IN THE HIGH COURT OF BOMBAY AT GOA

MISCELLANEOUS CIVIL APPLICATION NO. 65 OF 2021
WITH
APPEAL UNDER ARBITRATION ACT NO. 12 OF 2019, COMMERCIAL APPEAL NO. 8 OF 2019, COMMERCIAL APPEAL NO. 7 OF 2019, MISCELLANEOUS CIVIL APPLICATION NO. 68 OF 2021, MISCELLANEOUS CIVIL APPLICATION NO. 69 OF 2021, COMMERCIAL APPEAL NO. 4 OF 2019, MISCELLANEOUS CIVIL APPLICATION NO. 67 OF 2021, COMMERCIAL APPEAL NO. 5 OF 2019, APPEAL UNDER ARBITRATION ACT NO. 7 OF 2019, COMMERCIAL APPEAL NO. 6 OF 2019, MISCELLANEOUS CIVIL APPLICATION NO. 66 OF 2021, MISCELLANEOUS CIVIL APPLICATION NO. 443 OF 2023, MISCELLANEOUS CIVIL APPLICATION NO. 440 OF 2023

MISCELLANEOUS CIVIL APPLICATION NO. 65 OF 2021
IN
APPEAL UNDER ARBITRATION ACT NO. 12 OF 2019

Shoft Shipyard Pvt. Ltd.,
Rep. By its Auth. Sign., R Ram Garg … Applicant

Vs.

Goa Shipyard Ltd. … Respondent

WITH
APPEAL UNDER ARBITRATION ACT NO. 12 OF 2019

Goa Shipyard Ltd.,Thr. its Aut.
Officer & Additional Gen. Man. (Legal)
Kishore Manohar Samant … Appellant

Vs.

Shoft Shipyard Pvt. Ltd. … Respondent

WITH
COMMERCIAL APPEAL NO. 8 OF 2019

Shoft Shipyard Pvt. Ltd.,
Thr. its Atu. Rep. R Ram Garg … Appellant

Vs.

Goa Shipyard Ltd. … Respondent

WITH
COMMERCIAL APPEAL NO. 7 OF 2019

Shoft Shipyard Pvt. Ltd.,
Thr. its Atu. Rep., R Ram Garg … Appellant

Vs.

Goa Shipyard Ltd. … Respondent

WITH

MISCELLANEOUS CIVIL APPLICATION NO. 68 OF 2021

IN

APPEAL UNDER ARBITRATION ACT NO. 9 OF 2019

Shoft Shipyard Pvt. Ltd.,
Rep. By its Aut. Sign., R Ram Garg … Applicant

Vs.

Goa Shipyard Ltd. … Respondent

WITH

MISCELLANEOUS CIVIL APPLICATION NO. 69 OF 2021

IN

APPEAL UNDER ARBITRATION ACT NO. 8 OF 2019

Shoft Shipyard Pvt. Ltd.,
Rep. By its Aut. Sign., R Ram Garg … Applicant

Vs.

Goa Shipyard Ltd. … Respondent

WITH

COMMERCIAL APPEAL NO. 4 OF 2019

Goa Shipyard Ltd. … Appellant

Vs.

Shoft Shipyard Pvt. Ltd., … Respondent

WITH

MISCELLANEOUS CIVIL APPLICATION NO. 67 OF 2021

IN

APPEAL UNDER ARBITRATION ACT NO. 10 OF 2019

Shoft Shipyard Pvt. Ltd.,
Rep. By its Aut. Sign., R Ram Garg … Applicant

Vs.

Goa Shipyard Ltd. … Respondent

WITH

COMMERCIAL APPEAL NO. 5 OF 2019

Goa Shipyard Ltd. … Appellant

Vs.

Shoft Shipyard Pvt. Ltd., … Respondent

WITH

APPEAL UNDER ARBITRATION ACT NO. 7 OF 2019

Goa Shipyard Ltd. … Appellant

Vs.

