Madras High Court
M/S. Eden Exports Company vs Union Of India on 20 November, 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-11-2012

CORAM

THE HONOURABLE MR. JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE MR. JUSTICE M. VENUGOPAL

W.A. Nos. 2461, 2475, 2042, 2199 of 2010, 368, 456, 462 to 464,
694, 695, 1113, 1281, 1282 of 2011
and
W.P. Nos. 27319, 27888, 28168 of 2010, 4397 of 2009, 39, 7805,
11234, 15065, 24506, 15733 of 2011

W.A.No.2461 of 2010

M/s. Eden Exports Company Rep. by its Partner Mrs. Faiqua Shameel .. Appellant Vs.

1. Union of India, Rep. by its Secretary, Ministry of Micro, Small and Medium Enterprises, Udyog Bhavan, New Delhi 110 011.

2. State of Tamil Nadu, Rep. by its Secretary, Department of Industries and Commerce, Chepauk, Chennai 600 005.

3. Director, Ministry of Micro, Small and Medium Enterprises, Room 254, Udyog Bhawan, Rafi Marg, New Delhi 110 011.

4. Regional Joint Director of Industries and Commercial (i/c) / Zonal Officer, MSE Facilitation Council, Thiru. Vi. Ka Industrial Estate, Guindy, Chennai 600 032.

5. M/s. Falcon Prints Pvt. Ltd., No.68 (Old No.268), Royapettah High Road, Chennai 600 014. .. Respondents Appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge in W.P.No.25406 of 2009, dated 20.08.2010.

For Appellant : Mr. Zaffarullah Khan in WA.2461/2010, WP.No.11234/2011 For Appellant : Mr.K.S.V. Prasad in WA.Nos.368 & 456 of 2011 For Appellant in WA.NOs.1281 & 1282 of 2011 and WP.Nos.27319 & 27888/2010 : Mr. Perumbalavil Radhakrishnan For Appellant in WA.Nos.2042/2010 1113/2011 & WP. : Mr. Jayesh Dolia No.24506/2010 for M/s. Aiyar & Dolia For Petitioner in : Mr.M. Raghunandham WP.No.4397/2009 for M/s. T.S. Gopalan & Co.

For Petitioner in WP.No.7805/2011	: Mr.T. Saikrishnan for M/s. K.S. Natarajan
For Appellant in WA. Nos.694 & 695/2011	: Mr.P.S. Raman for M/s. Puspha Menon
For Petitioner in WP.No.15733/2011	: Mr. Muthukumarasamy Senior Counsel for M/s. A. Jenasenan
For Petitioner in WP.No.28168/2010 & Appellant in WA. No.2199/2010	: Mr.T. Mohan
For Petitioner in WP.No.39/2011	: Mr.S. Viswanathan
For Petitioner in WP.15065/2011	: Mr.A. Narayanan
For Appellant in WAs.462 to 464/11	: Mr.G. Vasudevan
For Appellant in WA.2475/2011	: Mr.J. Sivanandaraaj
For Union of India	: Mr.M. Ravindran Addl. Solicitor General of India for Mr.K. Mohanamurali
For the State	: Mr.A. Navaneethakrishnan Advocate General Assisted by Mr.S.T.S. Moorthy Mrs.M.E. Raniselvam Mr.R. Bala Ramesh
For R2 in WP.No. 11234/2011	: Mr.A.S. Rajkumar Vadivel
For R2 in WA.456/2011	: Mr.D. Krishnakumar
For R3 in WPs.	

