

Delhi High Court

Ge T&D; India Limited vs Reliable Engineering Projects ... on 15 February, 2017

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ O. M. P. (COMM) 76/2016

Reserved on: January 17, 2017

Date of decision: February 15, 2017

GE T&D INDIA LIMITED Petitioner
Through: Mr. Tejas Karia, Mr. Surjendu Sankar Das and
Mr. Siddharth Kochhar, Advocates

versus RELIABLE

ENGINEERING PROJECTS
AND MARKETING Respondent
Through: Dr. Amit George, Advocate/Amicus Curiae.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

% 15.02.2017 IA No. 4177/2016 (Seeking waiver of deposit)

1. GE T&D India Limited [earlier known as Alstom T & D India Limited (hereafter 'Alstom')] has filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996 (Act) challenging an Award dated 22ND November, 2015 passed by the Facilitation Council, Facilitation Cell, Kanpur (hereinafter FC) in the disputes between Alstom and the Respondent, Reliable Engineering Projects and Marketing (REPM).

2. It is pointed out at the outset by the Petitioner that the impugned Award comprises of two awards passed by the FC, one pursuant to the order dated 29TH June, 2015 (Award Part-I) and the other pursuant to the order dated 13TH August, 2015 (Award Part-II).

Background facts

3. REPM is a sole proprietorship concern of which Mr. Vijendra Kumar Verma is the Sole Proprietor. It has its office in Ghaziabad, Uttar Pradesh. The Government of India awarded the work of the installation of the Jhajjar Power Plant to Aravali Power Company Pvt. Ltd. ('Aravali'), a joint venture of NTPC Ltd., Haryana Power Generation Company Ltd and Indraprastha Power Generation Company Ltd. Aravali by a contract dated 15TH January, 2008 awarded Alstom a turnkey project for erection and commissioning of Power Transformer Package for Indira Gandhi Super Thermal Power Project (IGSTPP), Jhajjar in the Aravali Super Thermal Power Project.

4. On 6th January, 2009, REPM sent a letter to Alstom along with a brief introduction of the Respondent seeking its enlisting as an approved sub- contractor for the Principal Project. Alstom is stated to have engaged REPM for the receipt, unloading, storage, handling at site, installation, in plant transportation at site, insurance, installation testing and commissioning, including carrying out guarantee tests for the complete power package for IGSTPP (hereafter referred to as Works).

5. REPM submitted a quotation for the Works to Alstom on 2ND June, 2009. In response thereto, on 23RD July, 2009, Alstom issued a Letter of Intent to REPM. On 8th September, 2009, Alstom issued a purchase order (PO) bearing reference no. PTI/T-6748/48-52/SEC-II (First PO) for a sum of Rs.

1.2 crores. According to the terms and conditions of the First PO, the completion period was 24 months from the date of site mobilisation. However, Alstom was not to pay the overrun charges. The other terms and conditions were contained in Annexure-B to the PO. Admittedly, the said conditions did not incorporate any clause for referral of disputes between the parties arising out of the First PO to arbitration.

6. Alstom states that due to a change in its SAP system, the First PO was re- issued against the balance/remaining works by a Second PO dated 27TH November, 2012. REPM states that it never received the Second PO. What is significant about the Second PO is that it contains an arbitration clause (Clause 25) which reads as under:

"All or any of the disputes/differences arising between the parties with respect to the Contract shall be referred to arbitration by a sole arbitrator mutually agreed by the parties. The arbitration shall be conducted as per the Arbitration and Conciliation Act 1996, as may be amended from time to time. The venue of the arbitration shall be Delhi and the courts in Delhi shall have exclusive jurisdiction."

