

Salgaonkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11631 OF 2022

M/s Vina Electrical Pvt. Ltd. .. Petitioner

Versus

Micro and Small Enterprises .. Respondents
Facilitation Council, Nashik & Anr.

...
Ms.Prachiti Deshpande for the Petitioner.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATE : 22nd APRIL, 2026

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JUDGMENT (Per Bharati Dangre, J.) :-

1. The Petitioner, M/s Vina Electrical Pvt. Ltd., is aggrieved by the the Award dated 06/04/2022, passed by the Micro and Small Enterprises Facilitation Council (for short, “MSEFC”), Nashik in Reference Petition No.274 of 2022.

We have heard learned counsel Ms.Prachiti Deshpande for the Petitioner and on hearing the learned counsel, since we are of the view that the relief sought in the Petition is covered by the decision of the Apex Court, we deem it appropriate not to wait for the appearance of the Respondents. Further, despite the notice being issued by the Court, since the counsel for the Petitioner, did not supply the copies of the Petition, no notice is actually issued.

2. The Petitioner is a company, which placed a purchase order for supply of Distribution Transformers with breather on Respondent No.2-M/s Sai Shree Engineering and this business transaction took place between 01/04/2014 to 31/03/2015. It is the case of the Petitioner that the claims of the outstanding payment for this period was fully settled. However, Respondent No.2 contending that the transactions occurred between the subsequent period from 01/04/2015 to 31/03/2016, filed a Reference Petition before the MSEFC, Nashik for recovery of an outstanding amount of Rs.22,13,000/-.

3. Upon the proceedings being filed, MSEFC initiated conciliation proceedings and when the conciliation failed, the Council itself proceeded to conduct arbitration. On 06/04/2022, MSEFC passed an award directing the Petitioner to pay the disputed amount of Rs.22,13,000/- alongwith interest to Respondent No.2.

4. The learned counsel for the Petitioner, Mrs.Prachiti Deshpande, would submit that the impugned order is contrary to Section 80 of the Arbitration and Conciliation Act, 1996 (for short, “**A&C Act**”), as the the Conciliator cannot act as an Arbitrator or his representative or counsel of a party in any

arbitral or judicial proceedings and, therefore, the role of the MSEFC as a Conciliator and Arbitrator simultaneously is not permissible in law and in fact, once MSEFC has acted as a Conciliator, it is prohibited from acting as an Arbitrator.

The counsel for the Petitioner would place reliance upon the Judgment and Order passed in case of *Gujarat State Petronet Ltd. Vs. Micro and Small Enterprises Facilitation Council & Ors.*¹, where the Court invoked that the statutory bar created under Section 80 of the Arbitration & Conciliation Act and ruled that the MSEFC has the authority to act either as the Conciliator or an Arbitrator, but it cannot don both hats and once the Council assumed a role of Conciliator, Section 80 strictly prohibits it from acting as an Arbitrator.

She would also place reliance upon the decision of this Court in *Bridge and Roof Co. (India) Ltd. Vs. The Micro and Small Enterprises Facilitation Council & Ors. (Writ Petition No.3338 of 2018 decided on 13/06/2019)*, when the Division Bench, by relying upon the decision in case of *Gujarat State Petronet Ltd.* (supra), granted interim relief and stayed the execution and implementation of the impugned Awards.

5. In the wake of the scheme contemplated in the Micro, Small and Medium Enterprises Development Act, 2006 (for

¹ 2018 SCC OnLine Bom 2039

short, “**MSMED Act**”), we must note that it is a special statute, which contain a specific provision providing for overriding effect by virtue through Section 24. Section 18 of the said statute is in form of reference to the Micro and Small Enterprises Facilitation Council and it reads thus :-

“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.”

6. A reading of the provision would thus reveal that when a reference is made to the Council with respect to any amount

due under Section 17, the Council shall either itself conduct conciliation or it may seek assistance of any institution or centre providing alternate dispute resolution services for conducting conciliation and provisions of Section 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply.

When the conciliation is not successful and stand terminated, then the Council shall either itself take up the dispute for arbitration or refer to any institution or centre providing services for such arbitration and the process shall be carried out as per the provisions of the Arbitration and Conciliation Act.

7. The Division Bench of this Court in *Gujarat State Petronet Ltd.* (supra), by placing reliance upon the decision in the case of *M/s. Steel Authority of India Ltd. & Anr. Vs. The Micro, Small Enterprise Facilitation Council & Anr.*², held that if there was an arbitration agreement between the parties, then the mechanism set out in the special enactment need not be given effect to, as in any case, in the wake of the arbitration agreement in existence, the dispute shall be referred to arbitration and in such circumstances, it was held that the reference made by Respondent No.3 and entertained by the Council was not maintainable in view of the independent

² AIR 2012 Bombay 178

arbitration agreement between the parties. Another point, which the Division Bench pronounced upon, was the issue raised that the MSEFC itself having conducted the conciliation proceedings could not have decided itself arbitration proceedings under Section 18(3) of the MSMED Act and with reference to Section 80 of the Arbitration and Conciliation Act, 1996, it is held thus :-

“22. A plain reading of Section 80 makes it clear that the conciliator cannot act as an arbitrator or his representative or counsel of a party in any arbitral or judicial proceedings in respect of a dispute. It is thus evident that the MSEFC cannot act as conciliator as well as arbitrator, or it may choose to refer the dispute to any centre or institution providing alternate dispute resolution services for the parties to conciliation or arbitration. However, once the MSEFC acts as conciliator, in view of provisions of Section 80, it is prohibited from acting as arbitrator.”

