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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **Date of Decision: 14.02.2022**

% **FAO(OS) (COMM) 23/2022 & CM APPLs. 5885-5886/2022**

INDIAN HIGHWAYS MANAGEMENT COMPANY LIMITED
..... Appellant

Through: Ms. Aishwarya Bhati, ASG with Mr.A P Singh, Ms. Padma Priya and Ms. Shreya Sethi, Advs.

versus

SOWIL LIMITED ..... Respondent

Through: Ms. Manmeet Arora, Ms. Samapika Biswal and Ms. Pavitra Kaur, Advs.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE JASMEET SINGH

VIPIN SANGHI, J. (ORAL)

1. The present appeal under Section 37 of the Arbitration & Conciliation Act (the Act) is directed against the judgment dated 21.12.2021 passed by the learned Single Judge in O.M.P. (COMM.) NO. 376/2021. The learned Single Judge has dismissed the objections preferred by the appellant under Section 34 of the Act against the Arbitral Award dated 11.10.2021 rendered by the learned Sole Arbitrator appointed to adjudicate the claims of the respondent/claimant.

2. The respondent - who is admittedly a small enterprise under the Micro, Small, Medium Enterprises Development Act, 2006 (hereinafter

"*MSMED Act*"), is engaged in the business of providing consultancy services to various organizations for development works, railway works, bridges, structures and tunnelling. The parties entered into a contract dated 28.10.2014 whereunder the respondent rendered its services for "*Conducting Traffic Surveys on National Highways in Zone-5 (in the States of Odisha, West Bengal and North Eastern States) using Portable Automatic Traffic Counter & Classified (ATCC) Systems*".

3. Disputes arose between the parties under the contract, which were referred to Arbitration before the learned Sole Arbitrator. Amongst the claims that the respondent raised, was the claim for interest on the principle dues, under Section 16 of the MSMED Act. The Arbitral Tribunal dealt with the said claim and while doing so, rejected the submission of the appellant/non-claimant that since the Arbitration was not invoked under Section 18 of the aforesaid Act, the respondent-claimant was not entitled to raise its claim for interest under Section 15 of the MSMED Act. The consideration of the said issue by the Arbitrator reads as follows:-

> *"78. There is, therefore, no dispute that the Claimant is a small enterprise and is covered by the MSME Act. On this basis the Claimant has claimed interest as computed under section 16 of the MSME Act. However, the learned counsel for the Respondent has contended that any interest, if at all payable by the Respondent, would have to be reasonable interest and not interest under section 16 of the MSME Act as the present arbitration is not under section 18 of that act. It was contended that interest under section 16 can only be awarded in arbitration proceedings under the MSME Act. Reliance was placed on a decision of the Hon'ble High Court of Delhi in* ***AVR Enterprises v. Union of India: MANU/ DE/ 1024/***

2020. *However, that decision was on an entirely different context. The question there was – whether a petition to set aside an award which had not been made in an arbitration under the MSME Act would require the deposit of 75% of the awarded amount? The Court held that section 19 of the MSME Act applied only in respect of, inter alia, an award made under the said act and not in respect of awards which were made outside the act. There was no discussion with regard to the provisions of section 16, with which we are concerned in the present case. The said decision is, therefore, clearly inapplicable.*

79. Sections 15 to 17 of the MSME Act are relevant and they are reproduced below:

> ***"15. Liability of buyer to make payment.***—*Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:*
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> *Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.*
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> ***16. Date from which and rate at which interest is payable.***—*Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date*

agreed upon, at three times of the bank rate notified by the Reserve Bank.

17. Recovery of amount due.*—For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16."*

It is clear upon a plain reading of these provisions that delayed payments to an enterprise covered by the MSME Act would entail compound interest with monthly rests at three times the bank rate notified by the Reserve Bank. This is notwithstanding anything contained in any agreement between the parties or in any law for the time being in force. Furthermore, section 24 of the MSME Act makes it clear that these provisions would have overriding effect. Section 24 of the MSME Act reads as under:

24. Overriding effect *—The provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.*

80. In this view of the matter, the Claimant has rightly claimed interest in terms of section 16 of the MSME Act. The calculation of interest as per Exhibit CW-2/34 annexed to CW-2's evidence affidavit has gone unchallenged. That calculation is in respect of the interest on delayed payments up to and including the 6th round and is as on 22.07.2019. The interest so computed is Rs 1,81,72,387/-. The Claimant is also entitled to interest, computed on the same basis, in respect of the delayed payments for the 7th and 8th rounds. Issues 6 and 7 and Claim No. 4 is decided accordingly."

