

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL Division
ORIGINAL SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR

A.P (COM) No. - 782 of 2025

Macmet Engineering Ltd.

Vs.

Mecgale Pneumatics Pvt. Ltd.

For the Petitioner	: Mr. Rupak Ghosh, Adv. Ms. Sweta Gandhi, Adv.
For the Respondent	: Mr. Partha Chakraborty, Adv. Mr. Rishabh Dutta Gupta, Adv.
Judgment Reserved on	: 02.12.2025
Judgment Delivered on	: 23.12.2025
Judgment Uploaded on	: 23.12.2025

Shampa Sarkar, J.

1. This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 (in short ARC Act). The petitioner prayed for appointment of a learned Arbitrator to adjudicate the disputes between the parties, which arose out of purchase orders dated July 18, 2018 and September 24, 2018.
2. The case run by the petitioner was that, as an infrastructure development company, the petitioner would undertake works of

Turnkey EPC projects which included electromechanical, structural and civil works. The respondent was engaged in providing package based system solutions including erection, supervision and commissioning.

3. By a Letter of Intent (in short LOI) dated March 12, 2018, the petitioner was awarded the work of 'Design, Engineering, Procurement, Manufacturing, Inspection, Supply, Installation, Testing & Commissioning, Remedying Defects, Guaranteeing and warranting of Material Handling System (Ash Handling) under a Main Contract for Engineering, Procurement & Construction of Multi-Modal IWT Terminal at Haldia, West Bengal for the Inland Waterways Authority of India' by M/s. ITD Cementation. By its offer letter dated March 15, 2018, the respondent forwarded its expression of interest to undertake a portion of the aforementioned work awarded to the petitioner. By a LOI dated June 6, 2018, as amended on June 26, 2018, the respondent's offer was accepted by the petitioner and the respondent was called upon to tender unconditional acceptance of the terms of the LOI, including its amendment. Thereafter, a contract was concluded between the parties for execution of supply, installation, supervision, testing and commissioning of Silo loading and extraction system with dust extraction system. The petitioner issued a formal purchase order on July 18, 2018, for a sum of Rs. 5.77 crores, followed by another purchase order dated September 24, 2018, assigning work worth Rs. 93 lakhs to the respondent. The respondent was required to execute the work on the project site on the basis of

the purchase orders. According to the terms and conditions, necessary bank guarantee was also to be furnished by the respondent. Time was the essence of the contract and the supply chain was to be completed within November 30, 2019. On account of delay, the respondent ended the supply on December 13, 2019, with short supply of certain components. The petitioner had to procure such parts from outside, to ensure completion of the entire project.

4. According to the terms of the contract, the petitioner was required to supervise the installation and the supply system, test it and commission the system for its intended purpose. Only thereafter, the sum contracted was to be released in favour of the respondent. The petitioner contended that the respondent was informed about the deficiencies in the supply. Reliance had been placed on various e-mails in this regard. Allegedly, ITD Cementation forced the petitioner to compensate for the short fall from its own pocket. Despite several reminders, the respondent allegedly failed to remedy the deficiencies in service and the petitioner procured materials worth Rs. 98.34 lakhs. Allegation was that, despite having failed to fulfil its commitments, as per the purchase orders, the respondent continuously issued e-mails for release of payments. Such demands were unfounded, baseless and in excess of the supply made by the respondent. It was further alleged that, a sum of Rs. 15 lakhs was released as part of the contract consideration between January 22 to December 22, in good faith, while the work of installation and commissioning was pending. After repeated requests and reminders,

the respondent's representatives and officers visited the site on April 1, 2022 and July 5, 2022. At the time of visit, it transpired that some parts in the Silo loading and the extracted system required replacement and some of the parts required repairs, modifications and alterations. The respondent's representatives refused to undertake such repairs and rectifications and insisted on engaging service of a larger work force. The petitioner alleged that the respondent refused to fulfil its obligations and responsibility. In view of the inadequacies in supply, the commissioning was not successful.