7. A meeting took place between the parties on 1ST May, 2013 for sorting out the issues concerning the aforementioned PO. The Minutes of the Meeting (MoM) dated 1ST May, 2013, a copy of which has been placed on record, states in para 6 that "claim for overrun charges shall be submitted jointly by REPM and Alstom to NTPC after completion of the work." ANNEXURE-1 to the said MoM listed out the documents required to be submitted by REPM. According to Alstom, the additional works of the value of Rs. 3,30,000 were agreed upon thereafter. The Second PO was amended to incorporate the said additional works on 31ST May, 2013 wherein Line Item No. 20 was added. According to Alstom, on 4th June, 2013, the Second PO was further amended to delete certain Line Items and a single Line was added for the same value.

8. A second meeting took place between the parties on 28 th December, 2013. The said MoM has also been placed on record. This recorded the history of the transaction and enclosed a reconciliation statement as ANNEXURE-1.

9. In the meanwhile, REPM applied for registration as a Supplier under the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act). The said registration was granted on 4th April, 2012 but the date of commencement of the activity was indicated therein as 1ST February,

2009.

10. REPM approached the FC on 19TH February, 2015 setting out the entire background of the case and laying a claim against Alstom for the balance amounts due under the First PO for a sum of RS.5,81,08,100 inclusive of interest up to 31ST January, 2015.

Proceedings before the FC

11. The FC passed an order on the said claim on 20th February, 2015 registering it as Claim Petition No. 5 of 2015 and issuing notice to Alstom. On 25TH March, 2015, Alstom wrote to the FC seeking two weeks time to file a reply. An order was passed by the FC on 10TH April, 2015 directing that Alstom should submit its written statement within two weeks. On 20TH April, 2015, Alstom wrote to the FC seeking a further opportunity for appropriate representation before the FC and requesting that the matter should be taken up for conciliation under Section 18 of MSMED Act.

12. In its order dated 11TH May, 2015, the FC noted that no conciliation proposal has yet been brought by Alstom. In the circumstances, it directed Alstom to invite REPM for conciliation. A detailed reply was sent by Alstom on 6th June, 2015 which was deliberated upon by the FC. An order was passed by the FC on 29TH June, 2015 in which it was inter alia noted as under:

"When the above project was delayed, opposite no. 1 ordered petitioner for 'Digging work', besides above works, during delayed period. Opposite party agreed to pay Rs. 26,29,375/- to opposite party in written in the meeting of M.O.M. which was held on date 01.05.2013, but till now, no payment has been made."

13. The FC also noted that Alstom had not abided by the settlement arrived at between the parties on 28TH December, 2013. The FC proceeded to make an Award requiring Alstom to pay REPM Rs. 26,29,375/- for the excess digging work.

14. This led to Alstom to make another representation on 1ST July, 2015 to the FC requesting it for providing an opportunity of being heard. This was responded to by REPM by its letter dated 14th July, 2015. Another submission was presented by Alstom before the FC on 25TH August, 2015 placing on record certain documents. The impugned Award was thereafter passed on 22ND November, 2015 requiring Alstom to pay to REPM Rs. 2,24,23,454/- towards interest.

15. The findings as far as Issue No. 1 WERE that the FC was competent to act as an Arbitral Tribunal (AT) notwithstanding the arbitration clause in the contract between the parties. It was noted that Alstom had till then not invoked the arbitration clause.

16. Issue No. 2 WAS regarding the liability of Alstom to pay REPM Rs.1,38,52,500/-. The FC noted that Annexure -2 and Annexure-3 (i.e., the MoMs dated 1ST May, 2013 and 28TH December, 2013 respectively) were the backbone of the dispute and that a representative of Alstom was present at the meeting on 28TH December, 2013 when the MoMs were executed. In that view of the matter, the said claim was allowed.

17. Issue No. 3 concerned the payment of interest and the FC held that Alstom was liable to pay interest under Section 16 of the MSMED Act.

Proceedings in this Court

18. When the present petition was filed by Alstom, it was accompanied by an application being IA No.4177/2016 seeking waiver of the deposit as required in terms of Section 19 of the MSMED Act, which reads as under:

"19. Application for setting aside decree, award or order.- No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case subject to such conditions as it deems necessary to impose."