27319 & 27888/10 R5 in WA.Nos.1281 & 1282/2011 and R2 in WPs.4397/09 & 39/2011	:	Mr.N. Viswanathan
For R2 in WPs. 2042 & 24506/10 R5 in WA.No.1113/11	:	Mr.G. Rajasekaran (Party in Person)
For R2 in WP.15733/11	:	Mr. Venkatachalapathy Senior Counsel for Mr.M. Sriram
For R2 in WA.2199/10 & WP.28168/2010 & 15065/2011	:	Mr.C. Saravanan
For R1 in W.A.Nos. 462 to 464/2011	:	Mr.N. Ramakrishnan for M/s.Waraon & Sairams
For R3 in WP.2475/10	:	Mr.G.S. Rajasekaran Party-in-person

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COMMON JUDGMENT

ELIPE DHARMA RAO, J

All the writ appeals arise out of the common order passed by the learned single Judge in WP.No.16908 of 2009 & etc. batch, dated 20.08.2010. Most of the writ petitions were filed challenging various provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (Central Act 27 of 2006) as unconstitutional. Some writ petitions were filed challenging the orders passed by the Facilitation Council and the notices issued by the said Council. Since the issues involved in all these matters are intrinsically interconnected, they were heard together and disposed of by this common judgment.

2. In most of all these writ appeals and the writ petitions, some of the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (Central Act 27 of 2006) (in short "MSMED Act") are challenged as unconstitutional and ultra vires of the Constitution of India. The learned single Judge under the impugned order dated 20.08.2010, held that the provisions under challenge cannot be said to be unconstitutional and ultra vires and dismissed the writ petitions, giving rise to the present writ appeals.

3. We have heard the learned counsel appearing for all the parties at length and have gone through various records furnished at the time of hearing of these appeals and the decisions rendered by the

Hon'ble Supreme Court, this Court and various other High Courts.

3. Learned Senior Counsel appearing on behalf of the appellants and the counsel appearing in the connected writ appeals and the writ petitions have more or less reiterated the contentions raised before the learned single Judge. Their challenge encircles Chapter V of the MSMED Act.

4. In order to appreciate their contentions, it would be profitable to note down, first, the Statements and Objects for enacting the MSMED Act. This Act has been enacted for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises. From the Statement of Objects and Reasons for enacting the Act, it is seen that many Expert Groups or Committees appointed by the Government from time to time as well as the small scale industry sector itself have emphasised the need for a comprehensive Central enactment to provide an appropriate legal framework for the sector to facilitate its growth and development. And also considering the growing need and to extend policy support for the small enterprises so that they can grow into medium ones, adopt better and higher levels of technology and achieve higher productivity to remain competitive in a fast globalisation area, the Union Government thought it fit to enact the MSMED Act. Through the above Bill they also sought to make further improvements in the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertaking Act, 1993 and to repeal that enactment.

5. Section 2(e) defines "enterprise" an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951) or engaged in providing or rendering of any service or services.

6. According to Section 2(g) "medium enterprise" means an enterprise classified as such under sub-clause (iii) of clause (a) or sub-clause(iii) of clause (b) of sub-section (1) of section 7. "micro enterprise" is defined under Section 2(h). As per Section 7, if the enterprise engaged in the manufacture or production of goods pertaining to any industry and where the investment in plant and machinery is more than five crores but does not exceed ten crore rupees, it is called as medium enterprise. If the enterprise is service oriented and the investment is more than two crores but does not exceed five crore rupees, it is known as medium enterprise. In the case of micro enterprise, if it is engaged in production, the investment should not exceed twenty-five lakh rupees. In the case of service oriented, the investment in equipment should not exceed ten lakhs.

7. Section 3 deals with the formation and constitution of National Board for Micro, Small and Medium enterprises. The officials at various levels from all fields have been appointed as Members and in other capacities. Section 7(2) empowers the Central Government to constitute an Advisory Committee consisting of officials from the Central and State Governments and a representative each from the associations of micro, small and medium enterprises. Such Committee would examine the matters referred to by the National Board and shall advise the Central and the State Governments for promotion of the enterprises. Section 8 deals with the registration of the micro, small and medium enterprises.

8. The controversy in all these cases relate to Chapter V of the MSMED Act, viz., Sections 15 to 24. Though the learned counsel appearing for the appellants have attacked Sections 15 to 24, after the impugned order, they are very much particular in respect of Sections 18 to 21. However, with light intensity, in order to formally strike the impugned order, they have made their contentions with respect to Sections 15 to 17 also.

