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W.A(MD)No.1002 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2022

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A(MD)No.1002 of 2021

and

C.M.P(MD)Nos.4539 and 6834 of 2021

Madurai Kamaraj University,
Rep. by its Registrar,
Palkalai Nagar,
Madurai - 625 021.

... Appellant / Petitioner

Vs.

1.The Chairman,
Micro & Small Enterprises Facilitation Council,
(Industries Commissioner and Director of
Industries & Commerce, Chennai)
Coimbatore Region,
District Industries Centre,
Coimbatore - 641 001.

2.M/s.SET INFOTECH PVT LTD.,
726.B, II Floor, Sri Venkey Complex,
SND Layout,
Tatabad,
Coimbatore - 641 012.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent,
against the order dated 18.03.2021 passed in W.P(MD)No.6051 of 2021.

Prayer in WP(MD). 6051 of 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari call for the records relating to the Summon dated 31.01.2021 and 02.03.2021 issued by the 1st respondent in O.P.MSEFC/CBER/137/2020 and quash the same.

For Appellants	: Mr.Sricharan Rangarajan for Mr.T.Sakthi Kumaran
For R-1	: No Appearance
For R-2	: Mr.K.V.Om Prakash for M/s.Conscientia Law Associates



JUDGMENT

PUSHPA SATHYANARAYANA, J.

This Writ Appeal has been filed challenging the order dated 18.03.2021 passed in W.P(MD)No.6051 of 2021.

2. The appellant Madurai Kamaraj University has preferred this appeal claiming that the agreement entered into between the University and the second respondent with the specific terms and conditions, is binding on both the parties and the statutory provisions of Micro, Small and Medium Enterprises Development Act, 2006(in short 'MSMED Act'), is not applicable.

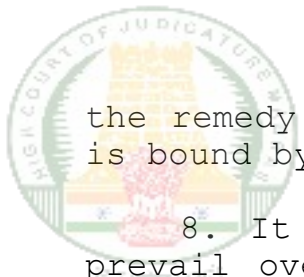
3. The appellant University had entered into a memorandum of agreement dated 28.02.2014 with the second respondent herein for "Creation of e-Learning Portal and Development of Digital Content for Directorate of Distance Education" with payment gateway and data records of users Development of Digital Content, Text, Voice Over, Animations, Illustrations and interactive on the terms and conditions agreed to in the agreement.

4. Clause 14 of the agreement stipulates arbitration clause for settlement of disputes. There was a dispute with respect to payment and a legal notice was issued by the second respondent on 08.12.2020 and the appellant also had replied for the same. While so, contrary to the memorandum of agreement dated 28.02.2014, the second respondent had filed a petition before the first respondent under Section 18 of the MSMED Act, with a prayer to direct the appellant to pay the interest.

5. Now, the question that arose for consideration in the writ petition was whether the terms of the contract govern the transaction between the writ petitioner and the second respondent or the provisions of the MSMED Act will apply. The writ petition was dismissed by the Writ Court holding that the dispute falls within the realm of private law and in any event when an alternative mechanism has been created for the settlement of the dispute through the first respondent council, the University has to respond to the same. Challenging the said order, the University has filed this writ appeal.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. Now, the point that had arisen for consideration in this writ appeal is whether provisions of the MSMED Act will supersede the arbitration clause in the memorandum of agreement. In other words, despite a contractual agreement setting out the scope and ambit of arbitration, when the second respondent seeks recourse to



the remedy provided under the special Statute, whether the appellant is bound by it or not.

8. It is well settled principle that a special Statute would prevail over General Statute in the event of any inconsistency or ambiguity. However, it has to be decided whether the said principle automatically apply in the context of arbitration.

9. The MSMED Act provides for facilitating the promotion and development and enhancing the competitiveness of Micro, Small and Medium Enterprises for matters connected therewith or incidental thereto.

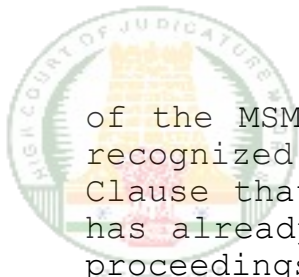
10. The learned counsel appearing for the appellant would submit that the agreement between the parties was entered into on 28.02.2014, wherein Clause 14 is for arbitration in the event of dispute. The second respondent had registered its Company under the Ministry of Micro, Small and Medium Enterprises, Government of India from 17.01.2015 subsequent to the agreement with the appellant University.

11. It is relevant to extract Section 24 of the MSMED ACT:

"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."