Shoft Shipyard Pvt. Ltd., … Respondent

WITH

COMMERCIAL APPEAL NO. 6 OF 2019

Shoft Shipyard Pvt. Ltd.,
Thr. its Atu. Rep., R Ram Garg … Appellant

Vs.

Goa Shipyard Ltd. … Respondent

WITH

MISCELLANEOUS CIVIL APPLICATION NO. 66 OF 2021

IN

APPEAL UNDER ARBITRATION ACT NO. 11 OF 2019

Shoft Shipyard Pvt. Ltd.,
Rep. By its Aut. Sign., R Ram Garg … Applicant

Vs.

Goa Shipyard Ltd. … Respondent

WITH

MISCELLANEOUS CIVIL APPLICATION NO. 443 OF 2023

IN

APPEAL UNDER ARBITRATION ACT NO. 854 OF 2022 (F)

Goa Shipyard Ltd.,Thr., its Aut.
Officer & Additional Gen. Man. (Legal)
Kishore Manohar Samant … Applicant

Vs.

Shoft Shipyard Pvt. Ltd. … Respondent

WITH

MISCELLANEOUS CIVIL APPLICATION NO. 440 OF 2023

IN

APPEAL UNDER ARBITRATION ACT NO. 853 OF 2022 (F)

Goa Shipyard Ltd.,Thr., its Aut.
Officer & Additional Gen. Man. (Legal)
Kishore Manohar Samant … Applicant

Vs.

Shoft Shipyard Pvt. Ltd. … Respondent

Ms. Ridhi Nyati a/w. Mr. Ashwin Shanker, and Mr. Nikhil D. Pai for Applicant - Shoft Shipyard.

Mr. Soli Cooper, Senior Advocate a/w. Mr. Sunjendu Shankar Das, Ms.Annie Mittal, Mr. Pavithran AV and Mr. Prasad Kholkar for respondent - Goa Shipyard.

CORAM : PRAKASH D. NAIK & MANISH PITALE, JJ.

Reserved on : 30TH OCTOBER, 2023

Pronounced on: 12TH DECEMBER, 2023

ORDER: *(Per Manish Pitale, J.)*

. The question arising for consideration in these applications is, as to whether the applications filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Arbitration Act") or even the present appeals filed under Section 37 thereof, were maintainable, in the absence of compliance with the mandatory deposit of 75% of the amount awarded under the arbitration award, as required under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the "MSMED Act").

2. This question specifically arises in the context of the admitted factual position that the arbitrator in the present case was appointed under Section 11 of the Arbitration Act by an order of this Court and the arbitration proceedings were not conducted before either the facilitation council or any institution or centre to which the dispute was referred by the facilitation council under Section 18 of the MSMED Act. While the applicant claims that such mandatory pre-deposit of 75% of the awarded amount applies, even if the arbitration proceeding has not been conducted by either the facilitation council or an institution or centre appointed by it under Section 18 of the MSMED Act, the respondent in the application i.e. the original appellant contends to the contrary. It is specifically contended on behalf of the original appellant (hereinafter referred to as the "respondent") that the mandatory pre-deposit of 75% awarded amount applies only in cases where the arbitral award has been

rendered pursuant to an arbitration proceeding conducted either by the facilitation council or an institution or centre appointed by it under Section 18 of the MSMED Act.

3. It is the case of the applicant that since the respondent admittedly did not make such a mandatory pre-deposit at the stage of filing of the applications under Section 34 of the Arbitration Act before the District Court and also because no such mandatory pre-deposit was made while filing instant appeals before this Court, on this short ground itself the present appeals ought to be dismissed.

