$~9 (2021)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 21st December, 2021*

\+ **O.M.P. (COMM) 376/2021 & IA Nos. 17159/2021, 17160/2021**

INDIAN HIGHWAYS MANAGEMENT COMPANY LIMITED ..... Petitioner

Through: Ms Padma Priya and Ms Shreya Sethi, Advocates.

versus

SOWiL LIMITED

Through: Ms Manmeet Arora, Ms Pavitra Kaur and Mr Kartikeya Sharma, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

VIBHU BAKHRU, J. ***(ORAL)***

1. The petitioner (hereafter 'IHMCL') has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the A&C Act') impugning an arbitral award dated 11.10.2021 (hereafter 'the impugned award') rendered by an Arbitral Tribunal constituted by Justice (Retired) Badar Durrez Ahmed as the Sole Arbitrator (hereafter 'the Arbitral Tribunal').

2. The Arbitral Tribunal has rendered the impugned award in the context of disputes that have arisen between the parties in relation to a contract dated 28.10.2014 for "*Conducting Traffic Surveys on National*

Highways in Zone-5 (in the States of Odisha, West Bengal and North Eastern States) using Portable Automatic Traffic Counter & Classified (ATCC) Systems" (hereafter 'the Contract').

Factual Context

3. The respondent (hereafter 'SOWiL') is a small enterprise under the Micro, Small, Medium Enterprise Development Act, 2006 (hereafter 'the MSMED Act') and is, *inter alia,* engaged in the business of providing consultancy services to various organizations for development works, railway works, bridges, structures and tunnelling.

4. IHMCL is a public limited company incorporated under the Companies Act, 1956 and provides services in relation to management of toll collection on National Highways through electronic toll systems; assessment of the volume of traffic; and collection of data through traffic surveys using portable Automatic Traffic Counter-cum-Classifiers (ATCC).

5. The Ministry of Road Transport and Highways (hereafter 'MORTH') had instructed IHMCL to conduct traffic surveys on the National Highways in India. Accordingly, on 13.05.2015, IHMCL issued a Request for Proposal (hereafter '2014 RFP') inviting bids for conducting traffic surveys using portable ATCC in seven zones on the National Highways in India (hereafter 'the Project'). SOWiL participated in the bid for Zone-5 and was declared as the successful bidder.

6. IHMCL issued a Letter of Award (hereafter 'LOA') to SOWiL on 13.08.2014. Consequently, on 28.10.2014, the parties entered into the Contract in respect of the aforesaid Project, for a contract value of ₹68,03,80,000/-. In terms of the Contract, SOWiL agreed to conduct traffic surveys twice a year for a period of five years, at the specified locations.

7. SOWiL claims that, during the term of the Contract, IHMCL issued another RFP on 08.03.2018 bearing no. IHMCL/Portable-ATCC/March/2018 (hereafter 'the 2018 RFP') and invited bids on a 'Price Discovery Mechanism' for the balance works being carried out by SOWiL in Zone-5. Thereafter, IHMCL expressed its intention to terminate the Contract in terms of Article 12.2 of the Contract.

8. It is SOWiL's case that IHMCL's proposed invocation of Article 12.2 of the Contract to terminate the Contract during its tenure, for convenience, is a breach of the terms of the Contract. IHMCL countered the same and stated that an exercise of price discovery is not a breach of the Contract. It further contended that the prices under the 2014 RFP were higher and thus, it intended to award the remaining four rounds at a lower rate to save public money.

9. Aggrieved by the same, SOWiL filed a petition before this Court under Section 9 of the A&C Act [being OMP (I) (COMM) 169/2018] and by an order dated 19.04.2018, this Court restrained IHMCL from terminating the Contract. This Court, by an order dated 24.04.2018, further restrained IHMCL from awarding contracts pursuant to the 2018

RFP to any third party in respect of the locations that were awarded to SOWiL.

