In the High Court at Calcutta
In Its Commercial Division
Ordinary Original Civil Jurisdiction

The Hon'ble Justice Sabyasachi Bhattacharyya

A.P.-COM No.296 of 2024
(Old No. A.P. 179 of 2023)

The Board of Major Port Authority
for the Syama Prasad Mukherjee Port, Kolkata
(earlier known as Board of Trustees of the Port of Kolkata)
Vs.
Marinecraft Engineers Private Limited

For the petitioner	:	Mr. Krishnaraj Thaker, Adv., Mr. Ashok Kr. Jena, Adv.
For the respondent	:	Mr. Shounak Mukhopadhyay, Adv., Mr. S. Bhattacharya, Adv., Ms. Anewesha Guha Roy, Adv., Mr. Abhijit Guha Roy, Adv.
Heard on	:	08.07.2024, 29.11.2024, 31.01.2025, 25.04.2025 and 16.05.2025.
Hearing concluded on	:	16.05.2025.
Judgment on	:	13.06.2025.

Sabyasachi Bhattacharyya, J.:-

1. The present application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act") has been preferred against an award passed in respect of a claim filed by the respondent herein

in a reference under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short, "the 2006 Act").

2. Initially, conciliation proceedings commenced under Section 18(2) of the 2006 Act. Subsequently, the present petitioner having failed to appear in the said proceedings, it was recorded by the Micro and Small Enterprises Facilitation Council (in brief, "the Council") that the conciliation had terminated. The dispute was accordingly taken up for resolution by arbitration under sub-section (3) of the Section 18 of the 2006 Act.

3. Learned counsel appearing for the petitioner contends that the impugned award is a nullity, since the mandate of the Council as the arbitral tribunal had already terminated when the award was passed, by operation of Section 29-A of the 1996 Act, the provisions of which statute were applicable in terms of Section 18(3) of the 2006 Act. The mandatory timeline as stipulated in Section 29-A(1) of the 1996 Act, it is argued, had expired before passing of the award.

4. Learned counsel next argues that the principles of natural justice were violated by the Council in failing to grant adequate opportunity to the present petitioner to place its case on merits before the Council. It is argued that initially the matter came up for conciliation. Upon termination of the conciliation, however, no opportunity was granted to the petitioner to argue its case on merits. The Council proceeded on the premise that the parties had already placed their respective cases by way of their written statements; however, denying opportunity to advance oral arguments to the petitioner. This, it is contended, brings the award within the purview of Section 34 of

the 1996 Act for violation of the fundamental policy of Indian Law and basic notions of justice.

5. The petitioner next argues that no GC-3 Form was submitted by the respondent/claimant, which was mandatory for disbursal of the dues of the claimant as per the contract between the parties, as borne out by the tender document. Thus, the award is vitiated, having not taken into consideration such aspect of the matter and the legal effect thereof. It is argued that the claimant/respondent did not become entitled to get its dues, even if any, in view of non-submission of such Form.

6. On merits, learned counsel for the petitioner argues that the Council erred in law and committed patent illegality in allowing the respondent's claims in respect of the illegal deductions and interests and other aspects of the matter. It is submitted that the Council could not have proceeded on the concessions given during conciliation proceedings but ought to have independently adjudicated the dispute on merits by granting opportunity of hearing to the petitioner.

7. It is further submitted that the Council initiated conciliation amid the arbitration proceedings and, as such, committed a patent illegality in deciding the matter on merits during such conciliation attempts, by construing the said proceedings to be an arbitral proceeding under Section 18(3) of the 2006 Act.

8. Learned counsel for the petitioner next argues that the Council committed jurisdictional error amounting to patent illegality in delegating its authority by leaving the task of computing the interest to the claimant/respondent,

through its designated Chartered Accountant (CA). Learned counsel cites *Usha Martin Limited v. Eastern Gases Limited*, reported at *2022 SCC OnLine Cal 3342*, as well as an unreported judgment in *AP No.90 of 2023 [Government of Maharashtra v. Shrivin Pharma]*, both Co-ordinate Bench decisions of this Court, in support of such contention.

9. Learned counsel for the petitioner, during oral arguments, submits that the dispute between the parties pertains to a "Works Contract" and, as such, is not amenable to the jurisdiction of the Council under the 2006 Act, although such point was not elaborated much in the written notes of arguments filed by the petitioner.

