IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11660 OF 2019

Maharashtra State Power Generation
Company Limited ....Petitioner
Versus
R.N. Metals & Anr. ....Respondents

Mr. Kiran Gandhi a/w. Aakash Kothari i/by M/s. Little Associates for the Petitioner.
Mr. Prateek Kasliwal, for Respondent No.1.

CORAM : A.A. SAYED AND
SURENDRA P. TAVADE, JJ.

Date : 29 SEPTEMBER 2020.

P.C. :

1. The Petitioner is a Government Company under Section 6(1) of the Companies Act, 2013. Pursuant to a tender process floated by the Petitioner, the Respondent No.1, which is stated to be small scale industry, emerged as the successful bidder. Respondent No.1 furnished Performance Guarantee in the form of Bank Guarantee and also paid a Security Deposit as required under the terms of the tender. The Petitioner placed an order with Respondent No.1 to supply certain material. Some payments were made by the Respondent No.1 to the Petitioner. Due to delay by the Respondent No.1 in supplying the material, the Petitioner levied liquidated damages upon the Respondent No.1 under the terms of the Purchase Order and encashed the Bank Guarantee and appropriated the Security Deposit.

2. The Respondent No.1 then filed Original Case No.933 of 2017 before the Respondent No.2-Micro and Small Enterprises Facilitation Council (hereinafter referred to as the Council) constituted under the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred

to as the MSMED Act) claiming refund of amount deducted as liquidated charges and refund of the Security Deposit and Bank Guarantee. On 7 May 2018, the Council passed an order directing the parties to explore the process of conciliation. Since the conciliation failed, by an Order dated 13.11.2018, the Council recorded that since the conciliation had failed, the process under Section 18(2) of the the MSMED Act is terminated and the arbitration process under Section 18(3) of the MSMED Act is started.

3. Aggrieved by the aforesaid Orders dated 7 May 2018 and 13 November 2018 passed by the Council, the Petitioner has filed this Petition.

4. We have heard the learned Counsel for the Petitioner and the learned Counsel for the Respondent No.1. None present on behalf of Respondent No.2 Council.

5. It is contended by the learned Counsel for the Petitioner that the claim filed before the Council by the Petitioner is time barred and that the Council has no jurisdiction to decide the claim. It is also contended that the Council has not adjudicated upon the preliminary issues raised by the Petitioner. Learned Counsel for the Respondent No.1, on the other hand raised a preliminary objection contending that the present Writ Petition is not maintainable in view of the provisions of MSMED Act. In support of this contention, learned Counsel for the Respondent No.1 has relied upon the following judgments:-

(i) Secur Industries Ltd. vs. Gordrej & Boyce Mfg.Co.Ltd.& Anr., reported in (2004) 3 SCC 447.

(ii) M/s. Paper & Board Convertors vs. U.P. State Micro & Small Enterprises & 2 Ors., reported in SCC Online All 5825.

(iii) Uttarakhand Purv Sainik Kalyan Nigam Ltd. vs. Northern Coal

Fields Limited, reported in (2020) 2 SCC 455.

(iv) Shah & Parikh Engineers *vs.* Urmi Trenchless Technology, 2019 SCC Online Bombay 340.

(v) United Electrical Industries Ltd. Vs. Micro and Small Enterprises & Ors., 2017 SCC Online Del 6887.

(vi) Bihar State Power (Holding) Co. Ltd. Vs. West Bengal Bihar State Power (Holding) Co. Ltd. Vs. West Bengal State Micro Small Enterprises Facilitation Council & Anr., (order dated 08.01.2019 passed by the High Court of Calcutta in Civil Application No.8679 of 2018). The order of the Calcutta High Court is affirmed by Apex Court in SLP No.11513-11514/2019 by order dated 08.07.2019.

(vii) M/s. Eden Exports Company Vs. Union of India, 2013 (1) MLJ 445 of the Madras High Court.

(viii) Kirloskar Brothers Limited Vs. The Micro and Small Enterprises Facilitation Council at Pune & Ors., (2017) 1 MHLJ 808 of this Court (Coram : Anoop V. Mohta and A.S. Gadkari, JJ).

