challenged the vires of the Act, has also filed a separate writ petition W.P. No. 28168 of 2010, challenging the award dated 29.7.2010, passed by the Council, by reiterating the contentions raised in the writ appeal. W.P. No. 4397 of 2009, though filed in 2009 challenging the award passed by the Council, dated 22.10.2008, has not got admitted so far. However, for one reason or the other it was not tied along with

the batch of the writ petitions heard by the learned single Judge.

*25. In all these writ petitions filed by various companies challenging the award/order passed by the Arbitrators/Facilitation Council, the question to be gone into is whether such writ petitions could be maintained before this Court. If one carefully goes through the provisions of the MSMED Act under Chapter V, in particular Section 18, it could be seen that the said Act is in consonance with the Arbitration and Conciliation Act, 1996. Moreover, the award/order passed by the Arbitrators/Facilitation Council is similar and identical to that of the award passed under Section 31 of the Arbitration and Conciliation Act. Section 5, which is contained in Part I of the Arbitration Act, defines the extent of judicial intervention in arbitration proceedings. It says that notwithstanding anything contained in any other law for the time being in force, in matters governed by Part I, no judicial authority shall intervene except where so provided in that Part. The Hon'ble Supreme Court in **P. Anand Gajapathi Raju v. P. v. G. Raju (2000) 4 SCC 539**, has held that the judicial intervention in arbitration proceedings should be minimal. Keeping in view the object of the MSMED Act, we have no hesitation in adopting Section 5 of the Arbitration and Conciliation Act, 1996, which prohibits interference of the judicial authority, to the awards passed under the MSMED Act.”*

Similarly, a Division Bench of Allahabad High Court in **M/s Bharat Heavy Electricals Limited Vs. State of U.P. and others, 2014 (16) RCR (Civil) 1**, in an identical fact situation, as obtaining in the present case, held as under:-

“5. Section 18 empowers the Council, upon receipt of a reference, to conduct a conciliation in terms of the provisions

of sections 65 to 81 of the Arbitration and Conciliation Act, 1996. Where the conciliation is not successful and is terminated without a settlement between the parties, the Council is empowered to itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services. Sub-section (4) of Section 18 begins with a non obstante clause which operates notwithstanding anything contained in any other law for the time being in force. Under sub-section (4), the Council or as the case may be, the centre providing alternative dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

6. The Act thus provides for a statutory remedy of an arbitration in sub-section (4) to Section 18 notwithstanding anything to the contrary contained in any other law for the time being in force.

7. In the present case, the Council is seized of the reference on a claim petition filed by the second respondent.

8. In this view of the matter, the relief of certiorari for quashing all the proceedings before the Council is manifestly misconceived. The proceedings had been entertained by the Council in pursuance of the provisions of the Act. Though there may be an arbitration agreement between the parties, the provisions of Section 18 (4) specifically contain a non obstante clause empowering the Facilitation Council to act as an Arbitrator. Moreover, section 24 of the Act states that sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

Again, exactly similar issue fell for consideration before this

Court in **Welspun Corp. Limited Vs. The Micro and Small, Medium**

Enterprises Facilitation Council, Punjab and others, 2013 (5) RCR

(Civil) 150. Similar were the facts in **Welspun Corp. Limited's** case (supra). After interpreting the provisions contained in Sections 18 and 24 of the Act of 2006, this Court, in paras 6 and 9 of its judgment in **Welspun Corp. Limited's** case (supra), held as under:-

“6. In this case, if there was a contract between the parties to have an arbitration made under the Act, 1996 and the Conciliator had proposed to terminate its conciliatory postures, it was competent for it to treat itself as an Arbitrator and proceed the arbitral process in the manner contemplated under Section 18(3). I cannot read Section 18(3) in the manner canvassed by the learned counsel that Section 18(3) will apply only if there is no contract between the parties for a reference to arbitration under the Act, 1996. On the contrary, the latter part of Section 18(3) that the provisions of the Act, 1996 would apply to a dispute as if the arbitration was in pursuance of an arbitration agreement shall be read in such a way that it is applicable only to a situation where the Council deems fit to refer to any institution for an alternate dispute resolution services for such an arbitration. Section 18(3) provides for two procedures: (i) on termination of conciliation, it can either take up the arbitration itself or (ii) refer the matter to arbitration as though there is an arbitral agreement between the parties. It is possible for a Council to make a reference to arbitration even in the absence of an arbitration agreement. If there is an arbitration agreement between the parties, it only means that the power is still available when the Council, without invoking its own powers. It can simply observe that in terms of the agreement between the parties, the parties shall be at liberty to have an arbitration done under the Act, 1996. It does not exclude a construction that whenever there is an arbitration clause, the Council does not have a power to act as