10. Learned counsel for the respondent/claimant controverts the above submissions and submits that it has been settled by this Court that the provisions of Section 29-A of the 1996 Act are not applicable, particularly insofar as the timelines are concerned, to a proceeding under the 2006 Act. In such context, learned counsel cites a judgment of this Court in *Porel Dass Water & Effluent Control Private Limited v. West Bengal Power Development Corporation Limited and others,* reported at *2024 SCC OnLine Cal 8927*.

11. Learned counsel for the respondent next takes the court through the various dates of the arbitral proceeding, as reflected in the impugned award of the Council, to show that sufficient opportunity was given at every stage to the petitioner to address the dispute on merits. It is submitted that the petitioner filed its Statement of Defence as well as written statement, including notes of arguments, and also, on several occasions, addressed the Council on the merits of the dispute.

12. On the issue of natural justice, it is argued that the reliance by the petitioner on *Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India (NHAI),* reported at *(2019) 15 SCC 131* is misplaced, since adequate opportunity of hearing was given to the petitioner in the present case.

13. Learned counsel for the respondent next argues that GC-1 and GC-2 Forms were duly submitted and, on the basis of those, the petitioner had certified and approved the completion of the work by the claimant/respondent. A GC-3 Form, it is contended, is only submitted when there is no further dispute regarding the dues, since it is in the nature of a "No Dues Certificate". There was no occasion for the respondent to submit such Form, since the dues of the respondent were not cleared by the petitioner, which is the very crux of the present dispute.

14. Insofar as the merits of the claim are concerned, it is argued that the Council dealt with the matter at length, considering the arguments of both sides as well as their pleadings, and accordingly came to its conclusions. It is submitted that the Council equally considered the contentions of both parties and, in fact, a part of the claim was not granted by the Council as well. Thus, there cannot be a reopening of the award under Section 34 of the 1996 Act.

15. Insofar as the attempts at conciliation during arbitral proceedings are concerned, learned counsel for the respondent points out that such efforts were taken only at the behest of the petitioner itself and did not partake the character of pre-arbitral conciliation, since such stage was already over and

the Council had made it clear that the pre-arbitral conciliation had failed and was terminated, fixing the matter for arbitration.

16. It is submitted that the power of the Council of adjudicating interest was not delegated to a CA. The Council came to specific conclusions as to the date from which and the rate at which the interest is payable. Thus, it was merely the arithmetical calculations which were left to the CA.

17. Hence, it is argued that the decisions cited by the petitioner on such count are not germane in the context of the present case.

18. Learned counsel relies on *(2021) 3 SCR 1044 [M/s Silpi Industries v. Kerala State Road Transport Corporation & Anr.]* for the proposition that the 2006 Act is a beneficial legislation to be read for the benefit of MSME units such as the respondent and that Sections 15 to 23 of the 2006 Act have overriding effect on any other statute, including the 1996 Act.

19. Insofar as Work Contracts are concerned, it is argued that such contracts came within the ambit of adjudication by arbitration by the Council under the 2006 Act, provided the concerned unit is registered as an MSME Unit under the Act, which criterion is met by the respondent in the present case. Learned counsel cites *Hindustan Petroleum Corporation Limited v. West Bengal State Micro, Small Enterprises Facilitation Council*, reported at *2023 SCC OnLine Cal 1700* in such context.

20. Upon hearing learned counsel for the parties, it transpires that several issues have cropped up for consideration, which are dealt with sequentially as follows:

Bar under Section 29-A of the 1996 Act

21. This issue was dealt with at length in *Porel Dass (supra)*, where it was held that the timeline stipulated under Section 29A of the 1996 Act are not applicable to an arbitral proceeding under the 2006 Act. Rather, the period stipulated under Section 18(5) of the 2006 Act is the relevant guiding factor. However, the latter period is directory and not mandatory.

22. It has to be noted here that the 2006 Act is a special statute insofar as MSME Enterprises are concerned and is a piece of beneficial legislation in aid of such units. The provisions of the Act, including the *non obstante* clause in Section 18 of the 2006, makes it abundantly clear that in case of conflict between two statutes, the 2006 Act would prevail.

23. The power of the Council to arbitrate disputes arising in respect of MSME units flows from Section 18 of the 2006 Act and not the 1996 Act. Sub-section (3) of Section 18 of the 2006 Act confers such power and enables the provisions of the 1996 Act to apply to such disputes. Thus, it has to be kept in mind that the arbitration contemplated under the 2006 Act emanates from the said statute (and not from the 1996 Act), and Section 18 the 2006 Act provides a complete eco-system of pre-arbitral conciliation, followed in case of failure of the same by arbitration.