(ix) Sanghi Industries Limited Vs. Micro Small Enterprises Facilitation Council, Department of Industries Rajasthan, (Order dated 26.04.2018 passed by the Rajasthan High Court in D.B. Special Appeal Writ No.591/2018.

6. Learned Counsel for the Petitioner has placed reliance on the following judgments : -

(i) *Maharashtra Chess Association vs. Union of India & Ors. in Civil Appeal No.5654 of 2019 dated 29th July, 2019 of the Apex Court;*

(ii) *M/s. Delton Electricals vs. Maharashtra State Electricity Distribution Company Ltd. & Ors. In Commercial Appeal No.38 of 2017 in Arbitration Petition (L) No.2464 of 2015 dated 31st August, 2017 of Division Bench of this Court;*

(iii) *Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors., (1998) 8 SCC 1 of the Supreme Court.*

7. We have considered the rival contentions. In our view, the issue raised in the Petition are no more *res integra* and covered by the judgments, of the Supreme Court and other Courts.

8. In ***Secur Industries Ltd. (supra)*** it was observed by the

Supreme Court as under:-

> *"2. This appeal has been preferred from an interim order granted by the Division Bench of the Bombay High Court staying the arbitration proceedings before the Uttar Pradesh Industry Facilitation Council (referred to as "the Council") set up under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (referred to as "the Act").*
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> *6. On 12-2-2002 Respondent 1 filed a suit in the City Civil Court at Bombay against the appellant who was named as Defendant 1 and the Council which was named as Defendant 2. The prayers in the plaint were, inter-alia, for a declaration that the claim petition filed by the appellant before the Council was ultra vires the provisions of the Act and, therefore, illegal, null and void. A permanent order of injunction was also asked for restraining further proceedings before the Council. An application was filed in the suit for interim relief by Respondent 1. By an order dated 5-2-2002 the City Civil Court granted an ad interim injunction staying the proceedings under the Act. The application for interim relief was, however, ultimately dismissed by the City Civil Court on 28-11-2002 principally on the ground that the claim had been filed by the appellant under Section 6(2) read with Section 8(1) of the Arbitration and Conciliation Act, 1996 (which we will refer to as the 1996 Act) and in view of Section 5 of the 1996 Act no Court could intervene in arbitration proceedings except to the extent prescribed under the 1996 Act. According to the City Civil Court, the reliefs claimed for Respondent 1 in its suit did not fall within the ambit of those situations where interference by court was permissible and consequently the Court had no jurisdiction to stay the proceedings before the Council.*
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> *7. Respondent 1 preferred an appeal from the decision of the City Civil Court before the High Court. The appeal is pending. On an application for interim relief filed by Respondent 1 pending the appeal, the High Court by its order dated 21-1-2003 stayed the proceedings before the Council only on the ground that no notice had been served by the appellant on Respondent 1 under Section 21 of the 1996 Act. The High Court rejected the appellant's application for expediting the appeal on 2-5-2003. Both these orders of the High Court are questioned before us in these appeals.*
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> *8. Section 6 of the Act provides as follows:*
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> *"6. Recovery of amount due - (1) The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of Sections 4 and 5 shall be recoverable by the supplier from the buyer by way of a suit or other proceedings under*

any law for the time being in force.

(2) Notwithstanding anything contained in sub-section (1), any party to a dispute may make a reference to the Industry Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in that sub-section and the provisions of the Arbitration and Conciliation Act 1996 (26 of 1996) shall apply to such disputes as if the arbitration or conciliation were pursuant to an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

9. Sub-section (2) of Section 6 expressly incorporates the provisions of the 1996 Act. Apart from such express incorporation, sub-section (2) of Section 6 goes further and creates a legal fiction whereby disputes referred are to be deemed to have been made pursuant to an arbitration agreement as defined in sub-section (1) of Section 7 of the 1996 Act.

10. Incorporation of the provisions of the 1996 Act into Section 6(2) of the Act has also been effected by sub-sections (4) and (5) of Section 2 of the 1996 Act which say:

"2. (4) This Part except sub-section (1) of section 40, Sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.