5. The specific case of the petitioner was that, the respondent refused to cooperate until the entire payment on account of commissioning was made. Such demands were baseless, as the commissioning work was pending completion. Although, 93.5% of the amended contract price was paid, the petitioner was unable to ensure any reciprocal obligation from the respondent. An additional sum of Rs. 98.34 lakhs had to be spent to make up for the short fall arising out of the inadequate services of the respondent.
6. In the facts and circumstances, the petitioner contended that, disputes arose between the parties. The respondent approached the Facilitation Council under The Micro, Small And Medium Enterprises Development Act, 2006 (in short the MSMED Act) at Nagpur, seeking payment of the outstanding dues. The petitioner filed an objection to the maintainability of the proceeding before the learned Council on various grounds. Several conciliation meetings were held, and thereafter, the learned Facilitation Council (in short the Council) orally

informed that the conciliation had failed and the matter was referred back to the Chairman for necessary course of action. Thereafter, a notice was issued to the petitioner, indicating that the Council had terminated the conciliation under Section 18(2) of the MSMED Act and referred the matter to arbitration. The matter was made returnable on August 1, 2025. The petitioner apprehended that the Council and the respondent were hand in gloves and as such, the said notice was dispatched at a later stage, which resulted in the petitioner missing the first date of hearing. The petitioner replied to the Council by bringing such facts to the Council's notice. A reply was filed by the respondent, to the written objection filed by the petitioner challenging maintainability of the proceeding. The petitioner responded to the same and submitted a copy of the response before the Council. The respondent was duly marked a copy of the e-mail and a hard copy was also dispatched. The petitioner complained that, the Council did not allow the petitioner to attend the proceeding virtually, despite request having been made.

7. During the pendency of such proceeding before the Council, the petitioner issued a notice dated July 14, 2025, under Section 21 of the ARC Act, invoking the arbitration clause in the contract. The petitioner's claim was for damages and compensation on account of failure on the part of the respondent to fulfil its contractual obligations. As the terms and conditions of the purchase orders, which formed part of the contract between the parties, contained an arbitration clause, such invocation was made. The claim of the

petitioner was for recovery of the additional sum spent on account of deficiency of services by the respondent and damages for the breach of the terms and conditions of the contract, committed by the respondent. The petitioner also relied on an information from Samadhan Portal, which was the official website maintained for the purposes of registration of MSME Enterprises. The portal contained certain FAQs. One of the answers to a question was that, the Councils did not entertain disputes in respect of claims in the nature of damages and compensation. As the claims of the petitioner were in the nature of damages and compensation for alleged breach by the respondent, the petitioner invoked the arbitration clause on the understanding that the claim of the petitioner could not be adjudicated by the Council. The respondent did not acquiesce to the reference. Thus, this application was filed for reference of the dispute to arbitration. The petitioner also relied upon a reply by the Council to the learned Advocate's query dated November 28, 2025, which stated as follows :-

“As per the MSMED Act, 2006, any registered MSE unit can file a claim before the Council for non-payment/delayed payment against the supply of any goods or rendering any service. Any claim for damages would not come under the purview of the MSMED Act.”

8. Thus, it was urged by Mr. Rupak Ghosh, learned Advocate for the petitioner that, the petitioner's claim would have to be adjudicated in terms of the arbitration clause contained in the LOI and the terms

and conditions accompanying the purchase orders issued pursuant to the LOIs.

9. Mr. Ghosh, learned Advocate for the petitioner further submitted that, the proceeding before the Council was not maintainable as the contract was a works contract. The Hon'ble Supreme Court had clearly laid down that, disputes arising out of a works contract would not fall within the purview of the Council and adjudication of such dispute was beyond the powers vested in the said Council. It was next contended that adjudication by the said Council under Section 18(3) was an alternate dispute resolution procedure by way of an arbitration. Under the provisions of the MSMED Act, only disputes relating to the dues of the supplier could be adjudicated by the Council. The dispute before the Council took its colour from the provisions of Section 17 of the MSMED Act. Section 17 of the MSMED Act. provided that, for goods and supplies or services provided by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under Section 16. Section 18(1) provided that, any dispute with regard to the amount due under Section 17 would be referable to the Micro Medium and Small Enterprises Facilitation Council, by the supplier.