12. The above Section states that 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. The second respondent had filed petition before the first respondent under Section 18 of the MSMED Act. The proceedings had been entertained by the first respondent in pursuance of the provisions of the Act. Though there is an arbitration clause in the agreement dated 28.02.2014, the provisions of Section 18(4) specifically contain a non-obstante Clause empowering the Facilitation Council to act as an Arbitrator.

13. The learned counsel appearing for the appellant argued that the pre-existing independent arbitration agreement between the appellant and the second respondent specifically provided for a procedure to appoint an Arbitrator and that the arbitration shall be in Madurai and in English language. However, the second respondent Company is in Coimbatore and registered under the department of Industries and Commerce only in the year 2015 and the certificate was issued only on 17.01.2015 after entering into an agreement with the appellant university. Though the Court may view the agreement as an additional method of appointment of an Arbitrator, the provisions



of the MSMED Act cannot be excluded. Clause 14 of the agreement is recognized by law, the same shall stand eclipsed by the non-obstante Clause that Section 18 of the MSMED Act provides for. As reference has already been made, the parties have to undergo the conciliation proceedings as mentioned in Section 18(2) of the Act.

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13.a. (i) Section 18 of the Act has been a subject matter of dispute in various cases where a Non-MSME party involved in a dispute with a MSME party challenging the applicability of the said Section to their dispute in the light of the Arbitration Agreement between them. In **AIR 2012(Bom) 178(M/s.Steel Authority of India Ltd., and another vs. the Micro, Small Enterprise Facilitation Council & Another**, which was the case on maintainability of an Arbitration clause against MSMED Act, it was held that by virtue of the non-obstante Clause under Section 18 of MSMED Act, it cannot be said that an independent arbitration agreement between the parties will cease to have effect. Accordingly, it was held that since the parties had already entered into an independent agreement, the Council could not proceed. (as per Section 18(3) of the Act). Relevant portion of the said Judgment is extracted hereunder:

"11. Having considered the matter, we find that Section 18(1) of the Act, in terms allows any party to a dispute relating to the amount due under Section 17 i.e. an amount due and payable by buyer to seller; to approach the facilitation Council. It is rightly contended by Mrs. Dangre, the learned Addl. Government Pleader, that there can be variety of disputes between the parties such as about the date of acceptance of the goods or the deemed day of acceptance, about schedule of supplies etc. because of which a buyer may have a strong objection to the bills raised by the supplier in which case a buyer must be considered eligible to approach the Council. We find that Section 18(1) clearly allows any party to a dispute namely a buyer and a supplier to make reference to the Council. However, the question is; what would be the next step after such a reference is made, when an arbitration agreement exists between the parties or not. We find that there is no provision in the Act, which negates or renders an arbitration agreement entered into between the parties ineffective. Moreover, Section 24 of the Act, which is enacted to give an overriding effect to the provisions of Sections 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 Sections 15 to 23 including Section 18 notwithstanding anything contained in any other law for the time being in force. Section 18(3) of the Act in terms provides that where conciliation before



the Council is not successful, the Council may itself take the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution and that the provisions of the Arbitration and Conciliation Act, 1996 shall thus apply to the disputes as an arbitration in pursuance of arbitration agreement referred to in Section 7(1) of the Arbitration and Conciliation Act, 1996. This procedure for arbitration and conciliation is precisely the procedure under which all arbitration agreements are dealt with. We, thus find that it cannot be said that because Section 18 provides for a forum of arbitration an independent arbitration agreement entered into between the parties will cease to have effect. There is no question of an independent arbitration agreement ceasing to have any 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 Arbitration Act, 1996.

12. At this stage, it is necessary to deal with another contention raised on behalf of the Council by Mrs. Dangre, the learned Addl. Government Pleader. According to the learned Addl. Government Pleader, the procedure of conciliation contemplated by Section 18 (2) of the Act is a procedure, which has been specially enacted for the purposes providing a Forum for conciliation which itself is capable of settling a dispute between the micro, small and medium enterprises and any other party. We find that the arbitration agreement in question, like most arbitration agreements, does not contain a specific provision for conciliation and, therefore, it would be necessary for the parties to submit to the conciliation process under Section 18 (2) of the Act notwithstanding the existence of an arbitration agreement. Undoubtedly, the Council may either itself conduct the conciliation in accordance with the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 or as provided by Section 18 (2) of the Act refer it to any institute or centre provided for alternate dispute resolution.

....

