

**Bata India Ltd. & Anr. v. UP State Micro & Small Enterprise  
Facilitation Council & Anr.  
(2023:AHC:122271-DB)**

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## **Introduction**

This case is regarding the dispute between Bata India Ltd. v. UP State Micro and Small Enterprise Facilitation Council and AVS International Pvt. Ltd. It was heard before the Allahabad High Court and the decision was given on May 31, 2023. The bench consisted of a single judge, Hon'ble Justice Mahesh Chandra Tripathi. The case mainly dealt with issues relating to conflicting provisions between the Micro, Small and Medium Enterprises Development Act, 2006 and the Arbitration and Conciliation Act of 1996 and whether the Micro and Small Enterprises Facilitation Council can take up a dispute for arbitration itself after it had held conciliation proceedings for the same matter for which a settlement was not reached.

## **Facts**

Bata India Ltd. is the largest retailer and leading manufacturer of footwear and accessories in India. The company also hires various manufacturers for the manufacturing of several goods as well as to supply certain products to various government organizations. AVS International Pvt. Ltd., also a manufacturer of footwear, entered into an agreement with Bata. In the agreement, AVS agreed to manufacture and supply certain products, particularly to the Indian Navy.

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Bata filed a writ petition before the Delhi High Court alleging that AVS International had breached the terms of their agreement on numerous occasions. Such breaches included not timely delivering goods and putting forward poor quality and defective goods. It was also highlighted in their petition that the Indian Navy had even rejected the goods on three occasions and imposed a late delivery penalty on them. The agreement put forth that where such penalties are levied, the cost of the same are to be borne by AVS International. Therefore, Bata deducted such charges from the amount to be paid to AVS. AVS International sent several legal notices to Bata regarding the “pending amounts”. Thereafter, Bata and AVS International attempted to resolve their disputes amicably amongst themselves.

As AVS International is registered Micro, Small and Medium Enterprise under the Micro, Small and Medium Enterprises Development (MSMED) Act of 2006, the company approached the UP State Micro and Small Enterprises Facilitation Council. It filed a claim petition and in response, the Council sent a conciliation notice to Bata to join conciliation proceedings. Under Section 18(2) of the MSMED Act, 2006, the Council is empowered to conduct conciliation proceedings or seek the assistance of any institution or center providing alternate dispute resolution services by referring the matter to such institution or center for conducting of conciliation. On agreeing to take part in conciliation proceedings, the representatives of both parties appeared before the Council for conciliation proceedings. After the first session, the Council was informed that the parties were going to negotiate amongst themselves to reach a settlement. For such purpose, the Council gave the parties one month’s time to conclude negotiations. However, the parties were unable to reach a settlement. Therefore, the petitioners decided to terminate conciliation proceedings under Sec. 76(d) of Arbitration and Conciliation Act, 1996, which provides that conciliation proceedings can be terminated through a written declaration by a party to the other party and the conciliator regarding the termination of the conciliation.

In the agreement between the parties, there existed a provision for arbitration. Clause 25 of their agreement stated that, “in case of any dispute between the parties, the parties shall attempt to resolve the dispute amicably and the aggrieved party shall send a notice to the other party requesting to settle the dispute amicably.”

Since such a clause existed in the agreement, Bata filed a petition under Sec. 11(6) of the Act before the Delhi High Court for appointment of an arbitrator. The petition included that the conciliation proceedings before the Council had been terminated.

Soon after, the Council issued a notice to the parties for resuming of conciliation proceedings. Bata's representative attended the session and informed the Council that they had already approached the Delhi High Court for reference of the dispute to institutional arbitration at the Delhi International Arbitration Center which had been set up by the Delhi High Court. It requested the Council to formally terminate the conciliation proceedings pending before it. Subsequently, under Section 18(3) of the MSMED Act, 2006, the Facilitation Council passed an order that it will arbitrate the dispute between the parties itself. Section 18(3) states that where conciliation under the Act is not successful and has been terminated without any settlement between the parties, the Council can either take up the dispute for arbitration itself or refer the dispute to any institution or center providing alternate dispute resolution services for arbitration.

Bata approached the Delhi High Court again by filing an interlocutory application. While the application was pending before the Delhi High Court, Bata approached the Council requesting them to withdraw its proposal for undertaking the arbitration issue itself and instead refer the parties to institutional arbitration at the Delhi International Arbitration Center.

Before the Delhi High Court, Bata argued that since the Council had already acted as a conciliator, it is now impermissible for them to assume the role of an arbitral tribunal. AVS International put forth that they had no objection to the matter being referred to any institution or center providing ADR services. They however contended that the decision is to be made by the Council. The High Court directed the Council to decide whether the parties are to be referred to arbitration at any institution or center and convey their decision to the Court within 2 weeks. The Council rejected the contention of Bata arguing for reference of the dispute for arbitration to an institution or center and affirmed its earlier decision that it will arbitrate the dispute itself. The Delhi High Court subsequently confirmed the judgement.

Aggrieved by the judgement, Bata approached the Allahabad High Court.

## Contentions & Arguments

### Petitioner

Bata submitted that Clause 25 of the agreement with AVS International provides that disputes arising out of their contractual relationship are to be settled amicably through arbitration. It was also submitted by them that the dispute in question involves complicated issues and therefore, the Delhi International Arbitration Center is best suited to arbitrate the dispute. They contended that the Facilitation Council is “not well equipped to arbitrate the dispute” and that the Delhi International Arbitration Center is better suited to carry out quality arbitration proceedings.