9. Sections 15 to 24 being relevant to decide the issue involved, are extracted hereunder :-

"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 therefor 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.

16. Date from which and rate at which interest is payable. Where any buyer fails to make payment of the amount to the supplier, as required under Section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from time the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

17. Recovery of amount due. For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under Section 16.

18. Reference to Micro and Small Enterprises Facilitation Council. (1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under Section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the disputes 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.

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.

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. (1) The Micro and Small Enterprise Facilitation Council shall consist of not less than three but not more than five members to be appointed from amongst 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 office-bearers 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 sub-section (1) shall be the Chairperson of the Micro and Small Enterprises Facilitation Council.

(3) The composition of the Micro and Small Enterprises 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.

22. Requirement to specify unpaid amount with interest in the annual statement of accounts. Where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts, namely:

(i)the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;

(ii)the amount of interest paid by the buyer in terms of Section 16, along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;

(iii)the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this Act;

(iv)the amount of interest accrued and remaining unpaid at the end of each accounting year; and

(v)the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under Section 23.

23. Interest not to be allowed as deduction from income. Notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), the amount of interest payable or paid by any buyer, under or in accordance with the provisions of this Act, shall not, for the purposes of computation of income under the Income-tax Act, 1961, be allowed as deduction.

24. Overriding effect. 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."

10. Section 15 is attacked by contending that this clause interferes with the right of the buyers, who utilise the goods or services rendered by the suppliers, by compelling them to enter into agreement with the suppliers, which is in violation of Article 19(1)(g) of the Constitution. In other words, according to the appellants/petitioners, this clause curtails the freedom to enter into contract and against the commercial parlance prevailing in the country. Sections 16 and 17 seek to specify the date from which and the rate at which interests will be payable by the buyer to the supplier in case of the former failing to make payments of the amount to the supplier. According to the appellants and the writ petitioners, these clauses are in violation of Article 14 of the Constitution of India and against the provisions contained in the Civil Procedure Code and the related Acts. Section 19, according to the appellants, which stipulates pre-deposit of 75% before challenging a decree, award or other orders made by the Facilitation Council, is unwarranted and against the decisions of the

Supreme Court. In support of their contentions, learned counsel have placed reliance upon various decisions of the Hon'ble Supreme Court, this Court and other High Courts and we have given our anxious consideration to the arguments advanced and the judgments relied on on either side

11. Admittedly, MSMED Act had repealed the earlier Interest on Delayed Payment Act, 1993 as the provisions of the old Act have been suitably incorporated in the new Act. Section 15 of the MSMED Act is similar to Section 3 of the old Act viz., the Interest on Delayed Payment Act, 1993. However, the difference in the period agreed upon between the supplier and the buyer was reduced from 120 days to 45 days. So far as Section 16 is concerned, the rate of interest on delayed payment has been increased from one and half time of prime lending rate charged by the State Bank of India to three times of the Bank rate notified by the Reserve Bank. Section 17 of the MSMED Act, which substitutes Section 6 of the old Act, mandates the buyer to pay the amount with interest as provided under Section 16 to the supplier for the goods supplied or services rendered by them; whereas Section 6 of the old Act made the amount recoverable by the supplier by way of a suit or other proceeding.

12. From the above comparison, it is apparent that there is only change in respect of time limit in making payment by the buyer and increase in the rate of interest payable on the principal amount, in case it fell due after the time limit prescribed in the agreement entered between them. The appellants and the writ petitioners, though strenuously contended that rate of interest and the time limit of 45 days fixed is arbitrary, they are not very much concerned with these contentions in view of the decisions of the Apex Court referred to by the learned single Judge in the impugned order.