(5) Subject to the provisions of sub-section (4), and save in so far as is otherwise provided by any law for the time being in force or in any agreement in force between India and any other country or countries, this Part shall apply to all arbitrations and to all proceedings relating thereto". (emphasis added)

11. <u>The "Part" referred to in this sub-section is Part I of the 1996 Act which deals with domestic arbitrations. The proceedings before the Council, therefore, are proceedings under the 1996 Act, pursuant to a deemed agreement between the parties to the dispute. With the applicability of Part I of the 1996 Act in all its force, the extent of judicial intervention in arbitration is limited by the non-obstante provisions of Section 5 of the 1996 Act, which stipulate</u>:

"5. Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part".

The City Civil Court was right in its approach when it said that the Court could only intervene in respect of matters expressly provided *for in the 1996 Act. The validity of the proceedings before the arbitral tribunal is an issue which the Council, and not the Court, could decide under Section 16 of the 1996 Act. Sub-section (1) of Section 16 opens with the words "the arbitral tribunal may rule on its jurisdiction...". It has been held by this Court that the arbitral tribunal's authority under Section 16 is not confined to the width of its jurisdiction but goes to the very root of its jurisdiction. [Konkan Railways Corpn. Ltd. v. Rani Construction Pvt. Ltd.][1]. <u>Therefore, the Council can go into the question whether its authority had been wrongly invoked by the appellant and it is open to it to hold that it had no jurisdiction to proceed with the matter</u>.*

12. <u>The arguments which have been raised before us by the learned counsel on behalf of the respondent to a large extent related to the merits of the appellant's claim before the Council. Having regard to the scope of the authority of the arbitral tribunal under Section 16, this is not a matter which the Court can adjudicate upon. Indeed it is incumbent on the Court to refer the parties to arbitration under Section 8(1) of the 1996 Act if a suit is filed in a matter which is the subject-matter of an arbitration agreement</u>. Furthermore, even while this question is pending decision before a court, the arbitral tribunal may proceed with the arbitration under Section 8(3) and make its award. The High Court could not, therefore, have stayed the proceedings before the Council.

13. <u>We are also unable to accept the submission of Respondent 1 that Section 16 of the 1996 Act does not apply to the present case because the reference is a statutory one</u>. The decision relied upon by Respondent 1 in support of this submission, namely, Rohtas Industries Ltd. v. Rohtas Industries Staff Union[2] related to a voluntary reference of an industrial dispute under Section 10-A of the Industrial Disputes Act. Section 10-A of the Industrial Disputes Act, 1947 permits the employer and the workmen to agree to refer the dispute to arbitration to a Labour Court or a tribunal for adjudication "where any industrial dispute exists or is apprehended". Therefore, if there was no such industrial dispute there could be no arbitral reference. This Court therefore held (at SCC p.98, para 31) that the disputes spilt 'into areas where the arbitrator deriving authority under Section 10-A has no jurisdiction". The provisions of Section 10-A are entirely different from the provisions of Section 16 of the 1996 Act. There is in this case, no question of dispute spilling into areas where the arbitral tribunal does not have jurisdiction. <u>Under the 1996 Act, the arbitral tribunal has been given a very wide and deep area of operation and it is the court's powers which have been statutory curtailed</u>.

14. This brings us to the ground on which the High Court stayed the

1 (2002) 2 SCC 388
2 (1976) 1 SCC 82 : 1976 SCC (L&S) 82

proceedings before the Council, namely, the alleged failure of the appellant to serve notice under Section 21 of the 1996 Act. The point was not raised before the High Court at all by Respondent 1. This was candidly stated by the learned counsel for Respondent 1. Our attention was not drawn to any other legal proceeding which requires a notice to be given prior to commencing proceedings apart from Section 21 of the 1996 Act. Whether the notice was a notice under Section 21 and whether the giving of notice under Section 21 is to be construed as a pre-condition to the exercise of jurisdiction by the Council are questions which the Council will have to decide. This debate could not be a ground for the High Court interfering with the Council's jurisdiction and staying proceedings before it.

15. To sum up: the High Court erred in staying proceedings before the Council. It had no jurisdiction to do so."

(emphasis supplied)

It may be mentioned that MSMED Act is a successor legislation to The Interest On Delayed Payments To Small Scale And Ancillary Industrial Undertakings Act, 1993 which provisions were being considered in the aforesaid case before the Supreme Court. The provisions of both the Acts are largely identical.

