THE HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR

Case No.	**W.P. No.8963/2020**
Parties Name	*Sasan Power Limited, Singrauli* *versus* *Madhya Pradesh Micro and Small Enterprise Faciliation Council & another*
Date of Judgment	**31.12.2020**
Bench Constituted	**Single Bench**
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	**Yes.**
Name of counsels for parties	**For the Petitioner**: Mr. Naman Nagrath, Senior Advocate assisted by Mr. Alok Hoonka and Mr. Jubin Prasad, Advocates. **For the respondent No.2:** Mr. Sanjay Agrawal, Advocate.
Law laid down	➔ **Micro, Small and Medium Enterprises Development Act, 2006-Section 17 and 18-** the reference to the Council- the provision is beneficent in nature and, therefore, must be given wide construction. The respondent No.2's reference was rightly entertained by the Council. More so, when objections (Annexure P/6 & P/10) filed by the petitioner regarding jurisdiction of council is not pregnant with a factual objection regarding non filing of memorandum by respondent No.2 under Section 8 of the Act. ➔ **Section 18 of Micro, Small and Medium Enterprises Development Act, 2006-** the requirement of Udyog Aadhar memorandum of the State where Council is situated- the argument is repelled in view of the legislative intent and the judgment of Andhra Pradesh High Court. If the unit is located within the jurisdiction of Council, the Council is competent to entertain the dispute. Non filing of memorandum under Section 8 of the Act of

	2006 is inconsequential. ➔ **Remedial provision** - In construing a remedial statute the Courts ought to give to it "the widest operation which its language will permit. They have only to see that the particular case is within the mischief to be remedied and falls within the language of the enactment." The words of such a statute must be so construed as "to give the most complete remedy which the phraseology will permit," so as "to secure that the relief contemplated by the statute shall not be denied to the class intended to be relieved. ➔ **Micro, Small and Medium Enterprises Development Act, 2006 & Interpretation**- It is a beneficent provision and the literal construction of statute alone will defeat the purpose of enactment. The text and context both are required to be seen. ➔ **Article 226/227 of the Constitution**- the different High Courts have taken different views about interpretation of Section 18 of Act of 2006. The impugned orders of Council are in consonance with the orders passed by certain High Courts. Thus, the view so taken in the impugned orders is a plausible view which cannot be interfered with merely because another view is possible. ➔ **Section 18(3) of Micro, Small and Medium Enterprises Development Act, 2006**- Shri C.K. Minj, Government Member, had acted as a Conciliator. The Court observed that it will be open to the council to proceed with the arbitration proceedings by excluding Shri Minj or refer the matter for arbitratrion to any other institute or center providing alternative dispute resolution service.
Significant paragraph numbers	**28, 31, 32, 33, 36, 37, 40, 41 & 42.**

O R D E R
(31.12.2020)

This petition filed under Article 226 of the Constitution assails the order dated 17.05.2019 Annexure P/3A, order dated 09.06.2020 (Annexure P/14) and other subsequent order passed by Respondent No.1.

FACTUAL BACKGROUND :-

2. Briefly stated, the petitioner is a Company incorporated under the provisions of the Companies Act 1956. The petitioner has set up a 3,960 MW Ultra Micro Power Project (**UMPP**) alongwith an Integrated Captive Coal Mines to meet the coal requirement of the said UMPP in District Singrauli, Madhya Pradesh. The project is generating and supplying electricity to various distribution companies of various States.

3. Respondent No.1 is a statutory body constituted under the provisions of Micro Small and Medium Enterprises Development Act, 2006 (**Act of 2006**) and the respondent No.2 is a Company incorporated under the provisions of Companies Act. As per petitioner's case, respondent No.2 is having its registered office at Raipur, Chhattisgarh. This Company is primarily involved in the business of manufacturing and supplying industrial explosives.

4. The petitioner awarded certain rate contracts since November, 2011 till 2018 to respondent No.2 for supply of explosives and accessories to carry out blasting activities to extract coal from its captive coal mines which is used for generation of electricity at its power plant. The petitioner's case is that at the time of registration of respondent as Wander, the petitioner was intimated by it that respondent No.2 is neither registered as a Micro Small and Medium Enterprises (**MSME**) nor as a Small Scale Industry (**SSI**).

5. The respondent No.2 sent a legal notice dated 19.12.2018 Annexure P/1 demanding an amount of Rs.9,77,07,857/-. Petitioner was called upon to clear

the said amount alongwith penal interest. The petitioner contends that while sending this legal notice, the respondent No.2 did not inform the petitioner that it is registered as a small enterprise. Had it been registered under the Act of 2006, it would not have agreed for 90 days payment terms and contractual arbitration alongwith other terms of contract with the petitioner.

6. The petitioner, in turn, replied the legal notice on 31.12.2018 Annexure P/2. The petitioner stated that respondent No.2 had committed fraud in supply of material.

