

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO. 60 OF 2016

M/s. Reliance Life Science Pvt. Ltd.Petitioner

Vs.

Klenzaids Contamination Controls
(P) Ltd.Respondent

Mr.Kalpesh Uttamrao Patil for petitioner.

Ms.Niyati Mankad a/w. Mr.Rahul Hakani i/b Kirit J. Hakani for Respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 24th NOVEMBER, 2017**

P.C.:

1 This is a petition under Section 11 of the Arbitration and Conciliation Act 1996. Admittedly, Petitioner and Respondent had entered into an Agreement as reflected in the Purchase Order issued by Petitioner being LS2/6207598 dated 5th August 2010 with additional Work Order ref. No. LS2/32002346 dated 27th August 2010. The Work Order provides for arbitration and the arbitration clause reads as under :

“34. Arbitration :-

Should any disagreement, dispute or difference whatsoever arise between OWNER and SELLER upon or in relating to or in connection with the PURCHASE ORDER either party may forthwith give to the other notice in writing on the existence of such disagreement, dispute or difference whatsoever and the same shall be referred to the adjudication of two arbitrators one to be

nominated by the OWNER and the other to be nominated by the SELLER and in the case of the said arbitrators not agreeing, then to the adjudication of an Umpire to be appointed by the arbitrators in writing before proceeding with the reference. The award of the arbitrators, or in the event of their not agreeing that of the Umpire appointed by them, shall be final and binding on the parties and the provisions of the Arbitration and Conciliation Act, 1996 and the Rules thereunder and any statutory modification thereof shall be deemed to apply.”

Admittedly, Respondent is registered with Gujarat State Micro and Small Enterprises Facilitation Council at Gandhinagar under the provisions of Micro, Small and Medium Enterprises Development Act, 2006 (The said Act). A copy of the Registration Certificate is also annexed to the affidavit in reply.

Brief facts :

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(a) Petitioner placed Purchase Order dated 5th August, 2010 with Respondent at its Factory at GIDC Industrial Area, Umbergaon, District Valsad, Gujarat for Rs.3,56,30,650.20 for supply of Filling Line with Isolator on the terms and conditions mentioned therein. Petitioner did not pay as per the Purchase Order and it is alleged, expected supply and service free of cost. Moreover, Petitioner placed another Order for a sum of Rs.77,96,665/-. Respondent raised Bills for a sum of Rs.4,34,27,315/- and as against this Petitioner paid an

aggregate sum of Rs.3,32,33,315/-, leaving balance amount payable of Rs.1,01,94,000/-.

(b) Petitioner issued a Notice dated 21st December, 2013 to Respondent alleging defect in machine and delay in supply and made claim for refund of Rs.2,61,29,000/-, reimbursement of Rs.20,00,000/- and for damages of Rs.23,00,00,000/-. There is no invocation of Arbitration but threat was given to file Civil and Criminal prosecution.

Respondent by its Demand Notice-cum-Reply, dated 14th April 2014 denied the allegations and claims made by Petitioner in the Notice dated 21st December, 2013 and called upon Petitioner to pay a sum of Rs.1,01,94,000/- with compounding interest as per the provisions of the said Act and stated that the Arbitration under the said Act may be invoked in alternative to the Arbitration as per the Purchase Order.

(c) Petitioner wrote a letter in Rejoinder dated 28th March, 2016 invoking Arbitration and appointed one Mr. Rahul Chitnis as its Arbitrator. Respondent replied vide its letter dated 26th April, 2016 and stated that Respondent is

referring the matter to the Gujarat Micro and Small Enterprises Facilitation Council (in short 'Council') at Gandhinagar. In the alternative, Respondent appointed the Council as an Arbitrator.

(d) On 16th August 2016, Petitioner filed this Arbitration Petition under Section 11 of the Arbitration and Conciliation Act, 1996. The copy of the Petition was served on respondent on 2nd September, 2016.

(e) On 12th September 2016, Petitioner made reference to the Council at Gandhinagar. The case was registered on 16th September, 2017 under Case NO.GJ/25/ S/00116. On 5th December, 2016, the Council at Gandhinagar issued a Notice to Petitioner.

(f) On 26th December, 2016, Petitioner replied to the said Notice of the Council and opposed the proceedings before it on the ground that Petitioner has filed Arbitration Petition in this Court and that the same is pending for admission. Respondent herein vide its letter dated 11th February, 2017 to the Council, has refuted the allegations and contentions made

by Petitioner in its letter to the Council and pointed out that the Council has jurisdiction to decide the claim of Respondent.