9. In ***M/s. Paper & Board Convertors Thru' Partners Rajeev Agrawal (supra),*** Justice Dr. D.Y. Chandrachud (as his Lordship then was) speaking for the Division Bench of the Allahabad High Court observed thus:

Chapter V of the Act contains special provisions in regard to delayed payments to Micro and Small Enterprises. Section 15 provides that where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment on or before the date agreed upon between him and the supplier in writing or, where there is no agreement, before the appointed day. The proviso stipulates that, in any case, the period agreed upon between the supplier and the buyer shall not exceed forty-five days from the day of acceptance or the day of deemed acceptance. Section 16 provides for the payment of interest by the buyer at three times of the Bank rate notified by the Reserve Bank upon a failure of the buyer to make payment, as required under Section 15, notwithstanding anything contained in any agreement or in any law for the time being in force.

Section 18 of the Act is to the following effect:

"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 it to 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 disputes as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of the 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."

Certain salient aspects of Section 18 would merit emphasis. <u>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</u>

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.

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.

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 5 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.

The non-obstane 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.

In this view of the matter, the impugned order of the Facilitation Council directing the parties to a reference before the sole arbitrator appointed by the respondents was manifestly illegal. We would, accordingly, have to allow the petition and set aside the impugned *order dated 13 February 2014. We order accordingly.*

As a consequence, we restore the proceedings back to the first respondent. The first respondent shall now 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. The first respondent shall pass necessary orders in consequence of this direction within a period of one month from the receipt of a certified copy of this order.

(emphasis supplied)

10. In Uttarakhand Purv Sainik Kalyan Nigam Limited (supra), the Supreme Court has held thus:

"7.13. <u>In view of the provisions of Section 16, and the legislative policy to restrict judicial invention, the issue of limitation would require to be decided by the Arbitrator. Sub-section (1) of Section 16 provides that the Arbitral Tribunal may rule on its own jurisdiction, "including any objections" with respect to the existence or validity of the arbitration agreement. Section 16 is an inclusive provision, which comprehend all preliminary issues touching upon the jurisdiction of the Arbitral Tribunal</u>".

(emphasis supplied)

11. In ***Shah & Parikh V/s. Urmi Trenchless Technology Pvt. Ltd. & Anr.*** relying upon the judgment of the Supreme Court in the case of ***Secur Industries Ltd. (supra)***, the learned Single Judge of this Court (Coram : K.R. Shriram, J) has observed as follows :-

"32. Having regard to the above legal position, this Court ought to reject the plaint which seeks an injunction restraining proceedings before the Council. As held by the Hon'ble Supreme Court, this Hon'ble Court would have no jurisdiction to pass such an order. In any event, the ground raised by plaintiff for opposing the proceedings before the Arbitral Tribunal to be constituted under Section 18 of the MSME Act, those are matters which can be raised before the Arbitral Tribunal, as held by the Hon'ble Supreme Court in Secure Industries Limited (supra). <u>The question as to limitation of defendant no.1's claim raised before the Facilitation Council is a matter that is squarely within the sole province of the Arbitral Tribunal to decide, and no order on this aspect can or ought to be passed by this Court.</u>

> *33. While considering the interplay between an arbitration agreement and statutory arbitrations under Section 18 of the MSME Act, the Hon'ble Allahabad High Court in Paper & Board Converters Ors. (Supra) held inter alia that Section 18 of the MSME Act commences with the words "notwithstanding anything contained in any other law for the time being in force", and therefore, for disputes contemplated under Section 18 of the MSME Act, if the jurisdiction of the Facilitation Council had been validity invoked, the Facilitation Council had exclusive jurisdiction to first enter upon conciliation and if conciliation fails, to refer the parties to arbitration.*
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> *34. Thus, the Facilitation Council having exclusive jurisdiction, this Court ought to reject the plaint as being barred by law, as it seeks reliefs which are clearly within the exclusive province of the Arbitral Tribunal and this Court has no jurisdiction to grant these reliefs.*
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> *35. Further the reliefs sought to by plaintiff, both at the interim and final stage, are in essence for an order restraining proceedings before the Facilitation Council, Gandhinagar, i.e. defendant no.2, which relief is barred under Section 41(b) of the Specific Relief Act, 1963. Accordingly, the present suit which seeks just such an injunction is also barred by law under Order VII, Rule 11(d) of Code of Civil Procedure, 1908. It is always open to a party to raise such an objection and for the Court to dismiss a suit or reject a plaint under Order VII, Rule 11 without a formal application being filed as it is a duty cast upon the Court to do so, and this could be done at any stage. This has been held inter alia by this Court in Rushab Ship International LLC v. The Bunkers Onboard the Ship M.V. African Eagle."*
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> *(emphasis supplied)*