14. In the circumstances, we hold that respondent No. 1 Council is not entitled to proceed under the provisions of Section 18(3) of the Act in view of independent arbitration agreement dated 23.9.2005 between the parties. The petitioners and respondent No. 2



shall, however, participate in the conciliation, which shall be conducted by respondent No. 1 Council under the provisions of Section 18(1) and (2) of the Act. Respondent No. 1 Council shall complete the process of conciliation within a period of two weeks from the date the parties appear before it. The parties are directed to appear before respondent No. 1 Council on 25.10.2010. Rule made absolute in the above terms. No order as to costs."

(ii) In **2014(3) ADJ 67 (M/s. Bharat Heavy Electricals Limited vs. State of U.P. & Others)**, the Allahabad High Court, held that though there may be an arbitration agreement between the parties, Section 18(4) of the Act, specifically contains a non-obstante Clause empowering the Council to act as an Arbitrator and took a divergent view. Relevant portion of the said Judgment is extracted hereunder:

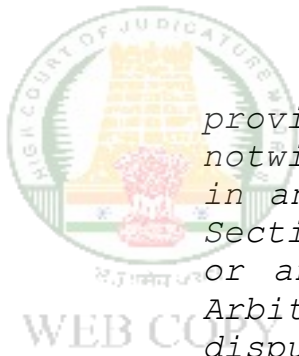
"(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

.....

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

(iii) The Gujarat High Court in **2016 AIR(Guj) 151 (Principal Chief Engineer vs. M/s.Manibhai and Brothers (Sleeper) & Another)**, also rejected the view of the Bombay High Court referred supra and held that the MSMED Act, shall prevail over the Arbitration Act. The relevant portion of the Judgment is extracted hereunder:

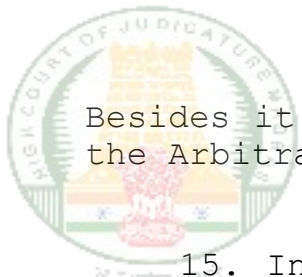
"6.1. It cannot be disputed that the Act 2006 is a Special Act and as per Section 24 of the Act, 2006, the



provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Therefore, Section 18 of the Act, 2006 would have overriding effect or any other law for the time being in force including Arbitration Act, 1996 and therefore, if there is any dispute between the parties governed by the Act, 2006, the said dispute is required to be resolved only through the procedure as provided under Section 18 of the Act, 2006. Thus, considering Section 18 of the Act, 2006, after conciliation has failed as per Section 18(2) of the Act, 2006, thereafter as per subsection (3) of Section 18, where the conciliation initiated under subsection (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in subsection (1) of section 7 of that Act."

14. The Delhi High Court in **GE T & D; India Limited vs. Reliable Engineering Projects** (O.M.P. (COMM.) 76/2016, dated February 15, 2017), has categorically held that the MSMED Act, overrides the Arbitration Act to the extent that it provides for a special forum for adjudication of disputes. After advent of the MSMED Act, the non-obstante Clause found in Section 24 of the MSMED Act, has been strictly followed and had given an interpretation that a Special Law will prevail over the General Law. Therefore, it appears that it has been well settled that validity of a contractual arbitration will be superseded by the provisions of the MSMED Act. It is also to be noted that MSMED Act only provides for arbitration through MSME Council and it also supports and promotes institutional arbitration. Therefore, when the MSMED Act is aimed at promoting alternate form of resolution in the form of conciliation and arbitration, it can be stated that the Act will supersede the pre-existing agreement between the appellant and the second respondent. However, the Arbitration under Section 18 of the Act, is confined to unpaid dues. For other disputes, the Arbitration agreement will prevail. To be noted is that the second respondent had already invoked the jurisdiction of the MSME Council.

14.a. The MSMED Act is a step in aid for Micro & Small Industries. The Act prescribes 90 days of limitation to complete both reconciliation and arbitration which is a speedy remedy.



Besides it is clear that MSMED Act being a Special Act will oversee the Arbitration Act in case of any inconsistency.

15. In the light of the above discussion, this Court sees that there is no infirmity in the order passed by the Writ Court and the same is confirmed and the appeal is dismissed. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Deputy Registrar (LA & MC)

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/ /2022

Sub Assistant Registrar(CS)

pm

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

TO

1.The Chairman,
Micro & Small Enterprises Facilitation Council,
(Industries Commissioner and Director of
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2.M/s.SET INFOTECH PVT LTD.,
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+1 CC to M/s.T.SAKTHI KUMARAN, Advocate (SR-3391[F]
dated 01/02/2022)

+1 CC to M/s.K.C.OMPRAKASH, Advocate (SR-3401[F] dated 01/02/2022)

JUDGMENT MADE IN
W.A(MD)No.1002 of 2021
01.02.2022

SK(CO)

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