

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1035 of 2018

Arising out of

C.W.J.C. No. 8086 of 2018

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The Best Towers Private Limited, 9/2 BIADA Industrial Area, Patliputra Patna through its Managing Director, Pervez Ahmad, Son of Late Dr. Tahir Hussain, Resident of 9/2 BIADA, Industrial Area, Patliputra, Presently Residing at House No. B-55, Ground Floor East, East of Community Hall, People Cooperative Colony, Ashok Nagar, Patna-20

... .. Appellant/s

Versus

1. Reliance Communications Limited, having its registered office at H Block, 1st Floor, Dhirubhai Ambani Knowledge City, Navi Mumbai- 400071, through its authorized signatory Mr. Mukesh Kumar, (Deputy Manager Legal) son of Gopal Sharan Singh Gandhinagar, Aashiana Nagar, Sector-4, Police Station Rajiv Nagar Patna- 800025 (Bihar)
2. The State of Bihar through the Secretary, Department of Industries, Secretariat, Bailey Road, Patna
3. The Director, Department of Industries, Secretariat, Bailey Road, Patna
4. The Micro and Small Industries Facilitation Council, through its Chairman, Patna

... .. Respondent/s

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with

Letters Patent Appeal No. 1036 of 2018

Arising out of

C.W.J.C. No. 8077 of 2018

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The Best Towers Private Limited, 9/2 BIADA Industrial Area, Patliputra Patna through its Managing Director, Pervez Ahmad, son of Late Dr. Tahir Hussain, Resident of 9/2 BIADA, Industrial Area, Patliputra, presently Residing at House No. B-55, Ground Floor East, East of Community Hall, People Cooperative Colony, Ashok Nagar, Patna-20

... .. Appellant/s

Versus

1. Reliance Communications Limited, having its registered office at H Block, 1st Floor, Dhirubhai Ambani Knowledge City, Navi Mumbai- 400071, through its authorized signatory Mr. Mukesh Kumar, aged about 40 years, son of Gopal Sharan Singh, Gandhi Nagar, Aashiana Nagar, Sector-4, Police Station Rajiv Nagar, Patna- 800025 (Bihar)



2. The State of Bihar through the Secretary, Department of Industries, Secretariat, Bailey Road, Patna
3. The Director, Department of Industries, Secretariat, Bailey Road, Patna
4. The Micro and Small Industries Facilitation Council, through its Chairman, Patna

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Jai Kishore Sharma, Advocate
Mrs. Ranjeeta Singh, Advocate
For the Respondent/s : Mr. Anuj Prakash, Advocate
Mr. Rakesh Kumar Sinha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-02-2019

Re: I.A. No. 6049 of 2018 (In L.P.A. No. 1035 of 2018)
& I.A. No. 6050 of 2018 (In L.P.A. No. 1036 of 2018).

Heard learned counsel for the appellant and learned counsel for the respondents.

2. The appeals are reported to be delayed by 3 and 5 days respectively.

3. We have considered the affidavit filed in support of the delay condonation applications and we find that sufficient cause has been shown to condone the delay in filing the appeals. The delay is condoned and the appeals shall be treated to be within time.

4. Both the Interlocutory Applications stand allowed



accordingly.

Re: L.P.A. No. 1035 of 2018 & 1036 of 2018.

These Intra Court Appeals have been filed assailing the judgment of a learned Single Judge dated 19th June, 2018, whereby an order passed by the Facilitation Council, Patna in Reference Case No. 05/2015 and Reference Case No. 01/2016 dated 06.02.2018 has been quashed, as it has been held to be without jurisdiction and *non est* in law. The matter has been remitted back to the Facilitation Council, Patna to make an appropriate reference in terms of Section 18 (3) of the Micro, Small and Medium Enterprises Development Act, 2006 (“MSMED Act, 2006” in short).

2. Learned counsel for the appellant at the outset has urged that the writ petition was a clear dilatory tactics and ought not to have been entertained by the learned Single Judge inasmuch as the Facilitation Council was not lacking in any inherent jurisdiction on the reasoning given by the learned Single Judge.