8. The aforesaid view in *M/s.Steel Authority of India Ltd.* (supra), however, does not hold good in light of the authoritative pronouncement of three-Judge Bench of the Apex Court in *Gujarat State Civil Supplies Corporation Ltd. Vs. Mahakali Foods Pvt. Ltd. (Unit 2) & Anr.*³, where the decision of the Bombay High Court has been held to be not laying down the good law.

The Apex Court specifically observed that the said statute has provided a dedicated statutory forum in form of Micro and Small Enterprises Facilitation Council to enable a

3 (2023) 6 SCC 401

party to whom the amount is due under Section 17 to make a reference. The statute has also set out a specific procedure to be followed by the Facilitation Council and it shall first attempt a conciliation, but if it does not succeed and it stand terminated without any settlement, then it shall resort to the process of arbitration, as contemplated under the Arbitration and Conciliation Act.

In regard to the observations of the Division Bench in the case of *M/s.Steel Authority of India Ltd.* (supra), that if an arbitration agreement is existing between the parties, no reference to the Facilitation Council would be entertained, the Apex Court by taking into consideration the provisions of the special enactment in form of MSMED Act, 2006, having an overriding effect over the Arbitration and Conciliation Act, 1996, held that no agreement entered between the parties could be given primacy over the statutory provision and particularly when the special Act has been created for ensuring timely and smoothly payment to the suppliers and the statute has also ensured an overriding effect to the said law over any other law for the time being in force. In paragraph 46 of the law report, the Apex Court held thus :-

“46. The submission therefore that an independent arbitration agreement entered into between the parties under the Arbitration

Act, 1996 would prevail over the statutory provisions of the MSMED Act, 2006 cannot be countenanced. As such, sub-section (1) of Section 18 of the MSMED Act, 2006 is an enabling provision which gives the party to a dispute covered under Section 17 thereof, a choice to approach the Facilitation Council, despite an arbitration agreement existing between the parties. Absence of the word “agreement” in the said provision could neither be construed as *casus omissus* in the statute nor be construed as a preclusion against the party to a dispute covered under Section 17 to approach the Facilitation Council, on the ground that there is an arbitration agreement existing between the parties. In fact, it is a substantial right created in favour of the party under the said provision. It is therefore held that no party to a dispute covered under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Facilitation Council under Section 18(1) thereof, merely because there is an arbitration agreement existing between the parties.”

It is thus held that, the reference to Facilitation Council by a party to a dispute with regard to any money due under Section 17 would be maintainable despite an independent arbitration agreement existing between the parties and that the Facilitation Council could also take up the dispute for arbitration and act as an arbitrator as contemplated under Section 18(3) of the MSMED Act, 2006 despite the bar contained in Section 80 of the A & C Act, 1996.

In the wake of the aforesaid observation, it is clear that the decision of the Bombay High Court holding that the arbitration agreement, if existing, shall preclude reference to the Council stands overruled.

9. Even the decision in the case of *Gujarat State Petronet Ltd.* (supra) is also specifically reversed, with the observation

that Chapter V of the MSMED Act, 2006 has an overriding effect over the provisions contained in the A & C Act, 1996. The Facilitation Council would be entitled to proceed further with the reference made by the party (supplier) under Section 18 (1) of the MSMED Act, 2006, despite an independent arbitration agreement existing between the parties.

10. Even on the second issue and which forms the basis of the argument of the learned counsel for the Petitioner to the effect that upon the conciliation having been failed, the arbitration could not have been taken up by the Council, is also put to rest by the decision in *Gujarat State Civil Supplies Corporation Ltd.* (supra), when the Apex Court observed thus :-

“47. The aforesaid legal position also dispels the arguments advanced on behalf of the counsel for the buyers that the Facilitation Council having acted as a Conciliator under Section 18(2) of the MSMED Act, 2006 itself cannot take up the dispute for arbitration and act as an arbitrator. Though it is true that Section 80 of the Arbitration Act, 1996 contains a bar that the Conciliator shall not act as an arbitrator in any arbitral proceedings in respect of a dispute that is subject of conciliation proceedings, the said bar stands superseded by the provisions contained in Section 18 read with Section 24 of the MSMED Act, 2006. As held earlier, the provisions contained in Chapter V of the MSMED Act, 2006 have an effect overriding the provisions of the Arbitration Act, 1996. The provisions of the Arbitration Act, 1996 would apply to the proceedings conducted by the Facilitation Council only after the process of conciliation initiated by the Council under Section 18(2) fails and the Council either itself takes up the dispute for arbitration or refers to it to any institute or centre for such arbitration as contemplated under Section 18(3) of the MSMED Act, 2006.

48. When the Facilitation Council or the institution or the centre acts as an arbitrator, it shall have all powers to decide the disputes

referred to it as if such arbitration was in pursuance of the arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996 and then all the trappings of the Arbitration Act, 1996 would apply to such arbitration. It is needless to say that such Facilitation Council/institution/centre acting as an Arbitral Tribunal would also be competent to rule on its own jurisdiction like any other Arbitral Tribunal appointed under the Arbitration Act, 1996 would have, as contemplated in Section 16 thereof.

11. In the wake of the authoritative pronouncement of the Apex Court to the aforesaid effect when the decision in case of *Gujarat State Petronet Ltd.* (supra) is held not to be a good law, we do not find any merit in the contention of the Petitioner, praying that the Award by the Council dated 06/04/2022 be set aside in the wake of the bar under Section 80 of the A&C Act.

The Petition, therefore, being without any merit and substance and in light of the authoritative pronouncement by the Apex Court to the aforesaid effect, the reliefs in the Petition do not survive and the Petition is dismissed.

Needless to state that if a remedy is available to challenge the Award on merits, the Petitioner may follow the said course of action.

No order as to costs.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)