Before S.J. Vazifdar, CJ.

M/S TRIDENT LIMITED THROUGH LALIT KAKKAR—*Petitioner*

versus

ANAND TALE & STEATITE PVT. LTD. UDAIPUR (RAJASTHAN)—*Respondent*

ARB No. 115 of 2016 (O&M)

October 18, 2016

The Arbitration & Conciliation Act, 1996—Ss.7(1), (2), (4) (a), (4) (b) & (5)—The Micro Small & Medium Enterprises Development Act, 2006—Ss.16, 17, 18 (3), 18 (4) & 24—Petitioner placed a purchase order by an email—e-mail stated that the purchase order would be as per the terms and conditions contained in the attachment to the e-mail which had been agreed upon— Receipt of the purchase order was followed by the supply of goods without contradicting the contents of the purchase order—Dispute arose between the parties—Petition filed for appointment of arbitrator—Two questions of law arose—First, whether an arbitration agreement must be signed by the parties—Held, while an arbitration agreement must be in writing it is not necessary for it to be signed by the parties thereto—Second, whether in view of the provisions of Micro Small & Medium Enterprises Development Act, 2006 arbitration agreement which is governed by the Arbitration & Conciliation Act, 1996 is of no effect—Held, bound by a judgment of a Co-ordinate Bench—An arbitration agreement between the parties governed by the Arbitration & Conciliation Act, 1996 cannot override the provisions relating to arbitration under the Micro Small & Medium Enterprises Development Act, 2006.

Held that, Sub Section (1) of Section 7 merely defines an arbitration agreement. Sub section (2) merely states that an arbitration agreement may be in the form of an arbitration clause in the contract or in the form of a separate agreement. The purchase order is a contract. The purchase order communicated by the e-mail dated 22.09.2014 incorporated the terms and conditions contained in the attachment thereto. The terms and conditions, therefore, formed a part of the purchase order. A contract in terms, thereof, had been arrived at for the respondent accepted the same and acted pursuant thereto having

actually supplied the goods and raised its invoices in respect thereof. Sub section (2) merely requires the arbitration agreement to be in writing. It does not require either the contract or the arbitration clause contained therein to be signed. A valid contract between the parties under the Contract Act does not have to be signed. Admittedly the arbitration agreement in this case containing the terms and conditions, which form the part of the purchase order, is in writing.

(Para 10 and 11)

Further held that, Sub section (4) of Section 7 provides the circumstances in which an arbitration agreement is considered to be in writing. Clause (a) of sub section (4) is only one of the circumstances which fulfill the requirement of an arbitration agreement being in writing. Clause (a) of sub section (4) provides that the arbitration agreement is in writing if it is contained in a document signed by the parties. It does not even imply that itis mandatory for an arbitration agreement to be signed by the parties. The case before me falls under clause (b) of sub section (4) of section 7 for the arbitration agreement is contained in an e-mail which falls within the meaning of the words "other means of telecommunication through electronic means" which provide a record of the agreement. An e-mail is a communication through electronic means.

(Para 12)

Further held that, the case before me also falls under sub section (5) of Section 7 of the Act of 1996. The purchase order is a contract. There is a reference in this contract to a document i.e. the attachment to the e-mail and that document admittedly contains an arbitration clause. The terms and conditions attached to the e-mail is a document. Accordingly, the attachment to the e-mail is the document referred to in the purchase order i.e. the e-mail itself and that document i.e. the attachment contains an arbitration clause. Sub section (5) of Section 7 recognizes the doctrine of incorporation of one document into another. Neither of these documents is required to be signed by the parties thereto. Once the Court comes to the conclusion that the contract is entered into and that contract contains an arbitration agreement, it is sufficient to constitute a valid agreement to refer the disputes and differences between the parties to arbitration.

(Para 13)

Further held that, I do not wish to express any view on either of these judgments as I find that I am bound by the judgment of the learned Single Judge of this Court in Welspun Corp. Ltd. v. The Micro

and Small Medium Enterprises Facilitation Council, Punjab and others 2013 (5) RCR (Civil) 150.

(Para 20)

Further held that, the judgment supports the respondent's case. It is necessary to note, however, that an appeal was filed against the judgment being LPA No. 492 of 2012 which by an order dated 09.09.2013 was admitted. The Division Bench, however, stayed the proceedings under the MSMED Act observing that the appeal raises a number of important issues.

