

(2020) 06 GUJ CK 0130
In the Gujarat High Court

Case No : R/Special Civil Application No. 7006 Of 2020

M/S Samrat Furnaces Pvt. Ltd

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 29-06-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Arbitration And Conciliation Act, 1996 — Section 2(4), 7, 11, 40(1), 41, 43, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81

Micro Small And Medium Enterprises Development Act, 2006 — Section 7, 7(1), 15, 16, 17, 18, 18(1), 18(2), 18(3), 18(4), 19, 20, 21, 22, 23, 24

Citation : (2020) 06 GUJ CK 0130

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : H P Baxi, Divyangna Jhala, Gm Amin, Vinay D Bairagar

Final Decision : Dismissed

Judgement

Biren Vaishnav, J

1. This petition under Article 226 of the Constitution of India is filed challenging the order dated 20.3.2020 passed by the sole arbitrator by which the petitioner's application raising certain preliminary objections before the arbitrator is rejected. The petitioner is the original respondent before the arbitrator and the respondent No.5 is the original claimant.

2. Facts in brief are as under:

2.1 The respondent No.5 - Ketan Engineering Services Pvt. Ltd. has filed an application u/S.18(1) of the Micro Small and Medium Enterprises and

Development Act, 2006 before the MSME Commissionerate, Gandhinagar. The application pertains to certain contractual obligations inter se between

the claimant, respondent No.5 and the petitioner M/s.Samrat Furnaces Pvt. Ltd.

According to the claimant, a work order was executed on 9.12.2010

by which the petitioner had placed an order for fabrication and erection of 250 MT and 300 MT furnaces at M/s. L & T Special Steels and Heavy

Forgings Pvt. Ltd., Hajira. The petitioner illegally terminated the order. The case of the respondent No.5 claimant before the arbitral tribunal is that the

petitioner has to pay certain outstanding amount. It is in this context, an application u/S.18 raising a claim is filed by the respondent No.5 before the

arbitrator. To this application for claim by the respondent No.5, on conciliation having failed, the petitioner filed an application raising several

preliminary objections which, the arbitral tribunal impugned award / order has rejected. The petition is filed challenging the same.

3. Heard Mr.Hemendra P. Baxi, learned counsel for the petitioner, Mr.Vinay D. Bairagar, learned counsel for respondent No.5 â?" M/s. Ketan

Engineering, Mr.G.M. Amin, learned counsel for respondent No.3 - GCCI and Ms.Jhala, learned AGP for the respondent â?" State through Video

Conferencing.

4. The learned counsels for the respective parties have also filed their written arguments.

5. Perused the written arguments. Mr.Baxi, learned counsel for the petitioner has raised several contentions. In brief, they are as under:

(i) According to Mr.Baxi, there is no evidence to suggest that the respondent No.5 â?" original claimant is registered as a small enterprise within the

meaning of Sec.2(m) of the MSME Act, 2006. According to him, it is not even a â?"supplierâ?" within the meaning of Sec.2(n) of the Act. According

to him, therefore, the respondent No.5, claimant could not have approached the arbitral tribunal by filing an application u/S.18 of the Act. Reliance is

placed on the decision dated 18.1.2019 in Special Civil Application No.6265/2018 in the case of M/s. Easun Reyrolle Limited v. M/s. NIK SAN

Engineering Co. Ltd. Mr.Baxi has further relied on the following decisions. Reference of the same is made in written submissions without supplying

any copies to the Court.

* M/s.Carvel Shipping Services P. Ltd. v. M/s. Premier Sea Food Exim P. Ltd. decided on 29.10.2018 by Hon'ble Supreme Court in Civil Appeal

No.10800-10801 of 2016.

* Surat Vankar Sahakar Sangh Ltd. v. Gayatri Combins decided by Division

Bench of this Court vide order dated 11.2.2010 passed in Special Civil Application No.10291 of 2009.

* 1993 (1) GLH 1004 (Guj)

* Laws (SC) 2004e 488

* Harmony Innovations Shipping Ltd. v. Max India Ltd. reported in 1993(1) GLH 1004.

* Max India Ltd.

* Balkrishna Ram v. Union of India, 2020 (SC)

* Canara Bank v. N.G. Subbaraya Setty Laws (SC) 2018 4 100

* Shree Bhagwati Steel Rolling Mills v. Commissioner of Central Excise Laws (SC) 2015 11 43.

