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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 100 of 2017**

M/s JMS Mining Services Private Limited (Formerly known as Joy Mining Services India Pvt. Ltd.) (A Company incorporated under the provisions of Companies Act, 1956), having Registered Office at 27, Shakespeare Sarani, Kolkata 700017 through its Authorized Signatory Ganesh Gupta S/o Late Sidh Nath Gupta).

---- Appellant**Versus**

1. State of Chhattisgarh Through the Secretary, Department of Commerce And Industries, Mantralaya, Mahanadi Bhawan, Naya Raipur (Chhattisgarh).
2. Directorate of Industries, Chhattisgarh Udyog Bhawan, Ring Road, No.1 Telebandha, Raipur Chhattisgarh Through its Director.
3. Micro & Small Enterprises Facilitation Council, Chhattisgarh, Directorate of Industries, Chhattisgarh Having Office A Udyog Bhawan, Ring Road No.1, Telebandha Raipur Chhattisgarh Through Its Director
4. M/s Arora Fabricators, Industrial Estate, Manendragarh, District Korea Chhattisgarh

---- Respondents**Writ Appeal No. 102 of 2017**

M/s JMS Mining Services Private Limited (Formerly known as Joy Mining Services India Pvt. Ltd.) (A Company incorporated under the provisions of Companies Act, 1956), having Registered Office at 27, Shakespeare Sarani, Kolkata 700017 through its Authorized Signatory Ganesh Gupta S/o Late Sidh Nath Gupta).

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1. State of Chhattisgarh Through the Secretary, Department of Commerce And Industries, Mantralaya, Mahanadi Bhawan, Naya Raipur (Chhattisgarh).
2. Directorate of Industries, Chhattisgarh Udyog Bhawan, Ring Road, No.1 Telebandha, Raipur Chhattisgarh Through its Director.
3. Micro & Small Enterprises Facilitation Council, Chhattisgarh, Directorate of Industries, Chhattisgarh Having Office A Udyog Bhawan, Ring Road No.1, Telebandha Raipur Chhattisgarh Through its Director.
4. M/s D.D. Enterprises, Industrial Area, Plot No 109, D Sector B Sirgitti Industrial Estate, Bilaspur Chhattisgarh

---- Respondents

Writ Appeal No. 103 of 2017

M/s JMS Mining Services Private Limited (Formerly known as Joy Mining Services India Pvt. Ltd.) (A Company incorporated under the provisions of Companies Act, 1956), having Registered Office at 27, Shakespeare Sarani, Kolkata 700017 through its Authorized Signatory Ganesh Gupta S/o Late Sidh Nath Gupta).

---- Appellant

Versus

1. State of Chhattisgarh Through the Secretary, Department of Commerce And Industries, Mantralaya, Mahanadi Bhawan, Naya Raipur (Chhattisgarh).
2. Directorate of Industries, Chhattisgarh Udyog Bhawan, Ring Road, No.1 Telebandha, Raipur Chhattisgarh Through its Director.
3. Micro & Small Enterprises Facilitation Council, Chhattisgarh, Directorate of Industries, Chhattisgarh Having Office A Udyog Bhawan, Ring Road No.1, Telebandha Raipur Chhattisgarh Through its Director.
4. M/s Radha Vallabh Industries, Plot No 133/a & B Sector B, Sirgitti Industrial Area, Bilaspur Chhattisgarh

---- Respondents

And

Writ Appeal No. 101 of 2017

M/s JMS Mining Services Private Limited (Formerly known as Joy Mining Services India Pvt. Ltd.) (A Company incorporated under the provisions of Companies Act, 1956), having Registered Office at 27, Shakespeare Sarani, Kolkata 700017 through its Authorized Signatory Ganesh Gupta S/o Late Sidh Nath Gupta).

---- Appellant

Versus

1. State of Chhattisgarh Through the Secretary, Department of Commerce And Industries, Mantralaya, Mahanadi Bhawan, Naya Raipur (Chhattisgarh).
2. Directorate of Industries, Chhattisgarh Udyog Bhawan, Ring Road, No.1 Telebandha, Raipur Chhattisgarh Through its Director.
3. Micro & Small Enterprises Facilitation Council, Chhattisgarh, Directorate of Industries, Chhattisgarh Having Office A Udyog Bhawan, Ring Road No.1, Telebandha Raipur Chhattisgarh Through its Director.
4. M/s Steel Expets, 10 Industrial Area, Village Chinpur, Manendragarh, District Korea Chhattisgarh

---- Respondents

For Appellant	: Dr. N.K. Shukla, Senior Advocate with Shri Ashish Shrivastava, Advocate.
For Respondent/State	: Shri Y.S. Thakur, Additional Advocate General.
For Respondent No.4	: Ms. Ginny J. Rautray, Shri Saurendra Rautary, Shri Akshay Sail, Shri Gokulanand Mehar and Shri Y.C. Sharma, Advocates.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri P. Sam Koshy, Judge.