7. The respondent No.1 sent a notice dated 17.05.2019 to the petitioner intimating him that a Reference Petition under Section 18 of the Act of 2006 has been preferred by respondent No.2 for recovery of an outstanding amount of Rs.32,65,71,556/- and Rs.8,28,56,525/- as interest; total amounting to Rs.40,94,28,081/-. The allegation of respondent No.2 in his claim submitted before respondent No.1 in statutory form was that he had supplied goods (explosives) to petitioner but petitioner has not made the payments.

8. Upon receiving the said notice dated 17.05.2019 from respondent No.1, petitioner entered appearance before respondent No.1 and took preliminary objection dated 30.05.2019 Annexure P/4. The petitioner raised objection regarding jurisdiction of respondent No.1.

PETITIONER'S CONTENTIONS:-

9. Shri Naman Nagrath, learned senior counsel assisted by Shri Alok Hoonka, Advocate urged that the respondent No.1 ignoring the fact that Reference Petition was not maintainable, passed the order dated 05.07.2019 Annexure P/5 wherein it was held that parties have failed to settle their dispute amicably, therefore, conciliation proceedings are closed and matter is now referred for arbitration. The respondent No.1 itself decided to act as an Arbitrator. The petitioner again submitted an objection before respondent No.1 on 10.07.2019 Annexure P/6 reiterating its stand that Reference Petition was

not maintainable for want of jurisdiction. The Reference deserves to be dismissed under Rule 7 of MP Micro & Small Enterprises Rules, 2017 (**Rules of 2017**). The claim of respondent No.2 on merits was also disputed by contending that it was not covered under Chapter V of the Act of 2006.

10. The petitioner is aggrieved by yet another order dated 05.08.2019 Annexure P/7 passed by respondent No.1 whereby said respondent itself decided to act as an Arbitrator.

11. Learned senior counsel for the petitioner by placing reliance on Section 18 of the Act of 2006 urged that it is a legislation by reference whereby certain provisions of Arbitration & Conciliation Act, 1996 (**Act of 1996**) were incorporated in Section 18 of the Act of 2006. By virtue of such incorporation, Section 80 of the Act of 1996 became part of the Act of 2006. In the teeth of Section 80(1)(a) of the Act of 1996, the respondent No.1 Council had no authority, jurisdiction and competence to act as an Arbitrator.

12. The respondent No.2 in its application itself stated that its Udyog Adhar Number is CG 14B0008056 (Annexure-P/8) which indicates that it is a company based and registered at Chhattisgarh. The respondent No.2 submitted another Udyog Adhar Memorandum (UAM) only on 30.01.2019 after expiry of all the contracts pursuant to which the respondent No.2 supplied explosives to petitioner for a period between November, 2011 to March, 2018. During this period, all the contracts, bills etc. were generated and issued in the name of Special Blast Limited based at Chhattisgarh. No work was ever given in the name of the Unit located at Signrauli (M.P.), which is part and parcel of respondent No.2 and Singrauli Unit was not a separate legal entity. The respondent No.2 misled the Authorities and fraudulently got itself registered as a small unit.

13. Reference is also made to the balance sheet of respondent No.2 for the year 2017-18 in the head of investment on ‘plant and machinery’ as on

31.03.2018 which is to the tune of Rs.16,16,94,429/-, which is above the specified amount i.e. Rs.5 crores for manufacturing sector for classifying as a 'small enterprise' as provided under Section 7 of the Act of 2006. The Gazette Notification dated 29.09.2006 (Annexure-P/9) is relied upon for this purpose.

14. In the 30th Annual Report 2017-18 (Annexure-P/11), the respondent No.2 mentioned with heading 'breakup of fixed assets of Note -9' which makes it clear that investment in 'plant and machinery' was to the tune mentioned hereinabove.

15. The respondent No.1 took up reference petition for hearing on 30.10.2019 and after hearing the parties, closed the matter to decide the question of maintainability of reference. The Bench of Council on 3.10.2019 was consisting of Chairman – Mr. Ashok Shah and Members – Mr. D.C. Shahu, Ms. Ananya Viswas. The petitioner contends that after a period of more than seven months from the date reference petition was reserved for order on the issue of maintainability, the respondent No.1 on 30.05.2020 informed the petitioner that the matter is now listed on 09.06.2020 and proceedings will be conducted through video conferencing. Petitioner was expecting that the issue of preliminary objection raised by the petitioner will be decided. In between, there was change in Officers/Members of the Council and, therefore, the matter will be re-heard by the Council. On 09.06.2020, the preliminary objection raised by the petitioner was rejected. Soon before that on 06.06.2020, the respondent No.1 *suo motu* sought a report from General Manager, District Industrial Centre (DIC) Singrauli. The DIC by communication dated 07.06.2020 informed that Unit of respondent-company was found to be functional. The respondent No.1 further held that the respondent No.2 has sent its Udyog Adhar Number as **MP 11 B0013174** which was found to be registered in Signrauli (M.P.). The Council opined that as per the balance sheet of respondent No.2 for the year 2018, the investment on

'plant and machinery' was Rs.1,83,99,841/- and, therefore, the Unit falls within the definition of 'MSME'.