Bata has acknowledged that under Sec. 18(3) of the MSMED Act, in case of failure of conciliation proceedings, the Council is empowered to take up the dispute itself for arbitration or refer the dispute to any institution providing ADR services. Bata highlighted Sec. 80 of the Arbitration & Conciliation Act. The provision talks about the role of the conciliator in other proceedings. Sec. 80(a) states that the conciliator shall not act as an arbitrator, representative or counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of conciliation proceedings. On such basis, Bata argued that since the Council had led the conciliation proceedings, it is prohibited from taking up the dispute for arbitration.

Therefore, it was submitted by Bata that although discretion lies with the Council to decide whether it will arbitrate the dispute itself or refer it to an institution, the Council ought to refer the matter to an institution.

### Respondent

AVS International contended that Sec. 18 of the MSMED Act has an overriding effect on any other law in force for the time being. The case of *Principal Chief Engineer v. Mani Bhai and Brothers*<sup>1</sup>

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<sup>1</sup> MANU/SCOR/24287/2017

before the Gujarat High Court was referred to by the respondents, where it was stated that, “it cannot be disputed that the Act of 2006, is a “Special Act” and as per Sec. 24 of the Act, 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”. The Court further stated that, “the non-obstante provision contained in Sec. 18(1) and again in Sec. 18(4) operates to ensure that it is a Facilitation Council which has jurisdiction to act as an arbitrator or conciliator in a dispute between a supplier located within its jurisdiction and a buyer located anywhere in India.” This decision of the Gujarat High Court was confirmed by the Supreme Court in 2017.

### **Issues**

1. Whether the provisions of the MSMED Act, 2006 would have an overriding effect on the provisions of the Arbitration & Conciliation of 1996.
2. Whether the Council itself could take up the dispute for arbitration and act as an arbitrator when the Council had previously already conducted the conciliation proceedings.

### **Judgement**

In giving its decision, the Allahabad High Court firstly highlighted that the MSMED Act, 2006 is a special law which was enacted to achieve certain special purposes such as to facilitate the promotion, development and to enhance the competitiveness of Micro, Small and Medium Enterprises. To achieve such purposes, Section 24 of the Act has given an overriding effect to Sections 15 – 23, in that they “shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force”.

In recognizing the same, the Court held that Section 18 of the MSMED Act, 2006 does in fact have an overriding effect. Furthermore, the Court put forward its opinion that through Section 18(3), the legislature has given the Council absolute discretion in deciding whether to take up the dispute itself for arbitration or to refer it to an institution or center providing ADR services in cases of failure of conciliation proceedings.

Furthermore, the Court has highlighted that Section 80 of the Arbitration & Conciliation Act permits an “otherwise agreement” between the parties. Therefore, the limitation placed by this provision that a conciliator shall not be an arbitral tribunal is not absolute in nature. Therefore, the overriding nature of Section 18 of the MSMED Act, 2006 was reinforced by the Court.

Therefore, the Court opined that the Council having acted as a conciliator is not barred from acting as the arbitral tribunal to arbitrate the dispute under Sec. 18(3) of the MSMED Act. The jurisdiction of the Council has been given an overriding effect through Section 24 of 2006 Act. It was affirmed by the Court that the Council is not prohibited from functioning as the arbitrator itself and is not obliged to refer the dispute to any other institute or center providing ADR services.

In giving its judgement, the Court also relied on the judgement given by the Supreme Court in 2022 in the case of *Gujarat State Civil Supplies Corporation Ltd. v. Ramkrishna Foods Pvt. Ltd. & Anr.*<sup>2</sup> It was held in this case that the Council having acted as a conciliator and in the event that the proceedings failed, the Council under Sec. 18(3) can proceed to arbitrate the dispute itself and the prohibition under Sec. 80 of A&C Act will have no application.

In considering the argument of the petitioner that the matter should be referred to the Delhi International Arbitration Center as it is an expert body well equipped to carry out quality arbitration proceedings, the Court put forth that the legislature framed the special law of the MSMED Act, 2006 to deal with various kinds of issues which may arise in the functioning of Micro, Small and Medium Enterprises. Therefore, the Act has provided for the Council to be made up of experts in the field of Micro, Small & Medium Enterprises. As such, the opinion of the petitioners was held to be misconceived and that the Council is in fact well equipped to carry out arbitration of the dispute.

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<sup>2</sup> 2022 SCC Online SC 1492

## **Analysis & Conclusion**

This recent judgement has specifically dealt with the special legislation of the MSMED Act, 2006 and its effect on the provisions of the Arbitration and Conciliation Act, 1996. The decision of the Allahabad High Court regarding this dispute between Bata and AVS International and the arguments of Bata against certain powers and jurisdiction of the Facilitation Council has given clarity as to the nature of such powers and the functioning of the Facilitation Council. With reference to the issues which were presented before the Court – it has been held that the provisions of the MSMED Act do in fact have an overriding effect on the provisions of the Arbitration & Conciliation Act and that the Council does have the power to take up the dispute for arbitration and act as an arbitrator itself in matters regarding which the Council has previously already conducted conciliation proceedings.