10. On 10.08.2018, SOWiL filed a petition under Section 11 of the A&C Act [being Arb. P. 593/2018] and this Court, by an order dated 30.10.2018, constituted the Arbitral Tribunal. This Court also disposed of the petition under Section 9 of the A&C Act with the direction that "*the petitioner* (SOWiL) *shall continue to work on the sites that were already allocated to it in terms of the contract between the parties, however, shall be paid in accordance with L-1 rates that have been received by the respondent* (IHMCL) *in the new tender process. The respondent shall be entitled to raise the claim of the differential amount and such other claims that it may have before the Arbitrator*."

11. IHMCL issued an amended LOA on 19.12.2018 on the basis of the revised cost on the L-1 rates for Zone-5 under the 2018 RFP. The same was accepted by SOWiL on 03.01.2019, however it reserved its right to raise claims in this regard, before the Arbitral Tribunal.

12. The arbitral proceedings commenced on 24.12.2019. Before the Arbitral Tribunal, SOWiL filed its Statement of Claims raising the following claims.

> "CLAIM NO.1: Declaration that the Claimant is entitled to perform the Contract dated 28.10.2014 for a fixed period of ten (10) rounds of traffic surveys, at the price bid submitted by the Claimant and consciously accepted by IHMCL vide letter of award dated 13.08.2014, and that the action of IHMCL in issuance of the Impugned Tender

during the subsistence of the Contract is illegal, arbitrary and invalid.

CLAIM NO.2: Direction for payment on account of the difference between the rate at which the Claimant was awarded the Contract and the L-1 rate in respect of Zone-5 received by IHMCL pursuant to the Impugned Tender along with interest @20.25% per annum from the due date of payment under each of the invoices as may be raised by the Claimant till the date of payment.

CLAIM NO.3: Loss amounting to Rs. 5,12,97,777/- suffered by the Claimant on account of idling of the manpower, equipment and resources of the Claimant under the Contract due to breach on the part of IHMCL to provide the Claimant with traffic survey locations timely and in a stream-lined manner along with pendente lite and future interest @20.25% per annum till the date of payment.

CLAIM NO.4:(i) Direct payment of a sum of Rs. 3,84,65,000/- to the Claimant towards the outstanding dues under the invoices raised by the Claimant upon IHMCL; and (ii) Direct the payment of a sum of Rs. 1,76,71,057/- to the Claimant towards interest on delayed payments for the period of delay, calculated as on 21.01.2019, along with pendente lite and future interest @20.25% per annum till the date of payment.

CLAIM NO.5: Loss amounting to Rs. 10,34,83,000/- suffered by the Claimant on account of non-listing of proposed shares of the Claimant on the SME Stock Exchange, due to breach of the contract by IHMCL by the illegal and arbitrary act of IHMCL in issuance of the Impugned Tender along with pendente lite and future interest @20.25% per annum till the date of payment.

> CLAIM NO.6: Direct payment of costs (as per actuals) incurred by the Claimant in connection with the present arbitration proceedings."

13. The Arbitral Tribunal considered the rival contentions of the parties and accordingly, held that the actions of IHMCL did not amount to a breach of the Contract. The Tribunal found that IHMCL's action of issuance of the 2018 RFP was only a price discovery mechanism, which was not barred under the terms of the Contract. It further held that a proposal to invoke Clause 12.2 of the Contract by IHMCL does not mean that the Contract has been terminated and therefore, rejected the claims made by SOWiL, in this regard.

14. In respect of SOWiL's claim for the difference between the rate at which SOWiL was awarded the Contract and the L-1 rate quoted in the 2018 RFP for the balance works, the Arbitral Tribunal held that IHMCL could not alter the unit price to SOWiL's detriment during the subsistence of the Contract. It, accordingly, held that SOWiL was entitled to the differential rate for the 7th and 8th rounds, as it had already commenced survey for the said rounds.

