



Reserved On : 08/10/2024
Pronounced On : 24/12/2024

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1728 of 2022
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2022
In R/FIRST APPEAL NO. 1728 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

=====

Approved for Reporting	Yes	No

=====

UTTAR GUJARAT VIJ COMPANY LIMITED
Versus
GUPTA POWER INFRASTRUCTURE LIMITED

=====

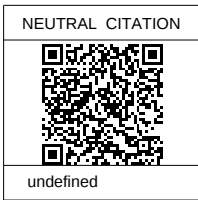
Appearance:
MR. MAULIK G. NANAVATI with MS. MANVI DAMLE AND MR. KISHAN
PATEL FOR NANAVATI & CO.(7105) for the Appellant(s) No. 1
MR SAURABH G AMIN(2168) for the Defendant(s) No. 1

=====

CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

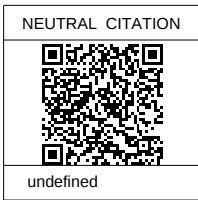
CAV JUDGMENT
(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

The present appeal is directed against the judgment and
order dated 5.4.2022 passed by the Commercial Court, 5th
Additional District Judge, Mehsana in rejecting the application



filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as ‘the Arbitration Act, 1996’) challenging the arbitral award dated 30.07.2016 passed by the Micro, Small and Medium Enterprises Facilitation Council (MSMEFC) in MSMEFC Case No. 26 of 2014. The application under Section 34 has been rejected on the ground that the Court at Mehsana has no jurisdiction to try, entertain and dispose of the application, inasmuch as, the territorial jurisdiction to challenge the MSME Facilitation Council’s award is with the Court in the State of Odisha as the seat of MSMEF Council would be the seat of arbitration in the spirit of Section 18 read with section 24 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as ‘the MSME Act, 2006’).

2. It was held by the Commercial Court that the seat of arbitration is fixed by virtue of Section 18 of the Act’ 2006 at a place where MSMEF Arbitrator has jurisdiction, which is the place where supplier is located. The location of the supplier

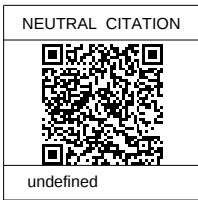


being at Cuttack, Odisha, the District Court at Cuttack, Odisha alone has jurisdiction to entertain the application under Section 34 of the Arbitration Act' 1996 to the exclusion of all other Courts by virtue of Section 18 and 24 of the MSMED Act' 2006.

3. Mr. Maulik G. Nanavati, the learned advocate appearing for the appellant invited attention of the Court to the Clauses 44 and 45 of the contract entered into between the parties, which read as under:-

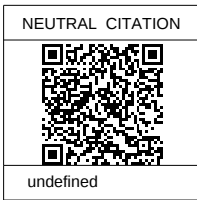
“44. **Jurisdiction**:- All questions, disputes or differences arising under out of or in connection with the tender/contract, if concluded, shall be subject to the exclusive jurisdiction of the Court under whose jurisdiction the place from which the tender/acceptance of tender is issued, is situated.”

“45. **Arbitration** :- All questions, disputes or differences whatsoever which may at any time arise between the parties to this agreement touching the agreement or subject matter thereof, arising out of or in relation there to and whether as to construction or otherwise, shall be referred to the decision of this Sole Arbitrator, appointed by the Chairman, UGVCL, for that purpose, who shall be a retired High Court Judge or retired District and Sessions Judge, and the decision of the said Arbitrator shall be final and binding upon the parties. Reference to the Arbitration shall be governed by the provisions of Indian Arbitration and Conciliation Act, 1996 as amended from time to time and the rules made thereunder.”

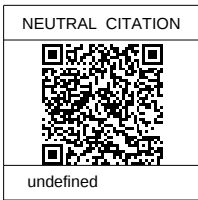


4. It was argued that by virtue of Clause 44 read with Clause 45, only the Court at Mehsana was having jurisdiction to deal with all questions, disputes or differences arising out of the or in connection with the tender/contract. The exclusive jurisdiction is conferred to the Court at Mehsana by the parties under whose jurisdiction, the place where tender/acceptance of tender was issued, is situated. It was argued that even though the venue of arbitration will be at Cuttack, i.e. the place of location of MSME Facilitation Council, but the seat of the arbitration cannot be fixed at Cuttack. The learned Commercial Court at Mehsana has committed an error of law in rejecting the application under Section 34 for want of jurisdiction.

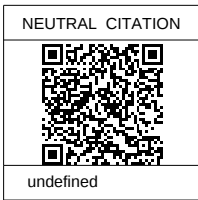
5. On the question of “seat” and “venue”, the law laid down by the Apex Court as to what constitutes the ‘juridical seat’ or arbitration proceedings and whether once the seat is delineated by the arbitration agreement, the Court at the place of the seat will alone have exclusive jurisdiction over the arbitral proceedings have been placed before us. It was



argued that this Court in the judgment and order dated 13.10.2023 passed in **Arbitration Petition No. 159 of 2022**, noted the law on “seat” and “venue” of the arbitration proceedings and stated that it is fairly well settled in cases where the parties have determined the ‘seat’ in their agreement, the same is akin to conferring exclusive jurisdiction on the Court(s) thereof. Where the clause in the contract vests exclusive jurisdiction over the disputes, it should be considered as fixing “seat” and the exclusive Court having jurisdiction to entertain the application under the Act’ 1996. Where the parties have agreed that all actions and proceedings arising out / related to the contract shall lie in the Courts of competent jurisdiction at place ‘A’ and have agreed to conduct the arbitration proceedings at place ‘B’, the expression in the agreement that the Court at place ‘A’ will have jurisdiction, would be a contrary indicator as held by the Apex Court in the case of **BGS SGS Soma JV vs. NHPC Limited [(2020) 4 SCC 234]**.