(ii) The other submission raised by Mr.Baxi is that it is only the High Court or Supreme Court who can appoint an arbitrator u/S.11 of the Arbitration

Act and, therefore the council nor the GCCI can appoint an arbitrator.

(iii) Mr.Baxi submits that neither the original nor the certified copy of the arbitration agreement was produced as required by Sec.8 of the Arbitration

Act. In the alternative, he submitted that even if there is an agreement, it is unstamped and unregistered and, therefore, inadmissible. As a part and

parcel of this agreement, Mr.Baxi submitted that there is an arbitration agreement and there is an arbitration clause. According to Mr.Baxi, once there

is an arbitration clause, it forms part of the agreement. In accordance with Section 7 of the Arbitration Act, there was a specific intention to refer the

dispute to the arbitration. Reliance is placed on a decision in the case of M/s.Carvel Shipping Services P. Ltd. (Supra). Reliance is also placed on a

decision in the case of Surat Vankar Sahakar Sangh Ltd. (Supra).

(iv) According to Mr.Baxi, the MSME Act would not apply in view of the arbitration agreement and, therefore, by law of the international chamber of

commerce, and in view of the applicability of the Arbitration Act, the venue has to be at Mumbai and not Ahmedabad. Reliance is placed on the

decision in the case of Harmony Innovations Shipping Ltd. (Supra) reported in 1993(1) GLH 1004.

(v) Mr.Baxi would further submit that since a preliminary objection had been raised which goes to the root of the matter and is a pure question of law,

a writ petition under Article 226 of the Constitution of India is maintainable. He

submitted that the fact that the order of the arbitral tribunal rejecting his preliminary contention is an order on an application filed by the claimant and since the order is without jurisdiction, a writ petition under Article 226 of the Constitution of India is maintainable.

6. Having perused the written submissions, I need not extensively refer to these written submissions which have extensively been filed referring various other judgments, in view of the fact that in a nut shell, these were the contentions raised by the learned counsels who appeared before the Arbitrator.

7. Mr.Vinay D. Bairagar, learned counsel has appeared for respondent No.5 "original claimant and has also filed his written arguments. His submissions are as under:

(i) Mr.Vinay D. Bairagar, learned counsel for respondent No.5 supports the order passed by the arbitral tribunal. He has also filed his reply to the petition and submits that there is a preliminary objection with regard to the maintainability of the petition under Article 226 of the Constitution of India.

He submitted that when an order has been passed deciding preliminary objections by the arbitrator, a petition under Article 226 of the Constitution of India is not maintainable. Reliance is placed on a decision of this Court in the case of GTPL Hathway Ltd. v. Strategic Marketing Ltd. in Special Civil Application No.4524 of 2019.

(ii) A preliminary objection has been raised by Mr.Bairagar as to the maintainability of the petition and reliance is placed on the decision in the case of GTPL Hathway Ltd. (Supra). Paragraph No.14 of the decision reads as under:

14. In view of aforesaid conspectus of law, and considering the provisions of the Act, 1996, the order passed by the Arbitration Tribunal during the course of Arbitration cannot be challenged by the petitioner under Articles 226 and/or 227 of the Constitution of India when the constitution bench of the Apex Court in case of M/s. S.B.P. and Co. v. M/s. Patel Engineering Ltd. and Anr.(supra) has disapproved the stand that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Articles 226 and 227 of the Constitution of India and has categorically held that such intervention by the High Court is not permissible. The Apex Court in case of M/s. Deep Industries Limited v. Oil and Natural Gas

Corporation (supra) has held that it is also important to notice that the seven Judge Bench has referred to the object of the Act being that of

minimizing judicial intervention and that this important object should always be kept in the forefront when a 227 petition is being disposed of against

proceedings that are decided under the Act, 1996 and that the policy of the Act is speedy disposal of arbitration cases as the Act, 1996 is 'self-contained'

Code and deals with all the cases.â??

Reading the paragraphs of the aforesaid judgments it clearly transpires that when a preliminary objection has been decided by an arbitral tribunal, a

petition under Article 226 of the Constitution of India is not maintainable. Even on this count, the petition, therefore is dismissed.