4. In the objection petition preferred by the appellant, the limited

challenge to the Arbitral Award raised by the appellant was to the award of interest at the rate of 20.25 % per annum compounded monthly in respect of the delayed payments for the services rendered to it by the respondent/claimant from due date till the date of payment. The learned Single Judge has rejected the said submission in the following manner:

> *"26. The only question to be addressed is whether the impugned award is vitiated by patent illegality or is in conflict with the public policy of India. And, warrants interference in these proceedings.*
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> *27. It is important to note at the outset that there is no dispute that SOWiL is entitled to interest on delayed payments as well as on differential amounts on account of difference in the rates as agreed in terms of the Contract between the parties and the lowest rates as discovered in the tenders invited subsequently. There is also no dispute that SOWiL is a small enterprise and falls within the definition of a Supplier within the meaning of Section 2(n) of the MSMED Act. The only contention advanced on behalf of IHMCL before this Court is that Section 16 of the MSMED Act is not applicable for the reason that the learned Arbitrator was appointed under Section 11 of the A&C Act and, not pursuant to reference by the Micro and Small Enterprise Facilitation Council (the Council).*
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> ***29. A plain reading of Section 15 of the MSMED Act makes it mandatory for the buyer to make payment for the goods supplied to it by a Supplier within the period as agreed by the parties or, where there is no agreement in this regard, before the appointed date. The expression 'appointed date' is defined under Section 2(b) of the MSMED Act to means the day following immediately after the expiry of the period of fifteen days from the day of acceptance of the goods. Further, the proviso to Section 15 of the MSMED Act makes it clear that under no circumstances, the period agreed between the supplier and buyer would exceed forty-***

five days from the day of acceptance or day of deemed acceptance of the goods. Section 16 of the MSMED Act provides for payment of interest on the amounts due to a supplier where the buyer has failed to pay the amounts as required under Section 15 of the MSMED Act. Undisputedly, the buyer's obligation to discharge its liability under Section 15 of the MSMED Act and to pay interest under Section 16 of the MSMED Act confers the right on 'the Supplier' to demand and recover the said amount. Section 17 of the MSMED Act also provides that the buyer would be liable to pay the amount and the interest as provided under Section 16 of the MSMED Act. Section 17 of the MSMED Act also makes it amply clear that the buyers would be liable to pay the amount due, along with interest, as provided under Section 16 of the MSMED Act to 'the Supplier'. It is material to note that Sections 15 and 16 of the MSMED Act imposes the liability on the buyer to pay the due amount to the supplier within the specified period and to pay interest if it fails to do so, independent of the provisions of Section 17 of the MSMED Act.

30. Section 18 of the MSMED Act provides for reference to the Micro and Small Enterprises Facilitation Council. It would be relevant to refer to Sections 18 and 19 of the MSMED Act, which are set out below:

> *"**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.*
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> *(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 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 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 dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section(1) of section 7 of that Act.

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

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.

19. Application for setting aside decree, award or order.–*No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any* *court unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:*

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose."

31. It is material to note that Section 18(1) of the MSMED Act opens with a non obstante clause. It expressly provides that 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 of the MSMED Act, make a reference to the Micro and Small Enterprises Facilitation Council. It is clear that either of the parties, to any dispute regarding the amounts in respect of goods and services and, interest due under Section 16 of the MSMED Act (which is the amount referred to as the amount due under Section 17 of the MSMED Act) is entitled to make a reference to the Micro and Small Enterprises Facilitation Council for resolution of the dispute. Sub-Section (2) to Section 18 of the MSMED Act provides for resolution of disputes by Conciliation either by the Council or, by any institution or centre for conducting Conciliation under the A&C Act.