12. In the present case, it is required to be noted that the impugned orders do not decide the dispute on merits. By the impugned order dated 07.05.2018, the Council merely directed the Respondent No.1 and the Petitioner to enter into conciliation. Further, by the impugned order dated 13.11.2018, the Council directed that the arbitration process be started as the conciliation proceedings had failed. Under Section 18(2), on a receipt of the reference, the Council has to conduct conciliation in the matter itself or seek the assistance of any institution. Sections 65 to 81 of the Arbitration

and Conciliation Act, 1996 (Act of 1996 for short) are to apply to such a dispute as if the conciliation was initiated under Part III of the Act of 1996. Under Section 67 of the Act of 1996, the role of the conciliator is merely to assist the parties to reach an amicable settlement of their dispute. Once the conciliation ended in a failure, the Council was under an obligation vide Section 18(3) to either take up the dispute for arbitration itself or to refer it to any institution. Therefore, till the stage of Section 18(2) there was no adjudication by the Council on any of the issues raised by the Petitioner. The stage to arbitrate or refer for arbitration has still not commenced when the Council would consider and adjudicate on the issues raised by the Petitioner.

13. The issues on which the Petitioner seeks to invoke the jurisdiction of this Court can be raised before the Arbitral Tribunal. As held in the aforequoted judgments under the Act of 1996, the Arbitral Tribunal has been given a very wide area of operation and it is the Court's powers which have been statutorily curtailed. The Arbitral Tribunal's authority under Section 16 of the 1996 Act is not confined to the width of its jurisdiction but goes to the very root of its jurisdiction. Having regard to the scope of powers of the Arbitral Tribunal under Section 16, this is not a matter which can be adjudicated upon by the Court.

14. Looking to the provisions of law, i. e. Section 18 and 19 of the MSMED Act and the principles of law laid down in the aforementioned judgments, it is apparent that in respect of any order/award passed by the Council, the statutory remedy to challenge the same lies under the applicable provisions contained in the Act of 1996. The other judgments relied upon by the learned Counsel for the Petitioner also support the case

of the Petitioner.

15. The case of ***M/s. Delton Electricals (supra)*** relied upon by the Petitioner was a matter where an award was challenged under Section 34 of the Arbitration Act, 1996 and the Council had come to a conclusion that Limitation Act was not applicable to the provisions under the MSMED Act. The Division Bench concluded that Limitation Act was applicable and all the issues including limitation, fall within the exclusive jurisdiction of the Arbitral Tribunal constituted under the MSME Act and therefore, the Council while considering the reference of the Respondent No.1, would be required to consider whether the claim is barred by limitation or is within limitation. The said judgment is clearly distinguishable on facts. In ***Maharashtra Chess Association (supra) and Whirlpool Corporation (supra)*** relied upon by the learned Counsel for the Petitioner, what is essentially laid down is that the decision of High Court whether to entertain or not entertain particular action under its writ jurisdiction, is fundamentally discretionary and that the limitations placed on the Court's decision to exercise or refuse to exercise its writ jurisdiction are self-imposed. The said judgments do not assist the case of the Petitioner.

16. In view of the above discussion, the Writ Petition cannot be entertained. It is accordingly dismissed as not maintainable. There shall be no order as to costs. It will be open for the Petitioner to raise their preliminary objection in terms of Section 16 of the Act of 1996 as also all other pleas in the arbitration proceedings.

(SURENDRA P. TAVADE, J.) **(A.A. SAYED, J.)**