(Para 21)

Further held that, the matter undoubtedly raises important issues under the two Acts, namely, the Micro Small & Medium Enterprises Development Act, 2006 and Arbitration & Conciliation Act, 1996……...there is much to be considered in this regard. I am, however, bound by the judgment of the learned Single Judge of this Court.

(Para 22)

Sanjeev Sharma, Senior Advocate with Shekhar Verma, Advocate, *for the petitioner.*

Suman Jain, Advocate, for the respondent.

S.J. VAZIFDAR, CHIEF JUSTICE

(1) This is a petition under section 11(6) of the Arbitration & Conciliation Act, 1996 for the appointment of a sole Arbitrator to adjudicate upon the disputes and differences between the parties.

(2) Two questions of law arise in this case. The first is whether an arbitration agreement must be signed by the parties. I have held that while an arbitration agreement must be in writing it is not necessary for it to be signed by the parties thereto. The second is whether in view of the provisions of Micro Small & Medium Enterprises Development Act, 2006, an arbitration agreement which is otherwise governed by the Arbitration & Conciliation Act, 1996 is of no effect. I find myself bound by a judgment of a learned Single Judge of this Court in case ***Welspun Corp. Ltd***. *versus* ***The Micro and Small Medium Enterprises Facilitation Council, Punjab and others***[1], where it is inter-alia held that even a buyer of goods from a micro enterprise can refer its claims

[1] 2013(5) RCR(Civil) 150

to arbitration against a micro enterprise. The learned Single Judge also rejected the contention that an arbitration agreement between the parties which is governed by the Arbitration & Conciliation Act, 1996 cannot override the provisions relating to arbitration under the Micro Small & Medium Enterprises Development Act, 2006. There are conflicting judgments of other High Court on this point. Although an appeal against this judgment has been admitted it has not been expedited and the appeal is likely to take some time. In view thereof and considering the importance of the issue involved instead of adjourning this petition sine-die to await the decision in the appeal, I thought it better to follow the judgment leaving the petitioner to its remedy of challenging this order and judgment.

(3) By an e-mail dated 29.01.2014 the petitioner placed a purchase order for supply of 'soap stone powder' on the respondent. The e-mail stated that the purchase order would be as per the terms and conditions contained in the attachment to the e-mail and that the same had been agreed upon. The petitioner sought the respondent's confirmation/acceptance of the order via reply e-mail. The petitioner stated that any discrepancy regarding the acceptance of the purchase order with the terms and conditions was to be intimated within 24 hours of the receipt of the purchase order. It further stated that the attached order would be assumed as accepted.

(4) One of the clauses of the terms and conditions reads as under:-

> "Any dispute, difference or question arising out of, in relation to or incidental to this Purchase order shall be referred for arbitration to be conducted in accordance with the Arbitration and Conciliation Act, 1996. The arbitration shall be conducted at Barnala, Punjab, India by 3 (three) Arbitrators, one arbitrator to be appointed by each party and the third being appointed by the mutual consent of the two arbitrators appointed by the parties. This purchase order shall be governed by the law of India and any dispute, difference or claim which may arise between the parties in connection with the performance of this Purchase order of the rights and obligations of the parties hereto shall be only under the jurisdiction of the law Courts of the city of Barnala/Ludhiana, Punjab, India."

(5) Pursuant to the purchase order, the respondent commenced supply of the goods from time to time and forwarded about 25 bills

between 29 01.2014 and 18.04.2014.

(6) There is no doubt, therefore, that the parties entered into a contract under which the respondent was to sell and deliver to the petitioner the said goods on the terms and conditions contained in the attachment to the said e-mail dated 29.01.2014. This is clear from the fact that the receipt of the purchase order was followed by the supply of goods without contradicting the contents of the purchase order. It is not the respondent's case that the terms and conditions attached to the said purchase order were not agreed upon or that even thereafter they were not acceptable to it. The doubt, if any, in this regard is set at rest by the respondent's letter addressed to the Chairperson, Micro and Small Enterprises Facilitation Council under section 18 of the Micro Small & Medium Enterprises Development Act, 2006 (hereinafter referred to as 'the MSMED Act'). In this communication the respondent acknowledges that the petitioner is the buyer of its goods. More important is the fact that column No.11 of the table set out in the letter specifically refers to the Purchase Order as one of the documents. Column-11 reads as under:-

11.	Documents enclosed in support of claim respect of goods supplied or sevices rendered as referred above.	1. C-Form 2. Invoice 3.Balance sheet as on 31.03.2014 4. Purchase order

(7) It is also important to note that the purchase order is attached to this communication. It bears the same number as the number of the purchase order mentioned in the e-mail, namely, PO No.5500108812.