Judgment on Board

Per Thottathil B. Radhakrishnan, Chief Justice

15/05/2017

1. These appeals are by the writ Petitioner whose four writ petitions challenging an award passed by the Chhattisgarh Micro and Small Enterprises Facilitation Council (hereinafter referred to as 'Chhattisgarh Council') have been dismissed by the learned Single Judge.
2. We have heard the learned counsel for the Appellant, the learned counsel for the contesting Respondents and the learned Additional Advocate General.
3. The short issue on which the learned Single Judge has refused to entertain the petitions under Article 226 of the Constitution of India, is that the Petitioner/Appellant has adequate alternative remedy under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'A&C Act'). This is the moot issue in these appeals as well.
4. The learned Senior Counsel for the Appellant argued that the Council, which is governed by the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'MSM Act') could not have made an award in relation to the transaction between the Petitioner and the private Respondent having regard to a particular term of the contract between them. The plea is that as per the said term of the contract, there is an exclusion of jurisdiction of all Courts other than the Courts in Calcutta and therefore, the

Chhattisgarh Council does not have the jurisdiction to consider any matter in relation to a transaction between the Petitioner and the private Respondent. It is thus pleaded that Section 18 of the MSM Act was unavailable to be invoked by the private Respondent before the Chhattisgarh Council. The second plea is that the Chhattisgarh Council having entered on arbitration after it acted as conciliator, the entire arbitral proceedings by the Chhattisgarh Council are invalid.

5. To buttress the aforesaid submissions, the learned Senior Counsel emphatically relied on the afore-noted terms of the contract which deals with the jurisdiction being with the Courts in Calcutta and had argued pointedly that sub-section (1) of Section 18 of the MSM Act does not exclude the effect of any contract between the parties since the non-obstante clause contained therein is confined only to any other law for the time being in force and does not extent to contractual terms. It is thus pointed out that a contract between the parties as to jurisdiction is one which holds good and would not fall on the basis of sub-section (1) of Section 18 of the MSM Act.

6. Per contra, the learned Counsel for the contesting Respondent argued that the Appellant had invoked the provisions of Section 34 of the A&C Act and by now, those proceedings have also concluded. It is accordingly argued by her that there is no question of the award made by the Chhattisgarh Council under the MSM Act being challenged independently because that award has merged in the decision of the Court under Section 34 of the A&C Act. It is further argued that the contract between the parties relates only to the realm of civil suits and may be arbitral proceedings and the challenge thereto, but no such issue can be raised in these cases where the challenge is to the awards made under the MSM Act and not to any proceedings under the A&C Act.

7. Section 24 of the MSM Act provides that the provisions of Sections 15 to 23 of that Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Therefore, if the law relating

to territorial jurisdiction, subject matter jurisdiction or pecuniary jurisdiction is referable to any other law and the provision of any other such law is inconsistent with the provisions of Sections 15 to 23 of the MSM Act, the provisions of the MSM Act, in particular, those contained in Sections 15 to 23 of that Act will have overriding effect over all such laws. This being the effect of Section 24 of the MSM Act, primacy to be given is to Section 18 of the MSM Act insofar as the case in hand is concerned. Section 18 opens up with yet another non-obstante clause and provides that any party to a dispute may, with regard to any amount due under Section 17 of the MSM Act make a reference to the Chhattisgarh Council. Section 17 of the MSM Act provides 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. What therefore become available for dispute resolution proceedings provided in Section 18 of the MSM Act is the statutory eligibility to the amounts that could be treated as due under Section 17 read with Section 18 of the MSM Act. When the supplier has invoked the provisions of Section 18 of the MSM Act, the Chhattisgarh Council is duty bound under sub-section (2) of Section 18 to conduct conciliation. The said sub-section read alongwith sub-section (3) of Section 18 of the MSM Act obliges the Chhattisgarh Council to proceed to have arbitration in the event of conciliation failing. On failure of such conciliation, the Chhattisgarh Council may either itself take up the dispute for arbitration or refer it to an institution or center providing alternative dispute resolution services for such arbitration. There is thus an incorporation by the relevant provisions of the A&C Act to govern the proceedings which would have commenced with the application of reference under Section 18 of the MSM Act. Once statutory sanction is given to a particular authority which is the conciliator, to be, by itself or himself, the arbitrator, there cannot be any challenge to the arbitrator's authority on the ground of dual office or dual responsibility. The proceedings provided through the various sub-sections of Section 18 of the MSM Act operates notwithstanding any other law for the time

being in force. Therefore, any inhibition in the realm of law relating to arbitration including the A&C Act, to a conciliator being an arbitrator in the same case, does not affect the arbitral proceedings under sub-sections (2) and (3) of Section 18 of the MSM Act. This being the net result of the analysis of the relevant provisions, we are of the view that the award made by the Chhattisgarh Council under the MSM Act could be challenged only under the provisions of the A&C Act.