13. The learned single Judge, for rejecting the aforesaid contention, has sought help from the decision of the Supreme Court in Civil Appeal No.5597 of 2002 in A.P. Transco v. Bala Conductors (P) Ltd., and another, dated 23.9.2003. The matter came up before the Supreme Court by way of appeal from the common order of the Andhra Pradesh High Court in C.A.Nos.5599, 5606 of 2002, etc., batch at the instigation of the A.P. Transco challenging the MSMED Act. The MSMED Act was challenged on two grounds, namely, (i) that the Act was outside the legislative competence of Parliament and (ii) that the Act was otherwise violative of Article 14 of the Constitution of India since it operated in discriminatory manner. The contention relating to legislative competence was fairly conceded by the appellant therein by stating that the legislative competence of the Parliament cannot be questioned not only in view of Entry 33 of List-III but also because of the residuary Entry 97 in List-I of the Seventh Schedule to the Constitution. The second contention was also rejected by the Hon'ble Supreme Court by observing the Industries (Development and Regulation) Act has already created the class by specifying the particular industries in the First Schedule to that Act, the control of which is expedient in the public interest to be under/ by the Union of India. The Hon'ble Supreme Court was of the further view that the discrimination if any, would operate against other industries and not against the buyer as all of them are similarly situated.

14. In view of the aforesaid decision of the Supreme Court on the point, we do not find any reason to entertain the contention of the learned Counsel for the appellants on this score. Moreover, the reasons stated by the learned single Judge for upholding Section 17 of the MSMED Act to the effect that a person who commits default and suffers an order or award or decree from the Facilitation

Council alone is bound to pay such interest and such order, if found erroneous, can be corrected by judicial review, cannot be brushed aside.

15. Coming to the challenge in respect of 75% pre-deposit contemplated under Section 19 of the MSMED Act, we have no hesitation in confirming the conclusion arrived at by the learned single Judge in this regard, in view of the decisions of the Supreme Court and this Court. The Hon'ble Supreme Court in Snehadeep Structures Private Limited v. Maharashtra Small Scale Industries Development Corporation Limited (2010) 3 SCC 34 has categorically held that the introduction of pre-deposit clause is a disincentive to prevent dilatory tactics employed by the buyers against whom the small-scale industry might have procured an award. The aforesaid decision has been followed by the Kerala High Court in (2010) 1 KLT 65 (K.S.R.T.C. v. UNION OF INDIA AND OTHERS) and this Court in 2011-3-L.W.626 (M/s. Goodyear India Limited, Rep. by its Zonal Manager v. M/s Nortan Intech Rubbers (P) Ltd., and another). Therefore, the appellants / writ petitioners no more cannot contend that the condition of pre-deposit imposed in Section 19 of the MSMED Act is arbitrary.

16. Learned Senior Counsel appearing for the appellants, though not much concerned with regard to the aforesaid provisions, are very much concerned about Sections 18 and 21. In one voice they have contended that Section 18 invokes Section 7(1) of the Arbitration Act and it is contrary to Section 80 of the said Act. Mr.P.S. Raman, learned Senior Counsel appearing for the appellants in W.A.Nos.694 and 695 of 2011 has specifically contended that the Arbitration and Conciliation Act could be invoked only when there is an agreement in writing between the parties. According to him, as per the MSMED Act, the suppliers could invoke the provisions of the Arbitration Act in the absence of a written agreement and therefore it has to be struck down.

17. For the sake of easy reference, we extract hereunder Section 7 of the Arbitration and Conciliation Act, 1996:

"7.Arbitration agreement.

(1) In this Part,' arbitration agreement' means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in-

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."