3. The background in which the submissions have been raised discloses that this is the second round of litigation between the parties. The work for establishment of towers for mobile services and providing ancillary works and material was



entrusted by the respondent petitioner to the appellant. The services so engaged led to the dispute of certain payments which according to the appellant was due on the respondent petitioner. The Facilitation Council passed an order on 30th of June, 2016 on an application being moved in terms of the 2006 Act directing payments to be made to the appellant. The respondent petitioner challenged the said order in C.W.J.C. No. 14884 of 2016 and 15044 of 2016 that were disposed of on 11th April, 2017 by a detailed judgment holding that the provisions of Section 18 of the 2006 Act were not followed inasmuch as it was the duty of the Facilitation Council to first attempt conciliation and in the event of any failure, the arbitration stage would arrive later on in terms of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “1996 Act”).

It was further opined in Paragraphs 74 and 75 as follows:-

“74. So from the above quotations and discussions, it is apparently clear that either the Facilitation Council will take the burden on its shoulder for arbitration or it relegates the matter to anybody. Either the Facilitation Council or anybody while making arbitration will follow the certain provision of Code of Civil Procedure as mention in Section 19 of the Act for the arrival to a fair and proper conclusion.

75. For the foregoing reasons, the impugned



order containing memo No. 3898 dated 27.10.2016 and the order containing memo No. 3913 dated 28.10.2016 passed by the Facilitation Council are hereby quashed. But, it is not end of the matter, this Court directs both the parties to appear before the Facilitation Council within 15 days from the date of passing the order of this Court. They should present themselves, the Facilitation Council will make effort to resolve the dispute, in future, **either the Facilitation Council itself will take responsibility of arbitrator or refer the matter to third party, according to the provisions of the Act, for arbitration.**”

4. It is thereafter, that conciliation proceedings were undertaken and from the records of the writ petition we find that the appellant filed L.P.A. No. 827 of 2017 challenging the said judgment which was dismissed on 17th July, 2017 by the following judgment:

“Finding statutory violation of Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006, the learned Writ Court has interfered into the matter. A detailed deliberation and consideration has been done by the learned Writ Court to say that there is violation of the statutory requirement of Section 18 of the Micro, Small and Medium Enterprises Development Act which contemplates reference by the Facilitation Council to the Arbitrator



and thereafter certain procedures to be followed. That being so, we find no error in the order passed by the Writ Court.

It is a well settled principle that if a statutory provision is violated, the learned Writ Court can exercise jurisdiction even under Article 226 of the Constitution when an even if an alternative remedy is available, this principle squarely applies to the present case. The appeals are, therefore, dismissed.

However, the Facilitation Council is directed to decide the issue within a period of 60 days from the date of receipt/production of a copy of this order.”

5. The judgment of the learned Single Judge was, therefore, affirmed in its entirety with a further observation that Section 18 contemplates reference by the Facilitation Council to the Arbitrator and since the principle of alternative remedy would not be a petition, the appeal was dismissed.

6. It is thereafter that the Facilitation Council took up the matter and on 13th September, 2017 a notice was issued to the appellant as well as to the respondent petitioner informing them about the proceedings undertaken before the Council. The said letter demonstrates the entire details of the proceedings recording that conciliation efforts were attempted that failed on account of non-cooperation of the respondent-petitioner and



also observed that the tendency of the respondent Reliance Communication was to delay the matter. The conciliation, therefore, terminated and was ultimately closed by the Council on 18th October, 2017.

7. In the proceedings for arbitration undertaken by the Facilitation Council the respondent-petitioner appeared through a representative who prayed for some more time and, therefore, the matter was adjourned for 28th November, 2017. It was again adjourned and both the references were taken up where the respondent-petitioner appeared but did not respond to the directions of the Council, as a result whereof in terms of Section 25(b)(c) of the Arbitration and Conciliation Amendment Act, 2014 read with the provisions of Section 18 of the 2006 Act an Award was made. It was also noted therein that the jurisdiction of the Facilitation Council to act as an Arbitrator under Section 12 of the Arbitration and Conciliation Act, 1996 had been challenged which was not tenable in view of Section 18(3) of the 2006 Act. This challenge was raised by an application, copy whereof was filed on record.

8. An interesting turn takes thereafter on facts. The two writ petitions giving rise to the present appeals being C.W.J.C. No. 8086 of 2018 and C.W.J.C. No. 8077 of 2018,



challenging the proceedings of arbitration before the Facilitation Council and the Award dated 6.2.2018 on the ground of lack of jurisdiction, were instituted on 25th April, 2018. The learned Single Judge proceeded to hear both the writ petitions simultaneously. A counter affidavit was filed on behalf of the appellant who was the Respondent No. 4 in the writ petition enclosing therewith the entire proceedings relating to the failure of conciliation up to the passing of the Award as referred to hereinabove. The judgment was reserved by the learned Single Judge on 18th of May, 2018.