15. The Arbitral Tribunal further found IHMCL liable to pay ₹47,85,655/- towards the outstanding amount due under the invoices raised by SOWiL; and, an amount of ₹1,81,72,387/- towards interest on the delayed payments for the survey of rounds 1 to 6 conducted by SOWiL And, accordingly, entered an award in favour of SOWil for the aforesaid sums. The Arbitral Tribunal also held that SOWiL is entitled to interest for delayed payments in respect of rounds 7 and 8.

16. The Arbitral Tribunal awarded interest at the rate of 20.25% per annum compounded monthly in respect of delayed payments for the service rendered by SOWiL and, on the outstanding dues amounting to ₹47,85,655/-. In addition, the Arbitral Tribunal also awarded interest at the rate of 20.25% per annum on the differential amount due to be paid by IHMCL to SOWiL for the 7th and 8th round from the due date till payment.

17. The Arbitral Tribunal also awarded costs quantified at ₹46,87,235/- in favour of SOWil and directed that the same be paid within a period of thirty days from the date of the award, failing which, SOWiL would be entitled to simple interest at the rate of 6% per annum on the said amount from the date of the award till actual payment.

18. SOWiL's claim for loss on account of non-listing of proposed public issues of shares on the SME Stock Exchange and loss suffered due to idling of its manpower, equipment and resources, were rejected by the Arbitral Tribunal.

Submissions

19. Ms Priya, learned counsel appearing for IHMCL, assailed the impugned award to the limited extent that the Arbitral Tribunal has awarded interest at the rate of 20.25% per annum compounded monthly in respect of the delayed payments for the services rendered by it to SOWiL from the due date till the date of payment.

20. SOWiL had claimed an amount equivalent to the difference between the rate at which the Contract was awarded to it and the rates tendered by the lowest tenderer (L1) as discovered by IHMCL in respect of Zone-5 pursuant to tenders received in response to 2018 RFP. SOWiL claimed the said amount along with interest at the rate of 20.25% per annum (Claim No.2). In addition, SOWiL also sought outstanding amounts in respect of the invoices raised by it along with interest at the rate of 20.25% per annum (Claim No.4). It also claimed interest at the same rate, that is, at the rate of 20.25% per annum compounded monthly in respect of the loss suffered by it.

21. On the basis of the rival pleadings, the Arbitral Tribunal had struck issues on 25.03.2019. Issue Nos. 7 and 9 are relevant and are set out below: -

> "7. Whether the Claimant is entitled for payment of a sum of Rs1,76,71,057/- towards interest on delayed payments for the period of delay, calculated as on 21.01.2019? OPC
>
> 9. Whether the Claimant is entitled to pendente lite and future interest 20.25% per annum compounded monthly on the claimed amounts till date of payment? OPC"

22. SOWiL had founded its claim for interest on Section 16 of the MSMED Act. IHMCL did not contest that SOWiL was not entitled to interest; it however, disputed SOWiL's entitlement to interest in terms of Section 16 of the MSMED Act. IHMCL contended that SOWiL was entitled to reasonable interest.

23. The Arbitral Tribunal referred to Sections 15, 16 and 17 of the MSMED Act and found that SOWiL, being a small enterprise, was covered under the provisions of the said enactment and was entitled to interest as contemplated under Section 16 of the MSMED Act. The Arbitral Tribunal also referred to Section 24 of the MSMED Act, which contains a *non-obstante* provision that expressly provides that the provisions under Sections 15 to 23 of the MSMED Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

24. Ms Priya submitted that the provisions of Section 16 of the MSMED Act were not applicable as SOWiL had not taken recourse to arbitration under Section 18 of the MSMED Act but had relied on the contractual provisions for invocation of the arbitration agreement. She contended that an arbitral tribunal, which has been constituted under Section 18 of the MSMED Act, would have the jurisdiction to adjudicate the disputes between the parties regarding the amounts payable under Section 17 of the MSMED Act but an arbitral tribunal constituted otherwise than pursuant to reference under Section 18 of the MSMED Act, would have no jurisdiction to do so. She referred to the decision of a Coordinate Bench of this Court in the case of ***AVR Enterprises v. Union of India: 2020 SCC OnLine Del 624*** and submitted that Section 18 of the MSMED Act would apply only to proceedings initiated under Section 18 of the MSMED Act and would not apply to an award published by an arbitrator appointed by the parties otherwise and in accordance with Section 18 of the MSMED Act. Ms