16. On the basis of aforesaid factual backdrop, the petitioner assailed the impugned orders by contending : -

(i) The Council has miserably failed to examine the application/ reference of respondent No.2 at the preliminary stage. As per sub-rule (5), (6) & (9) of Rule 7 of the Rules of 2017, the Council ought to have examined whether (a) the reference is pregnant with UAM number, (b) the applicant is located in the same State and (c) Council has jurisdiction to entertain the reference. In absence of UAM of MP, the reference was not maintainable.

(ii) The respondent No.2 is not a 'supplier' and was not entitled to file a reference under Section 18 of the Act of 2006. The definition of 'supplier' under the previous Act of 1993 has undergone sea change if examined on the anvil of Section 2(n) of MSME Act, 2006. 'Supplier' is a unit which has filed a memorandum with the authority referred to in sub-section (1) of Section 8. Thus, it is a mandatory pre-requisite for an enterprise classified as micro/small unit to have an UAM issued by the authorities under the territorial jurisdiction of concern MSME Council. The UAM must be with the supplier before entering the contract. UAM of Madhya Pradesh was obtained in January, 2019 and for this reason alone, reference should have been rejected.

(iii) There is a clear difference between 'enterprise' and 'supplier' under the Act of 2006. Section 7 provides classification of 'enterprise' on the basis of amount of investment in 'plant and machinery' whereas Section 8 is in two parts, namely, (a) those

intending to establish and (b) already established before commencement of the Act of 2006. The respondent No.2 based its application/contract on the basis of a SSI Registration of 2004. Under proviso (a) and (b) of Section 8(1), the respondent No.2 had discretion to file memorandum within 180 days of commencement of the Act if it wanted to avail the benefits of a supplier. Only upon filing a memorandum, a micro or small enterprise acquires the status of a 'supplier'. All the suppliers under the MSME Act are either micro or small enterprise but all such enterprises need not be 'suppliers' having chosen not to file a memorandum at their discretion. Micro, small and medium enterprises acquire such status as per their investment in plant and machinery are entitled to benefit and measures of promotions under Chapter IV wherein the benefits like credit facilities, procurement reference policy, grants by government etc. were made available to such 'enterprises'. In order to avail the benefit of adjudication through Council, it is only a 'supplier' which can invoke Chapter IV dealing with recovery of amount due to a supplier and reference at the behest of a supplier. Chapter V deals with recovery and reference through Council and reference is confined to a 'supplier'. This remedy is not provided to an 'enterprise'. The respondent No.2 may be an 'enterprise' having SSI Registration of 2004 but definitely not a 'supplier' to invoke jurisdiction of Council under Chapter V aforesaid.

(iv) Udyog Adhar Number must be available with the supplier on the date of contract is another limb of argument. To bolster this contention, ***2018 SCC OnLine Bombay 4542, (Scigen Biopharma Pvt. Ltd. vs. Jagtap Horticulatuer Pvt. Ltd.)*** is relied upon.

(v) Second UAM from MP does not make the reference as maintainable. The UAM obtained from MP cannot have any retrospective effect. The supplier can file reference only when on

the date of entering into contract, as well as on the date of filing of reference, he was having an UAM of concerned State.

(vi) The contention of respondent No.2 that the Company existing prior to commencement of the Act of 2006 is not included in the definition of 'supplier' under Section 2(n)(iii) is devoid of substance. Similarly, the argument of respondent No.2 that SSI Unit existing prior to 2006 were not required to file memorandum under Clause 12 of notification (Annexure-P/16) is baseless. Section 2(n)(iii) specifically deals with a Company 'selling goods' produced by micro or small enterprises so as to be included in the definition of 'supplier'. Respondent No.2 itself is not a manufacturer/producer and is not a company 'selling goods' produced by some other micro or small enterprises. Section 2(n)(iii) does not help the respondent No.2.

(vii) The Council is barred from acting as an Arbitrator under Section 80 of Arbitration & Conciliation Act. By virtue of Section 18(2) of the Act of 2006, the provisions of Sections 65 to 81 of the Act of 1996 became part of the Act of 2006.

As per Section 80 of the Act of 1996, the Council cannot act as an Arbitrator in respect of a dispute, which is subject matter of conciliation proceeding. MSME Council having undertaken the proceeding of conciliation and after having recorded its failure in the order sheet, cannot act as an Arbitrator and proceed ahead in the matter.

Under Section 18(3), the dispute has to be referred to any other institution or centre providing Alternative Dispute Resolution Service. Reliance is placed on Bombay High Court judgment in the cases of ***Gujarat State Petronet Ltd. Vs. Micro and Small Enterprises Facilitation Council, 2018 SCC OnLine SC 3147 and Mazgaon Dock Ltd Vs. MSME Council, 2018 SCC OnLine Bom.***

11003 and on the judgment of Karnataka High Court passed in ***WP No.9485/2017 (M/s Pal Mohan Electronics Pvt. Ltd. vs. The Secretary Department of Small Scale Industries)***.