(iii) In respect of the submission with regard to the jurisdiction of the tribunal so arbitrator to decide the issue, Mr. Bairagar submitted that the

contention that the claimant is not registered as a supplier / is a manufacturer is taken up for the first time before this Court. He drew my attention to

a specific averment made in the statement of claim wherein it is pointed out that the respondent No. 5 "claimant is registered as an MSME under

the provisions of the MSME Act, 2006. The petitioner submitted to the jurisdiction of the tribunal, participated in the proceedings did not specifically

object to the fact that the claimant was a registered MSME and the contention now raised is clearly an after thought.

(iv) To the contention of Mr. Baxi that there is no arbitration agreement and if there is any, it is not stamped and, therefore, no arbitration can be

raised, Mr. Bairagar drew my attention to Sec. 18 and 24 of the MSME Act and submitted that there is deem-in-fiction on reading Section 18 which

suggest that irrespective of an arbitration agreement, after the reference, the Arbitration Act is deemed to apply and, therefore, the argument of

Mr. Baxi must be negated. Mr. Bairagar further submitted that the judgment relied upon by Mr. Baxi in the case of M/s. Easun Reyrolle Limited

(Supra) is not applicable to the facts of the case because in that case, the claimant was not registered under the MSME Act. It was in the facts of

that case that it was held, the claimant was not entitled to approach MSME council. In the present case, it is evident that the claimant "respondent

No. 5 was a registered MSME.

(v) To the contention of Mr. Baxi that the GCCI had no jurisdiction to appoint an

arbitrator, Mr.Bairagar submitted that the present arbitration is a statutory arbitration reading Section 18 of the MSME Act and it cannot be compared to the normal arbitration proceedings invoked under the Arbitration Act.

(vi) Inviting my attention to various judgments viz.; in the case of [1] Secur Industries Ltd. v. M/s Godrej & Boyce Mfg. Co. Ltd. & Anr reported in 2004(3) SCC 447, [2] Paper and Board Converters v. UP State, MSME reported in 2014 SCC Online 582 5and [3] Principal Chief Engineer v.

M/s.Manibhai & Brothers & another reported in 2016 GLR 3349, Mr.Bairagar would submit that it is no longer in doubt that the MSME Act applies, that reading Sec.18 particularly Section 18(3) irrespective of arbitration agreement, there is a deem in fiction in the Act and, therefore, the arbitrator has committed no error in passing the impugned order.

8. Further, Gujarat Chamber of Commerce and Industries, respondent No.3, written submissions have been filed by Mr.G.M. Amin. His contentions are as under:

(i) Preliminary objection is that the arbitrator by name cannot be joined as party respondent in the proceedings.

(ii) He submitted that the MSME Council is constituted under the provisions of the Micro Small and Medium Enterprises Development Act, 2006. The

GCCI â?" ADRC is an institutional arbitrator. In case conciliation fails, the council itself can undertake arbitration or refer the dispute to an

institutional arbitrator. It was in accordance with Sec.18 of the Act that the GCCCI was appointed as an institutional arbitrator.

(iii) Drawing attention of the Court to the provisions of the Arbitration Act, particularly Section 7 read with Section 24 of the MSME Act, Mr. Amin

also relied on the decision so relied upon by Mr.Bairagar in the case of Principal Chief Engineer v. M/s.Manibhai & Brothers & another reported in

2016 GLR 3349 and in the case of Secur Industries Ltd. v. M/s Godrej & Boyce Mfg. Co. Ltd. &Anr reported in 2004(3) SCC 44. 7He submitted

that in view of the provisions of the MSME Act the dispute can be referred to the alternate dispute resolution center.

(iv) He submitted that there is a distinction between domestic arbitration and statutory arbitration. This being a statutory arbitration, it is under that

context that the MSME Act is applicable. Relying on a decision in the case of

Mackintosh Burn Limited v. Micro and Small Enterprises Facilitation

Council & Ors of the Calcutta High Court, Mr.Amin would submit that reading the provisions of Sec.18 and others that an arbitration agreement

cannot dilute the statutory right of the parties of making a reference u/S.18 of the MSME Act.

9. Having considered the arguments raised by learned advocates for the respective parties, I need to deal with these contentions.