24. A composite reading of Section 29A of the 1996 Act and Section 18 of the 2006 Act clearly shows that there is a direct conflict between the two provisions as to the respective timelines provided for completion of an arbitral proceeding under the two statutes.

25. In the first place, the timeline of twelve months under sub-section (1) of Section 29-A of the 1996 Act is made applicable to the date of completion of pleadings under sub-section (4) of Section 23 of the said Act. Section 23 of the 1996 Act operates within the window of the 1996 Act, under which arbitral proceedings are commenced in terms of Section 21 of the 1996 Act. As opposed thereto, the commencement of an arbitral proceeding under Section 18 of the 2006 Act is under sub-section (3) of Section 18 itself, on failure of conciliation proceedings. Thus, Section 29A of the 1996 Act does not come into play at all in respect of such arbitral proceedings before the Council, which are commenced under and by virtue of the 2006 Act.

26. As opposed to the timeline stipulated in Section 29A (1) of the 1996 Act, sub-section (5) of Section 18 of the 2006 Act independently stipulates period of 90 days from the date of making the reference for the completion of the arbitral proceedings. On a proper reading of sub-section (5) of Section 18, it is seen that although the expression "shall" has been used, the provision is couched not in a negative way, debarring the Council from proceeding with the reference after the expiry of 90 days, in stark contradistinction with sub-section (4) of Section 29A of the 1996 Act which stipulates that the mandate of the arbitrator itself terminates after the timeline stipulated in sub-Section (1) of Section 29A expires, unless the mandate is extended in terms of sub-Section (4) the said provision. As opposed thereto, Section 18 or, for that matter, any other provision of the 2006 Act, does not carry any sanction (such as termination of the mandate of the Council) or penalty for non-completion of the reference within the said period.

27. Whereas Section 29-A of the 1996 Act hits at the very mandate of the arbitral tribunal, rendering the tribunal *functus officio* after the expiry of the stipulated time, Section 18(5) merely nudges the Council to adhere to a timeline for the completion of the reference, without translating over-stepping such period into a termination of the mandate of the Council itself.

28. In fact, a contrary interpretation would frustrate the very purpose of the enactment of the 2006 Act, which categorically clothes the Facilitation Council under the 2006 Act to conduct the arbitral proceedings in respect of MSME Enterprises. If it is construed that the mandate of the Council terminates after 90 days, the necessary corollary would be that it would be open to the court, functioning independently under the 1996 Act, to substitute the Council by any other arbitrator, or for the parties to initiate fresh arbitral proceedings under the 1996 Act, thereby taking the arbitral process itself beyond the pale of the 2006 Act, which is an absurd interpretation, contrary to the very object and purpose of the 2006 Act. Another possible corollary to such termination of the mandate of the Council after 90 days would be that a fresh arbitral proceeding would be initiated before the Council itself or the arbitrator appointed by it, which would be an exercise in futility, since the Council or its appointed arbitrator would then be already in seisin of the matter, having substantially completed the arbitral process.

29. The root of the power of the Council is in consonance with the object of the 2006 Act, which is the promotion and development and enhancing the competitiveness of MSME units, a part of which is early terminus to

disputes relating to such units by alternative dispute resolution, first by conciliation and, if it fails, then followed by arbitration, by the Council or its designated arbitrator under the aegis of the 2006 Act itself.

30. As such, the argument of the petitioner that the Council became *functus officio* and the award was a nullity, due to the expiry of the timeline stipulated in Section 29-A of the 1996 Act (or even under Section 18(5) of the 2006 Act), cannot be accepted and is decided in the negative.

Violation of natural justice

31. The petitioner has alleged that the Council violated the principles of natural justice by denying it opportunity of arguing on the merits of the case.

32. The impugned award itself contains the gist of the minutes of the previous meetings of the Council, both at the conciliation stage and at the arbitration stage. At the pre-arbitral conciliation stage, it was recorded by the Council in its minutes dated February 16, 2016 that as the buyer unit (present petitioner) was absent, it was not possible to amicably settle the matter and a second notice for conciliation was issued to the parties. The petitioner repeated its absence, due to which on November 16, 2016, the Council recorded that the conciliation procedure as per Section 18(2) of the 2006 Act had failed due to the abstinence of the petitioner in the conciliation meetings. The Council decided simultaneously that the arbitration process would be initiated as per the provisions of Section 18(3), in its minutes dated November 16, 2016 itself.

