



## Supreme Court rules that the provisions of the MSMED Act override the provisions of the Arbitration Act

A 2 (two) judge bench of the Supreme Court of India (“**Supreme Court**”) in *Gujarat State Civil Supplies Corporation Ltd v. Mahakali Foods Pvt Ltd & Anr*<sup>1</sup> *inter alia* held that Chapter – V of the Micro, Small and Medium Enterprises Development Act, 2006 (“**MSMED Act**”) overrides the provisions of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”). The Supreme Court further held that the reference to the Micro and Small Enterprise Facilitation Council (“**MSEFC**”) by a party to a dispute under Section 17 of the MSMED Act is maintainable despite the existence of an independent and valid arbitration agreement.

### Brief Facts

The Supreme Court considered 7 (seven) appeals arising out of several impugned orders passed by the various high courts adopting divergent views involving common questions of law pertaining to the applicability of the Arbitration Act *vis-à-vis* the MSMED Act in cases involving micro, small or medium enterprises governed under the MSMED Act. As per the impugned orders of the various high courts, 2 (two) contrary views emerged – (a) a valid and independent arbitration agreement precludes parties to a dispute under Section 17 of the MSMED Act from approaching the MSEFC under Section 18 of the MSMED Act; and (b) the reference to the MSEFC despite the existence of a valid arbitration agreement is maintainable.

### Issues

1. Whether the provisions of Chapter V of the MSMED Act would have an overriding effect on the provisions of the Arbitration Act?
2. Whether any party to a dispute with regard to any amount due under Section 17 of the MSMED Act would be precluded from making a reference to the MSEFC under section 18 (1) of the MSMED Act if an independent arbitration agreement existed between the parties as contemplated under Section 7 of the Arbitration Act?
3. Whether the MSEFC could take up the dispute for arbitration and act as an arbitrator, after having conducted the conciliation proceedings under Section 18 (2) of the MSMED Act in view of the bar provided under Section 80 of the Arbitration Act?

<sup>1</sup> SLP (C) No. 12884/2020; 2022 SCC OnLine SC 1492

## Findings and Analysis

The Supreme Court *inter alia* made the following observations:

1. The Arbitration Act in general governs the law of arbitration and conciliation whereas the MSMED Act governs specific nature of disputes arising between specific category of persons which are to be resolved by following a specific process through a specific forum.
2. The MSMED Act being a special law and the Arbitration Act being a general law, the provisions of the MSMED Act would prevail over the Arbitration Act.
3. Even if the Arbitration Act is treated as a special law, the MSMED Act which was enacted at a subsequent point in time would have an overriding effect.
4. Considering the overall purpose, scheme and the unambiguous expression contained in the non-obstante clauses under Section 18(1) and Section 18(4) of the MSMED Act, a private agreement between the parties such as the one under Arbitration Act cannot obliterate statutory provisions.
5. Section 18(1) of the MSMED Act is an enabling provision that gives a party to a dispute under Section 17 of the MSMED Act a right to approach the MSEFC for resolution of its disputes despite the existence of an arbitration agreement. As such, no party to a dispute under Section 17 of the MSMED Act can be precluded from referring its dispute to the MSEFC merely because of a pre-existing arbitration agreement.
6. Section 18 (1) read with Section 24 of the MSMED Act supersedes Section 80 of the Arbitration Act which bars a conciliator from acting as an arbitrator. By operation of Section 18 of the MSMED Act, the MSEFC which had conducted the conciliation proceedings becomes entitled to act as an arbitrator to the same dispute.
7. Given that the Arbitration Act is applicable to proceedings before the MSEFC under the MSMED Act, the MSEFC acting as the arbitral tribunal under Section 18(3) of the MSMED Act is competent to rule on its own jurisdiction like any other arbitral tribunal, in accordance with Section 16 of the Arbitration Act.

The Supreme Court considered all 7 (seven) appeals individually and in light of its observations above, allowed 2 (two) of the 7 (seven) appeals, disposed of 1 (one) appeal and dismissed the remaining appeals. The impugned orders of various high courts that *inter alia* held that an arbitration agreement disentitles parties from referring the dispute to the MSEFC for its resolution under the MSMED Act, were accordingly set aside.

## JSA Comment

The Supreme Court in this judgment while adopting a purposive view has held that the provisions of the MSMED Act override the provisions of the Arbitration Act. The findings of the Supreme Court in this case noting that arbitration agreements between parties cannot be given primacy over statutory provisions can have far reaching ramifications. The findings in this case by the Supreme Court, appear to undermine the fundamental principle of party autonomy in arbitration law and appear to favour overriding of this principle in the face of statutory requirements.

## Disputes Practice

With domain experts and strong team of dedicated litigators across the country, JSA has perhaps the widest and deepest commercial and regulatory disputes capacity in the field of complex multi-jurisdictional, multi-disciplinary dispute resolution. Availing of the wide network of JSA offices, affiliates and associates in major cities across the country and abroad, the team is uniquely placed to handle work seamlessly both nationally and worldwide.

The Firm has a wide domestic and international client base with a mix of companies, international and national development agencies, governments and individuals, and acts and appears in diverse forums including regulatory authorities, tribunals, the High Courts, and the Supreme Court of India. The Firm has immense experience in international as well as domestic arbitration. The Firm acts in numerous arbitration proceedings in diverse areas of infrastructure development, corporate disputes, and contracts in the area of construction and engineering, information technology, and domestic and cross-border investments.

The Firm has significant experience in national and international institutional arbitrations under numerous rules such as UNCITRAL, ICC, LCIA, SIAC and other specialist institutions. The Firm regularly advises and acts in international law disputes concerning, amongst others, Bilateral Investor Treaty (BIT) issues and proceedings.

The other areas and categories of dispute resolution expertise include; banking litigation, white collar criminal investigations, constitutional and administrative, construction and engineering, corporate commercial, healthcare, international trade defence, etc.

### This Prism has been prepared by:



**Farhad Sorabjee**  
Partner



**Shanaya Cyrus Irani**  
Principal Associate



**Ananya Verma**  
Associate



**Meher Mistri**  
Junior Associate



14 Practices and  
23 Ranked Lawyers



15 Practices and  
18 Ranked Lawyers



7 Practices and  
2 Ranked Lawyers



11 Practices and  
39 Ranked Partners  
IFLR1000 APAC Rankings 2022

-----  
Banking & Finance Team  
of the Year

-----  
Fintech Team of the Year

-----  
Restructuring & Insolvency  
Team of the Year



Among Top 7 Best Overall  
Law Firms in India and  
10 Ranked Practices

-----  
13 winning Deals in  
IBLJ Deals of the Year

-----  
6 A List Lawyers in  
IBLJ Top 100 Lawyer List



Banking & Financial Services  
Law Firm of the Year 2022

-----  
Dispute Resolution Law  
Firm of the Year 2022

-----  
Equity Market Deal of the  
Year (Premium) 2022

-----  
Energy Law Firm of the Year 2021



Ranked #1  
The Vahura Best Law Firms to Work  
Report, 2022

-----  
Top 10 Best Law Firms for  
Women in 2022

For more details, please contact [km@jsalaw.com](mailto:km@jsalaw.com)

---

[www.jsalaw.com](http://www.jsalaw.com)



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi



This prism is not an advertisement or any form of solicitation and should not be construed as such. This prism has been prepared for general information purposes only. Nothing in this prism constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this prism disclaim all and any liability to any person who takes any decision based on this publication.