32. Sub-Section (3) to Section 18 of the MSMED Act provides for adjudication of disputes by arbitration either by the Micro and Small Enterprises Facilitation Council or, by any institution or centre providing alternate dispute resolution services for arbitration. It further clarifies that the provisions of the A&C Act would apply to disputes as if the arbitration in pursuance of an *arbitration agreement referred to in Sub-Section (1) of Section 7 of the A&C Act.*

33. Section 19 of the MSMED Act provides that no application to set aside any decree, award or other order made by the Council or the institution or center providing alternate dispute resolution services shall be entertained unless 75% of the said amount is deposited in terms of the decree, award or the order as directed by the Court.

34. It is apparent from the above that the provisions of Sections 15 and 16 of the MSMED Act confer substantive rights and impose obligations, which are not contingent upon recourse to any dispute resolution mechanism. Section 18 of the MSMED Act provides for a dispute resolution mechanism in respect of any amount due under Section 17 of the MSMED Act. It is obvious that it may not be necessary for a supplier to seek recourse to any proceedings for recovery of the amounts that may be otherwise due to it, if the buyer complies with its obligation under Sections 15 and 16 of the MSMED Act.

35. The import of the contentions advanced on behalf of IHMCL is that the obligations of the buyer under Sections 15 and 16 of the MSMED Act are contingent upon the supplier resorting to Conciliation or the adjudicatory process under Section 18 of the MSMED Act. The plain language of Sections 15, 16 and 17 of the MSMED Act, does not support this proposition.

36. The reliance placed by IHMCL on the decision of this Court in ***AVR Enterprises v. Union of India*** *(supra), is misplaced. In the said case, the Court was concerned with the question whether it could entertain a petition under Section 34 of the A&C Act without the petitioner depositing 75% of the awarded amount in terms of Section 19 of the MSMED Act. The Court held that the requirement* *of Section 19 of the MSMED Act would be applicable only in cases where reference was made under Section 18 of the MSMED Act and would not apply to an award rendered by an arbitral tribunal appointed otherwise. It is relevant to note that this Court relied on the plain language of Section 19 of the MSMED Act, which specified that it would apply to any decree, award or order made by the Council or by any institution or center providing alternate dispute resolution services to which reference was made by the Council. This condition would not be met in cases where an arbitrator is appointed by the parties or by a court under Section 11 of the A&C Act. The plain language of Section 19 of the MSMED Act does not require a pre-deposit of seventy-five percent of the awarded amount in respect of an arbitral award rendered by an Arbitral Tribunal which has not been appointed pursuant to a reference under Section 18 of the MSMED Act. The judgment in* ***AVR Enterprises v. Union of India*** *(supra) is not an authority for the proposition that the beneficial provisions of the MSMED Act would be inapplicable where a party does not seek to enforce its rights under Section 18 of the MSMED Act.*

37. The decision in the case of ***M/s SAVIO Industrial and Structural Corporation v. Southern Railway and Ors.*** *(supra) does not carry the case of the petitioner much further. In that case, the arbitral tribunal had concluded that the MSMED Act was not applicable. This was for the reason that the amount claimed by the petitioner was not on account of the amount due for sale of any material or for the services rendered. The Division Bench of the Madras High Court concurred with the view of the arbitral tribunal and held that the provisions of Sections 15 and 16 of the MSMED Act were not applicable as these provisions created an obligation to pay compound interest only in respect of the amounts due for the goods supplied or service rendered. The Court did not accept that the provisions of Section 19 of the MSMED Act were applicable* *since in that case the arbitral award was not rendered by an arbitral tribunal appointed pursuant to a reference under Section 18(1) of the MSMED Act.*

38. As noted above, the plain language of Section 19 of the MSMED Act limits its application only to the arbitral award or orders passed by the Facilitation Council pursuant to a reference under Section 18(1) of the MSMED Act or by an arbitral tribunal appointed pursuant to such reference. Sections 15 and 16 of the MSMED Act do not contain any such restrictive provisions, which limits their applicability. There is nothing stated in Section 15 or 16 of the MSMED Act which restricts the amount recoverable under the said provisions contingent to a reference under Section 18(1) of the MSMED Act.