33. Notice of termination of the conciliation process was issued *vide* Letter No. D/845(2)/2017 dated December 4, 2017. Although the respondent initially did not get a copy thereof, subsequently, the same was served on it. The petitioner never complained that such notice was not served on it.

34. We find from the award that the claimant/respondent had submitted its Statement of Facts before the Council with a copy to the buyer unit/present petitioner. The petitioner also duly submitted its Statement of Defence as well as points of arguments. The summary of the points raised by both the parties in their respective pleadings were recorded at length in the impugned award.

35. From the minutes dated February 26, 2018, it is found that despite being aware since the year 2016 that arbitral proceedings were commenced on termination of conciliation, the buyer unit (present petitioner) prayed for time to submit written statement, upon which three (03) weeks' time was granted to the petitioner on concession by the respondent. Yet again, on April 24, 2018, the petitioner repeated its request for further time, to which the claimant/respondent also did not raise any objection.

36. It was recorded in the minutes dated June 6, 2018, as reflected in the impugned award, that the Statement of Defence was filed by the present petitioner on June 5, 2018, but a copy thereof was handed over to the claimant/respondent only on the date of hearing, that is, June 6, 2018. On the said date, the learned advocate for the petitioner also commenced arguments on merits and submitted that the supplier unit (present respondent) had done additional work but the same was not approved by

the appropriate authority. The Council further recorded in its minutes dated June 6, 2018 that the present petitioner also advanced arguments in tune with its written notes. Arguments were also advanced by the present respondent on the extra work done by it. Submissions were made by both parties on the submission of GC-3 Form as well. Thus, both sides commenced arguments on merits on June 6, 2018 itself.

37. On August 28, 2018, the learned advocate for the petitioner (buyer unit) claimed that the supplier had disclosed new/additional documents, which allegation was refuted on behalf of the claimant/respondent. The learned advocate for the buyer unit/petitioner also raised the question of veracity of bills submitted by the supplier unit and proclaimed that the bills had already been paid by the buyer unit and that the supplier unit had forged and fabricated the bills, for which FIR had been lodged, which was denied by the supplier.

38. The learned advocate for the present petitioner further argued before the Council on non-submission of GC-3 Form by the buyer unit for reducing security deposit and contended that therefore the buyer was not entitled to the release of security deposit. It was alleged that the supplier had tampered some challans for repair of Kort Nozzle (Port Side), which were accordingly not considered by the buyer/petitioner. Such contentions were controverted by the supplier unit on merits.

39. Hence, it is evident that arguments were advanced on several occasions on merits of the dispute by both the parties. However, at that juncture, the buyer unit proposed a reconciliation meeting. As per the learned advocate

for the buyer, it expressed eagerness to settle the matter and informed that the payment against Kort Nozzle could be reviewed by the appropriate authority and that the supplier was to submit fresh documents on the CENVAT claim.

40. On September 24, 2019, the buyer unit (present petitioner) admitted the claim of the supplier unit, including the claim of dues on Kort Nozzle, but refused to settle the claim of CENVAT and to pay interest. The supplier unit did not accept such proposal and continued to contest the matter. However, although on previous occasions the buyer/petitioner had advanced arguments at length on merits, the learned advocate for the petitioner submitted that he was not ready to contest the matter and had only come up with the settlement proposal and wanted to come back "with appropriate documentary evidences".

41. Conspicuously, even at that stage, the petitioner's prayer for adjournment was granted by the Council, recording that it did not take up the matter for final arbitration "in order to provide natural justice to both the parties".

42. On January 21, 2020, the matter again came up before the Council, when the buyer/petitioner, arguing on merits, raised the question whether repairing came under the purview of the 2006 Act and whether the claim of the supplier unit came under the category of service. The supplier/respondent contended that the buyer/petitioner wrongly deducted some amounts and refused to pay certain justified due amounts. The matter was then adjourned on the prayer of both sides.

43. Subsequently on May 12, 2021, when the matter was again taken up for hearing, the learned advocate for the buyer unit/petitioner argued that the Council is governed by "the Special Act" and addressed the issue of jurisdiction of the Council to take up the matter for arbitration. The learned advocate for the buyer unit contended further that the supplier had erroneously submitted its application before the Council and that the petitioner was agreeable to sit together on a further offer of Rs.26 Lakhs settlement. The learned advocate for the buyer unit also sought for a decision on the said legal points. Legal arguments were advanced by both sides on the said issues.