4. It is not necessary to refer to the facts in detail leading up to the filing of the present applications. Suffice it to say that upon the respondent engaging the applicant for certain works concerning the shipyard, including construction of hull, installation of machinery and equipment etc., disputes arose between the parties. Since there were arbitration clauses in the contracts executed between the parties, the disputes had to be resolved through arbitration. It is an admitted position that the applicant being covered under the definition of a Micro, Small or Medium Enterprise under the MSMED Act, the arbitration proceedings could have taken place before the facilitation council or an institution or centre appointed by the council. But, due to lack of infrastructure with the concerned facilitation council, applications had to be moved before this Court under Section 11 of the Arbitration Act for appointment of arbitrator. Thus, the Arbitrators were appointed under Section 11 of the Arbitration Act, upon orders being passed by this Court and the arbitral awards were rendered pursuant to such arbitral proceedings.

5. The arbitrators rendered the arbitral awards. The parties filed applications under Section 34 of the Arbitration Act to challenge the awards. The challenge raised by the respondent herein was rejected,

resulting in filing of the present appeals before this Court.

6. The present applications have been filed raising the aforesaid preliminary objection and seeking dismissal of the appeals on that ground.

7. Ms. Ridhi Nyati, learned Counsel appearing for the applicant in these applications submitted that Section 19 of the MSMED Act clearly stipulates that no application for setting aside of a decree, award or order can be entertained by any Court unless the appellant deposits 75% of the awarded amount in the Court. It was submitted that a plain reading of Section 19 of the MSMED Act would show that no distinction is made between an award rendered by the facilitation council or an institution or centre appointed by the council under Section 18 of the MSMED Act on the one hand and on the other hand, an award rendered by an arbitrator appointed otherwise. It was submitted that undisputedly the provisions of the MSMED Act apply to the applicant and arbitration had to be undertaken before arbitrators appointed by this Court, only because the concerned facilitation council under the MSMED Act did not have appropriate infrastructure to conduct such arbitrations.

8. It was submitted that since the MSMED Act is a beneficial legislation for units like the applicant before this Court, considering the object of the MSMED Act and the protection afforded to units like the applicant, this Court ought to adopt an interpretation of Section 19 of the MSMED Act, which furthers the protection afforded under the MSMED Act and which is in tune with the object thereof. It was submitted that if a hyper-technical view was to be taken in the matter, as the respondent has been advocating, it would militate against the provisions of the MSMED Act.

9. The learned counsel placed much emphasis on the words “decree”

and "order" used in Section 19 of the MSMED Act, to claim that an expansive interpretation was necessary, so as to hold that even in the present circumstances, where the awards were rendered by the arbitrators appointed by this Court under Section 11 of the Arbitration Act, the mandatory requirement under Section 19 of the MSMED Act does apply. It was further submitted that under Section 18 of the MSMED Act, a mechanism is provided for conducting arbitration before the facilitation council or institution or centre appointed by the council, for assisting units covered under the MSMED Act, for resolution of disputes through arbitration. Even in cases where contractual arbitration clauses exist, if arbitration is undertaken as per such clause, it would not lead to the protection available to a unit like the applicant under the provisions of the MSMED Act, being taken away. It was submitted that if this Court were to hold otherwise, a unit covered under the MSMED Act could invoke Section 18 thereof, for conducting the arbitration, while the rival party may initiate arbitration proceedings under the contractual arbitration clause. This would lead to possibility of conflicting awards, if it was to be held that provisions of the MSMED Act, particularly Section 19 thereof, would not be available if the contractual arbitration clause was to be pressed into service.

10. The learned counsel for the applicant submitted that the interpretation being canvassed on behalf of the applicant had met with approval in certain judicial pronouncements. Specific reliance was placed on judgement of the Division Bench of the Gujarat High Court in the case of *Saryu Plastics Pvt. Ltd. and others Vs. Gujarat Water Supply and Sewerage Board*[1], as also judgement of the learned Single Judge of the Gujarat High Court in the case of *Jmc Projects (India) Ltd. & 1 Vs. Mechtech Engineers & 1*[2]. It was held in both these judgements that

1 AIR 2018 Guj 57.
2 (2012) 1 Arb LR 146 (Gujarat)

requirement of pre-deposit of 75% of the awarded amount under Section 19 of the MSMED Act, applied to awards rendered in arbitration proceedings under both scenarios i.e. award rendered by the facilitation council or an institution or centre appointed by the council under Section 18 of the MSMED Act or an award rendered by a tribunal appointed as per the contractually agreed arbitration clause.