9. From the supplementary affidavit filed on behalf of the appellant dated 4th of December, 2018, we find that on 25th of May, 2018, i.e. after the judgment was reserved by the learned Single Judge of this Court, a Miscellaneous Case under Section 34 of the Arbitration and Conciliation Act, 1996 was instituted by the respondent petitioner before the learned District Judge at Patna that was registered as Arbitration Case No. 81 of 2018 for setting aside the Award dated 06.02.2018. The matter was taken up on 28th May, 2018 according to the order-sheet and the case was directed to come up on 14th June, 2018 for hearing on admission. On 14th June, 2018 even though appearance had been put up on behalf of the respondent



petitioner, no one appeared and the case was directed to come up on 5th of July, 2018. The said application in the arbitration case has been filed along with the supplementary affidavit referred to above and the grounds for challenging the Award specifically includes the inherent lack of jurisdiction of the Facilitation Council to proceed for arbitration in the matter with a specific plea that in view of the provisions of Section 80 of the Arbitration Act, the Facilitation Council is prohibited to Act as an Arbitrator inasmuch as it had already acted as a Conciliator. The position was further sought to be challenged by making the following averments in Ground No. 8:

“8. Because the Facilitation Council has incorrectly held that the Objector has challenged the jurisdiction of the Facilitation Council. The Objector has challenged the independent status of the Facilitation Council validly and on justifiable grounds. The objection raised by the Objector is because of the actions of the Facilitation Council which is in conflict with the most basic notions of morality and justice. The action of the Facilitation Council itself indicates the non-independent status of the Facilitation Council.”

10. It was also alleged therein that the Facilitation Council was required to conduct conciliation proceedings but it



has wrongly assumed the role of Arbitrator. In Ground No. 14 it has been specifically alleged that once the conciliation proceedings had failed, the Facilitation Council was bound to appoint an independent Arbitrator inasmuch as there was no privity of contract between the parties to allow the Facilitation Council to act as Arbitrator. It was further pointed out in the said application that under Section 12 of the Act an application had been moved questioning the status of the Facilitation Council, which was ignored. It was also stated that the dispute was only with regard to one work order and, therefore, the Council has wrongly entertained other claims. The challenge to the Award on other grounds of Section 34 have also been raised. The said application had been filed within time and the notices had been issued, as is evident from the facts contained in the order-sheet noted above.

11. What is to be minutely noticed is that once the judgment was reserved by the learned Single Judge on 18th May, 2018, then if an application under Section 34 had been filed before the learned District Judge thereafter, on 25th of May, 2018 the same ought to have been brought to the notice of the learned Single Judge who had not yet delivered the judgment. On the other hand, the application moved under Section 34 by the



respondent petitioner before the learned District Judge on 25th May, 2018 did not contain a single averment that challenging the jurisdiction of the Facilitation Council in rendering the Award, the respondent petitioner had already filed two writ petitions wherein judgment had been reserved. Thus, neither the learned Single Judge was informed about the institution of the proceedings under Section 34 by the respondent petitioner before the judgment was delivered nor did the application under Section 34 contain any averment about the filing of the two writ petitions before this Court.

12. The aforesaid facts have to be noted in order to understand the conduct of the respondent petitioner in approaching this Court, moreso, in view of the observations of the learned Single Judge made in the earlier round of litigation and its affirmance in the Letters Patent Appeal that have been extracted hereinabove.

13. Learned counsel for the appellant has invited the attention of the Court to Section 18(3) of the 2006 Act in particular to urge that the said provision is clear, that if the conciliation effort fails and stands terminated without any settlement between the parties, the Council has the option to either itself take up the dispute for arbitration or refer it to any



institution as stated therein, and on such institution of proceedings 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. Learned counsel contends that there is no ambiguity in the said provision which is extracted hereinunder:-

“18(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 it** to any institution or centre providing alternative dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) **shall then** apply to the disputes as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of that Act.”

14. It is, therefore, submitted that the learned Single Judge has fallen in error in not construing the aforesaid Section appropriately inasmuch as the provisions of Sections 15 to 23 of the 2006 Act have an overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 24 is extracted hereinunder:-



“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.”