(8) Mr. Jain, learned counsel appearing on behalf of the respondent, however, contended that the arbitration agreement is ineffective and inoperative as it has not been signed by both the parties thereto. He submitted that under the provisions of the Act only an arbitration agreement signed by the parties is valid. The submission is not well founded.

(9) It is not necessary under the Arbitration & Conciliation Act, 1996 (for short 'the Act of 1996') for an arbitration agreement to be signed by the parties. Sections 2(b) and 7 of the Act of 1996 read as under:-

"2. Definitions.

1. In this Part, unless the context otherwise requires,

a. …….

b. "arbitration agreement" means an agreement referred to in section 7;

7. Arbitration agreement.

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

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

3. An arbitration agreement shall be in writing.

4. An arbitration agreement is in writing if it is contained in-

a. a document signed by the parties;

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

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

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

(10) Sub section (1) of Section7 merely defines an arbitration agreement. Sub section (2) merely states that an arbitration agreement may be in the form of an arbitration clause in the contract or in the form of a separate agreement. The purchase order is a contract. The purchase order communicated by the e-mail dated 22.09.2014 incorporated the terms and conditions contained in the attachment thereto. The terms and conditions, therefore, formed a part of the purchase order. A contract in terms, thereof, had been arrived at for the

respondent accepted the same and acted pursuant thereto having actually supplied the goods and raised its invoices in respect thereof. Sub section (2) merely requires the arbitration agreement to be in writing. It does not require either the contract or the arbitration clause contained therein to be signed. A valid contract between the parties under the Contract Act does not have to be signed.

(11) Admittedly the arbitration agreement in this case containing the terms and conditions, which form the part of the purchase order, is in writing.

(12) Sub section (4) of Section 7 provides the circumstances in which an arbitration agreement is considered to be in writing. Clause (a) of sub section (4) is only one of the circumstances which fulfill the requirement of an arbitration agreement being in writing. Clause (a) of sub section (4) provides that the arbitration agreement is in writing if it is contained in a document signed by the parties. It does not even imply that it is mandatory for an arbitration agreement to be signed by the parties. The case before me falls under clause (b) of sub section (4) of section 7 for the arbitration agreement is contained in an e-mail which falls within the meaning of the words "other means of telecommunication through electronic means" which provide a record of the agreement. An e-mail is a communication through electronic means.

(13) The case before me also falls under sub section (5) of Section 7 of the Act of 1996. The purchase order is a contract. There is a reference in this contract to a document i.e. the attachment to the e-mail and that document admittedly contains an arbitration clause. The terms and conditions attached to the e-mail is a document. Accordingly, the attachment to the e-mail is the document referred to in the purchase order i.e. the e-mail itself and that document i.e. the attachment contains an arbitration clause. Sub section (5) of Section 7 recognizes the doctrine of incorporation of one document into another. Neither of these documents is required to be signed by the parties thereto. Once the Court comes to the conclusion that the contract is entered into and that contract contains an arbitration agreement, it is sufficient to constitute a valid agreement to refer the disputes and differences between the parties to arbitration.

(14) In the circumstances the arbitration clause quoted above is valid subsisting and binding between the parties.

(15) Mr. Jain submitted that under the provisions of the Micro Small & Medium Enterprises Development Act, 2006, any arbitration between the parties must be under the provisions of that Act and not under the provisions of the Act of 1996. He further contended that in view of Section 24 of the MSMED Act, the aforesaid provisions have an overriding effect.

(16) In support of this contention Mr. Jain, relied upon sub sections (3) and (4) of Sections 18 and 24 of the MSMED Act. It is, however, necessary to consider few other provisions of the MSMED Act as well. They read as under:-

> **"2. Definitions.**
>
> 2. In this Part, unless the context otherwise requires,
>
> a. …….
>
> b. "arbitration agreement" means an agreement referred to in section 7;
>
> **8. Arbitration agreement.**
>
> 1. In this Part, 'arbitration agreement' means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
>
> 2. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
>
> 3. An arbitration agreement shall be in writing.
>
> 4. An arbitration agreement is in writing if it is contained in-
>
> a. a document signed by the parties;
>
> b. an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or
>
> c. an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
>
> 5. The reference in a contract to a document containing an

arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."