39. It is necessary to note that Section 18(3) of the MSMED Act also expressly provides that where the disputes are referred to arbitration either by the Council or to any institution or centre providing alternate dispute resolution services, the provisions of A&C Act would apply to such disputes as if the arbitration was in pursuance to an arbitration agreement referred to in Section 7(1) of the A&C Act. Section 18(3) of the MSMED Act creates a legal fiction, whereby the provisions of the A&C Act are made applicable to arbitration pursuant to the reference under Section 18(3) of the MSMED Act. ***During the course of submissions, it was contended on behalf of the respondent that an award for interest under Section 16 of the MSMED Act could be made in proceedings under Section 18 of the MSMED Act but not by an arbitral tribunal appointed in terms of the A&C Act. In such cases, the arbitral tribunal was required to award reasonable interest under Section 31(7)(a) of the A&C Act. This Court finds it difficult to accept this contention as it overlooks the express provisions of Section 18(3) of the MSMED Act. The provisions of the A&C Act are specifically applicable as they would be in case of arbitration***

pursuant to an arbitration agreement under Section 7(1) of the A&C Act. However, in case of repugnancy between the provisions of the A&C Act and the MSMED Act, the provisions of the MSMED would prevail.

40. It is also relevant to refer to the decision in the case of ***Snehdeep Structures Pvt. Ltd. v. Maharashtra Small Scale Industries Development Corporation Ltd.*** *(supra). The said case was rendered in the context of Interest on Delayed Payments to Small Scale and Ancillary Undertakings Act, 1993. In that case, the Court held that Interest on Delayed Payments to Small Scale and Ancillary Undertakings Act, 1993 (referred to as the 'Interest Act' in short by the court) was a special legislation viz-a-viz to any other legislation including the A&C Act and the contention that the payment of interest would be governed by Section 31(7)(a) of the A&C Act, was rejected as erroneous. The relevant extract of the said decision is set out below:*

> *"37. According to the learned counsel for the respondent Corporation, the Arbitration Act treats "appeals" and "applications" separately under two distinct chapters: Chapter VII and Chapter IX respectively. It was also strenuously contended by the learned counsel for the respondent that the Arbitration Act contains specific provisions for awarding interest and that Act being a special enactment will prevail over the Interest Act. He relied on* ***Jay Engg. Works Ltd. v. Industry Facilitation Council*** *to show that against the provisions of the Interest Act, the provisions of Arbitration Act will prevail, as the latter is a complete code in itself. The Interest Act will apply only when the party prefers a suit to arbitration.*
>
> *38. The Preamble of the Interest Act sows that the very objective of the Act was "to provide for and regulate the*

payment of interest on delayed payments to small-scale and ancillary industrial undertakings and for matters connected therewith or incidental thereto." Thus, as far as interest on delayed payment to small-scale industries as well as connected matters are concerned, the Act is a special legislation with respect to any other legislation, including the Arbitration Act. The contention of the respondent that the matter of interest payment will be governed by Section 31(7) of the Arbitration Act, hence, is erroneous. Section 4 of the Interest Act endorses the same which sets out the liability of the buyer to pay interest to the supplier "notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force". Thus, the Interest Act is a special legislation as far as the liability to pay interest, or to make a deposit thereof, while challenging an award / decree / order granting interest is concerned."

41. As pointed out by Ms Arora, one of the Statements and Objects of enacting the MSMED Act was to "make further improvements in the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 and making that enactment a part of the proposed legislation and to repeal that enactment.

42. In ***Shilpi Industries v. Kerala State Road Transport Corporation and Anr.*** *(supra), the Supreme Court had observed as under:-*

"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. 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."