(viii) The balance sheet of respondent No.2 (Annexure-R/2) shows that Rs.16.16 crores were invested in the head of 'plant and machinery'. Hence, respondent No.2 is not a small enterprise under the Act of 2006.

(ix) This petition is very much maintainable because there is an inherent lack of jurisdiction of the Council. The petitioner cannot be compelled to go through the cumbersome alternative redressal mechanism. Reliance is placed on ***1998 (8) SCC 1 (Whirlpool Corporation Vs. Registrar of Trade marks)***, ***2019 SCC OnLine SC 1602 (Deep Industries Vs. ONGC)***, ***AIR 1962 SC 1999 (Hiralal Patni Vs. Kali Nath)***, ***2005 (7) SCC 791 (Harshad Chimanlal Vs. DLF)***, ***2019 SCC OnLine Gujarat 2474 (Easun Reyrolle Limited Vs. Nik San Engineer Co. Ltd.)***.

STAND OF RESPONDENT NO.2:-

17. Shri Sanjay Agrawal, learned counsel for the respondent No.2 on the other hand urged that the respondent No.2 is registered as SSI Unit in District Singrauli (Annexure-R/1) in the year 2004. Factory of respondent No.2 is situated at Singrauli (M.P.), but UAM of Chhattisgarh was issued based on office address of Raipur (Chhattisgarh). Subsequently, the office address of respondent No.2 was shifted to factory site and accordingly earlier UAM was cancelled and fresh UAM of MP No.11B0013174 was issued. The DIC Singrauli in its report dated 07.06.2020 opined that Unit is functional and existing at Singrauli within the territorial jurisdiction of respondent No.1. It is strenuously contended that having SSI Registration or UAM is not a mandatory condition for filing a reference.

18. The petitioner did not raise objection regarding the maintainability of reference under Section 18 before the Council. The petitioner agreed for resolution of dispute amicably. When efforts to amicably settle the dispute failed, Facilitation Council in its order dated 05.07.2019 recorded such failure and posted the matter for arbitral proceeding. There is no error in such procedure adopted by the Council. Moreso, when conciliation proceeding did not take place with the intervention of Facilitation Council. The parties had tried to resolve their dispute amicably but since efforts went in vain, the parties gave information of such failure to the Council.

19. Shri Agrawal further pointed out that petitioner filed another application on 10.07.2019 (Annexure-P/6) for dismissal of reference but no objection regarding jurisdiction of the Council was taken. Yet another objection dated 28.10.2019 was rejected after hearing both the parties through video conferencing. There is no procedural impropriety in the procedure adopted by the Council. Emphasis is laid on the order sheet dated 28.10.2019 in respect of contention that although a Member of the Council was changed before this date of hearing, the fact remains that parties were given rehearing through video conference before the new body. Thus, argument of Shri Nagrath that at the time of hearing Bench was consisting of different Members whereas it was decided by different set of Members is factually incorrect.

20. At this interlocutory stage, when main reference is pending, the petition is not maintainable is the next contention of learned counsel for the respondent No.2. If final award goes against the petitioner, they may assail it under Section 34 of the Act of 1996. In view of ***2003 (6) SCC 564 (Food Corporation of India Vs. Indian Council of Arbitration and others***), Arbitral Tribunal needs to decide the question relating to scope, meaning purport and effect of arbitration clause between the parties. The whole attempt is to minimize the interference by Superior Courts. Same view is taken in ***2005***

SCC OnLine Jhar 66 (State of Jharkhand Vs. M/s Himachal Construction Co. Pvt. Ltd.) by the High Court. In ***2005 (8) SCC 618 (SBP & Company Vs. Patel Engineering Ltd.)***, the Apex Court disapproved the practice adopted by some High Courts permitting to challenge the interlocutory orders passed by the Tribunal in a proceeding filed under Article 227 of the Constitution. The only course open to the petitioner is to assail the outcome of the reference in appropriate proceedings, namely Section 34/37 of the Act of 1996. The *ratio decidendi* of said cases is followed in **2014 (7) SCC 255** (***Lalit Kumar Vs. Sanghavi)*** and **2019 SCC OnLine SC 1154** (***Sterling Industries Vs. Jai Prakash Association***), **2017 (2) MPLJ 77 (*Ellora Papaer Mills Ltd. Vs. State of M.P. and others*).**

21. Further more, Shri Agrawal contended that a conjoint reading of Section 2(e), 2(m) and Section 7(a)(ii) of the Act of 2006 shows that respondent No.2 falls within the ambit of 'Small Enterprise'. 'Enterprise' and 'Supplier' has no serious distinction as per Act of 2006 which could have deprived the respondent No.2 to file the instant reference. By taking this Court to the language employed in Section 8 of the Act of 2006, it is urged that the law makers cautiously used the expression 'intend to establish'. The filing of memorandum by the small enterprise is discretionary. The only requirement must be 'located' within the jurisdiction of Council. Reference is also made to Section 18(3) and (4) of the Act of 2006. The respondent No.2 is a scheduled industry as per First Schedule (Item 19) to the Industries (Development and Regulation) Act, 1951.