"**2. Definitions.-**

In this Act, unless the context otherwise requires,

(a) to (c) …….

(d) buyer means whoever buys any goods or receives any services from a supplier for consideration; ……

n. supplier means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes,-…….

15. Liability of buyer to make payment.-

Where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefore on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

16. Date from which and rate at which interest is payable.-

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

17. Recovery of amount due.-

For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with

interest thereon as provided under section 16.

18. Reference to micro and small enterprises facilitation council.-

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

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

3. Where the conciliation initiated under sub- section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

4. Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

5. Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.

24. Overriding effect.-

The provisions of sections 15 to 23 shall have effect

notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

(17) Mr. Sharma, the learned Senior counsel appearing on behalf of the petitioner on the other hand contended that the aforesaid provisions only apply where there is no arbitration agreement between the parties. He contended that in any event, the arbitration referred to in the aforesaid provisions is limited to cases falling under section 17, namely, in relation to the interest payable by the buyer to the supplier. In this regard he relied upon section 18 which provides that the reference to the Micro and Small Enterprises Facilitation Council is to be made "with regard to any amount due under section 17" and section 17 in turn only pertains to the buyer's liability to pay the supplier the amount with interest as provided under section 17. There is no reference to a claim by the buyer against the supplier. The provisions that follow sub section (1) of Section 18 also relate to Sections 16, 17 and 18(1) and go no further. Thus, according to Mr. Sharma, the power under sub section (3) of Section 18 to take up the dispute for arbitration itself or to refer it to any institution or centre providing alternate dispute resolution services for such arbitration is only in cases where there is no arbitration agreement between the parties and alternatively is limited to cases falling under sections 16 and 17 of the Act. Sub section (3) of Section 18 of the MSMED Act, therefore, according to him does not in any manner whatsoever affect the petitioner i.e. the supplier's right to make a claim against the buyer i.e. the respondent in this case. He contended that sub section (4) does not increase the ambit of Sub section (3) of the MSMED Act. Firstly sub section (4) relates to the territorial jurisdiction. Secondly the words "under this section" make it clear that it is in relation to disputes referred to in section 18 which in turn are relatable to sections 16 and 17 of the MSMED Act. In any event there is no other provision which deals with the buyer's rights against the supplier.

(18) Mr. Sharma relied upon a judgment of the Division Bench of the Bombay High Court in case of ***M/s Steel Authority of India Ltd. and another*** *versus* ***The Micro, Small Enterprise Facilitation Council, through joint Director of Industries Nagpur Region, Nagpur***[2] where it was held:-

"11. Having considered the matter, we find that

[2] 2012 AIR (Bom.) 178

Section 18 (1) of the Act, in terms allows any party to a dispute relating to the amount due under Section 17 i.e. an amount due and payable by buyer to seller; to approach the facilitation Council. It is rightly contended by Mrs. Dangre, the learned Addl. Government Pleader, that there can be variety of disputes between the parties such as about the date of acceptance of the goods or the deemed day of acceptance, about schedule of supplies etc. because of which a buyer may have a strong objection to the bills raised by the supplier in which case a buyer must be considered eligible to approach the Council. We find that Section 18(1) clearly allows any party to a dispute namely a buyer and a supplier to make reference to the Council. However, the question is; what would be the next step after such a reference is made, when an arbitration agreement exists between the parties or not. We find that there is no provision in the Act, which negates or renders an arbitration agreement entered into between the parties ineffective. Moreover, Section 24 of the Act, which is enacted to give an overriding effect to the provisions of Section 15 to 23-including section 18, which provides for forum for resolution of the dispute under the Act-would not have the effect of negating an arbitration agreement since that section overrides only such things that are inconsistent with Section 15 to 23 including Section 18 notwithstanding anything contained in any other law for the time being in force. Section 18(3) of the Act in terms provides that where conciliation before the Council is not successful, the Council may itself take the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution and that the provisions of the Arbitration and Conciliation Act, 1996 shall thus apply to the disputes as an arbitration in pursuance of arbitration agreement referred to in Section 7 (1) of the Arbitration and Conciliation Act, 1996. This procedure for arbitration and conciliation is precisely the procedure under which all arbitration agreements are dealt with. We, thus find that it cannot be said that because Section 18provides for a forum of arbitration an independent arbitration agreement entered into between the parties will cease to have effect. There is no question of an independent arbitration agreement ceasing

> to have any effect because the overriding clause only overrides things inconsistent therewith and there is no inconsistency between an arbitration conducted by the Council under Section 18 and arbitration conducted under an individual clause since both are governed by the provision of the Arbitration Act, 1996."
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> The judgment undoubtedly supports Mr. Sharma's contentions.