[Underlined for emphasis]

43. In view of the above, it is clear that the MSMED Act is a special legislation with regard to payment of interest and the provisions of MSMED Act would override the provisions of the A&C Act to the extent of any repugnancy. This view further draws support from the non obstante provisions of Section 24 of the MSMED Act, which reads as under: -

*"**24. Overriding effect.** – The provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."*

44. Ms Priya had also referred to the decision of the Supreme Court in ***Vedanta Ltd. v. Shenzen Shandong Nuclear Power Construction Co. Ltd.: (2019 11 SCC 465*** *and, on the strength of the said decision, contended that the award of interest was required to be awarded in accordance with Section 31(7) of the A&C Act and was thus, required to be reduced. The said decision would be of little assistance to IHMCL in the facts of this case. In that case, the Court had found that the award of interest was arbitrary and not in conformity with the laws in force. The Court also found that the arbitral tribunal had awarded uniform interest for the amounts payable in Indian currency as well as those payable in Euros, although both the currencies operated in materially different environments. As noticed above in this case, the Arbitral Tribunal has found that SOWiL is liable to pay interest under Section 16 of* *the MSMED Act and, thus, the impugned award does conform to lex fori."* (emphasis supplied)

5. The submission of Ms. Bhati, learned ASG, is that interest on delayed payments to Small Scale and Ancillary Undertakings was initially statutorily regulated by the ***Interest on the delayed payments to Small Scale and Ancillary Industrial Undertakings Act, 1998*** which had a similar provision for payment to such undertakings under Section 5 thereof. She points out that the preamble to the said Act discloses that the said Act was enacted to '*regulate the payment of interest on delayed payments to small scale and ancillary industrial undertakings.*' That was the limited scope of the Act. The said Act provided that the amount due from the buyer, together with the amount of interest calculated in accordance with provisions of Section 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. Thus, Section 6 provided flexibility to the small-scale supplier to invoke legal remedy by way of a suit or other proceeding, and he could make recovery of the amount due, together with interest calculated in terms of Sections 4 and 5, in any such proceeding. She submits that the Parliament enacted the Micro, Small, Medium Enterprises Development Act, 2006 as '*an Act to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto*'. Her submission is that Chapter V of the MSMED Act deals with the aspect of delayed payments to micro and small enterprises. She submits that Chapter V is a complete code inasmuch, as, the right to claim interest in terms of Sections 15 and 16 thereof would

accrue to micro and small enterprise only if such suppliers/enterprise were to invoke the remedy for recovery as prescribed in Section 18 thereof. She submits that since the respondent have not invoked the said remedy by making a reference to the Micro and Small Enterprises Facilitation Council and, in terms of the agreement between the parties, the disputes were referred to the Sole Arbitrator, the respondent did not get vested with rights under Section 15 and 16 of the MSMED Act.

6. In support of this plea, she has sought to place reliance on the judgment of the learned Single Judge of this Court in ***AVR Enterprises*** **(supra)**, which has already been noticed by the Arbitral Tribunal as well as by learned Single Judge, and the appellant's reliance on the said judgment has been rejected. As would be evident from the rationale contained in the Award as well as in the impugned judgment, ***AVR Enterprises*** was a case where the issue dealt with by the learned Single Judge was *"whether the requirement of making a pre deposit of 75% of the amount in terms of the decree or award, before a challenge to seek setting aside of the decree or award or other order made by the Council or any Institution or Centre providing alternate dispute resolution service to which a reference is made by the Council, could be entertained"*, would apply in respect of an Arbitral Award made *dehors* resort to Section 18 of the MSMED Act. The learned Single Judge held that since the Arbitration had been initiated *dehors* Section 18 of the MSMED Act, the requirement of making a pre-deposit in terms of Section 19 of the MSMED Act could not be insisted upon. Ms. Bhati submits that, similarly, for the right to accrue to claim interest in terms of Section 15 and 16, invocation of Section 18 by the MSMED

Enterprise/Supplier is a pre-requisite.

7. She further submits that the appellant was not even aware that the respondent is covered by the provisions of MSMED Act, and learnt of the same only when the respondent sought to place reliance on Sections 15 and 16 of the MSMED Act to claim interest in the Arbitral Proceedings. She submits that the definitions of micro enterprise, small enterprise, and medium enterprise, encompasses a large number of enterprises and the expression “supplier” - which means a micro or small enterprise, covers a large number of enterprises. Her submission is that Section 31 of the Arbitration & Conciliation Act prescribes that, unless otherwise agreed by the parties, in respect of an arbitral award for payment of money, the tribunal may include in the sum for which the award is made, interest at such rate as it deems reasonable, and the interest that the Award may carry, unless the Award directs otherwise, would be at the rate of 2% higher than the current rate of interest prevalent on the date of Award, from the date of Award, till the date of payment. Her submission is that the said provision over-rides Section 15 and 16 of the MSMED Act.