10. Having perused the memo of the petition together with the Annexures thereto, viz.; the copy of the claim and reply filed before the arbitral

tribunal what is evident is that, the fact that the claimant is an MSME is not disputed by the petitioner before the tribunal / arbitrator. The contention

that the claimant is not the supplier within the meaning of Sec.2(m) and that there is no evidence of the claimant being so registered is raised for the

first time before this Court. Mr.Baxi may be right in his submission that a question of law can be raised at any time. However, the present issue of the

claimant not being an MSME is going to the root of the matter which has not been raised by the petitioner before the arbitrator. A specific and clear

positive averment with the date of registration was given by the respondent No.5 "claimant which has not been denied by the petitioner. The

contention that the respondent No.5 is not a micro and small enterprise and, therefore, raised clearly as an afterthought, after having participated in the

proceedings at a belated stage and after having also participated before the conciliation proceedings i.e. the MSME council where the conciliation

failed and the dispute was referred to arbitration. The contention of Mr.Baxi is misconceived and, therefore, stands rejected.

11. A two fold contention has been raised by Mr.Baxi relying on the provisions of Secs.7 and 11 of the Arbitration Act to contend that the dispute

could have been referred to the arbitrator appointed under the Arbitration Act and only the High Court and the Supreme Court could have appointed

such arbitrator. In support of his contention, he also submitted as a part and parcel thereof that there was no arbitration agreement and if there was

any, it was unstamped and, therefore inadmissible in evidence. Having perused the order under challenge and referring thereto, it has come to my

notice that the arbitrator has considered the provisions of Secs.18 and 24 of the MSME Act.

12. Reading Sec.18(3) of the MSME Act makes it clear that the conciliation and the arbitration proceedings have to be conducted by the MSME

council. The Section makes it clear that where the conciliation initiated under sub section (2) is not successful and is without any settlement, the

council itself takes up the dispute for arbitration or refer it to any Institution or Center providing Alternate Dispute Resolution Services for such

arbitration. The sub section continues and reads that the provisions of Arbitration and Conciliation Act shall then apply to the disputes as if the

arbitration was in pursuance of an arbitration agreement referred to in sub section (1) of Sec.7 of that Act. Reading the sub section (3) therefore

makes it clear that irrespective of an arbitration clause or an arbitration agreement, once conciliation is failed and on a dispute being referred to

arbitration, the proceedings before the arbitrator appointed by the MSME council shall be in accordance with the provisions of the Arbitration Act. In

other words, there is a deem in fiction as rightly pointed out by the learned arbitrator that the provisions of the Arbitration Act would apply as if there

is an arbitration agreement. The contention of Mr.Baxi that there has to be an arbitration agreement, therefore, stands negated.

12.1 Even otherwise, if section 18, sub section (1) is referred to, the section begins with a non obstante clause and says that notwithstanding anything

contend in any other law for the time being in force. Any part to a dispute may with regard to any amount due under Section 17 make a reference to

the MSME council. Even Section 24 of the MSME Act provides that the provisions of Sec. 15 to 23 have an overriding effect. Secs. 18 and 24 of the

Micro Small and Medium Enterprises Development Act are reproduced as under:

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 subsection (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any

institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation

and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under subsection (2) is not successful and stands terminated without any settlement between the parties, the

Council shall either itself take up the dispute for arbitration or refer to it 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 subsection (1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre

providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the

supplier located within its jurisdiction and a buyer located anywhere in India.

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

19. APPLICATION FOR SETTING ASIDE DECREE, AWARD OR ORDER:

No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate

dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier)

has deposited with it seventyfive per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed

by such court: Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of

the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case subject to such conditions as it

deems necessary to impose.

20. ESTABLISHMENT OF MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL:

The State Government shall, by notification, establish one or more Micro and Small Enterprises Facilitation Councils, at such places, exercising such

jurisdiction and for such areas, as may be specified in the notification.

21. COMPOSITION OF MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL:

The Micro and Small Enterprise Facilitation Council shall consist of not less than three but not more than five members to be appointed from among

the following categories, namely:-

(i). Director of Industries, by whatever name called, or any other officer not below the rank of such Director, in the Department of the State

Government having administrative control of the small scale industries or, as the case may be, micro, small and medium enterprises; and

(ii) one or more officebearers or representatives of associations of micro or small industry or enterprises in the State; and

(iii). one or more representatives of banks and financial institutions lending to micro or small enterprises; or (iv) one or more persons having special

knowledge in the field of industry, finance, law, trade or commerce 2. The person appointed under clause (i) of subsection (1) shall be the chairperson

of the Micro and Small Enterprise Facilitation Council 3. The composition of the Micro and Small Enterprise Facilitation Council, the manner of filling

vacancies of its members and the procedure to be followed in the discharge of their functions by the members shall be such as may be prescribed by

the State Government 24. The provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other

law for the time being in force.â??