19. It is pointed out that in terms of orders dated 29 th June, 2015 and 13TH August, 2015, Alstom was required to pay REPM Rs. 4,08,56,470/-. In terms of Section 19 of the MSMED Act, if Alstom sought to challenge the Awards, then such challenge would not be entertained by the courts until Alstom deposited 75% of the awarded amount. It is pointed out that REPM had obtained registration as supplier under the MSMED Act only on 4th April, 2012. The PO was issued in favour of REPM way back on 8th September, 2009. Therefore, REPM could not take advantage of the provisions of the said Act. It is contended that the MSMED Act does not apply at all. Further, it is submitted that the FC could not proceed with the matter in view of the arbitration clause between the parties in the contract.

20. On hearing the petition on 1ST April, 2016, notice was issued in IA No. 4177/2016 filed under Section 19 of the MSMED Act seeking exemption which was accepted on behalf of the Respondent. At the hearing on 18TH April 2016, the Court directed the Respondent to seek adjournment in Execution Case Nos. 58 and 61/2016 filed before the District Court, Kanpur, U.P. That interim order has continued since then.

21. On 1ST December, 2016, the Court condoned the delay in filing of the petition in IA NO.12113/2016. On the same date, the Court allowed the change in the cause title of the Petitioner to GE T&D India Limited. On that date, the Court further noted that the Respondent, Mr. Vijender Kumar Verma, who was appearing in person required the assistance of a lawyer. Accordingly, Dr. Amit George, Advocate was requested to appear as amicus curiae on the side of the Respondent and assist Mr. Verma in presenting the case before the Court.

22. The Court has heard detailed arguments of Mr. Tejas Karia, counsel appearing for the Petitioner and Dr. Amit George, amicus curiae, for REPM. Both the parties have also filed their respective notes of written arguments.

23. The arguments centred around the applicability of the MSMED Act since that in turn would decide the fate of the IA No. 4177/2016 filed by the Petitioner seeking waiver of the deposit. This judgment, therefore, is confined to the issue of applicability of the MSMED Act.

Submissions on behalf of the Respondent

24. The submissions of Mr. Tejas Karia, learned counsel appearing for the Petitioner, were as under:

(i) Under Section 15 of the MSMED Act, the requirement that the buyer should make payment by the appointed date was only where any supplier, supplies any goods or renders any services to any buyer...". Further, under Section 17 of the MSMED Act, the liability of the buyer was attracted when the goods were supplied or services were rendered by the supplier. Reference could be made to the FC under Section 18 only with regard to any amount under Section 17.

(ii) The definition of supplier under Section 2 (n) is "a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of Section 8..." Under Section 2 (n) (iii), the definition includes any company, cooperative society, trust or body.

(iii) Under Section 8 (i), there are two situations under which a person seeks registration as a supplier. Under Section 8 (i), it could be a person who intends to establish a micro or small enterprise who has, prior to establishing such enterprise, filed the memorandum with the authority specified by the Central or State Government. The second situation is contemplated by the proviso to Section 8(i) which applies to a person who has already established a small scale industry prior to the commencement of the MSMED Act. Such a person is required to file the memorandum within 180 days from the date of commencement.

(iv) REPM commenced its activities prior to the MSMED Act coming into force and did not file memorandum till much later. Therefore, on the date of performance of the contract of supply, REPM was not a supplier within the meaning of Section 2(N) of the Act and, therefore, could not take advantage of the provisions of Section 17 read with Section 18 of the MSMED Act. In other words, the registration was not retrospective.

(v) Extensive reliance was placed on the decision dated 24TH July, 2015 of the Madhya Pradesh High Court in Writ Petition No. 19319/2014 [M/s Frick India Ltd. v Madhya Pradesh Micro and Small Enterprises Facilitation Council] where, in similar circumstances, it was held that the aspect of registration under the MSMED Act did

not act retrospectively. Where the contract was performed prior to coming into force of such registration, then an entity on the basis of subsequent registration could not have availed the benefit of the MSMED Act.