11. Reliance was also placed on judgement of the Supreme Court in the case of *Snehadeep Structures Private Limited Vs. Maharashtra Small Scale Industries Development Corporation Limited*[3], to contend that while interpreting a statutory provision, the interpretation that advances the object and purpose of the legislation ought to be accepted. In support of the proposition that the Court has no discretion to waive or reduce the amount of pre-deposit under Section 19 of the MSMED Act, the learned Counsel appearing for the applicant placed reliance on judgements of the Supreme Court in the case of *Goodyear India Limited Vs. Norton Intech Rubbers Private Limited & Another*[4], *Gujarat State Disaster Management Authority Vs. Aska Equipments Limited*[5] and judgements of this Court in the case of *Ravindranath Ge Medicate Associate Pvt. Ltd. Vs. Clean Coats Pvt Ltd. Ambernath*[6], *M/s. Steel Authority of India Ltd. and Anr. Vs. Micro, Small Enterprise Facilitation Council, through Joint Director of Industries, Nagpur Region, Nagpur*[7], as also judgement of the Uttarakhand High Court in the case of *Uttarakhand Power Corporation Limited (UPCL) Vs. Mahaveer Transmission Udyog Pvt. Ltd.*[8] and judgement of the Kerala High Court in the case of *K.S.R.T.C. Vs. Union of India (UOI)*[9].

3 (2010) 3 SCC 34
4 (2012) 6 SCC 345
5 (2022) 1 SCC 61
6 2016 (6) Mh.L.J. 49
7 2010 SCC Online Bom 2208
8 2018 SCC OnLine Utt 1163
9 2010 (1) KLT 65

12. The learned counsel appearing for the applicant further emphasized that the respondent had left no stone unturned in harassing the applicant by approaching Courts at every stage, thereby indicating that the respondent had no intention to pay the dues of the applicant. It was submitted that the conduct of the respondent also needs to be taken into consideration and that the applications deserve to be allowed, thereby dismissing the appeals on the aforesaid preliminary ground itself.

13. On the other hand, Mr. Soli Cooper, learned senior counsel appearing for the respondent submitted that the objection sought to be raised on behalf of the applicant in these applications ought not to be considered at this stage. It was submitted that initially the Court had directed depositing the entire amount, but later it was modified to direct the respondent to deposit the principal amount and then to give bank guarantee for the amount towards interest. It was submitted that the said orders were complied with and the applicant even withdrew the deposited amount. Hence, at this stage, when the appeals are to be taken up for final hearing, the present applications ought not to be entertained, particularly in the light of the fact that the orders passed regarding depositing amount towards principal and giving bank guarantee for the amount towards interest, were never challenged.

14. The learned senior counsel for the respondent further submitted that Section 19 of the MSMED Act has no application when the arbitration proceeding is conducted before the arbitrator appointed by this Court or in terms of the contractual arbitration clause. It was submitted that the aforesaid provision is applicable only when an award is rendered either by the facilitation council or an institution or centre appointed by the council under Section 18 of the MSMED Act. The learned senior counsel referred to Section 7 of the Interest on Delayed

Payment to Small Scale and Ancillary Industrial Undertakings Act, 1993 (hereinafter referred to as the “Act of 1993”). He submitted that the said provision of the Act of 1993 was extremely broad in scope and that the Supreme Court in the case of **Snehadeep Structures Private Limited Vs. Maharashtra Small Scale Industries Development Corporation Limited** (*supra*) had construed the word “appeal” in the context of Section 7 of the Act of 1993. On this basis, it was submitted that reliance placed on the said judgement of the Supreme Court on behalf of the applicant was clearly misplaced.