22. In support of the aforesaid contention, Shri Agrawal placed reliance on the judgments of ***Food Corporation of India vs. Indian Council of Arbitration and others, (2003) 6 SCC 564, State of Jharkhand vs. M/s Himachal Construction Co. Pvt. Ltd., 2005 SCC OnLine Jhar 66, Lalitkumar vs. Sanghavi vs. Dharamdas V. Sanghavi and others, (2014) 7 SCC 255, Sterling Industries vs. Jayprakash Associates Ltd. and others,***

2019 SCC OnLine SC 1154, Ellora Paper Mills Ltd. vs. State of M.P. and others, 2017 (2) MPLJ 77, Shivhare Road Lines, Gwalior vs. Container Corporation of India Ltd., Noida and another, 2017 (3) MPLJ 600, M/s Ramky Infrastructure Private Limited vs. Micro and Small Enterprises Facilitation Council and another (WP(c) No.5004/2017 & CM No.21615/2017 of Delhi High Court), M/s Equipment Conductor & Cable Ltd., New Delhi vs. Transmission Corporation of Andhra Pradesh Ltd. (Award dated 21.06.2010 passed by HMSEFC), The Indur District Cooperative vs. M/s Microplex (India) (WP No.35872/2012 of Andhra Pradesh High Court), Punjab State Power Corporation Ltd. vs. Emta Coal Ltd. and another (SLP(C)No.8482/2020) and ***Deep Industries Limited vs. Oil and Natural Gas Corporation Limited and another, 2019 SCC OnLine SC 1602.***

23. Lastly, Shri Agrawal placed reliance on the relevant balance-sheet (page 61) which shows that in the head of plant & machinery, amount of Rs.1,83,99,841/- is shown which is well within the prescribed limit for treating the respondent No.2 as a small enterprise. The total balance as on 31.03.2018 as per this balance-sheet is Rs.2,06,80,168/-. This amount is duly certified by a Chartered Accountant by its certificate dated 12.11.2019.

24. The Reserve Bank of India (RBI) Memorandum dated 13.07.2017 is relied upon to contend that a certificate issued by a Chartered Accountant regarding purchase price of plant & machinery is sufficient to satisfy the purpose of classification under the Act of 2006. Shri Agrawal further contend that the RBI circular dated 06.12.2010 Annexure 2 makes it clear that the Act of 2006, in the opinion of RBI, does not provide for clubbing of two or more enterprises. Hence, previous notification on this subject dated 01.01.1993 was rescinded. Point was clarified by another memorandum by the Office of Development Commissioner, MSME on 29.09.2015 Annexure A/3. It was decided that the investment in plant & machinery of all enterprises under same

ownership shall be clubbed together while assessing the status of MSME as per the Act of 2006. This circular stood withdrawn pursuant to another circular dated 03.03.2016 issued by Office of Development Commissioner, MSME. In view of these circulars, it is clear that the petitioner falls within the ambit of small enterprise.

25. Both the parties filed their written submissions.

26. Parties confined their arguments to the extent indicated *hereinabove*.

FINDINGS:-

27. I have bestowed my anxious consideration on the rival contentions and perused the record. In view of rival contentions advanced at the bar, broadly following issues emerged for determination:

(A) Whether respondent No.2 committed any jurisdictional error or illegality which warrants interference by this Court under Article 226/227 of the Constitution ?

(B) Whether Council committed any error in acting as an Arbitrator after failure of conciliation proceedings ?

Issue (A):-

28. Before dealing with this issue in sufficient detail, it is apposite to mention that scope of interference under Article 226/227 of the Constitution is limited. If orders impugned suffer from any patent lack of inherent jurisdiction or suffer from any manifest procedural impropriety or palpable perverseity, interference can be made. Another view is possible, is not a ground for interference. This Court is not required to sit in appeal and reweigh/reappreciate the entire material at this stage. In other words, this Court is not obliged to act as a bull in a china shop to disturb the finding

unless the aforesaid litmus test is satisfied (**See**: ***Shalini Shyam Shetty & another vs. Rajendra Shankar Patil, (2010) 8 SCC 329***).

29. The jurisdiction of Council is called in question by contending that respondent No.2 did not have UAD Memo of MP at the time of entering into contract This aspect ought to have been examined at the threshhold as mandated in Rule 7 of Rules of 2017. Merely because respondent No.2 is 'located' in M.P. will not bestow jurisdiction to the Council in M.P.

30. Section 2(e) of the Act of 2006 reads as under:

> *"(e) 'enterprise' means 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 (55 of 1951) or engaged in providing or rendering of any service or services."*

Section 7(1)(a) & (ii) of the Act of 2006 reads as under:

> *"(a) in the case of the enterprises 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 (65 of 1951),as--*
> *(ii) a small enterprise, where the investment in plant and machinery is more than twenty-five lakh rupees but does not exceed five crore rupees."*

31. Indisputably, the registration of respondent No.2 is of 2004 which is prior to the commencement of the Act of 2006. In view of this statutory provision, the question raised is whether the Council has committed any patent lack of inherent jurisdiction in entertaining the reference. The jurisdiction of Council can be traced from Section 18 which reads thus :-

> **"*18. Reference to Micro and Small Enterprises Facilitation Council.-***

*(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, **with regard to any amount due** under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.*
(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.
(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer 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.
(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."