(vi) Reliance was also placed on the decision of the Bombay High Court in Faridabad Metal Udyog Pvt. Ltd. v Anurag Deepak 2013 SCC OnLine Bom 1789; Hindustan Wires Limited v. R. Suresh 2013 SCC OnLine Bom 547; Steel Authority of India Ltd. v. The Micro, Small Enterprises Facilitation Council through Joint Director [Writ Petition No. 2145/2010].

(vii) The First PO dated 8th September, 2009 did not contain the arbitration clause but the subsequent PO dated 27TH November, 2012 did contain such a clause and, therefore, was in fact in continuation of the earlier PO. The said arbitration clause would govern the parties and, therefore, resort to the MSMED Act was legal for that purpose. The Act was a Special Act and took precedence over the MSMED Act. Reliance was placed on the decision of Bombay High Court in M/S. Girnar Traders v. State Of Maharashtra (2011) 3 SCC 1 to urge that in light of the Act, the claim had to be made only before the Arbitrator appointed under the agreement as it was to take precedence over the remedy under the MSMED Act.

Submissions on behalf of the Respondent

25. Countering the above submissions, Dr. Amit George, amicus curiae, appearing on behalf of the Respondent referred to Section 1 (2) of the MSMED Act which makes it explicit that it came into force on the date appointed by the Central Government for that purpose i.e., 2ND October, 2006. The MSMED Act was in fact in continuation of the earlier Act i.e., The Interest on Delayed Payments under Small Scale and Ancillary Industrial Undertakings Act, 1993 (1993 Act) which was repealed by Section 32(1) of the MSMED Act. In any event, both the POs in the present case were issued subsequent to the coming into force of the MSMED Act.

26. Dr. George submitted that the Court did not have discretion to waive the 75% deposit under Section 19 of the MSMED Act. He submitted that in Goodyear India Ltd. v. Norton Intech Rubbers Pvt. Ltd. (2012) 6 SCC 345, the Supreme Court was categorical in this regard. He also placed reliance on the decision of Purbanchal Cables & Conductors Pvt. Ltd. v Assam State Electricity Board & Anr. (2012) 7 SCC 462. Dr. George submitted that under Section 15 of the MSMED Act, the focus was on supply of goods and rendering of services and as long as a person satisfied these two requirements, he was recognized as a supplier for the purposes of the MSMED Act. According to Dr. George, it was never in doubt even from that point of view of the Petitioner that the First PO dated 8th September, 2009 which was in the process of being executed did not contain an arbitration clause and the supply pursuant thereto was continued even under the Second PO which made an explicit reference to the First PO. Dr. George also pointed out that as part of Alstoms representation to the FC on 25TH August, 2015, it had in fact enclosed a copy of machine generated PO dated 24TH November, 2009 which in paragraph 8 appended in the General Conditions of Contract (GCC). Clause 8 of this GCC stated that all disputes and differences arising out of the contract would be

referred to an arbitrator in Calcutta failing which it would be referred to Indian Chambers of Commerce, Calcutta whose decision would be final. He pointed out that this machine generated PO was obviously an embarrassment to Alstom since it required arbitration to take place in Calcutta. He pointed out that Alstom made a reference even in this PO to the First PO dated 8th September, 2009. Likewise, the minutes of the meeting dated 28TH December, 2013 also referred explicitly to the First PO dated 8th September, 2009.