Priya submitted that using the same analogy, interest under Section 16 of the MSMED Act was not payable if arbitration was not conducted under Section 18 of the MSMED Act. She also relied on the decision of the Madras High Court in ***M/s SAVIO Industrial and Structural Corporation v. Southern Railway and Ors.: 2016 SCC OnLine Mad 30027***, in support of her contention.

25. Ms Manmeet Arora, learned counsel appearing for SOWiL, countered the aforesaid submissions. She submitted that the MSMED Act was enacted, *inter alia*, with the stated objective to make further improvements in the Interest on Delayed Payments to Small Scale and Ancillary Undertakings Act, 1993, which were incorporated in the MSMED Act. She submitted that therefore, the decision of the Arbitral Tribunal to award interest in terms of Section 16 of the MSMED Act could not be faulted. She also referred to the decisions of the Supreme Court in ***Snehadeep Structures Pvt. Ltd. v. Maharashtra Small Scale Industries Development Corporation Ltd.: (2010) 3 SCC 34*** and ***Shilpi Industries v. Kerala State Road Transport Corporation and Anr.: 2021 SCCOnLine SC 439***, in support of her contention that the provisions of MSMED Act would override the provisions of Section 31(1)(a) of the A&C Act.

26. The only question to be addressed is whether the impugned award is vitiated by patent illegality or is in conflict with the public policy of India. And, warrants interference in these proceedings.

27. It is important to note at the outset that there is no dispute that

SOWiL is entitled to interest on delayed payments as well as on differential amounts on account of difference in the rates as agreed in terms of the Contract between the parties and the lowest rates as discovered in the tenders invited subsequently. There is also no dispute that SOWiL is a small enterprise and falls within the definition of a Supplier within the meaning of Section 2(n) of the MSMED Act. The only contention advanced on behalf of IHMCL before this Court is that Section 16 of the MSMED Act is not applicable for the reason that the learned Arbitrator was appointed under Section 11 of the A&C Act and, not pursuant to reference by the Micro and Small Enterprise Facilitation Council (the Council).

28. Sections 15, 16 and 17 of the MSMED Act are relevant and are set out below: -

> "**15. Liability of buyer to make payment.** – Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:
>
> Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.
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> **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.
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> **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."

29. A plain reading of Section 15 of the MSMED Act makes it mandatory for the buyer to make payment for the goods supplied to it by a Supplier within the period as agreed by the parties or, where there is no agreement in this regard, before the appointed date. The expression 'appointed date' is defined under Section 2(b) of the MSMED Act to means the day following immediately after the expiry of the period of fifteen days from the day of acceptance of the goods. Further, the *proviso* to Section 15 of the MSMED Act makes it clear that under no circumstances, the period agreed between the supplier and buyer would exceed forty-five days from the day of acceptance or day of deemed acceptance of the goods. Section 16 of the MSMED Act provides for payment of interest on the amounts due to a supplier where the buyer has failed to pay the amounts as required under Section 15 of the MSMED Act. Undisputedly, the buyer's obligation to discharge its liability under Section 15 of the MSMED Act and to pay interest under Section 16 of the MSMED Act confers the right on 'the Supplier' to demand and recover the said amount. Section 17 of the MSMED Act also provides that the buyer would be liable to pay the amount and the interest as provided under Section 16 of the MSMED Act. Section 17

of the MSMED Act also makes it amply clear that the buyers would be liable to pay the amount due, along with interest, as provided under Section 16 of the MSMED Act to 'the Supplier'. It is material to note that Sections 15 and 16 of the MSMED Act imposes the liability on the buyer to pay the due amount to the supplier within the specified period and to pay interest if it fails to do so, independent of the provisions of Section 17 of the MSMED Act.