[***Emphasis Supplied***]

The Act of 2006 has a scheme designed to provide for facilitating the promotion, development and enhancement of competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto. The said Act, in the considered opinion of this Court is a beneficent legislation introduced in order to promote the said enterprises. A statute of this nature must be given liberal and wide construction.

Sub-section (1) of Section 18 is pregnant with an expression "any party to a dispute may, with regard to any amount due". The use of words 'any party' makes it very wide which shows that any effected party "in relation to

any amount due" may make a reference to the Council. The restricted view canvassed by learned senior counsel Mr. Nagrath which confines this right to only for a supplier to file a reference is based upon literal reading of sub-section (4) of Section 18. In sub-section (4), the expression used is 'in a dispute between the supplier located within its jurisdiction and buyer'. This literal and narrow interpretation deserves acceptance if said expression is read in isolation and totally divorced from Section 18 (1) and the object and scheme of the Act of 2006. The said Act does not intend to deprive a small enterprise from the benefit of filing reference.

The Act of 2006 was brought into force in order to promote and develop the micro, small and medium enterprises. Sub-section (1) of Section 18 permits 'any party' to a dispute to file a reference with regard to any amount due under Section 17 of the Act of 2006. The conjoint and careful reading of Section 17 & 18 of the Act of 2006 shows that 'any party' means a party in whose favour amount based on goods supplied or services rendered is due. Thus, 'any party' is relatable to the said dues and cannot be restricted to a party who has filed memorandum under Section 8 of the Act of 2006. Section 17 and sub-sections of Section 18 must be read harmoniously and must be given wide construction taking into account the aim and object of the Act. It cannot be forgotten that adopting the principle of literal construction of the statute alone, in all circumstances without examining the context and scheme of the statute, may not subserve the purpose of the statute. In the words of V.R. Krishna Iyer, J., *such approach would be "to see the skin and miss the soul". Whereas, "the judicial key to construction is the composite perception of* ***Deha*** *and* ***Dehi*** *of the provision." (****See****:* ***Board of Mining Examination vs. Ramjee (1977) 2 SCC 256)****. This principle was followed by Supreme Court in* ***(2013) 3 SCC 489 (Ajay Maken vs. Adesh Kumar Gupta vs. Another)***.Thus, text and context both are equally important.

In other words, the interpretation of a statute depends on the text and the context. The textual interpretation must match the contextual. First it must be ascertained as to why the statute was enacted. Keeping in mind this aspect the statute should be read as whole, in its context and scheme, to discover what

each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire act (**See**: ***(1987) 1 SCC 424, [RBI vs. Peerless General Finance & Investment Company Ltd.]***). Section 18 of the Act of 2006 is a remedial provision. The general principle in construing a remedial statute the Courts ought to give to it "the widest operation which its language will permit. They have only to see that the particular case is within the mischief to be remedied and falls within the language of the enactment." The words of such a statute must be so construed as "to give the most complete remedy which the phraseology will permit," so as "to secure that the relief contemplated by the statute shall not be denied to the class intended to be relieved." (**See**: *Principles of Statutory Interpretation, 12th Edition 2010 Page-870, by Justice G.P. Singh*).

32. Applying the said acid test in the present matter, in my view the Act of 2006 provides a forum of making reference under Section 18 to 'any party' in relation to any amount due. Scheme of the Act does not preclude an enterprise from a redressel forum merely because said enterprise has not filed memorandum under Section 8 of the said Act. I find support in my view from the judgment of Andhra Pradesh High Court in the following case- ***The Indur District Cooperative vs. M/s Microplex (India)***(Supra), wherein it was opined as under:

> "*It would be anomalous to interpret the definition to mean that for a micro or small enterprise to be a supplier, it must mandatorily file a memorandum under Section 8(1), but any company, co-operative society, trust or body, which either sells goods or renders services of a micro or small enterprise, would automatically qualify as a supplier, irrespective of whether or not such micro or small enterprise has itself filed a memorandum under Section 8(1) Given the totality of the definition and the scheme and import of the enactment, this Court is inclined to accept the submission of Sri Ashok Anand Kumar, learned counsel, that the phrase which has filed a memorandum with the authority in Section 2(n) is only qualifying and does not curtail the scope of the definition.*
>
> *Therefore, filing of a memorandum under Section 8(1) of the Act of 2006 is not a condition precedent for a micro or small*

> *enterprise, which otherwise satisfies such description under the Act of 2006, to be included within the ambit of a supplier as defined under Section 2(n). The first respondent company in each of these cases would therefore qualify as a supplier under the said definition and their claims before the Council did not stand invalidated on this ground.*"
>
> [*Emphasis Supplied*]