15. It is urged that the provisions of Section 18(3) of the 2006 Act have an overriding effect and, therefore, there is a statutory requirement and obligation on the part of the Facilitation Council to enter upon arbitration as if the said proceedings are in pursuance of an agreement referred to under Section 7 of the 1996 Act. It is submitted that in view of this express arrangement under the 2006 Act, which is a special Act, the Facilitation Council was well within its authority to enter upon arbitration and deliver an Award. The same, therefore, could have been appropriately challenged through proceedings under Section 34 of the 1996 Act, that was actually done by the respondent petitioner, and the writ petition ought not to have been entertained as there was no lack of jurisdiction on the part of the Facilitation Council. Learned counsel for the appellant has relied on the judgment of a learned Single Judge of the Delhi High Court in the case of **GE T&D India Limited. Vs. Reliable Engineering Projects and Marketing [O.M.P. (COMM) 76/2016]**, decided on 15th February, 2017 to contend



that the 2006 Act is a special Act and has invited the attention of the Court to Paragraphs 38 and 39 of the said judgment which is extracted hereinunder:-

“38. In the present case, therefore, the Court is satisfied that the MSMED Act to the extent it provides for a special forum for adjudication of the disputes involving a ‘supplier’ registered thereunder, overrides the Act i.e., the Arbitration and Conciliation Act, 1996. The following observations in **Snehadeep Structures Pvt. Ltd. V Maharashtra Small Scale Industries Development Corporation Ltd.** (supra) which deal with the statute of 1993 proceeding the MSMED Act equally applies to the MSMED Act:

“47. The requirement of pre-deposit of interest is introduced as a disincentive to prevent dilatory tactics employed by the buyers against whom the small-scale industry might have procured in award, just as in cases of a decree or order. Presumably, the legislative intent behind Section 7 was to target buyers, who only with the end of pushing off the ultimate event of payment to the small-scale industry undertaking, institute challenges against the award/decreed/order passed against them. Such buyers cannot be allowed to challenge arbitral awards indiscriminately, especially when the section requires predeposit of 75% interest even when appeal is preferred against an award, as distinguished from an order or decree.”



39. Likewise, in **Edukanti Kistamma (Dead) through LRs. v. S. Venkatareddy (dead) through LRs.** (supra), the Supreme Court explained that a special statute would be preferred over a general one where it is beneficial. It was explained that the purport and object of the Act must be given its full effect by applying the principles of “purposive construction.” The question whether the dispute resolution mechanism under Section 18 of the MSMED Act overrides the arbitration clause under the contract has to be answered in the affirmative. As was explained in **Waman Shrinivas Kini v. Ratilal Bhagwandas & Co.** (supra) an agreement contrary to a statutory provision that prohibits it would be unenforceable. ”

16. Learned counsel has also relied on another judgment in the case of **Snehadeep Structures Private Limited Vs. Maharashtra Small-Scale Industries Development Corporation Limited**, reported in (2010) 3 SCC 34 to substantiate the same. It is, therefore, submitted that the learned Single Judge has erroneously assumed that a Conciliator is prohibited from acting as an Arbitrator unless otherwise agreed by the parties. It is further submitted that Section 80 of the Arbitration Act is no impediment in the passage of the Facilitation Council to proceed for arbitration. Assailing the findings recorded in Paragraph 19 of the



impugned judgment, the learned counsel submits that the learned Single Judge has erroneously assumed the absence of inconsistency between Section 18 of the 2006 Act and Section 80 of the 1996 Act inasmuch as Section 24 of the 2006 Act not only overrides in respect of inconsistencies but otherwise also begins with a *non obstante* clause giving an overriding effect of Section 18 as against the provisions of the Arbitration Act, 1996. He, therefore, submits that the distinction and the disagreement expressed by the learned Single Judge in respect of the judgments of the Madras High Court are not well founded. It is urged that the conclusion of the learned Single Judge that the Facilitation Council is prohibited from acting in a dual capacity is incorrect and to that effect the conclusion drawn is erroneous. The inference that the provisions of Section 80 recognizes the need to disassociate a decision making body from the approving body is an assumption on the basis of a judgment of the Supreme Court which does not apply on the controversy raised herein keeping in view the specific provisions of Section 18 read with Section 24 of the 2006 Act. It is, therefore, urged that the impugned judgment being erroneous for all the reasons aforesaid deserves to be set aside.