10. Under Section 18(2), the Council shall, either itself, or through any institute conduct such conciliation and for conducting the conciliation process, Sections 65 to 81 of the ARC Act would be applicable. Section 18(3) provided the consequences of failure of the conciliation process. If the conciliation failed and stood terminated

without any settlement, the Council was empowered to either take up the dispute for arbitration, or refer to any institution or centre for providing the alternate dispute resolution services. At that stage, the provisions of the ARC Act would be applicable, as if, the arbitration was in pursuance of an arbitration agreement as defined under sub-Section 1 of Section 7 of the ARC Act.

11. According to Mr. Ghosh, the entire jurisdiction of the Council was restricted by the statute, to recovery of dues by the supplier from the buyer, nothing more nothing less. The law did not envisage a situation when the buyer would also have a claim against the supplier, either by way of damages or otherwise. The law had consciously left out a situation when the buyer would have a counter-claim against the supplier. Such claim of the buyer was not covered by the MSMED Act. The MSMED Act was promulgated for facilitating the development and enhancement of the competitiveness of Micro, Small and Medium enterprises and for matters connected therewith or incidental thereto. The MSMED Act was for protection of those enterprises and did not contemplate the buyer's rights. Reliance was placed on a decision of the Calcutta High Court in ***Gita Refractories Pvt. Ltd. vs. Tuaman Engineering Limited*** in ***AP-Com 707 of 2024***, on the proposition that reference to arbitration could be made on the basis of an arbitration agreement, even if the claimant was a MSME enterprise, in the event the claims were beyond those covered under Section 16 thereof. A Coordinate Bench was of the view that, Section 18 of the MSMED Act, did not envisage any substantive relief

or creation of rights and liabilities, but merely provided one of the available modalities for the parties to resolve disputes alternatively, than in a court proceeding. If the parties chose to opt for arbitration under the ARC Act, there was nothing in the MSMED Act to prevent a party from invoking the arbitration clause.

12. Further reliance was placed on the decision of the Delhi High Court in ***Uniseven Engineering and Infrastructure Pvt. Ltd. vs. Micro and Small Enterprises Facilitation (MSEF) Council District (South) and Another*** reported in ***2023 SCC OnLine Del 3889***, on the proposition that, claim of the buyer against the supplier did not qualify as an amount due under Section 17 of the said Act.
13. Mr. Chakraborty, learned Advocate for the respondent submitted that, the law was well settled by the Hon'ble Supreme Court in ***Silpi Industries and Others vs. Kerala State Road Transport Corporation and Another*** reported in ***(2021) 18 SCC 790*** and ***Gujarat State Civil Supplies Corporation Limited vs. Mahakali Foods Private Limited (UNIT -2) and Another*** reported in ***(2023) 6 SCC 401***. As the respondent had already approached the Council and the Council had initiated the arbitral proceeding, the petitioner did not have a right to claim a separate reference for arbitration on the dispute arising out of the LOI and the purchase orders. Such dispute would not be decided by a different forum. The petitioner was required to approach the Council with its counter-claims and objections and the Council, being the arbitral tribunal,

was vested with the power and jurisdiction to decide all disputes arising between the parties in respect of the purchase orders.

14. The question before this Court is whether the petitioner shall be entitled to a separate reference, independent of the arbitral proceeding which had commenced before the Council in terms of Section 18(3) of the MSMED Act.

15. If the conciliation fails and is terminated, the proceeding before the Council for resolution of the dispute between the parties, partakes the character of an arbitral proceeding covered by all the provisions of the ARC Act. The provision of the ARC Act gets imported into the said proceeding. Section 18(4) provides that, notwithstanding anything contained in any other law for the time being in force, the Council or the centre providing alternate dispute resolution service, would have jurisdiction to act as Arbitrator or Conciliator under the said Section, in respect of disputes between the supplier located within its jurisdiction and a buyer located anywhere in India. Section 18(1) 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, make a reference to the Council.

16. Section 18 of the MSMED Act is quoted 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.

(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.”