Issue :

3 The issue raised is whether Petitioner should refer their disputes to the Facilitation Council under Section 18 of the said Act and whether Section 24 has an overriding effect or the arbitration clause in the work order quoted above will prevail.

4 Section 18 of the said Act reads 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 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 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.

Section 24 of the said Act reads 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.

SUBMISSIONS :

5 Mr. Patil for Petitioner, submitted that where there is an independent arbitration agreement in existence between the parties, the Council has no jurisdiction under Section 18 of the said Act either to conduct conciliation or to enter upon the reference for the purposes of arbitration. According to Mr. Patil, Section 24 of the said Act, which provides for an overriding effect of the provisions of the said Act including Section 18, which provides for reference to a Council is of no effect in a case where there is an arbitration agreement capable of being given full effect to under the provisions of the said Act, since such an agreement serves the same purpose as that of

arbitration, which might be entered upon under Section 18 of the said Act by the Council. According to the counsel for Petitioner, a buyer like Petitioner, has no remedy under the said Act and are not entitled to invoke the provisions of Section 18 of the said Act at all either for conciliation or for arbitration since an amount can be claimed under Section 18 of the said Act only in respect of an amount due under Section 17, which in term can only be an amount payable by the buyer for service provided or goods provided by the supplier. Shri Patil relied on judgment of a Division Bench (Nagpur Bench) of this Court in ***M/s. Steel Authority of India Ltd. & Anr. Vs. Micro, Small Enterprises Facilitation Council, through Joint Director of Industries, Nagpur Region, Nagpur***¹ and further submitted that Section 18(1) of the said Act clearly allows any party to a dispute, viz., a buyer and a supplier to make reference to the Council but Section 24 of the said Act which is enacted to give an overriding effect to the provisions of Section 15 to 23 including Section 18, which provides for forum for resolution of the dispute under the Act-would not have the effect of negating an arbitration agreement since that Section overrides only such things that are inconsistent with Section 15 to Section 23 including Section 18 notwithstanding anything contained in any other law for the time being in force. Mr. Patil relied on this judgment also to submit that the Court has to come to a conclusion that an

1 AIR 2012 BOMBAY 178

independent arbitration agreement will not cease to have effect because the overriding clause only overrides things inconsistent therewith and there is no inconsistency between an arbitration conducted by the Council under Section 18 and arbitration conducted under an individual clause since both are governed by the provision of the said Act.

6 Per contra, Ms. Mankad for Respondent submitted that though Section 17 of the said Act makes a provision for recovery of the amount due from the buyer alone at the instance of the supplier, Section 18 clearly contemplates that any party to the dispute may, with regard to any amount due under Section 17, make reference to the Council in view of the express provisions of Section 18(1). According to Ms. Mankad, the purport of the said Act is to provide for a special procedure for micro, small and medium enterprises to recover the amount and the said Act has, therefore, set up a Facilitation Council, which is required to deal with the dispute, which has arisen between a buyer and a micro and small enterprise, initially by conciliation and later if conciliation fails, by arbitration. Ms. Mankad submitted that a Division Bench of Allahabad High Court in ***M/s. Paper & Board Convertors Thru' Partner Rajeev Agrawal Vs. U.P. State Micro & Small Enterprises & 2 Others***² came to a different conclusion from that of

² MANU/UP/1087/2014

the Division Bench of Bombay High Court and held that Section 18 provides 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.

7 Ms.Mankad also submitted that a Division Bench of Gujarat High Court in ***Principal Chief Engineer Vs. Manibhai & Brothers (Sleeper) & Ors.***³ concurred with the views expressed by the Allahabad High Court and came to the same conclusion that considering Section 18 of the said Act, the Facilitation Council has jurisdiction to act as an Arbitrator or Conciliator in a dispute between the parties and it overrides an individual arbitration clause.

Mrs.Mankad submitted that as Section 18 also provides that if the conciliation talks fail, the Council will take steps under Section 18(3) to commence arbitral proceedings and hence, Petitioner may approach the Council.