30. Section 18 of the MSMED Act provides for reference to the Micro and Small Enterprises Facilitation Council. It would be relevant to refer to Sections 18 and 19 of the MSMED Act, which are set out below:

> "**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.
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> (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.
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> (3) Where the conciliation initiated under sub-section *(2)* is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or

refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the 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.

19. Application for setting aside decree, award or order.–No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose."

31. It is material to note that Section 18(1) of the MSMED Act opens

with a *non obstante* clause. It expressly provides that 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 of the MSMED Act, make a reference to the Micro and Small Enterprises Facilitation Council. It is clear that either of the parties, to any dispute regarding the amounts in respect of goods and services and, interest due under Section 16 of the MSMED Act (which is the amount referred to as the amount due under Section 17 of the MSMED Act) is entitled to make a reference to the Micro and Small Enterprises Facilitation Council for resolution of the dispute. Sub-Section (2) to Section 18 of the MSMED Act provides for resolution of disputes by Conciliation either by the Council or, by any institution or centre for conducting Conciliation under the A&C Act.

32. Sub-Section (3) to Section 18 of the MSMED Act provides for adjudication of disputes by arbitration either by the Micro and Small Enterprises Facilitation Council or, by any institution or centre providing alternate dispute resolution services for arbitration. It further clarifies that the provisions of the A&C Act would apply to disputes as if the arbitration in pursuance of an arbitration agreement referred to in Sub-Section (1) of Section 7 of the A&C Act.

33. Section 19 of the MSMED Act provides that no application to set aside any decree, award or other order made by the Council or the institution or center providing alternate dispute resolution services shall be entertained unless 75% of the said amount is deposited in terms of the decree, award or the order as directed by the Court.

34. It is apparent from the above that the provisions of Sections 15 and 16 of the MSMED Act confer substantive rights and impose obligations, which are not contingent upon recourse to any dispute resolution mechanism. Section 18 of the MSMED Act provides for a dispute resolution mechanism in respect of any amount due under Section 17 of the MSMED Act. It is obvious that it may not be necessary for a supplier to seek recourse to any proceedings for recovery of the amounts that may be otherwise due to it, if the buyer complies with its obligation under Sections 15 and 16 of the MSMED Act.

35. The import of the contentions advanced on behalf of IHMCL is that the obligations of the buyer under Sections 15 and 16 of the MSMED Act are contingent upon the supplier resorting to Conciliation or the adjudicatory process under Section 18 of the MSMED Act. The plain language of Sections 15, 16 and 17 of the MSMED Act, does not support this proposition.

36. The reliance placed by IHMCL on the decision of this Court in ***AVR Enterprises v. Union of India*** (*supra*), is misplaced. In the said case, the Court was concerned with the question whether it could entertain a petition under Section 34 of the A&C Act without the petitioner depositing 75% of the awarded amount in terms of Section 19 of the MSMED Act. The Court held that the requirement of Section 19 of the MSMED Act would be applicable only in cases where reference was made under Section 18 of the MSMED Act and would not apply to an award rendered by an arbitral tribunal appointed otherwise. It is relevant to note that this Court relied on the plain

language of Section 19 of the MSMED Act, which specified that it would apply to any decree, award or order made by the Council or by any institution or center providing alternate dispute resolution services to which reference was made by the Council. This condition would not be met in cases where an arbitrator is appointed by the parties or by a court under Section 11 of the A&C Act. The plain language of Section 19 of the MSMED Act does not require a pre-deposit of seventy-five percent of the awarded amount in respect of an arbitral award rendered by an Arbitral Tribunal which has not been appointed pursuant to a reference under Section 18 of the MSMED Act. The judgment in ***AVR Enterprises v. Union of India*** (*supra*) is not an authority for the proposition that the beneficial provisions of the MSMED Act would be inapplicable where a party does not seek to enforce its rights under Section 18 of the MSMED Act.