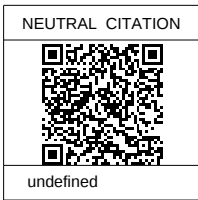


6. It was held by this Court that the words ‘the parties agreed that the arbitration proceedings will be conducted at Bangalore cannot be read to mean that the place ‘Bangalore’ has been designated under the contract as the ‘seat’ of arbitration and would operate as a exclusive jurisdiction clause to decide the jurisdiction of the High Court under Section 11 of the Act’ 1996. It was noted that in the agreement signed by the parties, clause 25(iii) exclusively confers jurisdiction to the Courts at Ahmedabad in all matters arising out of the agreement. The agreement was signed at Ahmedabad between the parties; it was executed and stamped in the State of Gujarat. The place of arbitration mentioned in Clause 25(ii) of the said agreement at ‘Bangalore’ is merely a convenient location for holding the arbitration proceedings being the “venue” of the arbitration and the Courts at Ahmedabad selected as having exclusive jurisdiction in all disputes arising out the lease agreement should be considered as the ‘seat of arbitration’.

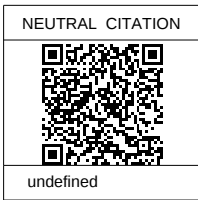


7. The judgment of the Apex Court in **Ravi Ranjan Developers Pvt. Ltd. vs. Aditya Kumar Chatterjee (2022 SCC OnLine SC 568]** has been placed before us to argue that “seat of arbitration” and “venue of arbitration” cannot be used interchangeably. Mere expression “place of arbitration” can not be made basis to determine the intention of the parties that they have intended that place as the “seat of arbitration”. The intention of the parties as to the “seat” should be determined from the clauses in the agreement and the conduct of the parties. It is well settled principle of law that when two or more Courts have jurisdiction to adjudicate the disputes arising out of an arbitration agreement, the parties might, by agreement decide to refer all disputes to any one Court to the exclusion of all other Courts, which might otherwise have had jurisdiction to decide the disputes. The parties cannot, however, by consent confer jurisdiction on a Court which inherently lacks jurisdiction.

8. The decision of the Delhi High Court in **O.M.P.(Misc.)**



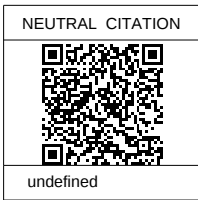
Commercial Petition No. 161 of 2020 dated 14.08.2023 has been placed to submit that the Apex Court in **BGS SGS Soma JV (supra)** has laid down the test for determination of “seat” in paragraph No. 82, wherein it was concluded that whenever there is designation of a place of arbitration in an arbitration clause as being the “venue” of the arbitration proceedings, the expression “arbitration proceedings” would make it clear that the “venue” is really the “seat” of the arbitral proceedings, inasmuch as, the said expression does not include just one or more individual or particular hearing, but the arbitral proceedings as a whole, including the making of an award at that place. Further, the fact that the arbitral proceedings “shall be held” at a particular venue would also indicate that the parties intended to anchor the arbitral proceedings to a particular place, signifying their intention that the place is the seat of the arbitral proceedings. This coupled with there being no other contra indicia that stated venue is merely a “venue” and not “seat” of the arbitral proceedings, would then conclusively show that such a clause designates the “seat” of



the arbitral proceedings.

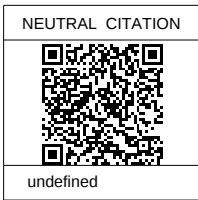
9. It was argued that, in the instant case, there is a categorical clause in the agreement signed by the parties to confer exclusive jurisdiction to the Court at the place from which tender / acceptance of tender was issued. There being a sufficient contra indica to confer exclusive jurisdiction upon the Court, the ‘juridical seat’ for all court proceedings would be the Court at Mehsana. The fact that the MSME Felicitation Council located at Cuttack, Odisha had passed the award and the opponent unit which is a MSME unit is situated at Cuttack, Odisha, “the juridical seat” cannot be fixed at Cuttack, Odisha to confer exclusive jurisdiction upon the Court of the said place.

10. The judgment and order dated 16th October, 2024 of the Division Bench of the Bombay High Court has been placed to submit that in a reference on the issue, as has been raised herein, about the place where exclusive jurisdiction as agreed

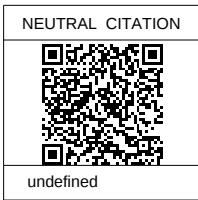


upon would confer jurisdiction to the Court at that place to entertain the application under Section 34 of the Act' 1996 and not at the place where the award under Section 18 was passed, was considered therein. It was argued by Mr. Nanavati that the Division Bench of the Bombay High Court having exhaustively considered the provisions of the Arbitration Act' 1996 and MSMED Act' 2006, reached at the conclusion that the application under Section 34 of the Arbitration Act' 1996 to challenge the award passed under Section 18(4) of the MSMED Act' 2006 would be covered by the agreement between the parties which has conferred exclusive jurisdiction to a particular Court, and would not lie to the Court at a place where award has been passed under Section 18 of the MSMED Act' 2006 which is guided by the location of the supplier.