8 Having considered the judgment in *Paper Board Convertors* (supra) and *Manibhai & Brothers* (supra), it is true that these Courts have come to a conclusion the Facilitation Council or the Centre providing alternate dispute resolution services shall have jurisdiction in a dispute between a buyer and a

3 MANU/GJ/1164/2016

seller who is registered under the said Act. Provisions of Section 18 of the said Act will prevail over the individual arbitration clause. Paragraphs 9, 10, 11 and 12 of the judgment in *Paper Board Convertors* (supra) read as under :-

“9 Certain salient aspects of Section 18 would merit emphasis. Sub-section (1) of Section 18 provides for a reference to the Micro and Small Enterprises Facilitation Council notwithstanding anything contained in any other law for the time being in force, by any party to a dispute, with regard to any amount due under Section 17. Consequently, what Section 18(1) does, is to stipulate a statutory reference to the Facilitation Council for the resolution of disputes. Under sub-section (2), on receipt of a reference, the Council shall either conduct a conciliation in the matter itself or seek assistance of any institution or centre providing alternate dispute resolution services. Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 are to apply to such a dispute. Sub-section (3) provides for the consequences if the conciliation is not successful. Once the conciliation proceeding is terminated without any settlement, the Council has one of two courses of action open. The Council may either itself take up the dispute for arbitration or refer the dispute to an institution or centre providing alternate dispute resolution services for such arbitration. Thereupon the provisions of the Arbitration and Conciliation Act, 1996 apply as if the arbitration was in accordance with the provisions of Section 7 (1) of the Act of 1996. Sub-section (3) of Section 18, therefore, contains a statutory reference to arbitration. This is not dependent on the existence of an arbitration agreement in the contract between the parties.

10 Under sub-section (4) of Section 18, this position is made abundantly clear because it stipulates 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 this section in a dispute between a supplier located within its jurisdiction and a buyer located anywhere in India.

11 The Petitioner invoked the provisions of the 2006 Act by filing a reference to the Facilitation Council on 3 October 2011. There was undoubtedly a dispute between the Petitioner and the Respondents in regard to the claim of the Petitioner arising out of non payment of its bills. The respondents appointed a sole

arbitrator on 5th October 2011 after the Petitioner had invoked the intervention of the Facilitation Council on 3 October 2011 under Section 18 of the 2006 Act. Once the jurisdiction of the Facilitation Council has been validly invoked, the Council has exclusive jurisdiction to enter upon conciliation in the first instance and after conciliation has ended in failure, to refer the parties to arbitration. The Facilitation Council could either have conducted the arbitration itself or could have referred the parties to a centre or institution providing alternate dispute resolution services. The Facilitation Council was clearly in error in entertaining the objection filed by the Respondents and referring the Petitioner to the sole arbitrator so designated by the Respondents.

12 The non-obstante provision contained in sub-section (1) of Section 18 and again in sub-section (4) of Section 18 operates to ensure that it is a Facilitation Council which has jurisdiction to act as an arbitrator or Conciliator in a dispute between a supplier located within its jurisdiction and a buyer located anywhere in India. The Facilitation Council had only one of the two courses of action open to it : either to conduct an arbitration itself or to refer the parties to a centre or institution providing alternate dispute resolution services stipulated in sub-section (3) of Section 18.”

9 It will also be useful to reproduce paragraphs 7 to 10 of the judgment of Gujarat High Court in *Manibhai & Brothers* (supra) and the same read as under :

“7 Identical question came to be considered by the Division Bench of the Allahabad High Court in the case of *Paper and Board Convertors* (supra). While interpreting the very provision of Section 18 of the Act, 2006, in para 12, the Division Bench has observed and held as under:

12. The non-obstane provision contained in sub- (1) of Section 18 and again in sub-section (4) of Section 18 operates to ensure that it is a Facilitation Council which has jurisdiction to act as an arbitrator or Conciliator in a dispute between a supplier located within its jurisdiction and a buyer located anywhere in India. The Facilitation Council had only one of the two courses of action open to it : either to conduct an arbitration itself or to refer the parties to a centre or institution

providing alternate dispute resolution services stipulated in sub-section (3) of Section 18.

After observing as above, the Division Bench of the Allahabad High Court has set aside the order passed by the Facilitation Council directing the parties to place it version before the sole arbitrator in terms of the rate contract agreement and restored the proceedings back to the Council and directed the Council to act in accordance with the provisions of sub-section (3) of Section 18 and either conduct the arbitration itself or refer the arbitral proceedings to any institution or centre providing alternate dispute resolution services.

