IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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ARB No. 373 of 2018 (O&M)
Date of Decision: 11.11.2022

THE STATE OF PUNJAB THROUGH EXECUTIVE ENGINEER, PUNJAB WATER SUPPLY SRI MUKTSAR SAHIB

.....Petitioner

Vs

M/S ENVIRO INFRA ENGINEER PVT LTD THROUGH ITS DIRECTOR SH MANISH JAIN

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Sanjiv Soni, Addl.A.G.Punjab along with
Mr.Parkash, SDO, Division No.2, Sri Muktsar Sahib.

Mr.Ajay Kumar Gupta, Advocate for MSMED.

Ms.Isha Goyal, Advocate
for the respondent.

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RAJ MOHAN SINGH, J.(Oral)

The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short “the Act”) for appointment of an Arbitrator.

Vide order dated 01.03.2019, proceedings before the Facilitation Council, Delhi under the provisions of MSMED Act were stayed. The petitioner has pleaded that the respondent has failed to undertake the allotted work and despite his having not undertaken the work of operation and maintenance of the STPs, submitted three bogus bills for an amount of Rs.30,70,000/-, Rs.29,70,000/- and Rs.28,70,000/- after a gap of about 5 years. The respondent has also claimed refund of security amount and moved a reference under Section 18(A) of the MSMED Act, 2006 before the Facilitation Council, New Delhi. The parties are at some variance in respect of status of proceedings before the Facilitation Centre, New Delhi. The fact remains that vide order dated 01.03.2019, proceedings before the Facilitation Council, New Delhi were stayed. Evidently, the proceedings before the Facilitation Council have not been terminated so far. In view of order dated 01.03.2019, those proceedings are kept in abeyance.

Learned counsel for the petitioner, by referring to email dated 12.09.2019, submitted that in view of non filing of statement of claim, the corresponding arbitration fee and miscellaneous expenses despite reminders, the proceedings before the Facilitation Centre have been closed.

This fact has been refuted by learned counsel for the respondent on the strength of email dated 10.11.2022 to the effect that proceedings are still pending and the claimant had paid its share towards arbitral fee in arbitration case reference No.DIAC/2460/05-19 and DIAC/2461/05-19 as per the provisional assessment of the arbitration centre. Be that as it may, the ratio of **M/s Silpi Industries etc. vs. Kerala State Road Transport Corporation and another etc.** **2021 (3) RCR (Civil) 394** would squarely apply to the present case, where it has been held that the provisions of MSMED Act will prevail as the Act has overriding effect in terms of Section 24 of the Act. MSMED being a special statute and shall have overriding effect vis-a-vis Arbitration and Conciliation Act, 1996, which is a general Act.

Perusal of para Nos. 18, 20, 23 and 26 of the aforesaid judgment would indicate that there is a provision for counter claim in the Act itself, which is a beneficial legislation. For ready reference para No.23 of the Act is reproduced herein as under:-

> *"23. The obligations of the buyer to make payment, and award of interest at three times of the bank rate notified by Reserve Bank in the event of delay by the buyer and the mechanism for recovery and reference to Micro and Small Enterprises Facilitation Council and further remedies under the 2006 Act for C.A.Nos.1570-1578 of 2021 etc. the party aggrieved by the awards, are covered by Chapter V of the 2006 Act. The provisions of Section 15 to 23 of the Act are given overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. From the Statement of Objects and Reasons also it is clear that it is a beneficial legislation to the small, medium and micro sector. The Arbitration and Conciliation Act, 1996 is a general law whereas the Micro, Small and Medium Enterprises Development Act, 2006 is a special beneficial*

legislation which is intended to benefit micro, small and medium enterprises covered by the said Act. The Act of 2006 contemplates a statutory arbitration when conciliation fails. A party which is covered by the provisions of 2006 Act allows a party to apply to the Council constituted under the Act to first conciliate and then arbitrate on the dispute between it and other parties. There are fundamental differences in the settlement mechanism under the 2006 Act and the 1996 Act. The first difference is, the Council constituted under the 2006 Act to undertake mandatory conciliation before the arbitration which is not so under the 1996 Act. Secondly, in the event of failure of conciliation under the 2006 Act, the Council or C.A.Nos.1570-1578 of 2021 etc. the centre or institution is identified by it for arbitration. The 1996 Act allows resolution of disputes by agreed forum. The third difference is that, in the event of award in favour of seller and if the same is to be challenged, there is a condition for pre- deposit of 75% of the amount awarded. Such is not the case in the 1996 Act. When such beneficial provisions are there in the special enactment, such benefits cannot be denied on the ground that counter-claim is not maintainable before the Council. In any case, whenever buyer wish to avoid the jurisdiction of the Council, the buyer can do on the spacious plea of counter-claim, without responding to the claims of the seller. When the provisions of Sections 15 to 23 are given overriding effect under Section 24 of the Act and further the 2006 Act is a beneficial legislation, we are of the view that even the buyer, if any claim is there, can very well subject to the jurisdiction before the Council and make its claim/ counter claim as otherwise it will defeat the very objects of the Act which is a beneficial legislation to micro, small and medium enterprises. Even in cases where there is no agreement for *resolution of disputes by way of arbitration, if the seller is a party covered by Micro, Small and Medium Enterprises C.A.Nos.1570-1578 of 2021 etc. Development Act, 2006, if such party approaches the Council for resolution of dispute, other party may approach the civil court or any other forum making claims on the same issue. If two parallel proceedings are allowed, it may result in conflicting findings. At this stage, it is relevant to notice the judgment of this Court in the case of Edukanti Kistamma (Dead) through LRs. v. S. Venkatareddy (Dead) through LRs. & Ors.4 where this Court has held that a special Statute would be preferred over general one where it is beneficial one. It was explained that the purport and object of the Act must be given its full effect by applying the principles of purposive construction. Thus, it is clear that out of the two legislations, the provisions of MSMED Act will prevail, especially when it has overriding provision under Section 24 thereof. Thus, we hold that MSMED Act, being a special Statute, will have an overriding effect vis-à-vis Arbitration and Conciliation Act, 1996, which is a general Act. Even if there is an agreement between the parties for resolution of disputes by arbitration, if a seller is covered by Micro, Small and Medium Enterprises Development Act, 2006, the seller can certainly (2010) 1 SCC 756 C.A.Nos.1570-1578 of 2021 etc. approach the competent authority to make its claim. If any agreement between the parties is there, same is to be ignored in view of the statutory obligations and mechanism provided under the 2006 Act. Further, apart from the provision under Section 23(2A) of the 1996 Act, it is to be noticed that if counter-claim is not permitted, buyer can get over the legal obligation of compound interest at 3 times of the bank rate and the "75% pre- deposit" contemplated under Sections 16 and 19 of the MSMED Act.* "

In the light of the observations made by the Hon'ble Apex Court in para Nos. 18, 20, 23 and 26 of the aforesaid judgment, this petition is disposed of. Petitioner would be entitled to take recourse to the counter claim in the pending proceedings before the Facilitation Centre, New Delhi. All the issues including limitation shall be decided by the Arbitrator.

(RAJ MOHAN SINGH)
JUDGE

11.11.2022

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whether speaking/non speaking yes/no
whether reportable/non reportable yes/no