44. The learned advocate for the supplier unit requested the Council further to have an opportunity to place its arguments on merits. In reply, the learned advocate for the buyer unit countered that it is a contractual matter and there is "no applicability of equality" and that the arbitration clause would be applicable only if there is a rejection on the part of the Chairman and that the arbitration clause should be read as a whole.

45. However, when further asked by the Council to address on merits, the learned advocate for the buyer unit insisted that the point of jurisdiction may be decided first before further arguments on merits.

46. The Council decided the objection as to jurisdiction accordingly on the self-same date and, by giving reasons, held that it had jurisdiction to take up the matter. It was further clarified that the matter would be taken up in the next hearing to adjudicate the points on merit.

47. Pausing here, it is abundantly clear that till the above date, both sides had already argued on merits elaborately, as well as on the issue of jurisdiction. It is not that the petitioner argued only on jurisdiction, but it had also addressed the Council on several occasions on the merits of the case. It is only that on May 12, 2021, the Council decided the issue of jurisdiction first, that too on the insistence of the buyer/petitioner, and posted the matter for adjudication on merits on the next date. Thus, although arguments had been advanced on merits as well as jurisdiction, the jurisdiction point was decided first and the adjudication on merits was left for a further date.

48. Accordingly, the matter was taken up on April 28, 2022, when the buyer unit/petitioner took a flimsy pretext of an undertaking having been given by the parties regarding no steps being taken before the Council, since apparently a challenge had been preferred against the decision of the council on its jurisdiction.

49. It is noteworthy that the challenge under Section 34 of the 1996 Act, to the decision of the Council that it has jurisdiction, failed before a learned Single Judge as well as affirmed by a Division Bench of this Court subsequently, on the ground that the ruling on jurisdiction was not an 'award' which was amenable to a challenge under Section 34 of the 1996 Act.

50. Coming back to April 28, 2022, the learned advocate for the buyer/petitioner, quite surprisingly, urged that he had not made his submission on merits and that the matter should be heard on merit. The learned advocate for the supplier/respondent submitted that he had already

argued the matter on merits at least five times during the arbitral proceedings. The Council, quite rightly, opined that the matter had been thoroughly heard on several occasions on merits and proceeded to scrutinize the written arguments of the parties and their pleadings and decide the matter on merits.

51. The above narrative clearly goes on to show that not only was ample opportunity given to the petitioner to argue the matter on merits but the petitioner had availed of such opportunity by arguing the matter on merits as well as on jurisdiction on several dates, covering the salient features of the dispute. The prior adjudication of the issue of jurisdiction, that too on the insistence of the petitioner, does not automatically signify that the other issues were not heard previously.

52. In fact, the conduct of the present petitioner is deplorable, since it sought to hinder the proceedings before the Council by seeking several adjournments and lingering a non-maintainable challenge before this Court, first the learned Single Judge concerned and thereafter in appeal before the concerned Division Bench, on the issue of jurisdiction.

53. Accordingly, I am of the clear opinion that the facts on record are clearly contrary to the argument of the petitioner that no opportunity of hearing was given to it. Thus, the natural justice principle, reiterated in *Ssangyong Engineering and Construction Company Limited (supra)*, was never violated by the Council in the present case.

54. Hence, this issue is also decided against the petitioner.

Non-submission of GC-3 Form

55. In terms of the contract between the parties, the GC-1 and GC-2 Forms precede the submission of GC-3 Form. In the present case, the materials on record placed before the Tribunal clearly show that certificates were issued by the petitioner itself under Form GC-1 and Form GC-2 in respect of final completion of the work done by the respondent. The liability of the petitioner to clear the respondent's dues for such work arose immediately, upon such completion certificates being issued by the petitioner itself, and was not dependent on any further paraphernalia.

56. The claimant/respondent duly submitted its bill on October 15, 2013, which was also produced before the Tribunal and has been annexed to the present application of the petitioner itself.

57. The GC-3 Form, in terms of the contract between the parties, as evidenced by the tender document, was in the nature of a "No Dues Certificate" in full and final settlement of claims between the parties, which could only be submitted by the respondent if it did not have any further dispute regarding non-payment of its legitimate dues. The very crux of the present reference is such a dispute as to non-payment and it is absurd to argue that non-submission of GC-3 Form can be a deterrent to the respondent getting its dues, as the very submission of a GC-3 Form by the respondent would indicate its acceptance of the amount paid in full and final settlement of the dues and would preclude the respondent from raising any challenge thereto.