17. In this case, the amount due under Section 17 is the claim of the respondent towards the money which allegedly remained unpaid under the contract, for supply of goods and services. The petitioner raised an objection that the demand was not legitimate. Conversely, the petitioner had a claim from the respondent for the alleged breach committed by the respondent. The claim of the respondent would have to be adjudicated in the light of the contentions of the

buyer/petitioner, otherwise the resolution of the dispute would remain incomplete. The buyer had a contrary claim in damages for the alleged breaches committed by the respondent. The entire dispute revolves around these issues. The amount due under Section 17, cannot be adjudicated in isolation to these issues. The dispute under Section 17 is not distinct or separate, in such fact situation. Secondly, Section 18(1) provides that, any party to a dispute, with regard to the amount due under Section 17 of the MSMED Act, can make a reference to the Council. This expression includes the buyer as well, for the reason that, for adjudication of the claim of the supplier, the counter-claim of the buyer had to be taken into consideration. The claim of the seller cannot be decided separately. Sections 16 and 17 of the MSMED Act are quoted below :-

“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 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.”*

18. In ***Silpi Industries*** (supra) the Hon’ble Supreme Court framed the following issues :-

“(1) Whether the provisions of the Limitation Act, 1963 is applicable to arbitration proceedings initiated under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006?

(2) Whether, counterclaim is maintainable in such arbitration proceedings?”

19. The Hon’ble Supreme Court held that, although, recovery of amount under Section 17 was in reference to the amount claimed by the supplier under Section 16 of the MSMED Act, the expression, ‘any party to a dispute’ should be read as a reference to the buyer as well. It was observed that, Section 18(3) of the MSMED Act made it clear that, in the event of failure of the Council to arrive at a conciliation, the provisions of the ARC Act would be made applicable and the arbitration proceeding which would commence under Section 18(3), would be treated to have commenced pursuant to an agreement between the parties, as per the definition of an arbitration agreement under Section 7 of the ARC Act. Section 23 of the ARC Act permitted filing of a counter-claim and making a plea for set off. The right of the buyer to make a counter-claim in the proceeding before the Council, could not be curtailed. The MSMED Act did not limit such right of the buyer by any express provision. The provisions of Sections 15 to 23 of the MSMED Act have been given an overriding effect to the ARC Act.

20. The claim of the buyer is in the nature of a counter-claim in the facts of this case. The buyer falls within the ambit of ‘any party’ under Section 18(1). Each and every provision of the ARC Act is applicable to the proceeding before the Council under Section 18(3) of the MSMED

Act, which includes Section 23 of the ARC Act. Section 23 of the ARC Act is quoted below :-

“23. Statements of claim and defence.—(1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit. 1

(2A) The respondent, in support of his case, may also submit a counterclaim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counterclaim or set-off falls within the scope of the arbitration agreement.

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it. 1

(4) The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing of their appointment.”

21. Moreover, in this case, there was already an agreement between the parties to refer all disputes to arbitration. This agreement is subsumed into the proceeding before the Council. Thus, instead of permitting any other arbitral proceeding to run parallel to the arbitral proceeding initiated under Section 18(3) of the MSMED Act, the issues should be adjudicated by the Council under Section 18(3) itself. Parallel proceedings before various fora cannot be the objective and

purpose behind a beneficial legislation. Multiplicity of proceedings cannot enure to the benefit of the Micro Small and Medium Enterprises. Parallel proceedings can also lead to conflicting decisions and give rise to an anomalous situation

22. In **Silpi Industries** (supra), the Hon'ble Supreme Court held as follows :-

“34. It is also further to be noted that if we do not allow the counterclaim made by the buyer in the proceedings arising out of claims made by the seller, it may lead to parallel proceedings before the various fora. On one hand, in view of beneficial legislation, seller may approach the Facilitation Council for claims, in the event of failure of payment by the buyer under provisions of 2006 Act, at the same time, if there is no separate agreement between the parties for any arbitration in a given case buyer may approach the civil court for making claims against the seller, or else if there is an agreement between the parties for arbitration in the event of dispute between the parties, parties may seek appointment of arbitrator. At the same time if the seller is covered by definition under micro, small and medium enterprises, seller may approach the Facilitation Council for making claims under the provisions of Micro, Small and Medium Enterprises Development Act, 2006. In such event, it may result in conflicting findings, by various forums.”

23. In the second set of cases before the Hon'ble Supreme Court, the buyer had approached the High Court for appointment of an arbitrator under Section 11(6) of the said Act, on the ground that, there was an agreement between the parties. The seller, who was the respondent before the High Court had submitted that, as the seller had already approached the Council and the proceedings were pending, the buyer could well approach the Council and contest the

proceeding by filing its counter-claims. The High Court held that, the buyer could not make a counter-claim and the claim of the buyer could not be proceeded with before the Council. Accordingly, a second Arbitrator was appointed. This was challenged by the supplier (appellant) before the Hon'ble Supreme Court. The Hon'ble Supreme Court was of the view that, even if the buyer had claims, the buyer could very well subject itself to the jurisdiction of the Council and make its claims and counter-claims. Otherwise, it would defeat the very object of the MSMED Act, which was a beneficial legislation for the Micro Small and Medium Enterprises.