27. Dr. George relied upon the decision in *Asiatic Rubro Complex v Kerala Micro & Small Enterprises Facilitation Council* ILR 2008 (2) Kerala 281; *Bharat Heavy Electricals Ltd. v State of Uttar Pradesh* 2014 (4) AWC 3543; *Paper & Board Convertors, Agra v Uttar Pradesh State Micro & Small Enterprises Facilitation Council, Kanpur* 2014 (5) AWC 4844; *Principal Chief Engineer v Manibhai & Brothers (Sleeper)* AIR 2016 Gujarat 151; *Central Electricity Supply Utility of Odisha v Union of India*. [W.P.(C) No.1213/2016 decided on 23RD March, 2016] and *Welspun Corp. Ltd. v The Micro & Small, Medium Enterprises Facilitation Council, Punjab* (2012) 166 PLR 195 to urge that Section 18 of the MSMED Act would have an overriding effect. He also placed reliance on the decision in *Waman Shrinivas Kini v. Ratilal Bhagwandas & Co.* AIR 1959 SC 689 to urge that a statute would override the contract. Relying on the decision in *Life Insurance Corporation of India v D.J. Bahadur* (1981) 1 SCC 315, he submitted that being a special statute it is the MSMED Act which should apply. In this context he also relied upon the decisions in *Snehadeep Structures Pvt. Ltd. v Maharashtra Small Scale Industries Development Corporation Ltd.* (2010) 3 SCC 34 and *Edukanti Kistamma (Dead) through LRs. v. S. Venkatarreddy (dead) through LRs* (2010) 1 SCC 756.

28. Dr. George also referred to Section 24 of the MSMED Act which underscores its overriding effect. According to him, there was nothing inconsistent in the MSMED Act with any other law. On the other hand, there were two advantages of the MSMED Act; one was that there would be a three-member AT. The second was that the arbitration could be expected to be completed within 90 days. Under Section 18(3) of the MSMED Act, the FC could even suo moto refer the dispute to arbitration and even the Act would have applied to such arbitration.

Analysis and Reasons

29. Before commencing the discussion on the above submissions, it is necessary to note the objects and reasons behind the MSMED Act. The Statement of Objects and Reasons highlights two broad objects; one was to have a comprehensive central enactment to provide an appropriate legal framework for facilitating the growth and development of the small scale industries sector (SSI). There was also a growing need felt to extend policy support for the small enterprises so that they were enabled to grow medium- level achieving higher productivity. The idea was to provide a single legal framework.

30. The second object is that not only does the MSMED Act deal exclusively with the activities of the SSI units but it also provides for a mechanism for expeditious adjudication of the claims that such units may have. This would even be in relation to a dispute involving a non-MSMED supplier. The relevant provisions of the MSMED Act which require to be discussed are Sections 15, 17 and 18 which read as under:

"15. Liability of buyer to make payment.

Where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefore on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day: Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty- five days from the day of acceptance or the day of deemed acceptance.

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. 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 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 to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 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."

31. There is no doubt that the above provisions apply only to the services rendered and goods supplied by a 'supplier as 'defined under Section 2(N) of the Act. The focus under Section 15 of the MSMED Act is on the actual act of providing services and supplying goods. If a small scale industry or micro or small enterprise undertakes the above tasks, then the buyer is bound under Section 15 of the MSMED Act to make payment by the appointed date which cannot exceed 45 days from the date of acceptance or deemed acceptance in terms of the proviso thereof.

32. A unit that is not registered as a supplier does not cease to be one. The registration as a supplier under the MSMED Act makes the availing of the benefit much easier. Section 8(1) of the MSMED Act which requires the filing of a memorandum by such unit reads as under:

"8. Memorandum of micro, small and medium enterprises.- 1. Any person who intends to establish, a. a micro or small enterprise, may, at his discretion, or b. a medium enterprise engaged in providing or rendering of services may, at his discretion; or c. a medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951, shall file the memorandum of micro, small or, as the case may be, of medium enterprise with such authority as may be specified by the State Government under sub-section (4) or the Central Government under sub-section (3):

Provided that any person who, before the commencement of this Act, established a. a small scale industry and obtained a registration certificate, may, at his discretion; and b. an industry engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951, having investment in plant and machinery of more than one crore rupees but not exceeding ten crore rupees and, in pursuance of the notification of the Government of India in the erstwhile Ministry of Industry (Department of Industrial Development) number S.O. 477(E) dated the 25TH July, 1991 filed an Industrial Entrepreneur's Memorandum, shall within one hundred and eighty days from the commencement of this Act, file the memorandum, in accordance with the provisions of this Act."