15. It was further submitted that Section 19 of the MSMED Act is distinct from Section 7 of the 1993 Act. In fact, the 1993 Act stood repealed by the MSMED Act. According to the learned senior counsel appearing of the respondent, the Legislature has consciously introduced a specific restriction as per Section 19 of the MSMED Act, departing from the position under the Act of 1993. On this basis, it was submitted that the requirement under Section 19 of the MSMED Act has to be read in the context of Sections 17 and 18 thereof, indicating that the insistence on the part of the applicant for mandatory pre-deposit of 75% of the awarded amount was misplaced.

16. It was further pointed out that the view adopted by the learned Single Judge of the Gujarat High Court in the case of **Jmc Projects (India) Ltd. & 1 Vs. Mechtech Engineers & 1** *(supra)* and the Division Bench of the Gujarat High Court in the case of **Saryu Plastics Pvt. Ltd. & Ors. Vs. Gujarat Water Supply and Sewerage Board** *(supra)*, cannot be relied upon by the applicant, for the reason that a Division Bench of the Gujarat High Court itself, in the case of *Gujarat Energy Transmission Corporation Ltd. Vs. Deora Wires N Machines Pvt. Ltd.*[10] had categorically held that Section 19 of the MSMED Act

10 2017 SCC OnLine Guj 2572

would apply only in the context of challenge to arbitral awards rendered by the facilitation council or an institution or centre appointed by the council under Section 18 of the MSMED Act. In fact, it was submitted that since the aforementioned judgement of the Division Bench of the Gujarat High Court in the case of **Gujarat Energy Transmission Corporation Ltd. Vs. Deora Wires N Machines Pvt. Ltd.** *(supra)* was not brought to the notice of the Division Bench of the Gujarat High Court in the case of **Saryu Plastics Pvt. Ltd. and others Vs. Gujarat Water Supply and Sewerage Board** *(supra)*, the said judgement was clearly *per incuriam*.

17. It was further submitted that the Delhi High Court in the case of *Bharat Heavy Electricals Ltd. v. The Micro and Small Enterprises Facilitations Centre*[11], clearly held that Section 19 of the MSMED Act would not apply to the awards rendered pursuant to an arbitration proceeding undertaken other than the arbitration proceeding provided under Section 18 of the MSMED Act. The same view has been taken by the High Court of Punjab and Harayana in the case of *State of Punjab Vs. Jai Bhushan Malik*[12]. This was further reiterated in judgements passed by the High Court of Punjab and Harayana. In fact, in the case of *AVR Enterprises Vs. Union of India*[13], the Delhi High Court specifically disagreed with the view of the Gujarat High Court in the case of **Saryu Plastics Pvt. Ltd. & Ors. Vs. Gujarat Water Supply and Sewerage Board** (*supra*).

18. The learned senior counsel appearing for the respondent further submitted that the view adopted by the Division Bench of the Gujarat High Court in the case of **Saryu Plastics Pvt. Ltd. & Ors. Vs. Gujarat Water Supply and Sewerage Board** (*supra*) was not only *per*

11 2017 SCC OnLine Del. 10604
12 Judgement and order dated 25th September, 2019 passed in FAO No.6194 of 2018
13 2020 SCC OnLine Del 624

incuriam, but it was against the position of law clarified by the Supreme Court in the case of *M/s Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa, Through Chief Engineer*[14].

19. Much emphasis was placed by the learned senior counsel appearing for the respondent on majority opinion in the case of **M/s Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa, Through Chief Engineer** *(supra)* to contend that when the language of the concerned provision was plain and unambiguous, there was no scope for deliberating upon the construction or interpretation of the provision. It was held in the said judgement that the jurisdiction of a Court cannot be invoked to interpret a statute so as to add or subtract words or read something into a provision, which is not there, particularly when the provision itself is clear and unambiguous. It was submitted that when Section 19 of the MSMED Act is read in the backdrop of the said position of law, it becomes clear that the mandatory pre-deposit specified under the said provision applies only to an award, decree or order made by the facilitation council or an institution or centre appointed by the council under Section 18 of the MSMED Act.