8. With the passage of time, the awards which are sought to be impeached before the learned Single Judge have been challenged before the principal Civil Court of original jurisdiction in terms of the provisions of A&C Act. In such cases, there is no room to independently challenge those awards passed under the MSM Act.

9. The learned Senior Counsel for the Appellant also argued that the question of jurisdiction of the Chhattisgarh Council to make an award under the MSM Act in relation to the subject matter of the reference under issue is an pivotal point to be considered. Having held that the A&C Act applies, we answer this issue by making immediate reference to the provisions of Section 16(1) of the A&C Act which provides, *inter alia*, that the arbitral tribunal may rule on its own jurisdiction, including ruling on any objection with respect to the existence or validity of the arbitration agreement. Sub-section (2) of Section 16 enjoins that a plea to the effect that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence before the arbitrator. However that there is no absolute bar from raising it at later point of time in accordance with the later provisions in sub-section (2) of Section 16 of the A & C Act. If the plea that the arbitral tribunal does not have jurisdiction is raised, sub-section (5) of Section 16 of the A&C Act enjoins that the arbitral tribunal shall decide on that plea and where the arbitral tribunal takes a decision rejecting that plea, sub-section (5) of Section 16 obliges it to continue with the arbitral proceedings and make an arbitral award. The net effect of sub-section (5) of Section 16 of the A&C

Act, on the issue in hand, is that even an interim award on the question of jurisdiction could be subjected to challenge alongwith the final award that the arbitrator may render. With this, we remind ourselves that the arbitrability of a particular issue is itself arbitral and the question whether a particular issue is arbitral, is itself a matter relating to the arbitrability of the issue and it is well settled even through the binding judicial precedents rendered under the provisions of the Arbitration and Conciliation Act, 1940, which is the predecessor of Arbitration and Conciliation Act, 1996, that such matters touching the jurisdiction, on the question arbitrability of a particular dispute, is itself a matter for arbitration. Section 16 of the Arbitration and Conciliation Act, 1996 essentially wipes off any doubt that might have lingered while effectuating the provisions of the Arbitration Act, 1940 in that regard.

10. It is also apposite in this context to refer to the different rules of Chhattisgarh, Micro and Small Enterprises Facilitation Council Rules, 2006. Rule 5(22) and 5(23) reads as follows:-

“5. Procedure to be followed:-

* * * *

(22) When such conciliation does not lead to settlement of the dispute, the Council shall either itself act as an Arbitrator for final settlement of the dispute or refer it to institute for such arbitration, in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The supplier of the buyer may, either in person or through his lawyer registered with any court, present his case before the Council or the institute during the arbitration proceedings. The institute shall submit its report to the Council with in such time as the Council may stipulate.

(23) The Council shall make an arbitral award in accordance with Section 31 of the Arbitration and Conciliation Act, 1996 and within the time specified in sub-section (5) of Section 18 of the Act. The award shall be stamped in accordance with the relevant law in force.”

11. In view of the afore-quoted Rule, the procedure for modulating the transit of conciliation proceedings to arbitral proceedings and the making of an arbitral

award are regulated through the statutory rules made in exercise of statutory powers.

12. With the aforesaid view of the matter, we do not find any illegality, misappreciation of facts or any error of jurisdiction by the learned Single Judge in dismissing the writ petition. Thus, these writ appeals therefore fail. They are accordingly dismissed.

13. On pronouncing this judgment, the learned Senior Counsel appearing for the Appellant attempted to say that the time taken for prosecuting the matter before the learned Single Judge and before the Division Bench, may be directed to be excluded. We are clearly of the view that the exercise of jurisdiction under Section 14 of the Limitation Act is a matter to be considered and done by the Court before which a new litigation is placed. Therefore, we clarify that we have not expressed anything on that issue and this judgment does not stand in the way of any other judicial authority deciding such question under Section 14 of the Limitation Act, on the facts and circumstances of the case, in accordance with law.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE