IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

RESERVED ON: 10.08.2026
DELIVERED ON: 10.09.2026

PRESENT:

THE HON'BLE MR. JUSTICE GAURANG KANTH

AP-COM 385 OF 2026

M/S. INNOVEL ENERGY SERVICES PVT. LTD.
(PREVIOUSLY: ENVIRON SOLAR PVT. LTD.)
VS
ELEVAR DIGITEL INFRASTRUCTURE PRIVATE LIMITED

Appearance: -

Ms. Hashnuhana Chakraborty, Adv.
Ms. Neelina Chatterjee, Adv.
Ms. Nikita Baid, Adv.
..... for the petitioner

Mr. Tishampati Sen, Adv.
Ms. Rupoma Bhattacharjee, Adv. .....for the respondent

JUDGMENT

Gaurang Kanth, J. :-

1. This is an application filed under Section 29A of the Arbitration and Conciliation Act, 1996, by the petitioner, M/s. Innovel Energy Services Pvt. Ltd. (previously Environ Solar Pvt. Ltd.), seeking a post-award extension of time in respect of arbitral proceedings conducted under the MSME Development Act, 2006, before the West Bengal Micro Small Enterprises Facilitation Council (WBMSEFC).

2. The facts leading to the present petition are as follows:

3. The petitioner, an MSME-registered enterprise, was engaged by VIOM Networks Pvt. Ltd. for operation and maintenance of telecom sites in West Bengal. Upon the respondent, then known as M/s. ATC Telecom Infrastructures Pvt. Ltd., acquiring 51% shareholding of VIOM Networks, a

fresh service agreement dated 18.01.2017 (later amended and extended till 31.01.2020) was executed between the parties, under which the petitioner carried out electrical and technical maintenance works without any demur. The petitioner changed its name from Environ Solar Pvt. Ltd. to Innovel Energy Services Pvt. Ltd. on 23.09.2022. The respondent, in turn, changed its name from M/s. ATC Telecom Infrastructures Pvt. Ltd. to Elevar Digitel Infrastructure Private Limited on 17.10.2024, during the pendency of the arbitral proceedings. This Court, by order dated 27.07.2026, allowed the amendment of the cause title and connected records to substitute the name of the respondent as Elevar Digitel Infrastructure Private Limited.

4. The petitioner claimed non-payment of twenty invoices amounting to Rs. 64,84,061/-, despite tax liability having been discharged on most of them, and accordingly filed an application dated 09.03.2021 before the WBMSEFC under the "Samadhaan" portal, registered as Case No. 212 of 2021. Conciliation proceedings held on six occasions concluded in failure on 15.02.2023, and the matter was referred to arbitration under Section 18(3) of the MSME Act. The respondent filed its statement of defence on 19.04.2023 admitting the principal claim but disputing the non-availability of supporting documents, a contention found unsubstantiated. Four hearings were held, the last on 10.12.2024. The WBMSEFC passed a detailed Arbitral Award on 18.09.2025, allowing claims of Rs. 54,23,416/-, Rs. 5,29,540/-, and Rs. 2,33,709/-, while disallowing Rs. 2,97,937/- and interest of Rs. 30,95,819/- claimed on delayed release of bank guarantee.

5. The petitioner has stated that the arbitral proceedings could not be concluded within the statutory timeline on account of extensions and adjournments sought by the respondent, evidenced by its communications dated 25.03.2023

and 03.04.2023 and the Council's communication dated 04.04.2023 granting such extension. It is averred that an application under Section 29A was moved during the arbitral proceedings, as the MSME Act contains no provision analogous to Section 29A for termination of the Council's mandate upon expiry of the timeline. It is further submitted that the respondent raised no objection and continued participating in the proceedings, including seeking adjournments on 29.08.2024 and 10.12.2024, even after 19.10.2024, the date on which the timeline for passing the award is stated to have expired.

6. It is further stated that the respondent has invoked the jurisdiction of the courts at New Delhi under Section 34 of the Act, registered as OMP (COMM.) No. 184 of 2025, challenging the Award. The petitioner has questioned the maintainability thereof on the ground that the seat of arbitration was Kolkata; the said maintainability application is pending consideration. The petitioner has denied any deliberate laches or delay, asserted that the balance of convenience lies in its favour, and that it would suffer irreparable loss, injury and prejudice absent the reliefs prayed for, and has accordingly sought a post-award extension of time for completion and disposal of the arbitral reference between the parties.

Submission on behalf of the Petitioner

7. Ms. Hashnuhana Chakraborty, learned counsel appearing for the Petitioner submitted that the arbitral reference between the parties was conducted, and the impugned Award dated 18.09.2025 was made and published, by the West Bengal Micro Small Enterprises Facilitation Council, Kolkata, within whose jurisdiction the Petitioner-Supplier is admittedly located. It was contended that under Section 18(4) of the MSME Development Act, 2006, being a non-obstante provision, the Facilitation Council where the

Supplier is located is vested with jurisdiction to conduct the arbitration, notwithstanding any private jurisdiction clause between the parties. This position stands settled by the Hon'ble Supreme Court in ***Harcharan Dass Gupta v. Union of India,*** reported as ***2025 SCC OnLine SC 1111***, following ***Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd.,*** reported as ***(2023) 6 SCC 401***. It was accordingly submitted that this Court, being the court having jurisdiction under Section 2(1)(e) of the Arbitration and Conciliation Act, 1996 over the seat where the Facilitation Council is situated, alone has jurisdiction to entertain the present application, and not the courts at New Delhi as sought to be contended by the Respondent.