20. It was further submitted that, in any case, Section 19 of the MSMED Act would not be applicable at the stage of proceedings or appeals filed under Section 37 of the Arbitration Act. It was submitted that the applicant having failed to pursue such an objection in the proceedings under Section 34 of the Arbitration Act before the District Court, it cannot be allowed to raise the said issue before this Court at the stage of final hearing of the appeals under Section 37 of the Arbitration Act. It was further submitted that the emphasis placed on behalf of the applicant on the words “decree” and “order” was misplaced, for the simple reason that the said words have to be read in conjunction with the

14 (2015) 2 SCC 189

remaining portion of Section 19 of the MSMED Act, indicating that the same would be relevant only in the context of such decree or order being passed by the facilitation council or any institution or centre appointed by the council under Section 18 of the MSMED Act.

21. Heard learned counsel for the parties and perused the material on record. The insistence of the applicant in these applications on mandatory pre-deposit of 75% of the awarded amount would be justified only if the interpretation canvassed on the part of the applicant as regards Section 19 of the MSMED Act is accepted by this Court. In order to interpret the said provision, it would have to be examined as to whether this Court needs to enter into an exercise of interpretation using recognized rules of interpretation like, purposive interpretation or golden rule of interpretation or even the mischief rule employed in some circumstances. But, before applying such rules, if the literal interpretation of the provision brings out a clear and unambiguous meaning, the complicated exercise of applying various rules of interpretation would not be necessary.

22. Since the aforesaid provision needs to be read in the context of the earlier provision, it would be appropriate to refer to Sections 18 and 19 of the MSMED Act, which read as follows:-

> "**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 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."

23. A perusal of Section 18 of the MSMED Act shows that when an amount is due under Section 17 thereof and the supplier is covered under the definition of a micro, small and medium enterprise, a dispute arising between such a supplier and a rival party can be referred to the facilitation council under the MSMED Act. It is now

settled law that even if there is a contractual arbitral clause in an agreement / contract executed between such parties, the dispute can be referred to arbitration before the aforesaid facilitation council. It is also provided in Section 18 of the MSMED Act that such a dispute can be referred by the facilitation council to an institution or a centre providing alternate dispute resolution services. This aspect becomes crucial while interpreting Section 19 of the MSMED Act.

24. A perusal of Section 19 of the MSMED Act shows that a challenge to a decree, award or order can be entertained only after 75% of the awarded amount is deposited with the Court before which such a challenge is raised. This Court finds that the mandatory requirement of such pre-deposit has to be read in conjunction with and upon appreciation of the entirety of the words used in Section 19 of the MSMED Act, the crucial words being '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 has deposited with the Court 75% of the amount so awarded'. The mandatory requirement of pre-deposit of 75% of the amount is inextricably linked or wedded with the words 'decree, award or other order made either by the council itself or by any institution or centre to which reference is made by the council'.

25. In the opinion of this Court, an award passed by an arbitrator or an arbitral tribunal other than the facilitation council or institution or centre appointed by such council under Section 18 of the MSMED Act, is distinct and not amenable to the mandatory requirement of such pre-deposit. The words of Section 19 of the MSMED Act being

clear and unambiguous, this Court does not find it necessary to give a purposive interpretation to the same by referring to the object of the MSMED Act or the necessity of protection provided to a micro, small or medium enterprise under the provisions thereof.

26. Even in cases where the supplier falls under the category of 'micro, small or medium enterprise' and it is entitled to the benefits of the provisions under the MSMED Act, arbitrators or arbitral tribunals can be appointed other than the facilitation council or institution or centre, particularly by exercise of power under Section 11 of the Arbitration Act.