24. As per Mr. Ghosh's interpretation, in cases where there is an agreement for resolution of dispute by way of arbitration, and the seller (MSME), approaches the Council for resolution of the dispute, the buyer must approach the court under Section 11(6) of the ARC Act for appointment of an Arbitrator. Such interpretation is not correct. Conflict in decisions must be avoided. In that event, where there is no arbitration agreement between the parties, the seller can approach the Council and the buyer will have to approach the Civil Court. The Act further provides that, the Council must complete the proceedings within 90 days, meaning thereby, the proceeding is normally expeditious, in order to benefit the MSME. Adjudication by a different fora, might result in a protracted litigation. Provisions of the MSMED Act have an overriding effect over other laws. The same prevails over the general laws and even if there is an agreement between the parties for resolution of disputes by arbitration, as the MSME has

approached the competent authority by making its claim, the counter-claim of the buyer must be permitted to be filed before the Council, which is now an arbitration.

25. The relevant paragraphs of the decision of the Hon'ble Supreme Court in **Silpi Industries** (supra) are quoted below :-

“37. The 2006 Act 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 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 counterclaim 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 specious plea of counterclaim, 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/counterclaim 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 Development Act, 2006, if such party approaches the Council for resolution of dispute, the 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.

38. At this stage, it is relevant to notice the judgment of this Court in *Edukanti Kistamma v. S. Venkatareddy* [*Edukanti Kistamma v. S. Venkatareddy*, (2010) 1 SCC 756 : (2010) 1 SCC (Civ) 244] 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.

39. Thus, it is clear that out of the two legislations, the provisions of the MSMED Act will prevail, especially when it has overriding provision under Section 24 thereof. Thus, we hold that the MSMED Act, being a special statute, will have an overriding effect vis-à-vis the 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 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(2-A) of the 1996 Act, it is to be noticed that if counterclaim 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.

40. For the aforesaid reasons and on a harmonious construction of Section 18(3) of the 2006 Act and Section 7(1) and Section 23(2-A) of the 1996 Act, we are of the view that counterclaim is maintainable before the statutory authorities under the MSMED Act.

26. For the aforesaid reasons and on a harmonious reading of Section 18(3) of the MSMED, and Section 7(1) and 23(2-A) of the ARC Act, the Supreme Court was of the view that a counter-claim of a buyer was maintainable before the statutory authority under the MSMED Act.

27. In **Gujarat State Civil Supplies Corporation** (supra) the Hon'ble Supreme Court made the following observations :-

“32. Now, the first and foremost issue involved in these appeals is whether the provisions contained in Chapter V of the MSMED Act, 2006 with regard to the Delayed Payments to Micro and Small Enterprises would have precedence over the provisions contained in the Arbitration Act, 1996, more particularly when the parties by execution of an independent agreement as contemplated in Section 7 of the Arbitration Act had agreed to submit to arbitration the disputes arising between them? In other words, whether the provisions contained in Chapter V of the MSMED Act, 2006 would have an effect overriding the provisions contained in the Arbitration Act, 1996?”

28. The Hon'ble Supreme Court held that, no party to a dispute covered under Section 17 would be precluded from making a reference to the Council under Section 18(1) thereof, merely because there was an arbitration agreement existing between the parties. The Supreme Court again reiterated that, the MSMED Act would have an overriding effect over the ARC Act. The provisions of the ARC Act would apply to the proceedings before the Council after the process of conciliation was concluded and had failed. The arbitral proceeding thereafter would be governed by the provisions of the ARC Act. The Facilitation Council or the institution or the centre which would act as an Arbitrator under Section 18(3) of the MSMED Act, would have all the powers to decide the dispute referred to it, as if, such arbitration was in pursuance of an agreement under sub-Section (1) of Section 7 of the Act. The Supreme Court also held that the arbitral tribunal would be competent to rule on its own jurisdiction like any other arbitral