58. Hence, such argument of the petitioner is hereby negated as well.

Merits

59. A thorough perusal of the impugned award shows that the Council meticulously dealt with the pleadings of the parties, including the Statement of Defence and written arguments filed by the petitioner, and the arguments of parties advanced on several occasions. It thoroughly discussed the claims under separate heads by adverting to the materials on record, including the invoices raised by the supplier unit, the tender document, the letters issued by the petitioner and the certificates issued in respect of completion of the work. Upon a consideration of the entire germane body of evidence, the Tribunal came to reasoned conclusions and decided separately each and every head of the claim, granting some and refusing others.

60. It is thus found that there is no dearth of reasons in the impugned award. It cannot be lost sight of that this Court, sitting in its jurisdiction under Section 34 of the 1996 Act, is not taking up a regular appeal or reassessing the evidence on record. The limited window within which the court can intervene has to be read on the anvil of the parameters set forth in Section 34 itself. I do not find any patent illegality or the violation of the fundamental policy of Indian Law and/or natural justice or for that matter any other provisions of the 1996 Act to justify interference under Section 34. As such, no case has been made out on merits of the case by the petitioner to interfere with the impugned award. In fact, the majority of the claims had been admitted by the petitioner itself in its several letters as well as submissions made before the Council itself. However, the Council took the pains of independently adjudicating on each of the said claims of the

respondent on merits. The petitioner, by its several letters, agreed the settle the claim under all the heads in principle, although not on quantum, except the claims on the respondent on CENVAT and deduction on account of Kort Nozzle.

61. However, by its communication dated September 24, 2019, the petitioner agreed to settle the Kort Nozzle claim as well, without admitting the claim in respect of interest only.

62. The Council proceeded on the basis of the petitioner's letter, on the minutes of the meeting dated January 28, 2014 granting additional time for completion of the work, the satisfactory completion of the Kort Nozzle work by the letter dated July 24, 2014, the agreement of the petitioner to pay the majority of the heads of claim by its letter dated September 26, 2018, and also independently adjudicated that the deductions in respect of illegal claims is not permissible. Such findings were arrived at by adverting to the evidence at length. The Council decided all issues accordingly on giving substantial reasons and it is not for this Court, under Section 34 of the 1996 Act, to substitute its own views, even if possible, on a re-appreciation of the evidence.

63. Thus, there is no scope of interference with the impugned award on merits in the present case.

Initiation of conciliation in the midst of arbitration

64. The very premise of the arguments of the petitioner is fallacious, since it is only on the basis of the proposal of the petitioner, as recorded in the

minutes dated June 6, 2018, that the option of settlement of the claims between the parties was again explored by the Council. It is found from the records that such an attempt could not be equated with a re-commencement of the pre-arbitral conciliation process, since there is no such provision of re-initiation of pre-arbitral conciliation afresh after the commencement of arbitration, once the pre-arbitral conciliation is terminated. The Council had already recorded in its Order dated November 16, 2016 that in view of the non-participation of the buyer/petitioner, the conciliation procedure under Section 18(2) was terminated and arbitral process was initiated under Section 18(3) of the 2006 Act. Due communication was made on December 4, 2017 to the parties to that effect.

65. Thus, once arbitral proceedings commenced under Section 18(3), the clock could not be set back by recommencing pre-arbitral conciliation, nor did the Council do so. Rather, it is only on the prayer of the petitioner that further avenues of mutual settlement, in addition to the arbitral proceeding, were explored by the Council, which having failed, the matter was decided on merits. It is to be noted further that the parallel attempts at mutual settlement did not deter the parties from continuing with the arbitral proceeding by advancing arguments on merits as well as jurisdiction before the Council all along, as reflected in the minutes of the prior proceedings and recorded in the impugned award itself.

66. Thus, such argument of the petitioner cannot also be accepted.

Sub-delegation of interest-adjudication by Council

67. The ordering portion of the impugned award is self-explanatory and comprehensively answers such issue. The Council held therein that the buyer unit is liable to pay Rs.16,77,027/- against deduction made for excess and extra work from different bills "plus interest thereon @ 3 times of Bank Rate of RBI, compounded with monthly rest to the supplier unit under Section 16 of Chapter V of the 2006 Act". It was further recorded that such interest would be "calculated after 45 days from the date of invoice till realisation of the due amount".