17. Responding to the aforesaid submissions, learned



counsel for the respondent petitioner has commenced his arguments by contending that a comparative study of the 2006 Act with the provisions of the 1996 Act would reveal that the provisions of Section 18(2) and the reference to the provisions of Sections 65 to 81 of the 1996 Act contained in Part-III thereof have been made applicable and, therefore, a purposive meaning has to be attached to the said provision that has been rightly construed by the learned Single Judge. It is urged that the same read with Section 80 of the Arbitration and Conciliation Act would leave no room for doubt that the bar clearly comes to the aid of the respondent petitioner which has been rightly construed and interpreted by the learned Single Judge. It is submitted that even though the 2006 Act is a special Act, yet it does not exclude the applicability of the provisions of the 1996 Act and the overriding effect of Section 24 of the 2006 Act is nowhere attracted inasmuch as there is no inconsistency. The provisions of Section 18(2) of the 2006 Act and Section 80 of the 1996 Act are extracted hereinunder:-

“18(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.”

“80. Role of conciliator in other proceedings.-

Unless otherwise agreed by the parties,-

- (a) The conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings;
- (b) the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.”

18. On the strength of the aforesaid provisions and with the aid of the judgment in the case of **Harshad Chiman Lal Modi Vs. DLF Universal Ltd. And another**, reported in **(2005) 7 SCC 791**, it is urged that since the question of jurisdiction goes to the root of the matter, and the Facilitation Council inherently lacked jurisdiction, the writ petition was very much entertainable and, therefore, the argument raised on behalf of the appellant about the availability of the statutory remedy under Section 34 of the 1996 Act is no bar for the entertaining of a writ petition. It is further submitted that there was no intention to suppress any fact either before the learned Single Judge or before the learned District Judge about the



pendency of the respective proceedings and in such circumstances the writ petition was rightly entertained and allowed. It is also submitted that since the writ petition was allowed, the respondent writ petitioner has withdrawn the proceedings under Section 34 of the 1996 Act, as such the Facilitation Council will have to proceed in accordance with the directions of the High Court. It is further submitted that no dilatory tactics had been adopted by the respondent petitioner inasmuch as the issue of jurisdiction being essential and core to the dispute, the same was rightly raised and, therefore, there is no error in the impugned judgment. It is further submitted that the allegations of concealment made in the reply to the counter affidavit dated 06.02.2019 is absolutely incorrect as explained above. Learned counsel has extensively taken the Court through the provisions of the 2006 Act as well as the 1996 Act to contend that the Facilitation Council could not have acted as an Arbitrator and a Conciliator in the fashion in which the entire proceedings have been conducted and, therefore, the learned Single Judge has rightly observed that the Facilitation Council has acted without jurisdiction.

19. We have considered the submissions raised by the learned counsel for the parties and have examined the records



as also the provisions referred to hereinabove.

20. We may at the outset undertake a comparative study of the provisions of the MSMED Act, 2006 and the Arbitration and Conciliation Act, 1996. To begin with the object and reasons for enacting the 2006 Act was to clearly protect the development of Micro, Small and Medium Enterprises and to extend support to them to enable them to grow and adopt higher levels and higher productivity to remain competitive in a fast globalization era. It is for this reason, a single legal framework was required to facilitate the promotion and development of such industries. The statement of objects and reasons in Clause 2(d)(h) clearly recites that the procedure also envisages to make further improvements in respect of delayed payments. In this background, the appellant before us is a supplier within the meaning of Section 2(n) of the 2006 Act and the respondent-petitioner is a buyer within the meaning of Section 2(d) of the Act. To facilitate the resolution of disputes relating to delayed payments, Chapter-5 was incorporated in the Act fixing a statutory liability on the buyer to make payments within a specified time. Section 16 fixes the liability of payment of interest and Section 17 empowers the supplier to receive payments with interest thereon. On a dispute being raised with



