



ARBITRATION AND CONCILIATION

**SUPREME COURT: MSMED Act, 2006 being special statute shall prevail over Arbitration Act, 1996 in case of apparent conflict: “generalia specialibus non derogant” (General laws do not prevail over Special laws)**

**AUTHOR** Supriya Bhosale, Asav Rajan Arora

**PUBLISHED** 8 November 2022

The [Hon'ble Supreme Court](#) in its landmark judgment dated 31st October 2022 clarified that the Micro, Small, and Medium Enterprises Development Act, 2006 ("**MSMED Act, 2006**") is a special law. It has an effect overriding the provisions of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"). The Bench was considering a batch of appeals that raised common questions of law regarding the interplay between the MSMED Act, 2006, and the Arbitration Act.

The significant question before the Bench was as to whether the provisions regarding the delayed payments to Micro and Small Enterprises under the MSMED Act, 2006 would have precedence and overriding effect over the provisions contained in the Arbitration Act, more particularly when the parties by execution of an independent agreement as contemplated in Section 7 of the Arbitration Act had agreed to submit to arbitration the disputes arising between them.

The Bench held that the Arbitration Act, 1996 in general governs the law of Arbitration and Conciliation, whereas the MSMED Act, 2006 governs the specific nature of disputes arising between specific categories of persons to be resolved by following a specific process through a specific forum. The bench relied on *Kaushalya Rani Vs. Gopal Singh*, wherein it was held that a "**Special Law**" means a law enacted for special cases, in special circumstances, in contradiction to the general rules of law laid down, as applicable generally to all cases with which the general law deals. It was further observed that if the Arbitration Act, 1996 is treated as a special law instead of general law, the effect would have been same because the [MSMED Act, 2006](#) having been enacted subsequently in point of time i.e., in 2006, it would have an overriding effect, more particularly in view of Section 24 of the MSMED Act, 2006 which specifically gives an effect to the provisions of Section 15 to 23 of the MSMED Act, 2006 over any other law, which also includes Arbitration Act, 1996.

Learned counsel for the Buyers argued that the non obstante portion of Section 18 of the MSMED Act, 2006 does not explicitly include the word 'agreement' and therefore Section 18 cannot precede over an arbitration agreement between the parties. The Hon'ble Bench refused to accept this argument while stating that sub-section (1) of Section 18 of the MSMED Act, 2006 is an enabling provision which gives a choice to approach the Facilitation Council, despite an arbitration agreement existing between the parties.

MSMED Act, 2006 prescribes a specific procedure for the Facilitation Council to resolve disputes. The Facilitation Council has been conferred with the jurisdiction to act as an Arbitrator or Conciliator under Section 18(4), notwithstanding anything contained in any law in a dispute between the supplier located within its jurisdiction. The Facilitation Council acting as an arbitral tribunal is competent to rule on its own jurisdiction like any other arbitral tribunal appointed under the Arbitration Act, 1996 would have, as contemplated in Section 16 thereof. The provisions of the Arbitration Act, 1996 have been made applicable to the dispute under MSMED Act, 2006 only after the Conciliation initiated under section 18 (2) of the MSMED Act 2006 stands terminated without any settlement between the parties.

While referring to both the Acts, the Bench held below:

- i. *Chapter V of the MSMED Act, 2006 would override the provisions of the Arbitration Act, 1996.*
- ii. *No party to a dispute with regard to any amount due under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Micro and Small Enterprises Facilitation Council, though an independent arbitration agreement exists between the parties.*
- iii. *The Facilitation Council, which had initiated the Conciliation proceedings under Section 18(2) of the MSMED Act, 2006 would be entitled to act as an arbitrator despite the bar contained in Section 80 of the Arbitration Act.*
- iv. *The proceedings before the Facilitation Council/institute/centre acting as an arbitrator/arbitration tribunal under Section 18(3) of MSMED Act, 2006 would be governed by the Arbitration Act, 1996.*
- v. *The Facilitation Council/institute/centre acting as an arbitral tribunal by virtue of Section 18(3) of the MSMED Act, 2006 would be competent to rule on its own jurisdiction as also the other issues in view of Section 16 of the Arbitration Act, 1996.*
- vi. *A party who was not the 'supplier' as per the definition contained in Section 2(n) of the MSMED Act, 2006 on the date of entering into contract cannot seek any benefit as the 'supplier' under the MSMED Act, 2006. If any registration is obtained subsequently the same would have an effect prospectively and would apply to the supply of goods and rendering services subsequent to the registration.*

Till now there had been plethora of judgements on the same issue with different views. At last the Supreme Court has set the law as regards primacy of MSMED Act, 2006 over other general statute. However, the judgement does not provide the clarity as regards fate of the cases where the arbitration under the Arbitration and Conciliation Act, 1996 is ongoing despite there being

institution arbitration available under the MSMED Act, 2006. Would such arbitration be remanded back to Institution formed under MSMED or a fresh litigation would be invited is the question.