27. The moment the arbitration proceeding is initiated and undertaken before an arbitrator or arbitral tribunal, upon interference and exercise of power under Section 11 of the Arbitration Act, the award rendered pursuant thereto can certainly not be said to be an award made by either the facilitation council or an institution or centre engaged at the behest of the facilitation council for dispute resolution. In the present case, it is undisputed that the arbitral awards were rendered by arbitrators appointed by this Court upon exercising power under Section 11 of the Arbitration Act. The facilitation council under the MSMED Act had no role to play and the arbitration was certainly not conducted before an institution or centre engaged by the facilitation council. Even if the parties approached this Court under Section 11 of the Arbitration Act, on the ground that sufficient infrastructure was not available with the facilitation council under the MSMED Act, that in itself cannot be a ground to insist upon applicability of Section 19 of the MSMED Act regarding mandatory pre-deposit of 75% of the awarded amount in the facts and circumstances of the present case.

28. The emphasis placed on the words 'decree' and 'order' used in Section 19 of the MSMED Act, on the part of the applicant, cannot take its case much further, simply for the reason that the aforesaid words have been specifically used in conjunction of the words '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'.

29. Therefore, it cannot be said that if the contention raised on behalf of the respondent is accepted, the aforesaid two words used in Section 19 of the MSMED Act would be rendered meaningless. In this context, when the judgement of the Division Bench of the Gujarat High Court in the case of **Gujarat Energy Transmission Corporation Ltd. Vs. Deora Wires N Machines Pvt. Ltd.** *(supra)* is perused, this Court finds that the said Court has also emphasized upon the fact that Section 19 of the MSMED Act refers to decree, award or order made either by the facilitation council or any institution or centre to which reference is made by the facilitation council. This Court agrees with the aforesaid view taken by the Division Bench of the Gujarat High Court in the said judgement. As regards emphasis placed on judgement of another Division Bench of the Gujarat High Court in the case of **Saryu Plastics Pvt. Ltd. & Ors. Vs. Gujarat Water Supply and Sewerage Board** *(supra)*, this Court finds that there is substance in the contention raised on behalf of the respondent that the said judgement of the Division Bench is *per incuriam*, for the reason that the earlier aforesaid judgement rendered by the co-ordinate Division Bench of the Gujarat High Court was not brought to the notice of the Division Bench that subsequently rendered the judgement in the case of **Saryu Plastics Pvt. Ltd. & Ors. Vs. Gujarat Water Supply and Sewerage Board** *(supra)*. Therefore, the judgement in the case of

Saryu Plastics Pvt. Ltd. & Ors. Vs. Gujarat Water Supply and Sewerage Board *(supra)* does not deserve to be considered. On this very basis, reliance can also not be placed on the judgement of the learned Single Judge of the Gujarat High Court in the case of **Jmc Projects (India) Ltd. & 1 Vs. Mechtech Engineers & 1** *(supra)*.

30. It is significant to note that the Delhi High Court in the case of **Bharat Heavy Electricals Ltd. Vs. The Micro and Small Enterprises Facilitations Centre** (*supra*) has also taken a view similar to the view of the Division Bench of the Gujarat High Court in the case of **Gujarat Energy Transmission Corporation Ltd. Vs. Deora Wires N Machines Pvt. Ltd.** *(supra)*. A perusal of the judgement of the Punjab and Haryana High Court in the case of **State of Punjab Vs. Jai Bhushan Malik** *(supra)* shows that the said High Court has also taken a similar view. In this judgement, the said Court has also dealt with the judgement of the learned Single Judge of the Gujarat High Court in the case of **Jmc Projects (India) Ltd. & 1 Vs. Mechtech Engineers & 1** *(supra)*, as also the Division Bench judgement of the Gujarat High Court in the case of **Saryu Plastics Pvt. Ltd. & Ors. Vs. Gujarat Water Supply and Sewerage Board** *(supra)*. While dealing with these judgements, the said Court has also referred to the fact that the aforesaid judgement of the learned Single Judge of the Gujarat High Court was ultimately set aside by the Supreme Court when it was challenged in a special leave petition.