33. Section 8 of the MSMED Act envisages two possible situations; one is where a unit which has not yet come into existence, and the second is where the unit is in existence. Where a unit is yet to be established, Section 8(1) requires filing of the memorandum in the manner specified by the State or the Central Government, as the case may be. Where a unit has already been established prior to the commencement of the MSMED Act, then the proviso applies and the memorandum has to be applied within 180 days from the date of commencement.

34. It, however, does not mean that a third category i.e., a unit that is established after the commencement of the Act cannot seek registration as a supplier. That could never have been the intention of the legislature as is evident from the Statement of Objects and Reasons of the MSMED Act.

35. The case on hand falls in the third category where a supplier is already in existence at the time of commencement of the Act but has not obtained any registration till then. It is registered as a supplier beyond 180 days from the date of the commencement of the Act i.e., after 180 days from 2ND October, 2006. Clearly, such a unit can also seek registration as a supplier. That is precisely what has happened in the present case. The certificate issued to the REPM is dated 4th April, 2012, but importantly, it notifies that the date of commencement of the activities as 1ST February, 2009.

36. The question that next arises is whether having been registered on 4th April, 2012, can REPM take advantage of the MSMED Act? For this purpose, it is necessary to refer to Section 18 which requires REPM to be a supplier as on the date of making such reference. Clearly, that condition stood satisfied. Secondly, even according to the Petitioner, the supplies made by REPM pursuant to the PO dated 8th September, 2009 continued even under the Section PO dated 27TH November, 2012. From the point of view of the Petitioner, it is seeking to rely on the Second PO having been validly issued. The supplies made by REPM to Alstom in terms of the PO dated 8th September, 2009 continued even after REPM's registration as supplier as is evident from the two MoMs dated 1ST May, 2013 and 28TH December, 2013. The result is that REPM can seek the application of the beneficial provisions of MSMED Act as far as its claims against Alstom arising from the said First PO are concerned.

37. Now to a discussion of the decisions cited by both parties. In the first place, the Court finds merit in the contention of REPM that the MSMED Act should be construed to be a special statute. In *Life Insurance Corporation of India v D.J. Bahadur* (supra), the two statutes that the Supreme Court was considering were the Industrial Disputes Act, 1947 (ID Act) and the Life Insurance Corporation Act (LIC Act). While the ID Act exclusively provided for resolution of disputes, the LIC Act was a general one not specific to the service conditions of the employees of the LIC. This explains the following observation of the Supreme Court that even if both statutes were to be construed as special enactments, it is the ID Act which should be given preference since that was specific to the dispute on hand:

"53. What are we confronted with in the present case, so that I may determine as between the two enactments which is the special? The only subject which has led to this litigation and which is the bone of contention between the parties is an industrial dispute between the Corporation and its workmen qua workmen. If we refuse to be obfuscated by legal abracadabra and see plainly what is so obvious, the conclusion that flows, in the wake of the study I have made, is that vis-a-vis industrial disputes at the termination of the settlement as between the workmen and the Corporation the ID Act is a special legislation and the LIC Act a general legislation. Likewise, when compensation on nationalisation is the question, the LIC Act is the special statute. An application of the generalia maxim as expounded by English textbooks and decisions leaves us in no doubt that the ID Act being special law, prevails over the LIC Act which is but general law."