tribunal appointed under the 1996 Act, as contemplated in Section 16

thereof. The relevant paragraphs are quoted below :-

“33. *It is trite to say that the provisions of the special statute would override the provisions of the general statute. It is also well settled that while determining the effect of a statute overriding the other statute, the purpose and policy underlying the two statutes and the clear intendment conveyed by the language of the relevant provisions therein would be the relevant consideration. This Court in CIT v. Shahzada Nand & Sons [CIT v. Shahzada Nand & Sons, AIR 1966 SC 1342] , while stating the fundamental rule of construction, had observed that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the court as to what is just and expedient.*

34. *One of principles of statutory interpretation relevant for our purpose is contained in the Latin maxim *leges posteriores priores contrarias abrogant* (the later laws shall abrogate earlier contrary laws). Another relevant rule of construction is contained in the maxim *generalalia specialibus non derogant* (General laws do not prevail over Special laws). When there is apparent conflict between two statutes, the provisions of a general statute must yield to those of a special one.*

35. *As observed in Kaushalya Rani v. Gopal Singh [Kaushalya Rani v. Gopal Singh, AIR 1964 SC 260] , a “Special Law” means a law enacted for special cases, in special circumstances, in contradiction to the general rules of law laid down, as applicable generally to all cases with which the general law deals.*

36. *Keeping in view the aforesaid principles of statutory interpretations as also the proposition of law laid down by this Court with regard to the general rules of construction, let us proceed to examine whether the MSMED Act, 2006 is a special enactment having an effect overriding the Arbitration Act, 1996 which is perceived to be a general enactment? As stated earlier, the very object of enacting the MSMED Act, 2006 was to facilitate the promotion and development, and enhance the competitiveness of micro, small and medium enterprises. The Act also aimed to ensure timely and smooth flow of credit to the micro, small and medium enterprises, and to minimise the*

incidence of sickness. One of the main objects of the Act was to delete the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, and to include stringent provisions as also to provide dispute resolution mechanism for resolving the disputes of non-payment of dues to the micro and small enterprises. Thus, the seed of the MSMED Act, 2006 had sprouted from the need for a comprehensive legislation to provide an appropriate legal framework and extend statutory support to the micro and small enterprises to enable them to develop and grow into medium ones.

37. Sections 15 to 25 contained in Chapter V of the MSMED Act, 2006 pertain to the “delayed payments to micro and small enterprises”. A bare perusal of the said provisions contained in Chapter V shows that a strict liability is fastened on the buyer to make payment to the supplier who supplies any goods or renders any services to the buyer, prescribing the time-limit in Section 15. Section 16 further fastens the liability on the buyer to pay compound interest if any buyer fails to make payment to the supplier as required under Section 15. Such compound interest is required to be paid at three times of the bank rate notified by the Reserve Bank, notwithstanding contained in any agreement between the buyer and supplier or in any law for the time being in force. An obligation to make payment of the amount with interest thereon as provided under Section 16 has been cast upon the buyer and a right to receive such payment is conferred on the supplier in Section 17. Thus, Section 17 is the ignition point of any dispute under the MSMED Act, 2006. Section 18 thereof provides for the mechanism to enable the party to the dispute with regard to any amount due under Section 17, to make a reference to the Micro and Small Enterprises Facilitation Council.

38. Section 18 starts with a non obstante clause i.e. “notwithstanding anything contained in any other law for the time being in force”. It means that the said provision has been enacted with the aim to supersede other laws for the time being in force. Further a dedicated statutory forum i.e. the Micro and Small Enterprises Facilitation Council (as established under Section 20 of the MSMED Act, 2006), has been provided to which a reference could be made by any party to the dispute. Sub-section (2) of Section 18 empowers the Facilitation Council,

on receipt of such reference made under sub-section (1), to conduct conciliation in the matter or seek assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation, as contemplated in Sections 65 to 81 of the Arbitration Act, 1996. If the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council is further empowered under sub-section (3) to either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration. The provisions of the Arbitration Act, 1996 are then made applicable to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996. Sub-section (4) of Section 18 again starts with a non obstante clause i.e. “notwithstanding anything contained in any other law for the time being in force”, and confers jurisdiction upon the Facilitation Council to act as an arbitrator or a conciliator in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India. Sub-section (5) of Section 18 fixes the time-limit of ninety days to decide such reference.