regard to delay in payments or any amount due, a forum named as a Facilitation Council is created under Section 18 of the Act where any party to a dispute may make a reference to the Facilitation Council. Sub-section (2) of Section 18 enjoins upon the Council to either itself conduct a conciliation or seek the assistance of any Institution or Centre providing alternate dispute resolution services by making a reference to it. The provisions of Section 65 to Section 81 of the Arbitration and Conciliation Act, 1996 are to apply to such a dispute as if the conciliation was under Part-III of the 1996 Act. Thus, the first step on the reference of a dispute is to undertaking a conciliation effort by the Council or reference of such conciliation to any Institution or Centre as provided therein. The words “shall apply” in respect of Section 65 to Section 81 of the 1996 Act, therefore, clearly stipulates that in an effort of conciliation the same process will be adopted in respect of conciliation proceedings with a specific bar in Section 80 that the Conciliator shall not act as an Arbitrator or as a representative or Counsel of a party in “any arbitral or judicial proceedings in respect of a dispute that is the subject of conciliation proceedings”. Thus, according to Section 80 the Conciliator cannot act as an Arbitrator. The question raised before us by the



learned counsel for the respondent petitioner is that if the Facilitation Council acts as a Conciliator then the Council cannot act as an Arbitrator as in the present case when after having attempted conciliation proceedings and its termination in failure, the Council itself has proceeded to arbitrate which it could not have done in terms of Section 80 of the 1996 Act read with Section 18(2) of the 2006 Act. This argument on behalf of the respondent petitioner has been accepted by the learned Single Judge that has been questioned by the appellant contending that Section 24 of the 2006 Act clearly provides that Sections 15 to 23 thereof shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. What we find is that sub-section (2) of Section 18 only refers to conciliation and the procedure to be followed in terms of Part-III of the 1996 Act to the extent of Section 65 to Section 81 thereof. Immediately thereafter, sub-section (3) of Section 18 introduces an absolutely novel procedure allowing the commencement of arbitration proceedings with a mandate on the Council that in the event conciliation ends in failure, 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 1996 Act “shall then” apply to the disputes as if the arbitration was in pursuance of an agreement. The overriding effect given to this provision in terms of Section 24 of the 2006 Act, in our opinion, clearly overrides any bar as suggested by the learned counsel for the respondent petitioner under Section 80 of the 1996 Act. It is trite law that the meanings assigned and the purpose for which an enactment has been made should be construed to give full effect to the legislative intent and we have no doubt in our mind that the provisions of Section 18(3) mandates the institution of arbitration proceedings under the 2006 Act itself and it is “then” that the provisions of the Arbitration and Conciliation Act, 1996 shall apply. The institution of arbitration proceedings would be governed by sub-section (3) of Section 18 of the 2006 Act which having an overriding effect cannot debar the Facilitation Council from acting as an Arbitrator after the conciliation efforts have failed under sub-section (2) of Section 18 of the Act. A combined reading of sub-section (2) and sub-section (3) of Section 18 of the 2006 Act read with the overriding effect under Section 24 thereof leaves no room for doubt that any inconsistency that can possibly be read keeping in view Section 80 of the 1996 Act stands overridden and the Facilitation



Council can act as an Arbitrator by virtue of the force of the overriding strength of sub-section (3) of Section 18 of the 2006 Act over Section 80 of the 1996 Act. The conclusion of the learned Single Judge that there is a prohibition on the Council to act in a dual capacity is, therefore, contrary to the clear intention of the legislature and, therefore, the verdict that the Facilitation Council lacked inherent jurisdiction does not appear to be a correct inference. Thus, on a comparative study of the provisions referred to hereinabove, there is no scope for any doubt with regard to the overriding effect of the provisions of the 2006 Act that empowers the Facilitation Council to act as an Arbitrator upon the failure of conciliation proceedings. The cloud of suspicion and doubt about the role of the Facilitation Council, therefore, stands clarified on the basis of the analysis made by us hereinabove.

21. The second reason why we differ from the view of the learned Single Judge is that the 2006 Act was enacted as a complete code in itself and it is for this reason that the authority to conciliate and arbitrate were enacted and provided for in a different form for the promotion, development and facilitation of delayed payments arising out of disputes of small industries under the 2006 Act. The platform for resolution of disputes was,



therefore, created under Section 18 of the 2006 Act in order to avoid the rigors and settlement of disputes at a pre-arbitration stage itself.