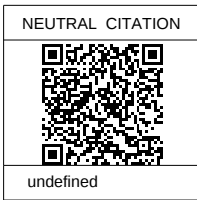
11. In rebuttal, Mr. Saurabh Amin, the learned counsel for the respondent would vehemently argue that the respondent herein is a 'buyer' within the meaning of Section 2(d) and



‘supplier’ as also a ‘small enterprise’ within the meaning of Section 2(n) and 2(m) of MSMED Act’ 2006. The disputed claim falls under Section 17 of the MSMED Act for which a special mechanism has been provided under Section 18 of the said Act. The respondent availed the remedy under Section 18 by making a reference to the MSME Felicitation Council at Cuttack for recovery of the claim covered by Section 17. The MSEFC Case No. 26/14 was registered and MSME Council passed arbitral award dated 30.07.2016, which was challenged before the Commercial Court at Mehsana by moving application under Section 34 of the Arbitration Act, registered as Civil Misc. Application No. 131 of 2019. By the impugned judgment and order dated 05.04.2022, the Commercial Court has held that as the entire arbitration proceedings had taken place at Cuttack and the award was passed at Cuttack, the seat of arbitration shall be at Cuttack as the Court at Mehsana did not have jurisdiction to entertain the application under Section 34.

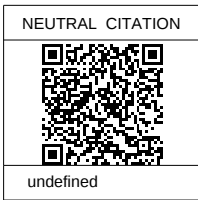


12. The first point of argument of Mr. Amin, the learned advocate for the respondent is that the present appeal under Section 37 of the Act' 1996 is not maintainable, inasmuch as, the Commercial Court has not entered into the merits of the case and hence the challenge would not fall within the scope of powers conferred under Section 37 of the Arbitration Act' 1996 to challenge the order passed by the Commercial Court, inasmuch as, it would not amount to refusal to set aside the arbitral award applying the grounds available under Section 34. As the Commercial Court has held that it lacks jurisdiction and has reserved the liberty to the appellant to approach the Court of proper jurisdiction, the impugned order does not fall within the narrow ambit of Section 37. The appeal under Section 37 being a creature of a statute, a party does not have inherent right to appeal on any issue beyond the scope of Section 37. Reliance is placed on the decision of the Apex Court in **BGS SGC Soma (supra)** to substantiate the said point.



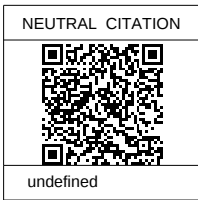
13. On the issue of jurisdiction, on merits of the appeal, i.e. it was argued that the seat of arbitration is at Cuttack and the Court at Mehsana has no jurisdiction to entertain the application under Section 34, inasmuch as, it is settled position of law that only the District Court having jurisdiction over the seat of arbitration has jurisdiction to entertain the application under Section 34 to the exclusion of all other Courts. The aspects of cause of action or consent of the parties does not confer jurisdiction upon a Court. Reliance is placed on the decisions in **2021 SCC online SC 448 (Inox Renewables Limited vs. Jayesh Electricals Limited)** and **(2020) 4 SCC 310 (Hindustan Construction Company Limited vs. NHPC Limited and Another)**.

14. It was further submitted that it is not in dispute that the entire arbitral proceedings has been held at Cuttack and the award has been signed and declared at Cuttack. Not a single hearing had taken place at Mehsana. Clauses 44 or 45 of the contract do not designate Mehsana as the seat of arbitration.



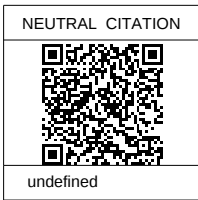
Mehsana is neither the “seat” of arbitration nor the designated “venue” of arbitration.

15. It was argued that Section 18 of the MSMED Act’ 2006 denotes the “seat”. Under Section 2(4) of the Act’ 1996, the arbitration agreement gets substituted by Section 18 of the MSME Act’ 2006 which talks of the substitution of the arbitration agreement with the statutory enactment. Section 2(4) provides that the provisions of the enactment will replace the arbitration agreement and the provisions of Part-I of the Arbitration Act’ 1996 shall apply to every arbitration under any statutory enactment for the time being in force to the extent of there being no inconsistency with the enactment. Section 18 (2) & (3) talk of the application of Arbitration Act’ 1996 to the limited extent of conciliation sittings. Sub-section (4) of Section 18, however, fixes the seat of arbitration and is an exception to party autonomy contemplated under the Arbitration Act, 1996. Sub-section (4) of Section 18 begins with a non-obstante clause by providing that the MSME Felicitation



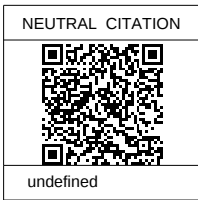
Council or the centers providing alternative dispute resolution services or conciliation under Section 18, shall have jurisdiction to act as an Arbitrator or Conciliator in a dispute between the supplier located within its jurisdiction and the buyer located anywhere in India.