39. Section 19 prescribes the procedure to be followed when any application is made in the court for setting aside any 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. Section 24 of the MSMED Act, 2006 states that the provisions of Sections 15 to 23 shall have an effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

40. Having regard to the purpose, intention and objects as also the scheme of the MSMED Act, 2006 and having regard to the unambiguous expressions used in Chapter V thereof, following salient features emerge:

40.1. Chapter V is “party-specific”, inasmuch as the party i.e. the “buyer” and the “supplier” as defined in Sections 2(d) and 2(n), respectively are covered under the said Chapter.

40.2. A specific provision is made fastening a liability on the buyer to make payment of the dues to the supplier in respect of the goods

supplied or services rendered to the buyer, as also a liability to pay compound interest at three times of the bank rate notified by the Reserve Bank, if the buyer fails to make payment within the prescribed time-limit. The said liability to pay compound interest is irrespective of any agreement between the parties or of any law for the time being in force.

40.3. *A dedicated statutory forum i.e. Micro and Small Enterprises Facilitation Council is provided to enable any party to a dispute with regard to any amount due under Section 17, to make reference to such Council.*

40.4. *A specific procedure has been prescribed to be followed by the Facilitation Council after the reference is made to it by any party to the dispute.*

40.5. *The Facilitation Council or the centres providing alternative dispute resolution services have been conferred with the jurisdiction to act as an arbitrator or conciliator under Section 18(4), notwithstanding anything contained in any law for the time being in force, in a dispute between the supplier located within its jurisdiction.*

40.6. *The provisions of the Arbitration Act, 1996 have been made applicable to the dispute only after the conciliation initiated under sub-section (2) does not succeed and stands terminated without any settlement between the parties.*

40.7. *Sub-section (1) and sub-section (4) of Section 18 starting with non obstante clauses have an effect overriding the other laws for the time being in force.*

40.8. *As per Section 24, the provisions of Sections 15 to 23 have an effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.*

41. *As against the above position, if the purpose, objects and scheme of the Arbitration Act, 1996 are considered, as stated hereinabove, the said Act was enacted to consolidate and amend the law relating to the domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards and also to define the law relating to conciliation. It was enacted taking into account the UNCITRAL Model Law on international commercial arbitration. The main objectives amongst others of the said Act were to make provision*

for an arbitral procedure which was fair, efficient and capable to meet the needs of the specific arbitration and to minimise the supervisory role of courts in the arbitral process, as also to permit the Arbitral Tribunal to use mediation, conciliation or other procedures during the arbitral proceedings in the settlement of disputes, etc [Bharat Sewa Sansthan v. U.P. Electronics Corpn. Ltd., (2007) 7 SCC 737] . The Arbitration Act, 1996 focuses and covers the law relating to the Arbitration and Conciliation, providing for the requirements of the arbitration agreement, composition of Arbitral Tribunal, conduct of arbitration proceedings, finality and enforcement of domestic arbitral awards as well as of certain foreign awards, and covers the law relating to conciliation. Having regard to the entire scheme of the Arbitration Act, 1996, it appears that it is a general law relating to the domestic arbitration, international commercial arbitration and for conciliation. It does not specify any specific dispute or specific class or category of persons to which the Act shall apply, as has been specified in the MSMED Act, 2006.

42. *Thus, the Arbitration Act, 1996 in general governs the law of Arbitration and Conciliation, whereas the MSMED Act, 2006 governs specific nature of disputes arising between specific categories of persons, to be resolved by following a specific process through a specific forum. Ergo, the MSMED Act, 2006 being a special law and the Arbitration Act, 1996 being a general law, the provisions of the MSMED Act would have precedence over or prevail over the Arbitration Act, 1996. In Silpi Industries case [Silpi Industries v. Kerala SRTC, (2021) 18 SCC 790 : 2021 SCC OnLine SC 439] also, this Court had observed while considering the issue with regard to the maintainability and counter-claim in arbitration proceedings initiated as per Section 18(3) of the MSMED Act, 2006 that the MSMED Act, 2006 being a special legislation to protect MSMEs by setting out a statutory mechanism for the payment of interest on delayed payments, the said Act would override the provisions of the Arbitration Act, 1996 which is a general legislation. Even if the Arbitration Act, 1996 is treated as a special law, then also the MSMED Act, 2006 having been enacted subsequently in point of time i.e. in 2006, it would have an overriding effect, more particularly in view of Section 24 of the MSMED Act, 2006*

which specifically gives an effect to the provisions of Sections 15 to 23 of the Act over any other law for the time being in force, which would also include the Arbitration Act, 1996.”