(19) Mr. Jain on the other hand relied upon a judgment of a Division Bench of Allahabad High Court in ***M/s Bharat Heavy Electricals Limited.*** *versus* ***State of UP and others***[3]. In that case, the supplier filed a claim petition before the Uttar Pradesh Micro and Small Enterprises Facilitation Council for the recovery of the price of the goods sold and delivered to the buyer. The buyer filed an application under section 8 of the Act of 196 stating that there was an arbitration agreement between the parties. The Council, however, proceeded with the reference made to it under the provisions of the MSMED Act. The petitioner i.e. the purchaser filed a petition before the Allahabad High Court for a writ of certiorari to quash the proceedings before the Uttar Pradesh Micro and Small Enterprises Facilitation Council and a direction to the council to decide the objections filed under section 8 of the Act of 1996. The Division Bench rejected the petition in view of the aforesaid provisions of the Act. However, the issue as to whether the supplier's right to invoke the arbitration agreement is effected by the MSMED Act did not fall for consideration. However, Mr. Sharma's submission do not appears to have been raised before the Division Bench of the Allahabad High Court.

(20) I do not wish to express any view on either of these judgments as I find that I am bound by the judgment of the learned Single Judge of this Court in ***Welspun Corp. Ltd***. *versus* ***The Micro and Small Medium Enterprises Facilitation Council, Punjab and others***[4]. In that case the petitioner challenged the order passed by the Chairman of the Council before which the third respondent had sought conciliation under the provisions of the MSMED Act. The proceedings were challenged before the learned Single Judge. Failing conciliation

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[3] 2014(16) RCR (Civil) 1
[4] 2013(5) RCR(Civil)150

the third respondent sought arbitration also under section 18(3) of the MSMED Act. The learned Judge inter-alia held:-

> "4. Learned counsel appearing for the petitioner would mount several objections on the validity of the order. Firstly, he would contend that the Act, 2006, which contemplates a resolution of a dispute under Section 18 through a reference, is in the context of a recovery of amount provided under Section 17 of the Act, 2006.
>
> "Recovery of amount due. - For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16."
>
> Learned counsel would read to this provision to mean that it contemplates a buyer's liability to pay the amount with interest as provided under Section 16 and to that extent it excludes any possibility of any counter claim by the buyer against the seller. I would reject this objection right away, for, a liability to pay is invariably a reckoning of the mutual rights of the parties and when Section 17 contemplates a buyer's liability to pay, the assessment cannot and ought not to exclude the liability of the seller to pay, if any. This issue was dealt within a slightly different context in the proceedings under the Recovery of Debts Due to Banks & Financial Institution Act, 1993, which originally did not contain a provision for making a set-off by a debtor. It came after the decision of Hon'ble the Supreme Court in "***United Bank of India v. Abhjit Tea Co. (P) Ltd***., 2000(7) SSC 357" that allowed for a plea for counter claim/set-off to be entertained that the law itself was amended explicitly by amending Section 19(6) of the 1993 Act to make explicit what the law even otherwise made possible. I would not, therefore, find that Section 17 does not fetter a buyer to plead that he is not liable to pay the money and that there is some entitlement, which he has against the seller himself. The Act, 2006 would, therefore, make possible a reference to include even a right, which a buyer claims against the seller.
>
> 5. Learned counsel would contend that the reading of Section 18 of the Act, 2006 makes it clear that insofar as it makes provision for conciliation, the provisions of Sections 65 to 81 of the Act, 1996 as applicable, it should be so read

that even the provision under Section 80 of the Act, 1996 that bars a Conciliator for acting as an Arbitrator must be applied. According to the learned counsel, Section 18(2) itself allows for a full applicability of Sections 65 to 81 and therefore, the non obstante clause in Section 18(1) ought not to be used to eclipse Section 80 itself. In my view, this is not a correct reading of Section 18. The Act, 2006 itself contains provisions, which are at once consistent with the Act, 1996. It must be remembered that the Act, 2006 is also an Act of Parliament and it is a special enactment meant for a particular class of persons only namely the Micro, Small and Medium Enterprises and for facilitating the promotion, development and enhancing their inter se competitiveness. The Act insofar as it contains a specific provision for conciliation and arbitration is alive to the issue that it could come into conflict with some of the provisions of the Act, 1996. There could also be certain other conflicts relating to recovery modes provided under other Central enactments. Consequently, there is an express provision under Section 24, which spells out an overriding effect of the Act. If there was no conflict or likely to be a conflict, it will be even futile to introduce such a provision. We must read into every section of an enactment of Parliament, a wisdom, which the Courts are bound to apply as having been exercised by the Legislature.