16. It was argued that Section 18 of the special enactment namely MSMED Act' 2006 provides mechanism to recover the claim amount with respect to which liability is created under Section 17. Section 15 creates a statutory liability upon the buyer and Section 16 provides for rate of interest payable. The MSMED Act' 2006 being a special enactment where the dispute of the above stated categories is to be settled through the process of arbitration by MSME Felicitation Council, would have an overriding effect on the general principles of the Arbitration Act, 1996 based on a party autonomy or the overriding effect of fixing the "seat" to confer exclusive jurisdiction upon the Civil Courts by agreement of the parties. The "seat" as contemplated in the arbitration agreement has



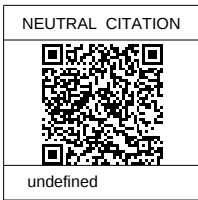
been replaced by Section 18 (4) of the MSME Act, 2006 and the “seat of arbitration” has been fixed at the location of supplier. The Court at the said location will have exclusive jurisdiction irrespective of the location of the buyer anywhere in India in light of the provisions of sub-section (4) of Section 18 of the MSME Act, 2006.

17. It was argued that Section 18 of the MSME Act, 2006 providing for adjudication of disputes with regard to any amount due under Section 17 is party specific. The remedy is limited to unpaid amount only and any other dispute arising out of the contract is not adjudicated by the Facilitation Council under the MSME Act, 2006. Section 18(3) and (4) anchor the arbitration proceedings at the place where the supplier is located. The Special Act fixing the place for conducting arbitration proceedings in turn fixes the seat of arbitration. Whereas sub-section(1) of Section 20 of the Arbitration Act, 1996 speaks of party autonomy giving freedom to the parties to agree on the place of arbitration and choice



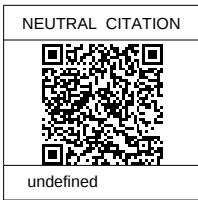
given to the arbitral tribunal to determine a convenient place as the place of arbitration under sub-section(2) of Section 20. Such an autonomy has been specifically taken away with the non-obstante clause contained in sub-section(4) of Section 18 of the MSMED Act' 2006. The MSMED Act' 2006 being a special Act beneficial to small enterprises has overridden Section 20 of the Act' 1996 in a case of arbitration by the MSME Felicitation Council. Section 2(4) of the Arbitration Act' 1996 by deeming fiction has replaced the arbitration clause completely by the statutory provisions.

18. Placing reliance on the judgment of the Apex Court in **Gujarat State Civil Supplies Corporation Limited vs. Mahakali Foods Private Limited (Unit 2) [(2023) 6 SCC 401]**, it was argued that the issue as to whether Chapter-V of the MSMED Act' 2006, which contains Section 18 as well, would have an effect overriding the provisions of the Arbitration Act' 1996 has been settled by the Apex Court. It is held therein that Section 18 is a substantive law as it provides rights and the



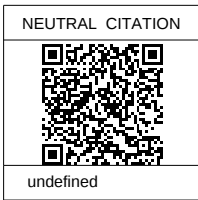
remedies of an MSME for resolution of dispute being beneficial statute. The MSMED Act' 2006 should be given a liberal and not a strict interpretation. Section 18 starts with a non-obstante clause which means that the said provision has been enacted with the aim to supersede other laws for the time being in force and statutory forum namely MSME Facilitation Council has been conferred jurisdiction to act as an Arbitrator or the Conciliator in a dispute between supplier located within its jurisdiction and a buyer located anywhere in India.

19. It was noted therein that Chapter-V is “Parties specific”, inasmuch as, the party i.e. “the buyer” and “supplier” defined in Sections 2(d) and 2(n); respectively, are covered under the said Chapter. A special procedure has been prescribed to be followed by the Facilitation Council after the reference is made to it at the instance of any party to the dispute. As per Section 24 of the MSMED Act' 2006, the provisions of Sections 15 to 23 contained in Chapter-V of the MSMED Act' 2006 shall have an effect overriding the other



law for the time being in force.

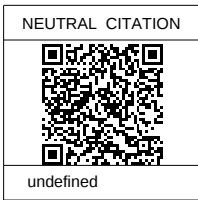
20. Considering the scheme of the Arbitration Act, 1996 and the MSMED Act' 2006, it was held by the Apex Court therein that the Arbitration Act' 1996 is a general law relating to domestic as well as international commercial arbitration and for conciliation. It does not specify any specific dispute or specific class or category of persons to which the Act' 1996 shall apply in comparison to the provisions of the MSMED Act' 2006. The provisions of the MSMED Act' 2006 do have precedence over or prevail over the Arbitration Act' 1996 because of the nature of dispute being specific between specific categories of persons, to be resolved by following a specific process through a specific forum. The submission made on behalf of the buyer that there is a conscious omission of the word 'agreement' in sub-section(1) of Section 18 as against the use of the said word in Section 16 of the MSMED Act' 2006, which implies that the arbitration agreement independently entered into between the parties as contemplated under



Section 7 of the Arbitration Act' 1996 was not intended to be superseded by the provisions contained under Section 18 of the MSMED Act' 2006, was not accepted therein. It was held by the Apex Court that once the statutory mechanism under sub-section(1) of Section 18 is triggered by any party, it would override any other agreement independently entered into between the parties.