8 *Now, so far as reliance placed upon the decision of the Division Bench of the Bombay High Court in the case of M/s. Steel Authority of India Ltd and Anr. (supra) relied upon by Shri Patel, learned advocate for appellant, for the reasons stated above provision of Act 2006 referred herein above and the Act 2006 being Special Act under which the parties are governed, we are not in agreement with the view taken by the Division Bench of the Bombay High Court and we are in complete agreement with the view taken by the Division Bench of the Allahabad High Court in the case of Paper and Board Convertors (supra).*

9 *Now, so far as reliance placed upon the decision of the Hon'ble Supreme Court in the case of Morgan Securities and Credit Pvt Ltd (supra) and decision in the case of Vijay Kumar and Others (supra) are concerned, on going through the said decisions, we are of the opinion that said decisions shall not be applicable to the facts of the case on hand. In the case before the Hon'ble Supreme Court, the dispute was as to whether the provision of Arbitration Act, 1996 would prevail over the provision of Sick Industrial Companies (Special Provisions) Act or not (in the case of Morgan Securities and Credit Pvt Ltd (supra). In the case before the Hon'ble Supreme Court in the case of Vijay Kumar and Others (supra) a dispute was whether the Tribunal constituted under the Delhi School Education Act can be said to be "Judicial Authority" or not. Under the circumstances, the said decision shall not be applicable to the facts of the case on hand.*

10 *In view of the above and for the reasons stated above, no error has been committed by the learned Council in not entertaining the application under Section 8 of the Arbitration Act, 1996. We see no reason to interfere with the order passed by the learned Council. As observed herein above and considering the sub-section (1) of Section 18 of the Act, 2006 the Facilitation Council has jurisdiction to act as Arbitrator and / or conciliator any dispute between the parties and that Council had*

only one of two courses of action open to it, either to conduct an arbitration itself or to refer the parties to a centre or institution providing alternate dispute resolution services stipulated in Section 18(3) of the Act, 2006. Therefore, while dismissing the present appeal, it is observed that Council shall now act in accordance with provision of sub-section (3) of Section 18 and either to conduct an arbitration itself or to refer the parties to a centre or institution providing alternate dispute resolution services. With the above observations, present appeal is dismissed. No costs. In view of dismissal of the First Appeal, Civil Application stands dismissed accordingly.”

10 Similar view has also been taken by the Punjab and Haryana High Court in the case of **Welspun Corp. Ltd. Vs. The Micro and Small, Medium Enterprises Facilitation Council, Punjab and Others**⁴. The relevant paragraphs of the said judgment are reproduced hereinbelow :

5 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 CWP No.23016 of 2011 (O&M) and connected cases [10] 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

4 Civil Writ Petition No.23016 to 23019 & 23023 of 2011 decided on 13th December 2011

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 CWP No.23016 of 2011 (O&M) and connected cases [11] ride the provisions of the Act, 2006 in view of the aforesaid fact."

6 *The learned counsel states, to a specific query as to why the Petitioner has a problem for obtaining an adjudication through the Council as an Arbitrator, would contend that the contract between the parties contemplates appointment of an Arbitrator by each party and a provision for appointment of an Umpire, but that remedy will be lost if the Council itself has to act as an Arbitrator where his own individual volition comes to nought. The counsel would further contend that there are other stringent provisions of the Act, 2006, such as requirement of having to deposit 75% of the amount determined by the Arbitrator through an award for an application under Section 19, which an application under Section 34 of the Act, 1996 does not enjoin. This points out to the inconsistency in provisions between the Act, 2006 and the Act, 1996 but the Act, 2006 still obtains primacy of its application through the overriding effect, which we had stated above. If an arbitration made under Section 18 proceeds to an award directing the payment between the parties, the manner of setting aside the award cannot happen under Section 34 of the Act, 1996 but it has to be still only in the manner contained under Section 19 of the Act, 2006. Inevitably, it has to be so and if an express provision in a statute would contain a non-obstante clause and overriding effect of the Act, a full play to the same Act must be given and it CWP No.23016 of 2011 (O&M) and connected cases [12] shall become possible to apply the Act, 1996 only to such matters of procedures as the Act, 2006 itself does not provide for. For instance, the Act, 2006 contains no procedure for conducting arbitral process; the Act, 2006 does not contain provisions for challenging the Arbitrator's impartiality; the Act, 2006 does not still contain any provision for enforcement of process where an*

award was obtained in a foreign jurisdiction. The above are merely illustrative and not exhaustive. But in respect of provisions relating to appointment of Arbitrator or commencement of arbitral process, the binding nature of arbitral award and the manner of redressal of a person not satisfied with the award would perforce have to conform to the provisions of section contained in Sections 18 and 19 of the Act, 2006. I would, therefore, find that if the Council found that the Act, 2006 empowers it to act as an Arbitrator, I would not find any error in the said order.