6. "24. Overriding effect. – The provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. To the extent to which Section 18 contains a particular procedure for an arbitration and the same Act also provides a particular method of setting aside an award passed by an Arbitrator, surely, the said provisions must have precedence over what is contained in the 1996 enactment.

"18. Reference to Micro and Small Enterprises Facilitation Council".

Section 18(3) provides that where a conciliation initiated under Section 18(2) is not successful and stands terminated without any settlement between parties, the Council shall itself take up the dispute for arbitration. Therefore, when there is an express provision under Section 18(3) providing for

conciliator to act as an Arbitrator, it will be untenable to contend that Section 18 will still apply. The restrive application to Section 18(3) is sought to be made by the counsel by contending that this clause will apply only in cases where there is no agreement between the parties for an arbitration in their own contract. According to the learned counsel, since the contract specifies that the parties shall be at liberty to seek for an arbitration under the Act, 1996, the said contract must prevail. If the statute does not save the sanctity of specific terms of contracts by making express provision that it shall be subject to any contract to the contrary, it must be so read that the legislation must prevail over the individual volition of parties.

6. In this case, if there was a contract between the parties to have an arbitration made under the Act, 1996 and the Conciliator had proposed to terminate its conciliatory postures, it was competent for it to treat itself as an Arbitrator and proceed the arbitral process in the manner contemplated under Section 18(3). I cannot read Section 18(3) in the manner canvassed by the learned counsel that Section 18(3) will apply only if there is no contract between the parties for a reference to arbitration under the Act, 1996. On the contrary, the latter part of Section 18(3) that the provisions of the Act, 1996 would apply to a dispute as if the arbitration was in pursuance of an arbitration agreement shall be read in such a way that it is applicable only to a situation where the Council deems fit to refer to any institution for an alternate dispute resolution services for such an arbitration. Section 18(3) provides for two procedures: (i) on termination of conciliation, it can either take up the arbitration itself or (ii) refer the matter to arbitration as though there is an arbitral agreement between the parties. It is possible for a Council to make a reference to arbitration even in the absence of an arbitration agreement. If there is an arbitration agreement between the parties, it only means that the power is still available when the Council, without invoking its own powers. It can simply observe that in terms of the agreement between the parties, the parties shall be at liberty to have an arbitration done under the Act, 1996. It does not exclude a construction that whenever there is an arbitration clause, the Council does not have a power to act as an Arbitrator. Such an interpretation would render nugatory

the first portion of Section 18(3) that allows it to proceed to arbitrate. I would, therefore, uphold the specific reasoning, which the impugned order makes in stating that:

'If Section 18 of the Act, 2006 provides for a mode of resolution of a dispute wherein this Council is to adjudicate acting as an arbitrator in terms of the Act, 1996, it would not be open for any party to oust the said jurisdiction of this Council which has been vested in terms of Section 18(3) of the Act, 2006 merely by creating a mutual agreement. The Agreement cannot over ride the provisions of the Act, 2006 in view of the aforesaid fact."

(21) The judgment supports the respondent's case. It is necessary to note, however, that an appeal was filed against the judgment being LPA No. 492 of 2012 which by an order dated 09.09.2013 was admitted. The Division Bench, however, stayed the proceedings under the MSMED Act observing that the appeal raises a number of important issues.

(22) The matter undoubtedly raises important issues under the two Acts, namely, the Micro Small & Medium Enterprises Development Act, 2006 and Arbitration & Conciliation Act, 1996. I do not for a moment suggest that Mr. Sharma's submission do not have any force. Indeed, there is much to be considered in this regard. I am, however, bound by the judgment of the learned Single Judge of this Court.

(23) At one point I did consider adjourning this matter sine-die to await the decision in LPA No. 492 of 2012. However, the hearing of the appeal has not been expedited and it is likely to take considerable time. Considering the importance of the matter, I thought it best, therefore, to follow the judgment of the learned Single Judge of this Coun and leave the parties to the remedy of challenging this order.

(24) In the circumstances, the petition is dismissed.

J.S. Mehndiratta