38. In the present case, therefore, the Court is satisfied that the MSMED Act to the extent it provides for a special forum for adjudication of the disputes involving a 'supplier' registered thereunder,

overrides the Act i.e., the Arbitration and Conciliation Act 1996. The following observations in *Snehadeep Structures Pvt. Ltd. v Maharashtra Small Scale Industries Development Corporation Ltd.* (supra) which dealt with the statute of 1993 preceding the MSMED Act equally applies to the MSMED Act:

"47. The requirement of pre-deposit of interest is introduced as a disincentive to prevent dilatory tactics employed by the buyers against whom the small-scale industry might have procured an award, just as in cases of a decree or order. Presumably, the legislative intent behind Section 7 was to target buyers, who, only with the end of pushing off the ultimate event of payment to the small-scale industry undertaking, institute challenges against the award/decreed/order passed against them. Such buyers cannot be allowed to challenge arbitral awards indiscriminately, especially when the section requires predeposit of 75% interest even when appeal is preferred against an award, as distinguished from an order or decree."

39. Likewise, in *Edukanti Kistamma (Dead) through LRs. v. S. Venkatareddy (dead) through LRs* (supra), the Supreme Court explained that a special statute would be preferred over a general one where it is beneficial. It was explained that the purport and object of the Act must be given its full effect by applying the principles of "purposive construction." The question whether the dispute resolution mechanism under Section 18 of the MSMED Act overrides the arbitration clause under the contract has to be answered in the affirmative. As was explained in *Waman Shrinivas Kini v. Ratilal Bhagwandas & Co.* (supra) an agreement contrary to a statutory provision that prohibits it would be unenforceable.

40. While it is true that a Division Bench (DB) of the Bombay High Court in *Steel Authority of India Ltd. v. The Micro, Small Enterprises Facilitation Council through Joint Director* (supra) has observed that the MSMED Act would not be retrospective, the DB in that case was dealing with a case where the supply had been completed much earlier and not where it continued after registration of the supplier under the MSMED Act. Likewise, the decisions in *M/s Frick India Ltd. v. Madhya Pradesh Micro and Small Enterprises Facilitation Council* (supra) and *Faridabad Metal Udyog Pvt. Ltd. v. Anurag Deepak* (supra) are distinguishable on facts. To reiterate, here, the supply has continued beyond the registration of the supplier. Therefore, the benefit of the MSMED Act cannot be denied to such supplier.

41. The decisions in *Goodyear India Ltd. v. Norton Intech Rubbers Pvt. Ltd.* (supra); *Asiatic Rubro Complex v. Kerala Micro & Small Enterprises Facilitation Council* (supra); *Bharat Heavy Electricals Ltd. v. State of Uttar Pradesh* (supra); *Principal Chief Engineer v. Manibhai & Brothers* (supra); *Welspun Corp. Ltd. v. The Micro & Small, Medium Enterprises Facilitation Council, Punjab* (supra) support the case of the REPM in relation to the applicability of the MSMED Act to the transactions in question.

42. For the above reasons, the Court negates the plea of the Petitioner that the MSMED Act does not apply. Consequently, the question of the Petitioner seeking a waiver of the requirement of depositing 75% of the amount in terms of Section 19 of the MSMED Act does not arise. As explained

by the Supreme Court in Goodyear India Ltd. v. Norton Intech Rubbers Pvt. Ltd. (supra), there is no discretion in the Court to reduce the amount of pre-deposit.

43. The question that now arises is whether, in terms of the provisions of Section 19 of the MSMED Act, the Court can set any reasonable terms for the deposit to be made? Considering the amount involved, the Court directs that 75% of the amount awarded by the FC in favour of the Respondent should be deposited by the Petitioner in this Court, in four equal instalments with each instalment being deposited before the 10TH of every succeeding month hereafter. The amount as and when deposited by the Petitioner shall be kept by the Registry in a fixed deposit initially for a period of six months and kept renewed during the pendency of the petition. The hearing of the main petition will be subject to compliance with the above direction.

44. The application is disposed of in the above terms.

45. The Court records its appreciation of the excellent assistance it received from Dr. Amit George, who appeared at the Court's request as amicus curiae on behalf of the Respondent and Mr. Tejas Karia, learned counsel for the Petitioner.

OMP (Comm.) 76/2016

46. List for further hearing on 17TH July 2017.

S. MURALIDHAR, J FEBRUARY 15, 2017 dn/rd