29. The conclusion arrived at are quoted below :-

“52. The upshot of the above is that :

52.1 Chapter V of the MSMED Act, 2006 would override the provisions of the Arbitration Act, 1996.

52.2. No party to a dispute with regard to any amount due under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Micro and Small Enterprises Facilitation Council, though an independent arbitration agreement exists between the parties.

52.3. The Facilitation Council, which had initiated the conciliation proceedings under Section 18(2) of the MSMED Act, 2006 would be entitled to act as an arbitration (sic arbitrator) despite the bar contained in Section 80 of the Arbitration Act.

52.4. The proceedings before the Facilitation Council/institute/centre acting as an arbitrator/Arbitrator Tribunal under Section 18(3) of the MSMED Act, 2006 would be governed by the Arbitration Act, 1996.

52.5. The Facilitation Council/institute/centre acting as an Arbitral Tribunal by virtue of Section 18(3) of the MSME\$D Act, 2006 would be competent to rule on its own jurisdiction as also the other issues in view of Section 16 of the Arbitration Act, 1996.

52.6. A party who was not the “supplier” as per the definition contained in Section 2(n) of the MSMED Act, 2006 on the date of entering into contract cannot seek any benefit as the “supplier” under the MSMED Act, 2006. If any registration is obtained subsequently the same would have an effect prospectively and would apply to the supply of goods and rendering services subsequent to the registration.”

30. The decision of **Gita Refractories Pvt. Ltd.** (supra) does not help the petitioner, inasmuch as, the issue before the said Court was

whether the unit registered as a MSME would be bound to approach the Council under the MSMED Act and was precluded from invoking the arbitration agreement in the contract. This decision did not deal with the question whether, a counter-claim of the buyer would be maintainable before the Council, when arbitration commenced on the seller approaching the Council. The decision in ***Uniseven Engineering and Infrastructure Pvt. Ltd.*** (supra) also, does not help the petitioner, inasmuch as, the decision was that the Council could not entertain an independent claim of the buyer against the supplier, but could only entertain claims of the supplier against the buyer and counter-claim of the buyer against the supplier. Thus, the Delhi High Court held that, the buyer could not independently approach the Council against the supplier under the MSMED Act, but the buyer could file a counter-claim before the Council if the supplier had already made a claim before such authority. This decision is distinguishable on facts.

31. Under such circumstances, the information given to the learned Advocate on record for the petitioner that, the claim for damages could not be adjudicated by the Council, holds no value.
32. This court holds that, the application for appointment of a second Arbitrator, for adjudication of the dispute between the buyer and the seller, is not maintainable. The arbitral proceeding under the MSMED Act has already commenced. The buyer is already a party to the dispute covered by Section 17 of the MSMED Act. The seller has claimed unpaid dues for the goods and services supplied to the buyer.

The buyer disputes such claim and has a claim in damages and compensation, for deficiency in service. Thus, in order to adjudicate the claim of the seller, the objection of the buyer to such claim and the contention of the buyer, must form part of the same dispute. The law provides that, any party to a dispute may, with regard to any amount due under Section 17 of the MSMED Act, make a reference to the MSMED Council. The buyer has raised a dispute with regard to an amount due to it and as such, can refer its claim to the council, which had commenced arbitral proceeding. The ARC Act is applicable to such proceeding. It has already been held by the Hon'ble Supreme Court that, either the Council or the Arbitrator or the institution can rule on its own jurisdiction. Thus, the issue of non-arbitrability of the dispute on the ground that, the purchase orders and LOIs were in respect of a works contract, can also be raised before the said forum. The buyer's remedy is to file a counter-claim before the learned Council and also raise all questions, including the question of jurisdiction, arbitrability etc.

33. The application is disposed of accordingly.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(Shampa Sarkar, J.)