22. The status of the 2006 Act conferring the jurisdiction on the Facilitation Council to resolve disputes is further fortified by a bare perusal of sub-section (4) of Section 18 to either act as a Conciliator or Arbitrator in respect of a dispute anywhere in India. The aforesaid provision, therefore, also clearly rules out the possibility of reading a bar on the role of the Facilitation Council to act as an Arbitrator if it has performed the role of Conciliator. The argument of the learned counsel for the respondent petitioner, as accepted by the learned Single Judge, therefore, overlooks the aforesaid intention that can be easily gathered from a reading of the entire provisions of the 2006 Act, particularly the provisions of Section 18 and Section 24 thereof.

23. The learned Single Judge has also held that the direction given by the learned Single Judge in the earlier round of litigation on 11th April, 2017 and the dismissal of the Letters Patent Appeal on 17th July, 2017 will not amount to a direction conferring jurisdiction of arbitration on the Facilitation Council. We are unable to agree with the said view as the learned Single



Judge had categorically indicated that either the Facilitation Council will itself take the responsibility of acting as an Arbitrator or refer the matter as provided under the Act. The Division Bench in appeal held that since the procedure for conciliation had not been followed, therefore, the petition could be entertained under Article 226 of the Constitution of India, but the Division Bench nowhere contradicted the observations made by the learned Single Judge. It is, thus, clear that the said observations were clearly binding and could not have been annulled, moreso, keeping in view the law as analyzed by us hereinabove. The judgment dated 11th April, 2017 to that extent rightly observed that the Facilitation Council will have to take responsibility of discharging its duty as an Arbitrator or to refer the matter under the provisions of sub-section (3) of Section 18 of the 2006 Act. The same was binding on the respondent petitioner as well as on the appellant as it was in consonance with the provisions of the 2006 Act.

24. The learned Single Judge has dealt with the issue of jurisdiction and it appears that had the fact of the filing of an application by the respondent petitioner under Section 34 of the 1996 Act be brought to his notice, the learned Single Judge would have also looked into the grounds raised in the said



application. We are mentioning this inasmuch ground No. 8 taken in the application filed by the respondent petitioner under Section 34 is as follows:-

“Because the Facilitation Council has incorrectly held that the Objector has challenged the jurisdiction of the Facilitation Council. The Objector has challenged the independent status of the Facilitation Council validly and on justifiable grounds. The objection raised by the Objector is because of the actions of the Facilitation Council which is in conflict with the most basic notions of morality and justice. The actions of the Facilitation Council itself indicates the non-independent status of the Facilitation Council.”

25. The aforesaid stand taken by the respondent petitioner is clearly in teeth of the provisions of the 2006 Act as discussed hereinabove but the Award given by the Facilitation Council was amenable to the proceedings under Section 34 of the 1996 Act inasmuch as Section 18(3) of the 2006 Act itself recites that upon an arbitration having been instituted, the provisions of the 1996 Act “shall then” apply. This clear remedy being available to question an Award is open to challenge on the grounds referred to in Section 12 and the other related



provisions of the 1996 Act. The learned Single Judge, if informed about the institution of the proceedings under Section 34 of the 1996 Act by the respondent petitioner, might have taken a different view but in our clear opinion the respondent petitioner was playing ducks and drakes and he has virtually gambled with law that clearly appears to be intended to delay the proceedings. As noticed by us hereinabove, the application under Section 34 of the 1996 Act was moved by the respondent-petitioner against the Award of the Facilitation Council on 25th of May, 2018 after the judgment had been reserved by the learned Single Judge on 18th May, 2018. It was, therefore, the duty of the respondent petitioner to have informed the learned Single Judge who had not yet delivered the judgment about such process having been adopted. On the other hand, the respondent petitioner was under a bounden duty to disclose the institution of the two writ petitions giving rise to these appeals in the application moved before the Arbitrator. Neither of these informations were tendered to the learned Single Judge or to the learned District Judge before whom the application had been moved under Section 34 of the 1996 Act. The said application was quietly withdrawn after the impugned judgment was delivered. This conduct of the respondent petitioner clearly



disentitled him for any discretionary relief under Article 226 of the Constitution of India.

26. For all the reasons given hereinabove, we find that the judgment of the learned Single Judge cannot be sustained and costs deserve to be imposed on the respondent petitioner for having attempted to delay the proceedings as observed hereinabove.

27. The appeals are accordingly allowed and the impugned judgment dated 19th June, 2018 is set aside with cost of Rs. 50,000/- (fifty thousand) on the respondent No. 1 petitioner payable and to be deposited with the Patna High Court Legal Services Committee within one month from today.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	15.02.2019
Transmission Date	