31. This Court is persuaded to agree with the views of the Division Bench of the Gujarat High Court in the case of **Gujarat Energy Transmission Corporation Ltd. Vs. Deora Wires N Machines Pvt. Ltd.** *(supra)*, as also of the learned Single Judge of the Delhi High Court in the case of **Bharat Heavy Electricals Ltd. vs. The Micro and**

Small Enterprises Facilitations Centre (*supra*) and the learned Single Judge of the Punjab and Haryana High Court in the case of **State of Punjab Vs. Jai Bhushan Malik** *(supra)*.

32. Since much emphasis was placed on behalf of the applicant on the object of the MSMED Act and the necessity to provide statutory protections contained therein, particularly the requirement of mandatory pre-deposit under Section 19 thereof, it would be appropriate to consider as to in what circumstances does the question of object of the statute and its purpose come into play. The respondent is justified in relying upon judgement of the Supreme Court in the case of **Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa, Through Chief Engineer** *(supra)*, to contend that no question of construction of a statutory provision arises when the language of the statutory provision is plain and unambiguous. The Court cannot exercise jurisdiction to add or subtract words or read something into a provision under the garb of interpreting the same. It is only when there is some ambiguity in the contents of the provision itself, that the Court is called upon to conduct the exercise of interpretation, by applying various rules of interpretation indicated hereinabove, including purposive interpretation etc. The Supreme Court in the aforesaid case of **Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa, Through Chief Engineer** *(supra)* has quoted with approval the cardinal principle of construction stated in the landmark judgement of the Supreme Court of United States of America in the case of *Caminetti Vs. United States*, **242 U.S. 470 (1917)** to the effect that, where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise.

33. Therefore, this Court is not convinced with the arguments

advanced on behalf of the applicant seeking dismissal of the appeals on the ground of failure of the respondent in satisfying the mandatory requirement of pre-deposit indicated in Section 19 of the MSMED Act. Since this Court has accepted the interpretation canvassed on behalf of the respondent, it is not necessary to go into the question as to whether the aforesaid provision would, at all, apply to appeals under Section 37 of the Arbitration Act.

34. There cannot be any quarrel with the proposition laid down in the judgements noted in paragraph 11 above, holding that the Court cannot dilute the requirement of mandatory pre-deposit of 75% of the awarded amount. But, in the light of the fact that this Court has already held hereinabove that, in the facts and circumstances of this case, the said requirement under Section 19 of the Arbitration Act does not apply, the aforesaid judgements cannot be of any assistance to the applicant.

35. As regards the contention raised on behalf of the applicant about the conduct of the respondent in harassing the applicant by filing appeals and various proceedings, suffice it to say that the respondent cannot be prevented from exhausting legal remedies. If such proceedings are frivolous, the Courts can certainly deal with them in an appropriate manner.

36. In any case, it is an admitted position that the appeals are now at the stage of final hearing. It is also an admitted position that this Court had directed the respondent herein to deposit only the principal amount and to give bank guarantees for the portion of interest. The said orders were never challenged. The applicant even withdrew the amounts that were deposited by the respondent before this Court.

37. In such circumstances, at this stage, it is too late in the day to claim dismissal of the appeals on the ground of non-compliance with the mandatory pre-deposit provided under Section 19 of the MSMED Act.

38. In the light of the above, the applications are dismissed. The appeals shall now be taken up for final hearing.

(MANISH PITALE, J.) **(PRAKASH D. NAIK, J.)**

MINAL SANDIP PARAB Digitally signed by MINAL SANDIP PARAB Date: 2023.12.12 17:44:26 +0530

Shrikant / Minal