8. On the other hand, Ms. Arora, who appears for the respondent on advance notice, has opposed even the admission of the appeal on the ground that the provisions of the MSMED Act override the provisions of the Arbitration & Conciliation Act. In this regard, she has drawn our attention to the judgment of the Supreme Court in ***Snehadeep Structures Pvt. Ltd. v. Maharashtra Small-Scale Industries Development Corporation Ltd. [(2010) 3 SCC 34]*** and in particular paragraph 38 thereof wherein the

Supreme Court observed as follows:

> *"38. The Preamble of the Interest Act shows that the very objective of the Act was "to provide for and regulate the payment of interest on delayed payments to small-scale and ancillary industrial undertakings and for matters connected therewith or incidental thereto." Thus, as far as interest on delayed payment to small-scale industries as well as connected matters are concerned, the Act is a special legislation with respect to any other legislation, including the Arbitration Act. The contention of the respondent that the matter of interest payment will be governed by Section 31(7) of the Arbitration Act, hence, is erroneous. Section 4 of the Interest Act endorses the same which sets out the liability of the buyer to pay interest to the supplier "notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force". Thus, the Interest Act is a special legislation as far as the liability to pay interest, or to make a deposit thereof, while challenging an award/decree/order granting interest is concerned."*

9. Ms. Arora has also referred to the Objects and Reasons of the MSMED Act, in particular, to para 2 (d), (f) and (k) thereof. The said paragraphs read as follows:

> "2. *In view of the above-mentioned circumstances, the Bill aims at facilitating the promotion and development and enhancing the competitiveness of small and medium enterprises and seeks to –*
>
> > *(d) empower the Central Government to notify programmes, guidelines or instructions for facilitating the promotion and development and enhancing the competitiveness of small and medium enterprises.*
> >
> > *(f) make provisions for ensuring timely and smooth flow of credit to small and medium enterprises to minimize the*

incidence of sickness among and enhancing the competitiveness of such enterprises, in accordance with the guidelines or instructions of the Reserve Bank of India.

(k) make further improvements in the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 and making that enactment a part of the proposed legislation and to repeal that enactment."

10. Ms. Arora submits that the obligation to pay interest in terms of Sections 15 and 16 of the MSMED Act arise *dehors* the invocation of the remedy under Section 18 thereof. In fact, in a given case, it may not even be necessary for the micro or small enterprise supplier to invoke the remedy under Section 18 of the Act, since the buyer may comply with Section 16, and make payment of the amount due along with interest computed in terms of these sections. Her submission is that, it cannot be, that the statutory right which vest in the supplier by virtue of Sections 15 and 16, would be taken away by the subsequent conduct or decision of the supplier to invoke the remedy as available under Section 18 of the said Act, or to invoke some other legal remedy as may be available to the supplier. She submits that, that is not even the purport of Section 18 of the MSMED Act. She also places reliance on Section 22 of the MSMED Act and, in particular, to Clauses (i) and (ii), which places an obligation on the buyer to reflect in his annual accounts audited under the law, firstly, the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year, and; secondly, the amount of interest paid by the buyer in terms of section 16, along with the amount of the payment made to the supplier beyond the appointed day during each accounting year.

She submits that the relevant clauses under the Companies Act have also been amended in light of the aforesaid provision. She submits that the liability to pay interest under the MSMED Act to the supplier cannot be claimed as a deduction under the Income Tax Act by virtue of Section 23. The object of the aforesaid provisions is to discourage the buyer from withholding the payments due to a supplier i.e. the micro and small enterprise. She has also drawn our attention to a clarification issued by the Deputy Director in the O/o. DC (MSME), Central Government, Ministry of Micro, Small and Medium Enterprise, wherein the said Ministry has clarified "*that as evident from Chapter V of Micro, Small & Medium Enterprises Development (MSMED) Act, 2006, Sections 15, 16 and 17 of the MSMED Act, 2006 are applicable on every entity delaying payment to a Micro and Small Enterprise (MSE) vendor by more than 45 days even if the dispute is not referred to Micro and Small Enterprises Facilitation Centres (MSEFCs). Further, the Act does not preclude adjudication by any forum other than MSEFC.*"

11. Having considered the submissions of Ms. Bhati, learned ASG and Ms. Arora, learned counsel for the respondent, we are of the view that there is no merit in the present appeal, and the impugned judgment does not call for interference by us.