18. From the reading of the above Section, it is no doubt true that this Section stipulates that an Arbitration agreement should be in writing. But, we should not forget the wordings of Section 18 of the MSMED Act which provides a party to the dispute with regard to the amount due under Section 17, to make a reference to the Micro and Small Enterprises Facilitation Council. Sub-section (2) enables such Council to conduct conciliation by itself or seeking assistance of any institution or centre providing alternate dispute resolution services by making a reference to such institution or centre. It has also been made mandatory that Sections 65 to 81 of the Arbitration and Conciliation Act 1996 are applicable to such a dispute as if the conciliation was initiated under Part III of that Act. In case such conciliation is not successful, sub-section (3) provides for further arbitration by the council itself or to any other institution providing alternate dispute resolution services for such arbitration. The contention of the appellants in this context is three folded; (1) without any written agreement, the provisions of the Arbitration and Conciliation Act could not be invoked; (2) the Micro and Small Enterprises Facilitation Council, which was empowered to conciliate between the parties, should not be allowed to further arbitrate in the matter; and (3) the Members of the Council who conciliate as per sub-section (2) of Section 17 would also be the Members in the arbitration proceedings provided under sub-section (3) and, therefore, such arbitration would be of no use and such provision being contrary to Section 80 of the Arbitration and Conciliation Act, it is required to be struck down as illegal and unconstitutional.

19. But, the Legislature in its wisdom, was very careful in drafting Section 18 MSMED Act, providing solace to the parties, even where there is no Arbitration clause in writing, and requiring the Council to take up the dispute for itself for arbitration or refer to any other institution for that purpose. Taking into consideration the object for which the said Act has been introduced by the Legislature, it cannot be said that there is any Legal conflict between the provisions of Arbitration and Conciliation Act and that of the MSMED Act as the intention of the Legislature is very clear from the wordings of the said Section to bring the disputes into the fold of arbitration, even where there is no written agreement to that effect.

20. Section 80 of the Arbitration and Conciliation Act, 1996, being relevant, is extracted hereunder :-

"80. Role of conciliator in other proceedings. - Unless otherwise agreed by the parties, -

(a) the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings."

21. A cursory reading of the aforesaid provision makes it clear that a conciliator could not act as an arbitrator. It is no doubt true that Sections 18(2), 18(3) and 18(4) have given dual role for the Facilitation Council to act both as Conciliators and Arbitrators. According to the learned counsel for the appellants, the Facilitation Council should not be allowed to act both as Conciliators and Arbitrators. This contention, though prima facie appears to be attractive, it is liable to be rejected on a closer scrutiny. Though the learned counsel would vehemently contend that the Conciliators could not act as Arbitrators, they could not place their hands on any of the decisions of upper forums of law in support of their contentions. As rightly pointed out by the learned single Judge, Section 18(2) of MSMED Act has borrowed the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act for the purpose of conducting conciliation and, therefore, Section 80 could not be a bar for the Facilitation Council to conciliate and thereafter arbitrate on the matter. Further the decision of the Supreme Court in (1986) 4 SCC 537 (Institute of Chartered Accountants of India v. L.K. Ratna), on this line has to be borne in mind. One should not forget that the decision of the Facilitation Council is not final and it is always subject to review under Article 226 of the Constitution of India and, therefore, the appellants are not left helpless.

22. An allied contention was raised with respect to bias in passing the award by the arbitrator, if he happened to be the conciliator also. In order to ascertain the factual position, we have gone through the minutes of the various meetings held by the Council with respect to Conciliation as well as the Arbitration. From the materials produced by the Facilitation Council, it is seen that the conciliators who had conciliated on the matter had not sat as the Members/Arbitrators during arbitration. However, at this stage, a duty has been cast upon this Court to take judicial notice that the Members who participate in the Conciliation shall not sit in the Arbitration proceedings and the Facilitation Council has to amend/formulate its own rules in this regard at the earliest in order to avoid these complications.

23. Coming to the question of formation of Facilitation Council, we are in full agreement with the conclusion arrived at by the learned single Judge. The contention of the learned counsel for the appellants / petitioners that the members preside over the Facilitation Council should have legal background and a Judicial Member has to preside over the Facilitation Council cannot be accepted. When the Facilitation Council is not a Tribunal constituted in exercise of power granted under Articles 323-A and 323-B of the Constitution, the appellants cannot be heard to contend that a Judicial Member has to preside over the Council or the members should have legal background. However, we cannot fully brush aside the aforesaid contention of the learned counsel for the appellant. Considering the issues involved in all these matters, in order to avoid the Companies /Corporation in approaching the Court in large numbers, in future, we observe that while appointing the Members for the Council, the Government may bear in mind this aspect and appoint the Members having judicial background.