13. Even, considering the decision in the case of Principal Chief Engineer (Supra) in Paragraph No.6.1, the Division Bench of this Court has

considered the provisions of Secs.15 to 23 of the Act and categorically held while relying on a decision of the case SBP & Co. v. Patel Engineering

Ltd. reported in 2005(8) SCC 618 that Secs.18 and 24 provide for a special mechanism of appointing an arbitrator and after such an application has

been filed and the council itself acts as an arbitrator, an arbitrator appointed under the provisions of Sec.8 of the Arbitration Act cannot entertain any

application. Paragraph No.6.1 of the decision in the case of Principal Chief Engineer (Supra) is reproduced herein and reads as under:

â??6.1. It cannot be disputed that the Act 2006 is a Special Act and as per Section 24 of the Act, 2006, the provisions of sections

15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Therefore, Section 18

of the Act, 2006 would have overriding effect or any other law for the time being in force including Arbitration Act, 1996 and therefore, if there is any dispute between the parties governed by the Act, 2006, the said dispute is required to be resolved only through the procedure as provided under Section 18 of the Act, 2006. Thus, considering Section 18 of the Act, 2006, after conciliation has failed as per Section 18(2) of the Act, 2006, thereafter as per sub-section (3) of Section 18, 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 to it 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. In the present case, therefore, after unsuccessful conciliation which was conducted as per sub-section (2) of Section 18 the Council shall have jurisdiction to take up dispute for arbitration. Therefore, once the Council itself is acting as an Arbitrator in that case, thereafter the Council who acts as an Arbitrator has no authority and / or jurisdiction to entertain the application under Section 8 of the Arbitration Act, 1996. Section 8 of the Arbitration Act, 1996 would be applicable in case where any proceedings are pending before the "Judicial Authority". "Judicial Authority" is not defined in the Arbitration Act, 1996. However, in the case of *SBP & Co. vs Patel Engineering Ltd* and another reported in (2005) 8 SCC 61,8 it is observed by the Hon'ble Supreme Court that "Judicial Authority" as such is not defined in the Act. It would certainly include the Court as defined in Section 2(e) of the Act and would also, in our opinion include other courts and may even include a special Tribunal like the Consumer Forum. Even in the case of *Morgan Securities and Credit Pvt Ltd* (supra), the Hon'ble Supreme Court has observed that in its ordinary parlance "Judicial Authority" would comprehend a Court defined under the Act but also courts which would either be a Civil Court or other authorities which perform judicial functions or quasi judicial functions."

14. Even reference can be made to the decision of the Hon'ble Supreme Court in the case of *Secur Industries Ltd.* (Supra) wherein also paragraph

Nos.8 and 9 when read, suggest that there is a deem in fiction which expressly incorporated in the provisions of the MSME Act and by legal fiction

disputes referred to it are deemed to be proceedings under the Arbitration Act.

14.1 Perusal of paragraph Nos.11 to 13 of the decision of the arbitrator impugned indicate that the learned arbitrator has extensively discussed these decisions and I do not find any reason to fault such findings of the arbitrator.

15. To the contention of the petitioner that the GCCI or its president has no legal authority to appoint an arbitrator and having considered the

submission of Mr.G.M. Amin in this context, it is rightly held by the arbitrator that the GCCI has to designate somebody as an arbitrator. GCCI is a

body which provides an Alternative Disputes Resolution Service. Such an authority or a body, as a part of GCCI - ADRC appoints an arbitrator who

then takes over the arbitral proceedings. It is a recognize institution constituted for the purpose of alternate disputes resolution council maintaining a

panel of arbitrators and the present arbitrator who has passed the impugned order / award is one such arbitrator appointed by the GCCI.

15.1 To the contention raised by Mr.Baxi regarding the unstamped agreement and / or there is no agreement which is produced on record, I have

extensively dealt with these submissions earlier. While dealing with the provisions in context of the MSME Act and the Arbitration Act and the

judgment of this Court in the case of Principal Chief Engineer (Supra) clearly enunciates that legal position that is and when there is a provision of

MSME Act that itself is applicable.