12. The primary issue raised by Ms. Bhati is that the respondent supplier under the MSMED Act, could not claim interest under Section 16 of the said Act, when the supplier has not resorted to invocation of the remedy provided under Section 18 of the said Act. This legal issue has been exhaustively

considered both by the learned Sole Arbitrator in the Award, as well as by the learned Single Judge in the impugned judgment.

13. To claim that Section 16 cannot be invoked to claim interest at the rates specified therein, if the remedy under Section 18 has not been invoked, the appellant has sought to place reliance on ***AVR Enterprises*** (supra). That decision has been distinguished by the Arbitral Tribunal, as well as by the learned Single Judge, and in our view, rightly so. In ***AVR Enterprises*** (supra), the Court was not concerned with the applicability of Section 16 to a case where Section 18 of the MSMED Act had not been invoked. It was only concerned with consideration of the issue, whether, the requirements of Section 19 of the said Act would be applicable, only in cases where the reference to Arbitration was made under Section 18 of the MSMED Act. As rightly observed by the learned Single Judge, the liability to pay interest in terms of the Section 16 of the MSMED Act is independent of the nature of proceedings in which the claim for interest is made by the supplier by resort to Section 16. Section 16 vests rights in the supplier to claim interest in terms thereof, and that right is not contingent upon the nature of remedial proceedings undertaken by the supplier to effectuate recovery of the principal and/ or the interest due to him.

14. A right created/ vested by Section 16 in a supplier does not get extinguished merely because the dispute is not raised by the supplier before the Micro and Small Enterprises Facilitation Council. Section 18 only seeks to create an additional forum before which the supplier may raise its claim. The provisions under the MSMED Act, including Section 15 and 16 thereof,

are beneficial provisions applicable to Micro and Small Enterprises who fall within the definition of 'supplier' contained in the said Act. An interpretation which advances the purpose for which the beneficial legislation has been enacted would be preferred, and an interpretation which seeks to defeat the purpose of the beneficial legislation has to be eschewed.

15. As held by the Supreme Court in ***Snehdeep Structures Pvt. Ltd.*** (supra), the provisions of the special Act framed to protect the interest of Small Scale and Ancillary Industrial Undertakings override the provisions of the Arbitration & Conciliation Act. By the same analogy, the provisions of the MSMED Act – which provide for a higher rate of interest under Section 16 thereof, would prevail over Section 31 of the Arbitration & Conciliation Act, since the MSMED Act is a special legislation as far as liability to pay interest to Micro and Small Enterprises – which fall within the definition of supplier, is concerned.

16. Ms. Arora has pointed out that the Objects & Reasons of the MSMED Act, *inter alia*, include the object of making further improvement in the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993. We find force in her submission that a right vested in a supplier under Sections 15 & 16 cannot be taken away by the subsequent conduct, or the decision of the supplier to invoke one, or the other remedy, available to him, in law. The provisions pointed out by Ms. Arora, namely Section 22 and Section 23 of the MSMED Act, are also clear pointer to the absolute liability created in favour of the supplier to claim interest in terms of Section 16. Even the Central Government in the

Ministry of Micro, Small and Medium Enterprises has clarified the position as taken note of hereinabove.

17. For the aforesaid reasons, we find absolutely no merit in the submission of the appellant with regard to interpretation of Section 16 of the MSMED Act.

18. Merely because by virtue of the definitions contained in the MSMED Act, a large number of enterprises got covered within the scope of the definition of Micro and Small Enterprises, is not a reason to deny the statutory benefit conferred on such enterprises. That is a matter of legislative policy with which the Court would not interfere.

19. For all the aforesaid reasons, we find no merit in the appeal and the same is, accordingly, dismissed leaving the parties to bear their respective costs.

VIPIN SANGHI, J.

JASMEET SINGH, J.

FEBRUARY 14, 2022/sr