It was further held that:

> "*As long as these companies were suppliers within the meaning of Section 2(n) of the Act of 2006 and were located within the jurisdiction of the Council, as required by Section 18(4), the Council had jurisdiction to deal with their claims. In this regard it is relevant to note that what is required is only that they are located within the jurisdiction of the Council and not that they should be registered or have their registered office within such jurisdiction.*"
>
> [*Emphasis Supplied*]

33. In view of this judgment, in the considered opinion of this Court, the Council has taken a plausible view. In other words, if the view taken by the Council matches with the view taken by the Andhra Pradesh High Court, by no stretch of imagination, the said view can be treated as a view not plausible at all. Such a plausibe view cannot be subject matter of challenge under Article 226/227 of the Constitution.

34. The 'plant & machinery' head contains an amount of Rs.2,06,80,168/- which is within prescribed limit (which does not exceed Rs.5.00 crore) as per Section 7(1)(a)(ii) of the Act of 2006. The balacne sheet is duly certified by a Chartared Accountant.

35. True it is that the matter was heard by the Council on the question of jurisdiction and it was reserved for orders. However, the matter was reheard on 09.06.2020 through Video Conferencing whereby both the objections of petitioner Annexure P/6 and Annexure P/10 were decided by the Council. Although the constitution of Council has undergone a change after the matter was reserved for order and before the impugned orders were passed. However,

after such change had taken place in the constitution of Council, the parties were duly heard on 09.06.2020. Thus, the argument of petitioner that reference was heard by one set of Members and decided by another is factually incorrect and does not require any interference.

36. The Courts in catena of judgments opined that in arbitration matters and matters of this nature, the interference of Courts should be minimal at interlocutory stage. In ***Food Corporation of India Vs. Indian Council of Arbitration and others***(Supra), the Apex Court opined as under:

> "*Adverting to Section 16 of the 1996 Act the Constitution Bench also held that questions relating to the improper constitution of Arbitral Tribunal or its want of jurisdiction or objections with respect to the existence or validity of the arbitration agreement are matters which should be canvassed before the Arbitral Tribunal itself which has been specifically empowered to rule on such issues and on its own jurisdiction, as well. Unfortunately, the High Court in this case seems to have proceeded to adopt an adjudicatory role and returned a verdict recording reasons as to the very existence or otherwise of the agreement as well as the tenability and legality or otherwise of making a reference to an arbitrator.*"
>
> *[Emphasis Supplied]*

This judgment was followed by Jharkhand High Court in the case of ***State of Jharkhand Vs. M/s Himachal Construction Co. Pvt. Ltd.***(Supra). In the case of ***Lalitkumar vs. Sanghavi vs. Dharamdas V. Sanghavi and others***(Supra), the Apex Court placed reliance on its judgment of seven Judges' Bench in the case of ***SBP & Company vs. Patel Engineering Ltd.*** (Supra) wherein Apex Court disapproved the stand adopted by various High Courts against the interlocutory orders passed by Arbitral Tribunal. This ratio of SBP & Company Ltd. (Supra) is followed in the case of ***Sterling Industries Vs. Jai Prakash Association***(Supra). The same view is followed by this Court in the cases of ***Ellora Papaer Mills Ltd. Vs. State of M.P. and others***(Supra) and ***Shivhare Road Lines, Gwalior vs. Container Corporation of India Ltd., Noida and another***(Supra).

37. In a recent order passed in ***Punjab State Power Corporation Ltd. vs. Emta Coal Ltd. and another***(Supra), the Supreme Court opined that in absence of any patent lack of inherent jurisdiction as explained in the case of ***Deep Industries Vs. ONGC***(Supra), interference under Article 226/227 of the Constitution is not proper.

38. As analysed above, I am unable to hold that the Council committed any patent lack of inherent jurisdiction which warrants interference at this stage in exercise of power under Article 226/227 of the Constitution.

Issue (B):

39. On one factual aspect, the petitioner and the respondent No.2 had taken a diametrically opposite stand before this Court. The aspect was whether the conciliation was conducted by the Council itself or it was conducted by any other independent person. In order to separate the wheat from the chaff, this Court issued direction to the Council to furnish information in this regard. In turn, by communication dated 09.11.2020, the Council informed that the conciliation proceedings were conducted by Council itself. The Government Member, Shri C.K. Minj was appointed as Conciliator.

40. The argument of petitioner was that as per Section 18(3) of the Act of 2006 since conciliation was conducted by the Council, it was no more open to the Council to undertake the exercise of arbitration. The petitioner placed reliance on various judgments on this aspect. True it is that Bombay High Court in the case of ***Gujarat State Petronet Ltd. (supra)*** has taken this view, which was followed in the case of ***Mazgaon Dock Ltd. (supra)***. The same view is taken by Karnataka High Court in the case of ***M/s. Pal Mohan Electronics Pvt. Ltd. (supra)***.