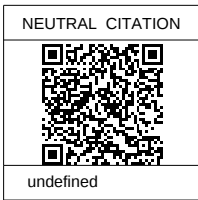
21. It was, thus, argued that in view of the law laid down by the Apex Court in **Mahakali Foods Private Limited (supra)**, the Clause 44 of the agreement providing exclusion of jurisdiction of Civil Court other than the Court at the place wherefrom the tender/acceptance of tender issued, cannot be pressed into service, inasmuch as, the said provision became redundant in so far as the proceedings of Arbitration conducted under the MSMED Act' 2006.

22. Even otherwise, as per the concept of determination of "venue" as "seat" being the juridical seat for conducting of



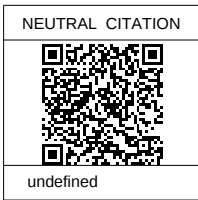
arbitration proceedings, the “venue” becomes “seat” in absence of any contra indica. As far as the agreement executed between the parties, Clause 45 quoted hereinabove pertains to the arbitration, which does not contain any statement as to the place of arbitration as “venue” or “seat”. In absence of any such contra indica in Clause 45 which does not fix either the venue or seat of arbitration, the place where arbitration proceedings have been conducted as per Section 18 (4) of the MSMED Act’ 2006 will be the “seat” of arbitration. The jurisdiction of any other Civil Court other than the Court within the jurisdiction of which the arbitration proceedings have been conducted, will have to be excluded. The question as to “venue” and “seat” being distinct is not automatic, but has to be culled out from the agreement between the parties.

23. Heard learned counsels for the parties and perused the record. To deal with the arguments of the learned counsels for the parties, we may note that the agreements covering the transactions between the parties by way of the purchase orders



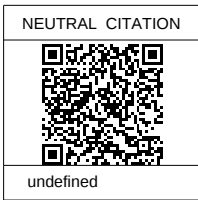
were entered into in the year 2009-2010. Pursuant to the claim put up by the respondent herein, the proceedings of conciliation commenced under the MSMED Act' 2006 and after termination of conciliation, award was passed by the MSME Facilitation Council on 30.07.2006. The challenge to the award was brought by moving an application under Section 34 by the appellant herein invoking Clause 44 of the Agreement which talks of exclusive jurisdiction conferred upon the Courts at Mehsana wherefrom tender/acceptance of tender was issued. There is no dispute about the abovenoted factual aspects.

24. The argument of the learned counsel for the respondent that Section 18(4) fixes the “seat” of arbitration being the place where the MSME Felicitation Council is situated at the location of the supplier, is to be examined by us. The contention is that Section 18 (4) fixes the seat of arbitration at the place within the jurisdiction of MSME Felicitation Council, which is further decided by the location of the supplier. The location of the buyer has no relevance to decide the

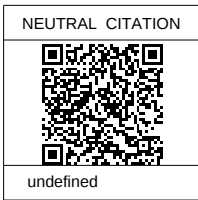


jurisdiction of the MSME Facilitation Council. The submission is that the Clause 44 of the Arbitration Agreement stood replaced by Section 18(4) of the MSMED Act' 2006.

25. Taking note of the above arguments, we have to examine the interplay between the Arbitration Act' 1996 and MSMED Act' 2006 by going through the relevant provisions of both the enactments. When we go through the provisions of the MSMED Act' 2006, it can be discerned that the overriding effect has been given by virtue of Section 18(4) read with Section 24 of the MSMED Act' 2006 over any agreement between the parties in relation to the dispute covered by the MSMED Act' 2006 and in so far as the claim under Section 17, where it has been kept open to the parties to refer the dispute to the MSME Facilitation Council. From the procedure prescribed in Chapter-V of the MSMED Act' 2006, it is evident that the forum namely MSME Facilitation Council provided in Section 18, is in replacement of 'arbitration agreement' as contained in Section 7 of the Arbitration Act' 1996, which

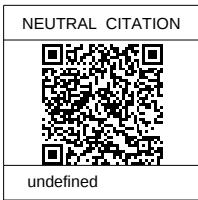


covers the dispute resolution mechanism of arbitration between the parties. Sub-section(4) of Section 2 of the Arbitration Act' 1996 provides that Part-I of the Arbitration and Conciliation Act' 1996 shall apply to every arbitration including statutory arbitration, and every arbitration under any other enactment for the time being in force shall be deemed to be the arbitration pursuant to the arbitration agreement within the meaning of the Arbitration Act' 1996. Thus, by virtue of Section 2(4) read with Section 7, in so far as the arbitration proceedings are concerned, they shall be governed by the statutory enactment, which would result in replacing the mode and manner of appointment of arbitral tribunal under the Arbitration Act' 1996. The provisions of the Arbitration Act' 1996 which are inconsistent with the statutory enactment shall not apply. With the commencement and conclusion of the arbitral proceedings under the statute namely the MSMED Act' 2006 at both the states, the Arbitrator and the parties have to refer to the provisions of the Arbitration Act' 1996. For any dispute pertaining to the correctness or validity of the



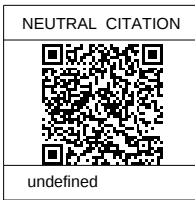
arbitral award, execution and implementation thereof, no other procedure have been provided under the MSMED Act' 2006, and the provisions of the Arbitration Act' 1996 are applicable..