an Arbitrator. Such an interpretation would render nugatory the first portion of Section 18(3) that allows it to proceed to arbitrate. I would, therefore, uphold the specific reasoning, which the impugned order makes in stating that :

"If Section 18 of the Act, 2006 provides for a mode of resolution of a dispute wherein this Council is to adjudicate acting as an arbitrator in terms of the Act, 1996, it would not be open for any party to oust the said jurisdiction of this Council which has been vested in terms of Section 18(3) of the Act, 2006 merely by creating a mutual agreement. The Agreement cannot over ride the provisions of the Act, 2006 in view of the aforesaid fact."

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9. *There are at least 25 central enactments, which contain provisions for statutory arbitrations. The provisions that are frequently invoked are statutory arbitration provided under the Telegraph Act and amongst the State enactments, the State Cooperative Societies Act. The reference to statutory arbitration and the primacy that it obtains over contractual reference to independent modes of resolution of disputes had come before Hon'ble the Supreme Court in several cases. In "**Registrar, Cooperative Society v. Krishan Kumar Singhania, 1995(6) SCC 482**" the Supreme Court dealt with a conflict between the statutory arbitration contained under the West Bengal Cooperative Societies Act and the Arbitration and Conciliation Act, 1996 and provided for a primacy of application of the State Act. In "**Punjab State Electricity Board v. Guru Nanak Cold Storage, 1996(3) R.C.R.(Civil) 261 : 1996(5) SCC 411**", the Supreme Court was considering the effect of some of the provisions of the Electricity Act and a provision for an arbitration outside the scope of the Act, 1996. These are merely to state that the issue is not res integra. The*

conflicts have existed and the Courts have never found it essential at all times to give the Act, 1996 a primacy. In this case, the Act, 2006 which is an Act of the Parliament and will hold itself field for determining the rights of parties for the disputes that they have arisen between a supplier and a buyer.....”

A bare reading of the above-said observations made by Division Bench of Madras High Court in **Eden Exports Company’s** case (supra), Division Bench of Allahabad High Court in **M/s Bharat Heavy Electricals Limited’s** case (supra) and by this Court in **Welspun Corp. Limited’s** case (supra), leaves no manner of doubt that the petitioner has no case either on facts or in law. In fact, the issue is no more *res integra*. In the circumstances of the case, no fault can be found with the impugned order passed by the first respondent-Council, while referring the matter to the empanelled arbitrator, notified by the Government under Rule 16 of the Rules of 2007 read with Section 18 (3) of the Act of 2006 and the same deserves to be upheld for this reason also.

Case of the petitioner has been found based on technicalities and super-technicalities alone. It is the settled proposition of law that technicalities must not weigh with the Court, while doing complete and substantial justice between the parties. As noticed hereinabove, facts of the case, including liability of the petitioner to make payment to the 2nd respondent, had never been in dispute. Even during the course of the hearing, learned counsel for the petitioner could not deny the liability of the petitioner. In such a situation, neither the contentions raised by the learned counsel for the petitioner have been found in consonance with the provisions of the Act of 2006 nor the same appeal to reason.

In fact, the learned counsel for the petitioner has miserably failed to substantiate any of his arguments. The impugned order (Annexure P-7) passed by the respondent-Council has not been found suffering from any patent illegality or perversity. Further, learned counsel for the petitioner could not point out any kind of prejudice, which might have been caused to the petitioner, by passing the impugned order, so as to warrant interference, at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the respondent-Council committed no error of law, while passing the impugned order, the same deserves to be upheld. Instant writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out

Resultantly, with the above-said observations made, the present writ petition stands dismissed, however, with no order as to costs.

30.8.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No