16. Fruitful reliance also can be placed on the decision of Calcutta High Court in the case of Mackintosh Burn Limited (Supra) wherein a similar

contention was raised. Para Nos.12 to 17 of that decision need to be reproduced which read as under:

â??12. Section 18 (1) of the Act of 2006 opens with a nonobstante clause. It requires a reference to a dispute to the Micro and Small Enterprises

Facilitation Council notwithstanding anything contained in any law for the time being in force. Section 20 of the Act of 2006 contemplates the

establishment of such Council. The composition of such Council is laid down in Section 21 of the Act of 2006. Section 18(2) of the Act of 2006

mandates that, the Council upon receipt of a reference under subsection (1) would undertake conciliation by itself 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.

The provisions of Sections 65 to 81 of the Act of 1996 get attracted in such an eventuality. Section 18(3) contemplates that, in the event the

conciliation is not successful, the Council would take up the dispute for arbitration or refer it to any institution or centre for arbitration. In such an

eventuality the provisions of sections of the Act of 2006 is mandated to apply. Section 18(4) of the Act of 2006 mandates that, notwithstanding

anything contained in any other law for the time being in force, the institution or the Centre identified by the Council shall have jurisdiction to act as

arbitrator or conciliator.

13. The Act of 2006 contemplates statutory arbitration. The Act of 2006 allows a party that is governed by it to apply to the Council constituted under

the Act of 2006 to first conciliate and then arbitrate on the disputes between it and the other parties.

14. Section 2(4) of the Act of 1996 is as follows: 2(4). This Part except subsection (1) of section 40, sections 41 and 43 shall apply to every arbitration

under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment

were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made

thereunder.

15. Section 2(4) of the Act of 1996 stipulates that, the provisions of the first part of the Act of 1996 will apply to a statutory arbitration as if there was

an arbitration agreement between the parties. However, the first part of the Act of 1996 will not apply in the event there is a conflict between the

provisions of the Act which enforces statutory arbitration and the provisions of the Act of 1996.

16. There are fundamental differences between the settlement of dispute mechanism provided by the Act of 2006 and the Act of 1996. One of such

differences is that, the Council has to undertake a mandatory conciliation before an arbitration which is not so under the Act of 1996. The second is

that, the Council or the centre or institution identified by it will undertake the arbitration in the event of an unsuccessful conciliation, notwithstanding

anything contained otherwise. The Act of 1996 allows resolution of the disputes

by the agreed forum. The Act of 2006, therefore, overrides the chosen forum for settlement of the disputes to that extent. The third difference is that, the Act of 2006 mandates that, an application for setting aside of decree or award or order made by the Council or the institution or centre identified by the Council will not be entertained by any Court unless the appellant not being the supplier has deposited with it 75% of the amount in terms of the decree, award or the order appealed against. Such is not the case under the provisions of the Act of 1996. The Act of 1996 does not mandate a Court not to entertain a challenge to an award or an order or decree without a specified pre deposit.

17. Section 24 of the Act of 2006 mandates that, sections 15 to 23 of such Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 18 of the Act of 2006 vests a party with a statutory right to make a reference to the Council. Such right is higher than an arbitration agreement. In any event, an arbitration agreement will not dilute the statutory right of a party to make a reference under Section 18 of the Act of 2006 or prevent it from doing so. Once such a reference is made the conciliation and arbitration must be had in terms of the Act of 2006 and by the forum designated by it rather than the forum under the arbitration agreement. In view of Sections 18(4) and 24 of the Act of 2006 read with Section 2(4) of the Act of 1996, the arbitration clause contained in the agreement between the parties stands superseded by the statutory rights granted by the Act of 2006." It finds that, when there exists an arbitration agreement between the parties and one of such party to the arbitration agreement is a legal entity within the meaning of the Act of 2006, the Council established under the provisions of the Act of 2006 or any institution or centre identified by it has the jurisdiction to arbitrate such disputes on a request being received by such Council for such purpose.â??

The contention, therefore, raised by Mr.Baxi needs to be negated.

17. For the aforesaid reasons, I do not find any merit in the petition and, the petition deserves to be dismissed and the same stands dismissed accordingly.