68. Sections 15 and 16 of the 2006 Act govern the imposition of interest under the 2006 Act. A bare perusal of the said provisions, juxtaposed with the language used by the Council in the award, as narrated above, goes on to show that the Council categorically decided all the adjudicable elements of interest in consonance with Sections 15 and 16 of the 2006 Act, not only stipulating the agreed date but also the period for which interest would be payable, the rate and mode of interest, as well as specifically invoked Section 16 of the 2006 Act while doing so. Hence, a complete and thorough adjudication on all the decisive ingredients of interest was undertaken by the Council.

69. It was only the clerical act of mathematical calculation of the interest that was left to the CA, duly certified, to be appointed by the claimant/respondent. The job of the CA was clear-cut – merely to arithmetically calculate the quantum in terms of the parameters already

fixed by the Tribunal in its award. Hence, there was no element of "adjudication" which was delegated to the respondent or its CA.

70. In *Usha Martin (supra)*, relied on by the petitioner in this context, the principal amount was left to be adjudicated by the CA and the award did not specify the time from which the interest was to be calculated.

71. Again, in *Government of Maharashtra v. Srivin (supra)*, the Council had failed to indicate the time-period for calculation of interest.

72. As opposed to both the above cases, all such ingredients of adjudication were completely taken care of by the Council in its award. Thus, the ratio laid down in the said judgments is not applicable to the instant case at all.

73. Rather, the reliance of the respondent on *M/s Silpi Industries (supra)* is apt in the present context. Sections 15 to 23 of the 2006 Act have overriding effect on all other statutes, including the 1996 Act and, being a beneficial legislation, has to be given a wider interpretation, since it is not in dispute that the respondent is an MSME unit and is squarely covered by the 2006 Act.

Whether the MSME Council had jurisdiction to adjudicate on disputes in respect of Works Contract

74. Although not elaborately stated in its written notes of arguments, the petitioner's counsel verbally agued the point, for which the same is taken up for adjudication for the sake of completion.

75. The issue at hand was dealt with elaborately by this Court in *Hindustan Petroleum Corporation Limited (supra)* in WPO No.2896 of 2022, referred to by the respondent in its written notes of arguments.

76. The relevant judgments of the Supreme Court in respect of works contracts, rendered in respect of taxing statutes, were misinterpreted in some of the judgments of different High Courts by automatically borrowing such concept in respect of the 2006 Act, which is a beneficial piece of legislation, whereas those were read in correct context by others. The entire gamut of the said citations was considered and dealt with in *Hindustan Petroleum Corporation Limited (supra)*, which is not being repeated verbatim to save unnecessary time and paper (virtual) space. Suffice to mention the crux of the principle as follows:

77. Section 2(e) of the 2006 Act defines "enterprise" as an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods or engaged in providing or rendering any service or services.

78. Section 2(m) provides that "supplier" means a micro or small enterprises which has filed a memorandum with the authority referred in sub-section (1) of Section 8 of the 2006 Act. The 2006 Act applies to all such enterprises, irrespective of the nature of the contract entered into. There is no bar in the 2006 Act for works contracts, having ingredients both of goods and services supply, to come within the purview of the Act. Rather, the expansive definition of "enterprise", covering both manufacture and production of goods as well as providing or rendering of any service or services, makes it

abundantly clear that both supply of goods and services are covered by the Act. Section 18 is impartial as to the nature of dispute which may be referred to the Council and merely provides that "any dispute regarding any amount under Section 17" of the 2006 Act is referable under the said provision to the Council.

79. Section 17 of the 2006 Act stipulates that the recovery of amount has to be of any good supplied or services rendered by the supplier. Hence, both the facets of goods and services are included within the ambit of such dispute and works contracts, which by their very nature have both components, cannot be excluded from the purview of the Act.

80. In fact, the previous judgments in that regard were elaborately dealt with in *Hindustan Petroleum Corporation Limited (supra)* in the backdrop of the liberal interpretation of the 2006 Act, which is a beneficial statute, as opposed to the interpretation of whether "works contracts" would be taxable by the States in the context of taxing statutes, which are by their very nature to be interpreted strictly, being penal in nature.

81. Furthermore, there is nothing in the 2006 Act itself to debar works contracts from being covered by the 2006 Act, including Section 18 therein, provided the dispute relates to an MSME unit and is covered by Section 17 of the said Act.