41. Another set of judgments on which reliance is placed includes the judgment of Patna High Court in the case of ***Reliance Communications***

Limited (supra). The High Court distinguished the aspect of jurisdiction between: (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction & (iii) jurisdiction over the subject matter. It is opined that if an authority inherently lacks jurisdiction, the resultant order can be challenged at any stage before a higher forum. Interestingly, the Division Bench of Madras High Court in the case of ***Ved Prakash (supra)*** considered certain judgments of Bombay High Court and opined that constitutionality of Section 18 of the Act of 2006 has already been upheld. The proceedings under Section 18 of the Act of 2006 by way of arbitration shall not be conducted by the very same person, who had acted as Conciliator. The Gujarat High Court in the case of ***M/s. Easun Reyrolle Lmited (supra)*** opined that as long as a party is a supplier "within the meaning of the Act of 2006 and is located within the jurisdiction of Council", the Council has jurisdiction to deal with the claim. The Division Bench of Patna High Court in the case of ***Best Towers Pvt. Ltd. (supra)*** has taken a different view. The relevant portion reads as under:

> *"20……. The question raised before us by the learned counsel for the respondent petitioner is that if the Facilitation Council acts as a Conciliator then the Council cannot act as an Arbitrator as in the present case when after having attempted conciliation proceedings and its termination in failure, the Council itself has proceeded to arbitrate which it could not have done in terms of Section 80 of the 1996 Act read with Section 18(2) of the 2006 Act. This argument on behalf of the respondent petitioner has been accepted by the learned Single Judge that has been questioned by the appellant contending that Section 24 of the 2006 Act clearly provides that Sections 15 to 23 thereof shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. What we find is that sub-section (2) of Section 18 only refers to conciliation and the procedure to be followed in terms of Part-III of the 1996 Act to the extent of Section 65 to Section 81 thereof. Immediately thereafter, subsection (3) of Section 18 introduces an absolutely novel procedure allowing the commencement of arbitration proceedings with a mandate on the Council that in the event conciliation ends in failure, 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 1996 Act "shall then" apply to the disputes as***

if the arbitration was in pursuance of an agreement. The overriding effect given to this provision in terms of Section 24 of the 2006 Act, in our opinion, clearly overrides any bar as suggested by the learned counsel for the respondent petitioner under Section 80 of the 1996 Act. It is trite law that the meanings assigned and the purpose for which an enactment has been made should be construed to give full effect to the legislative intent and we have no doubt in our mind that the provisions of Section 18(3) mandates the institution of arbitration proceedings under the 2006 Act itself and it is "then" that the provisions of the Arbitration and Conciliation Act, 1996 shall apply. The institution of arbitration proceedings would be governed by sub-section (3) of Section 18 of the 2006 Act which having an overriding effect cannot debar the Facilitation Council from acting as an Arbitrator after the conciliation efforts have failed under sub-section (2) of Section 18 of the Act. A combined reading of sub-section (2) and sub-section (3) of Section 18 of the 2006 Act read with the overriding effect under Section 24 thereof leaves no room for doubt that any inconsistency that can possibly be read keeping in view Section 80 of the 1996 Act stands overridden and the Facilitation Council can act as an Arbitrator by virtue of the force of the overriding strength of sub-section (3) of Section 18 of the 2006 Act over Section 80 of the 1996 Act. The conclusion of the learned Single Judge that there is a prohibition on the Council to act in a dual capacity is, therefore, contrary to the clear intention of the legislature and, therefore, the verdict that the Facilitation Council lacked inherent jurisdiction does not appear to be a correct inference. Thus, on a comparative study of the provisions referred to hereinabove, there is no scope for any doubt with regard to the overriding effect of the provisions of the 2006 Act that empowers the Facilitation Council to act as an Arbitrator upon the failure of conciliation proceedings. The cloud of suspicion and doubt about the role of the Facilitation Council, therefore, stands clarified on the basis of the analysis made by us hereinabove."

[Emphasis Supplied]

The different High Courts have taken different views on the interpretation of Section 18 of the Act of 2006. The Bombay High Court in certain cases opined that the Council cannot act as conciliator as well as arbitrator. The Madras High Court opined that the same person, who has acted as conciliator cannot act as an arbitrator. The Division Bench of Patna High Court in ***Best Towers Pvt. Ltd. (supra)*** has given a totally different

interpretation to Section 18 aforesaid and clarified that the Council can act as an arbitrator upon the failure of conciliation proceedings.

42. At the cost of repetition, it is apposite to mention that if a plausible view is taken by the Council, it does not warrant interference by this Court. The impugned decision taken by the Council is in consonance with the view taken by certain High Courts. Thus, no interference can be made by this Court at this stage under Article 226/227 of the Constitution. However, it will be open for the Council to proceed with arbitration proceedings by excluding Shri C.K. Minj as a Member of arbitral body or refer the matter to any other institute or center providing alternative dispute resolution service.

43. In view of foregoing analysis, no case is made for interference under Article 226/227 of the Constitution of India. Thus, with aforesaid observation, petition is **dismissed**.

(Sujoy Paul)
Judge

YS/Bwl/S@if