24. Coming to the writ petitions, in W.P.Nos.27319, 27888 of 2010, 39, 7805, 11234, 15065, 15733, of 2011, the concerned writ petitioner has challenged the award passed by the Facilitation Council, dated 20.9.2010, 20.9.2010, 29.7.2010, 31.7.2010, 7.1.2011, 29.4.2011, 29.03.2011 respectively. The appellant in WA.No.2199 of 2010, who had challenged the vires of the Act, has also filed a separate writ petition W.P.No.28168 of 2010, challenging the award dated 29.7.2010, passed by the Council,

by reiterating the contentions raised in the writ appeal. W.P.No.4397 of 2009, though filed in 2009 challenging the award passed by the Council, dated 22.10.2008, has not got admitted so far. However, for one reason or the other it was not tied along with the batch of the writ petitions heard by the learned single Judge.

25. In all these writ petitions filed by various companies challenging the award / order passed by the Arbitrators / Facilitation Council, the question to be gone into is whether such writ petitions could be maintained before this Court. If one carefully goes through the provisions of the MSMED Act under Chapter V, in particular Section 18, it could be seen that the said Act is in consonance with the Arbitration and Conciliation Act, 1996. Moreover, the award / order passed by the Arbitrators / Facilitation Council is similar and identical to that of the award passed under Section 31 of the Arbitration and Conciliation Act. Section 5, which is contained in Part I of the Arbitration Act, defines the extent of judicial intervention in arbitration proceedings. It says that notwithstanding anything contained in any other law for the time being in force, in matters governed by Part I, no judicial authority shall intervene except where so provided in that Part. The Hon'ble Supreme Court in (2000) 4 SCC 539 (P. Anand Gajapathi Raju v. P.V.G. Raju), has held that the judicial intervention in arbitration proceedings should be minimal. Keeping in view the object of the MSMED Act, we have no hesitation in adopting Section 5 of the Arbitration and Conciliation Act, 1996, which prohibits interference of the judicial authority, to the awards passed under the MSMED Act.

26. Apart from the reason stated above, these writ petitions were filed without complying with the provisions contained in Section 19 of the MSMED Act, which contemplates pre-deposit of 75% of the decree amount. The petitioners cannot overtake Section 19 and invoke Article 226 of the Constitution before this Court. As we have held that pre-deposit of 75% is mandatory, we see no reason to entertain the present writ petitions. Moreover, once the petitioners have submitted themselves to the jurisdiction of the Council and when the decision of the Council went against them, they cannot turn round and state that the Council has no jurisdiction or the conciliators cannot sit as arbitrators or the pre-deposit of 75% is against the provisions of law. As rightly pointed out by the learned single Judge it is always open to the petitioners to move the appropriate civil court for relief or to invoke arbitration clause, if provided in the agreement. Hence, we are not inclined to entertain the present writ petitions filed challenging various awards / orders passed by the Facilitation Council and they are liable to be dismissed.

For the reasons stated above, subject to the observations made, all the writ appeals and the writ petitions stand dismissed. There shall be no order as to costs. Interim order, if any, shall stand vacated. Consequently, the connected Miscellaneous Petitions are closed.

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1. Union of India, Rep. by its Secretary, Ministry of Micro, Small and Medium Enterprises, Udyog Bhavan, New Delhi 110 011.

2. State of Tamil Nadu, Rep. by its Secretary, Department of Industries and Commerce, Chepauk, Chennai 600 005.

3. Director, Ministry of Micro, Small and Medium Enterprises, Room 254, Udyog Bhawan, Rafi Marg, New Delhi 110 011.

4. Regional Joint Director of Industries and Commercial (i/c) / Zonal Officer, MSE Facilitation Council, Thiru. Vi. Ka Industrial Estate, Guindy, Chennai 600 032