82. As such, the above issue is also decided in the negative and against the petitioner.

CONCLUSION

83. In fine, on the basis of the discussions above, there is no scope of interference with the impugned award under Section 34 of the 1996 Act. The petitioner has abjectly failed to establish any of the grounds stipulated under Section 34 of the 1996 Act for this Court to intervene with the arbitral award. In fact, if we go by the principle enunciated in Section 5 of the 1996 Act itself, no judicial authority shall intervene except were so provided under the concerned Part of the 1996 Act and, as such, there cannot be any intervention in the present case.

84. Another aspect of the matter is required to be dealt with here. In the caption of the present application under Section 34 of the 1996 Act, a challenge has also been purportedly thrown to the Order dated May 12, 2021 passed by the Council, whereby the Council had held in favour of its jurisdiction to adjudicate the dispute.

85. However, such challenge is not maintainable within the four corners of the 1996 Act. The only two situations in which a challenge can be preferred under the 1996 Act to a decision of a domestic arbitral tribunal are under Sections 34 and 37 of the said Act.

86. Section 34 contemplates a challenge to an award. The petitioner preferred a previous challenge under Section 34 to the self-same Order dated May 12, 2021 which was turned down by the learned Single Judge on the ground that such a challenge was not maintainable since the order was not an award. The said view was affirmed by a Division Bench of this Court. Thus, there is no scope of further reopening the said issue.

87. Insofar as Section 37 of the 1996 Act is concerned, the said provision clearly stipulates the specific orders which can be challenged under it. Sub-section (2)(a) of Section 37 provides for a challenge where a plea referred to in sub-section (2) or sub-section (3) of Section 16 of the Act is "accepted".

88. Section 16(2) and Section 16(3) pertain respectively to the Arbitral Tribunal not having jurisdiction and exceeding the scope of its authority.

89. In the present case, by the order dated April 12, 2021, the objection as to jurisdiction under sub-sections (2) and/or (3) of Section 16 of the 1996 Act, raised by the petitioner, was not "accepted" but refused. Thus, under the specific scheme of Section 37(2)(a), although an acceptance of an objection of jurisdiction would be appealable, the converse is not true and, thus, no appeal lies against the refusal to entertain an objection under sub-Sections (2) and (3) of Section 16 of the 1996 Act.

90. An analogy cannot be drawn with Section 105 of the Code of Civil Procedure, under sub-section (1) of which an error, defect or irregularity in any order affecting the decision of a case may be set forth as a ground of objection in a memorandum of appeal under Section 96 of the Code against the final decree, since Section 105 is only provided in respect of an appeal under the Code of Civil Procedure, which provides for an entirely distinct and different legal ecosystem and hierarchy of appeals than Sections 34 and 37 of the 1996 Act. Thus, we cannot superimpose the provision of a different statute, operating in a completely different field, to an arbitral proceeding under the 1996 Act. What cannot be done directly cannot also be indirectly brought in by the backdoor by permitting a challenge to an interlocutory order passed

by the arbitral tribunal within the ambit of a challenge to the final award by way of an application under Section 34 of the 1996 Act.

91. Another important aspect of the matter is that although a challenge under Section 37 of the 1996 Act has been consciously termed as an "appeal", the Legislature, in its wisdom, has deliberately named a challenge under Section 34 not as an "appeal" but as an "application".

92. Hence, the analogy of an appeal could not even otherwise be drawn in respect of an application under Section 34 of the 1996 Act, which is not an appeal in any event.

93. Hence, the said challenge to the Order dated May 12, 2021 is not maintainable and is hereby turned down as well.

94. In view of the above, the present challenge fails. Accordingly, A.P.-COM No.296 of 2024 (Old No. A.P. 179 of 2023) is dismissed on contest without, however, any order as to costs, thereby affirming the impugned award dated April 28, 2022, passed by the West Bengal Micro, Small Enterprises Facilitation Council and turning down the challenge to the order dated May 12, 2021 passed by the said Council as not maintainable.

95. Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

LATER :

After the above judgement is passed, learned Counsel appearing for the petitioner seeks a stay of operation of the above judgement.In view of certain arguable question being involved, stay of operation of the above judgement is granted for a period of four weeks from date.

Learned Counsel appearing for respondent seeks permission to withdraw the amount which has been deposited pursuant to a previous order passed in the matter. However, such prayer shall be subject to any order, if passed in the challenge, if any, to be preferred against the above judgement and/or till the period of four weeks from date, whichever is earlier. In the event no appeal is preferred against the above judgment within four weeks, the respondent shall be at liberty to withdraw such amount and adjust it with the decretal dues.

(Sabyasachi Bhattacharyya, J.)