37. The decision in the case of ***M/s SAVIO Industrial and Structural Corporation v. Southern Railway and Ors.*** (*supra*) does not carry the case of the petitioner much further. In that case, the arbitral tribunal had concluded that the MSMED Act was not applicable. This was for the reason that the amount claimed by the petitioner was not on account of the amount due for sale of any material or for the services rendered. The Division Bench of the Madras High Court concurred with the view of the arbitral tribunal and held that the provisions of Sections 15 and 16 of the MSMED Act were not applicable as these provisions created an obligation to pay compound interest only in respect of the amounts due for the goods supplied or service rendered. The Court did not

accept that the provisions of Section 19 of the MSMED Act were applicable since in that case the arbitral award was not rendered by an arbitral tribunal appointed pursuant to a reference under Section 18(1) of the MSMED Act.

38. As noted above, the plain language of Section 19 of the MSMED Act limits its application only to the arbitral award or orders passed by the Facilitation Council pursuant to a reference under Section 18(1) of the MSMED Act or by an arbitral tribunal appointed pursuant to such reference. Sections 15 and 16 of the MSMED Act do not contain any such restrictive provisions, which limits their applicability. There is nothing stated in Section 15 or 16 of the MSMED Act which restricts the amount recoverable under the said provisions contingent to a reference under Section 18(1) of the MSMED Act.

39. It is necessary to note that Section 18(3) of the MSMED Act also expressly provides that where the disputes are referred to arbitration either by the Council or to any institution or centre providing alternate dispute resolution services, the provisions of A&C Act would apply to such disputes as if the arbitration was in pursuance to an arbitration agreement referred to in Section 7(1) of the A&C Act. Section 18(3) of the MSMED Act creates a legal fiction, whereby the provisions of the A&C Act are made applicable to arbitration pursuant to the reference under Section 18(3) of the MSMED Act. During the course of submissions, it was contended on behalf of the respondent that an award for interest under Section 16 of the MSMED Act could be made in proceedings under Section 18 of the MSMED Act but not by an arbitral

tribunal appointed in terms of the A&C Act. In such cases, the arbitral tribunal was required to award reasonable interest under Section 31(7)(a) of the A&C Act. This Court finds it difficult to accept this contention as it overlooks the express provisions of Section 18(3) of the MSMED Act. The provisions of the A&C Act are specifically applicable as they would be in case of arbitration pursuant to an arbitration agreement under Section 7(1) of the A&C Act. However, in case of repugnancy between the provisions of the A&C Act and the MSMED Act, the provisions of the MSMED would prevail.

40. It is also relevant to refer to the decision in the case of ***Snehdeep Structures Pvt. Ltd. v. Maharashtra Small Scale Industries Development Corporation Ltd.*** (*supra*). The said case was rendered in the context of Interest on Delayed Payments to Small Scale and Ancillary Undertakings Act, 1993. In that case, the Court held that Interest on Delayed Payments to Small Scale and Ancillary Undertakings Act, 1993 (referred to as the 'Interest Act' in short by the court) was a special legislation viz-a-viz to any other legislation including the A&C Act and the contention that the payment of interest would be governed by Section 31(7)(a) of the A&C Act, was rejected as erroneous. The relevant extract of the said decision is set out below:

> "37. According to the learned counsel for the respondent Corporation, the Arbitration Act treats "appeals" and "applications" separately under two distinct chapters: Chapter VII and Chapter IX respectively. It was also strenuously contended by the learned counsel for the respondent that the Arbitration Act contains specific provisions for awarding interest and