26. Further, we may also note from the language employed in sub-section (3) of Section 18 that where the conciliation initiated under sub-section(2) of Section 18 is not successful, the Council is empowered to take up the dispute for arbitration onto itself or refer to it any institution or center providing alternate dispute resolution services for such arbitration. In both eventuality, the arbitration proceedings would be governed by the provisions of Arbitration and Conciliation Act, 1996 in dealing with the dispute as if the arbitration was pursuant to an arbitration agreement referred to in sub-section(1) of Section 7 of the Arbitration Act' 1996. With the language employed under sub-section(3) of Section 18, if the provisions of sub-section(4) of Section 18 are read and understood, it would mean that the provisions of sub-section(4) of Section 18 would have an overriding effect only



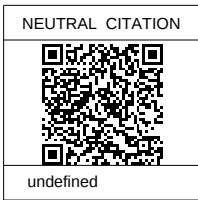
with respect to the jurisdiction of the MSME Facilitation Council in adjudication of the dispute as an Arbitrator and has no application beyond that point.

27. We may further look into the provisions of the Section 19 of the MSMED Act' 2006, which provides the manner in which the application can be moved for setting aside the decree, award or order made either by the Council itself or by any institution or center providing alternative dispute resolution services to which a reference is made by the Council. Section 19 contemplates pre-deposit of certain amount before any such application is entertained by any Court. The word 'Court' is not defined under the MSMED Act' 2006. The phrase 'any court' contained in Section 19 of the MSMED Act' 2006, thus, has to be understood to mean the 'court' defined under Section 2(1)(e) of the Arbitration Act, 1996, which applies to the arbitration proceedings conducted by the MSME Facilitation Council or a institute or center referred to by it, by virtue of sub-section(3) of Section 18. The resultant effect would be



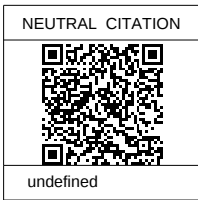
that the Court having jurisdiction to entertain the challenge to an arbitral award within the meaning of Section 34 of the Arbitration Act, 1996 shall be able to adjudicate the challenge to an arbitral award within the scope of the said provisions. A conjoint reading of Section 19 of the MSMED Act' 2006 and Section 34 of the Arbitration Act' 1996 makes it clear that the Court defined in Section 2(1)(e) of the Arbitration Act' 1996 will have the jurisdiction to entertain the challenge to any award of the MSME Felicitation Council or the institution to whom the dispute is referred by the Council, subject to fulfillment of the condition of pre-deposit laid down in Section 19 of the MSMED Act' 2006.

28. We may further note that except Section 19 contained in Chapter-V of the MSMED Act' 2006, there is no other provision which would deal with the procedure or the manner or even the jurisdiction of the Court where challenge to an award by the Council can be laid. Section 24 of the MSMED Act' 2006 which gives overriding effect to the provisions of



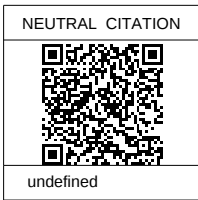
Sections 15 to 23 contained in Chapter-V of the MSMED Act' 2006, thus, would not apply beyond the provisions contained therein. Meaning thereby, once the challenge is put forth before the Court defined in Section 2(1)(e) of the Arbitration Act, 1996 by making pre-requisite deposit as per Section 19 of the MSMED Act' 2006, the interplay between the MSMED Act' 2006 and the Arbitration Act' 1996 would come to an end.

29. The Court before which the challenge is laid, once entertained the challenge by ensuring compliance of Section 19 of the MSMED Act' 2006, would have to deal with the challenge within the purview of Section 34 of the Arbitration Act, 1996. The MSMED Act' 2006 cannot be read and applied to determine the jurisdiction of the Court defined in Section 2(1)(e) of the Arbitration Act' 1996 before whom the challenge to an award is laid under Section 34. The limited scope of Section 19 of the MSMED Act' 2006 is clear with the conjoint reading of Section 19 of the MSMED Act' 2006, Section 2(1)(e)



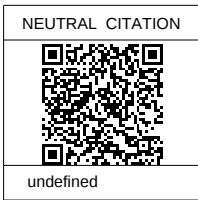
and Section 34 of the Arbitration Act, 1996. The interplay between Section 18 of the MSMED Act, 2006, Section 2(4) and Section 7 of the Arbitration Act, 1996, has already been discussed hereinbefore in detail.

30. The Legislature which fixes the jurisdiction of the MSME Facilitation Council by virtue of sub-section(4) of Section 18, has not prescribed any provision dealing with the jurisdiction of the Courts entertaining application for setting aside any decree, award or other order made either by the Council itself or by any institution or center referred to by the Council, in view of the fact that the provisions of the Arbitration and Conciliation Act, 1996 are applicable at both the stages of making of the award and post-passing of the award. The only mode and manner of referring the dispute for conciliation and arbitration and appointment of an arbitrator in case of disagreement between the parties, as governed by the Arbitration Act, 1996 has been replaced by the statutory scheme of the MSMED Act, 2006.