7 The learned counsel would also point out to me that in the order passed by this Court earlier in CWP No.13111 of 2011, it had been found that if there is a refusal to refer the matter to the arbitration, the Petitioner was entitled to have the remedy under the Act, 1996 in terms of Section 11 but the manner in which the Council has provided to treat itself as an Arbitrator amounted to violation of the directions contained in the order. The Council has also dealt with this objection in the CWP No.23016 of 2011 (O&M) and connected cases [13] order itself and in my view correctly. This clause could have obtained relevance where the arbitral dispute had not been referred to arbitration. As per the procedure under Section 18(3), the reference could have been either by the Council acting itself as an Arbitrator or it could have made a reference to an Arbitrator constituted under the Act, 1996. If he had omitted to do either one of them, it should have been possible for the Petitioner to apply under Section 11 of the Act, 1996. Admittedly, till date a resort to Section 11 had not been made. This has also been referred to in the impugned order. In a case, where the Council has constituted itself as an Arbitrator then, it has done an act allowing for appointment of an Arbitrator and setting the arbitral process in motion. Consequently, a need for appointment of an Arbitrator under Section 11 of the Act, 1996 does not arise.

8 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 Co-operative 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, Co-operative Society Vs. Krishan Kumar Singhania, 1995(6) CWP No.23016 of 2011 (O&M) and connected cases [14] 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(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. The arbitral proceedings before the Council have not made much head way except that through the impugned order, it is clear that the Council has decided to accept the termination of conciliation proceedings and it has stated that the case was being adjourned and the parties will be informed the future date of hearing. The Petitioner shall have his recourse only under the Act, 2006 and with reference to the procedures for which the Act, 2006 does not make provision for conducting the arbitral process, he shall be entitled to resort to the Act, 1996 to the extent to which it is applicable.

10. In the light of the above reasoning, the writ petitions challenging the impugned order ought to fail and accordingly dismissed.

11 The judgment of Gujarat High Court in *Manibhai & Brothers* (supra) was impugned before the ***Hon'ble Supreme Court of India***⁵. The Apex Court, by an order dated 5th July 2017 has upheld the view expressed by the Division Bench of Gujarat High Court. The short order of the Supreme Court reads as under :

" We have given our thoughtful consideration to the submissions advanced before us yesterday and today.

We are satisfied, that the interpretation placed by the High Court on Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 in the impugned order, with reference to arbitration proceeding is fully justified and in consonance with the provisions thereof.

Having affirmed the above, we are of the view, that all other matters dealt with in the impugned order are not relevant for

5 SLP (C) No. 017434/2017

the adjudication of the present controversy, and need not be examined.

The special leave petition is dismissed in the above terms. Pending applications stand disposed of.”

12 In the circumstances, I am afraid, I cannot accept the submissions of Shir Patil because the Gujarat High Court had, in paragraph 8 of the judgment as quoted above, expressly disagreed with the views of the Division Bench of the Bombay High Court and the Supreme Court has upheld the interpretation placed by the Gujarat High Court. This Court is bound by that. I must hasten to add that it was pointed out by Respondent that judgment in *M/s.Steel Authority of India Ltd.* (supra) is also challenged before the Hon'ble Apex Court and Special Leave is granted and the Civil Appeal is pending for final hearing. For the moment, however, the interpretation placed by Gujarat High Court in *Manibhai & Brothers* (supra) holds fort.

13 In view of the above, the non- obstante provision contained in sub-section (1) of Section 18 and again in sub-section 18(4) operates to ensure that it is the Facilitation Council which has jurisdiction to act as an arbitrator or Conciliator in a dispute between a supplier located within its jurisdiction (Respondent) and a buyer located anywhere in India. It will prevail over the individual arbitration clause.

14 Therefore, as the jurisdiction of the Gujarat Micro and Small Enterprises Facilitation Council has been invoked and the said Council having taken cognizance thereof, the said Council shall continue with the proceedings.

15 Petition stands dismissed. No order as to costs.

16 By way of abundant caution, it is made clear that this Court has expressed no opinion on the merits or the tenability of the claim of Petitioner in respect whereof all rights and contentions of Respondent is kept open, to be urged before the Conciliator or arbitral forum.

(K.R. SHRIRAM, J.)