> that Act being a special enactment will prevail over the Interest Act. He relied on ***Jay Engg. Works Ltd. v. Industry Facilitation Council*** to show that against the provisions of the Interest Act, the provisions of Arbitration Act will prevail, as the latter is a complete code in itself. The Interest Act will apply only when the party prefers a suit to arbitration.
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> 38. The Preamble of the Interest Act sows that the very objective of the Act was "to provide for and regulate the payment of interest on delayed payments to small-scale and ancillary industrial undertakings and for matters connected therewith or incidental thereto." Thus, as far as interest on delayed payment to small-scale industries as well as connected matters are concerned, the Act is a special legislation with respect to any other legislation, including the Arbitration Act. The contention of the respondent that the matter of interest payment will be governed by Section 31(7) of the Arbitration Act, hence, is erroneous. Section 4 of the Interest Act endorses the same which sets out the liability of the buyer to pay interest to the supplier "notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force". Thus, the Interest Act is a special legislation as far as the liability to pay interest, or to make a deposit thereof, while challenging an award / decree / order granting interest is concerned."

41. As pointed out by Ms Arora, one of the Statements and Objects of enacting the MSMED Act was to "*make further improvements in the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 and making that enactment a part of the proposed legislation and to repeal that enactment*."

42. In ***Shilpi Industries v. Kerala State Road Transport Corporation***

and Anr. (*supra*), the Supreme Court had observed as under:-

> "At this stage, it is relevant to notice the judgment of this Court in the case of *Edukanti Kistamma (Dead) through LRs. v. S. Venkatareddy (Dead) through LRs. & Ors.* where this Court has held that a special Statute would be preferred over general one where it is beneficial one. It was explained that the purport and object of the Act must be given its full effect by applying the principles of purposive construction. Thus, it is clear that out of the two legislations, the provisions of MSMED Act will prevail, especially when it has overriding provision under Section 24 thereof. Thus, we hold that MSMED Act, being a special Statute, will have an overriding effect vis-à-vis Arbitration and Conciliation Act, 1996, which is a general Act."
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> [Underlined for emphasis]

43. In view of the above, it is clear that the MSMED Act is a special legislation with regard to payment of interest and the provisions of MSMED Act would override the provisions of the A&C Act to the extent of any repugnancy. This view further draws support from the *non obstante* provisions of Section 24 of the MSMED Act, which reads as under: -

> "**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."

44. Ms Priya had also referred to the decision of the Supreme Court in ***Vedanta Ltd. v. Shenzen Shandong Nuclear Power Construction***

Co. Ltd.: (2019 11 SCC 465 and, on the strength of the said decision, contended that the award of interest was required to be awarded in accordance with Section 31(7) of the A&C Act and was thus, required to be reduced. The said decision would be of little assistance to IHMCL in the facts of this case. In that case, the Court had found that the award of interest was arbitrary and not in conformity with the laws in force. The Court also found that the arbitral tribunal had awarded uniform interest for the amounts payable in Indian currency as well as those payable in Euros, although both the currencies operated in materially different environments. As noticed above in this case, the Arbitral Tribunal has found that SOWiL is liable to pay interest under Section 16 of the MSMED Act and, thus, the impugned award does conform to *lex fori.*

45. Before concluding, it would also relevant to reiterate that the scope of interference with an arbitral award is restricted. It is permissible only on the grounds as set out under Section 34 of the A&C Act. The view of an arbitral tribunal is final and binding unless it is found that the impugned award is vitiated by patent illegality or falls foul of the public policy of India. Even in those cases, where it is found that the arbitral tribunal has erred in law, interference with the arbitral award would not be permissible unless it is found that the patent illegality goes to the root of the matter and which vitiates the award [See: ***Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.: 2021 SCC OnLine SC 695***]. Clearly, in this case, the impugned award cannot be stated to be vitiated by patent illegality or in

conflict with the public policy of India.

46. The petition is unmerited and is, accordingly, dismissed. All pending applications are also disposed of.

VIBHU BAKHRU, J

DECEMBER 21, 2021
RK/*v*