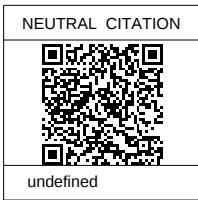
31. In view of the above discussion, the contention of the learned counsel for the respondent that by virtue of the overriding effect of sub-section(4) of Section 18 read with Section 24 of the MSMED Act' 2006, the juridical seat of arbitration proceedings has been fixed and it would result in exclusion of the jurisdiction of the Civil Court anywhere else in India where cause of action for adjudication of the dispute lies, is untenable.

32. As per own submission of the learned counsel for the respondent, the concept of party autonomy in fixing the place of arbitration by virtue of sub-section(1) Section 20 and the choice given to the arbitral proceedings under sub-section(2) of Section 20 failing in any agreement between the parties as referred to in sub-section(1) of Section 20, has been replaced by virtue of Section 18(4) of the MSMED Act' 2006. The result is that the place of arbitration is fixed by virtue of the statutory provision by conferring exclusive jurisdiction for arbitration to the statutory arbitrator namely, the MSME



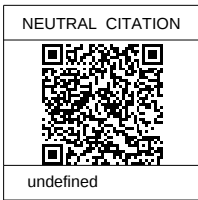
Facilitation Council having jurisdiction at a place where the supplier is located. The choice of the parties, thus, to decide the ‘venue’ or the ‘seat’ of arbitration proceedings as per Section 20 of the Arbitration Act’ 1996 no more survives. The whole concept of “venue” or “seat” as delineated by the Apex Court in **BGS SGS Soma JV (supra)** and other decisions noted hereinabove relied on by Mr. Saurabh Amin, the learned counsel for the respondent as to the choice of “venue” or fixing “seat” of arbitration do not attract in this case.

33. The provision of Section 18(4) of the MSMED Act’ 2006 cannot be read to exclude the jurisdiction of the Civil Court at Mehsana which otherwise has jurisdiction to deal with the dispute being the Civil Court within the jurisdiction of which the tender / contract was executed and supply was made against the purchase orders No. 2794 dated 4.9.2009 and No. 3262 dated 30.07.2010. Section 9 of the Code of Civil Procedure specifically provides that the Civil Courts (subject to the provisions contained therein) shall have jurisdiction to try



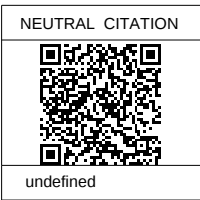
all civil suits, unless cognizance of such suit is either expressly or impliedly barred. There is no bar, express or implied, which can be read into under Section 18 or 24 of the MSMED Act' 2006.

34. In so far as the Clause 44 of the agreement between the parties relating to the choice of jurisdiction of the Civil Court, pertinent is to note that the said agreement has been arrived between the parties in the year 2009-2010, much after the enactment of the MSMED Act' 2006. Two agreements dated 17.08.2009 and 30.01.2010 signed by the parties contain both the Clauses 44 and 45 reproduced hereinbefore. Clause 44 talks of exclusive jurisdiction conferred by the parties to a Civil Court, whereas Clause 45 deals with the reference to the dispute to arbitration, which shall be governed by the provisions of the Arbitration and Conciliation Act, 1996. As noticed hereinabove, the Clause 45 of the agreement stood replaced by Section 18 of the MSMED Act' 2006, but there is no replacement of Section 44, which still survives.



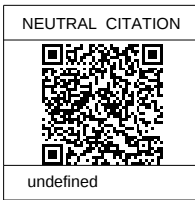
35. At the time of execution of the agreement, both the parties were aware that the Courts at Mehsana other than the Court at the location of the supplier, where MSME Felicitation Council has jurisdiction to arbitrate, will have jurisdiction to decide the dispute arising out of the arbitration proceedings or the agreement between the parties. Once the parties have consciously agreed to confer jurisdiction to the Court at Mehsana in exclusion to any other Court having jurisdiction, the respondent cannot be permitted to turn around to contend that the exclusive jurisdiction due under clause 44 (contained in the agreement signed and agreed by it), will not be applicable.

36. It is settled position of law that the parties by agreement cannot confer jurisdiction on a Court which otherwise does not have jurisdiction to deal with the dispute, however, the contracting parties are free to agree that all actions and proceedings arising out of or related to the contract shall lie in the Court of competent jurisdiction at one place out of two or



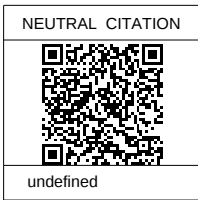
more Courts having jurisdiction to decide the disputes. The intention of the parties as to the choice to refer all disputes to the Court at Mehsana to the exclusion of all other Courts which might otherwise have had jurisdiction to decide the dispute, is evident from Clause 44 in the agreement and the conduct of the parties in signing the said agreements in the year 2009-2010. The parties once have agreed to submit to the jurisdiction of Court at Mehsana in respect of the disputes arising out of the agreement, one contracting party cannot be permitted to argue that since the arbitration proceedings had been conducted at Cuttack, Odisha because of the location of MSME Felicitation Council by virtue of Section 18(4) of the MSME Act, 2006, the Civil Court at Cuttack, Odisha will have exclusive jurisdiction to deal with the challenge to the arbitral award under Section 34 of the Arbitration Act, 1996.

37. We may refer to the two decisions of the High Court at Bombay and Delhi High Court dealing with the same issue which have been placed before us by the Mr. Maulik G.



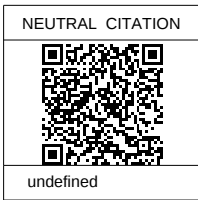
Nanavati, the learned counsel appearing for the appellant. We may record that both the above noted judgments have provided due guidance and assistance to us in writing this judgment and have been followed by us having persuasive value.

38. In **Ircon International Limited vs. Pioneer Fabricators Private Limited (2023 SCC OnLine Delhi 1811)**, the Division Bench of the Delhi High Court was dealing with the appeal under Section 37 of the Arbitration Act, 1996 challenging an order of rejection of a petition filed under Section 19 of the MSMED Act' 2006 read with Section 34 of the Arbitration Act, 1996 on the ground of lack of jurisdiction. The Division Bench of the Delhi High Court dealing with the issue has considered various decisions to hold that the place where the proceedings were held by the Facilitation Council must be construed as a 'venue' as different from a 'seat' which is determinative clause of the jurisdiction conferred by the parties on a particular Court by mutual agreement. An earlier decision of the Delhi High Court in **Indian Oil Corporation**



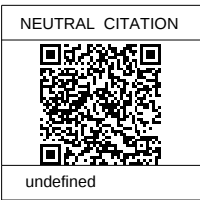
Limited vs. Fepl Engineering (P) Limited & Anr. (2019 SCC OnLine Delhi 10265) was noted and relied therein, wherein it was held that the MSMED Act, 2006 despite being a special legislation, would not eclipse and nullify the jurisdiction clause agreed upon between the parties. The place of arbitration for the parties, to entertain and challenge to an arbitral award continues to be the place over which the Court has been conferred with exclusive jurisdiction, as agreed between the parties. Post-rendering of the arbitral award by the Facilitation Council, the exclusive jurisdiction clause entered into between the parties shall not be affected by operation of the provisions of the MSMED Act, 2006 and only the procedure of constitution of the arbitral tribunal is obliterated in view of the judgment of the Apex Court in **Mahakali Foods Private Limited (supra)**.

39. The Division Bench of High Court of Bombay has expressed the same view on a reference made to it while answering the question whether the jurisdiction of the Court to



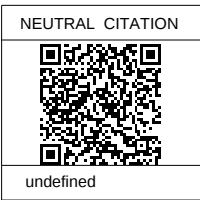
hear a petition under Section 34 of the Arbitration Act' 1996 challenging the award in a statutory arbitration under Section 18 of the MSMED Act' 2006 would be governed by the non-obstante provision under Section 18(4) of the MSMED Act' 2006 or would be governed by the arbitration agreement between the parties, which has conferred the exclusive jurisdiction to a particular Court. Considering the interplay between the MSMED Act' 2006 and the Arbitration and Conciliation Act, 1996, it was held therein that the jurisdiction of the Court to hear the application under Section 34 of the Arbitration Act' 1996 as to challenge the award passed under Section 18(4) of the MSMED Act' 2006, would be governed by the agreement between the parties which has conferred exclusive jurisdiction to a particular Court.

40. Coming to the next submission of the learned counsel for the respondent about the maintainability of the present appeal under Section 37 of the Act' 1996 on the premise that the order under challenge is not an order of refusal to set aside the arbitral award under Section 34 on any ground stated in Section 34 of the Act' 1996, suffice it to say that the rejection



of the application under Section 34 on the ground of entertainability, i.e. lack of jurisdiction has resulted in denial to set aside an arbitral award, which in our considered opinion, would be a ground to entertain the appeal under Section 37, incorporated in sub-section (1)(c) of Section 37. The distinction sought to be drawn by the learned counsel for the respondent between an order passed under Section 34 on merits and the rejection of Section 34 application on the ground of lack of jurisdiction, does not appeal to us, inasmuch as, any order of refusal to set aside an arbitral award under Section 34 on any ground, will give rise to a remedy of appeal under Section 37, to the Court authorized by law to hear the appeals from the original decree of the Court.

41. In view of the above discussion, the judgment and order dated 05.04.2022 passed by the Commercial Court-5th Additional District Judge, Mehsana in rejecting the application under Section 34 of the Arbitration Act, 1996 read with Section 19 of the MSMED Act' 2006, on the ground that the Court lacks territorial jurisdiction, is liable to be set aside being suffering from a grave error of law. While allowing the instant appeal filed under Section 13 of the Commercial Court's Act' 2015 read with Section 37 of the Arbitration and Conciliation Act' 1996, we set aside the judgment and order dated 05.04.2022 passed by the Commercial Court and revive



the Commercial Misc. Civil Application No.131 of 2019. The competent court at Mehsana is directed to decide the same on merits, as expeditiously as possible.

42. With the above, the present appeal stands allowed. The Civil Application also stand disposed of. No order as to the costs.

(SUNITA AGARWAL, CJ)

(PRANAV TRIVEDI,J)

FURTHER ORDER

After delivery of the judgment, request made by Mr. Saurabh G. Amin, the learned advocate for the respondent, to stay the effect and operation of this order, is hereby rejected in view of the reasoning given in the order.

(SUNITA AGARWAL, CJ)

(PRANAV TRIVEDI,J)

C.M. JOSHI/pps