8. Learned counsel next submitted that although a coordinate Bench of this Court in ***Porel Dass Water & Effluent Control Pvt. Ltd. v. West Bengal Power Development Corporation Ltd.,*** reported as ***2024 SCC OnLine Cal 8927***, has taken the view that the timeline under Section 29A of the 1996 Act does not, strictly, apply to a reference under Section 18 of the 2006 Act, the correctness of that view remains an open question, having regard to the fact that a contrary view has been expressed by the Hon'ble Gujarat and Bombay High Courts holding Section 29A to be applicable to such references. It was submitted that the present application has, therefore, been filed purely out of abundant caution, so as to safeguard the Award from any future technical challenge on the ground of limitation, without conceding that Section 29A applies to the present reference.

9. Learned counsel further submitted that, in any event, even assuming Section 29A were applicable, the passing of the Award would be no bar to the grant of extension, this position having been conclusively settled by the

Hon'ble Supreme Court in ***C. Velusamy v. K. Indhera*****,** reported as ***2026 SCC OnLine SC 142***, wherein it was held that an application under Section 29A(5) is maintainable even after expiry of the statutory period and even after the award has been rendered; that such an award is not a nullity but merely unenforceable until the mandate of the arbitrator is extended by the Court. It was further held that the power of the Court under Section 29A is not impaired by the arbitrator's indiscretion in passing an award without a subsisting mandate.

10. Learned counsel lastly submitted that sufficient cause, as contemplated under Section 29A(5), stands duly made out inasmuch as the delay in conclusion of the arbitral proceedings was occasioned entirely by repeated adjournments and extensions sought by the Respondent, as borne out from the Respondent's own communications and the minutes of the Council, and that the Petitioner, as claimant, was diligent throughout. It was accordingly prayed that the post-award extension of time be granted in respect of the arbitral reference culminating in the Award dated 18.09.2025.

Submission on behalf of Respondents

11. Learned counsel appearing for the Respondent submitted that, while it is not disputed that the arbitral reference between the parties was conducted by the West Bengal Micro Small Enterprises Facilitation Council, Kolkata, under Section 18 of the MSME Development Act, 2006, the same only determines the venue for conduct of the arbitration and does not, by itself, confer jurisdiction on the courts at Calcutta for the purposes of Section 2(1)(e) of the Arbitration and Conciliation Act, 1996. It was contended that once the Award came to be pronounced, any challenge thereto, or any

application arising in relation thereto, including one under Section 29A, is required to be made before the court to which the parties have contractually conferred exclusive jurisdiction, and that, in terms of the jurisdiction clause contained in the agreement between the parties, it is the Courts at New Delhi alone which have exclusive jurisdiction to entertain such proceedings. It was pointed out that the Petitioner's own conduct is consistent with this position, inasmuch as the Respondent has already preferred a challenge to the very same Award under Section 34 of the 1996 Act before the courts at New Delhi, registered as OMP (COMM.) No. 184 of 2025, and it does not lie in the mouth of the Petitioner to now invoke a different and competing jurisdiction before this Court in respect of the self-same Award.

12. Learned counsel for the Respondent placed reliance on the decision of the Hon'ble Bombay High Court in ***Gammon Engineers & Contractors (P) Ltd. v. Sahay Industries,*** reported as ***2023 SCC OnLine Bom 750***, as also on ***Ircon International Ltd. v. Pioneer Fabricators Pvt. Ltd.,*** passed in ***FAO (COMM) 200/2022***, for the proposition that the situs of the Facilitation Council conducting the arbitration under the 2006 Act does not, by itself, determine the "Court" for the purposes of Section 2(1)(e) of the 1996 Act, and that where the parties have, by contract, agreed to confer exclusive jurisdiction on a named court, such contractual stipulation continues to govern and is not overridden merely on account of the Facilitation Council having conducted the reference from a different location.

13. Learned counsel further relied upon the decision of a coordinate Bench of this Court in **Odisha Power Generation Corporation Ltd. v. Techniche**

Consulting Service, reported as ***2024 SCC OnLine Cal 10386***; submitting that this Court has itself taken the view, in similar facts, that applications under the 1996 Act arising out of awards passed by a Facilitation Council under the 2006 Act are required to be filed before the court which the parties have agreed to clothe with exclusive jurisdiction under the underlying contract, and not before the court within whose territorial limits the Facilitation Council happens to be situated. It was submitted that this being the settled position taken by the coordinate Bench, the same is binding on this Bench and the present application, having been filed in disregard of the said jurisdiction clause and the binding precedent, is not maintainable before this Court.

14. Learned counsel for the Respondent accordingly submitted that the present application under Section 29A is wholly misconceived and ought to be dismissed at the threshold for want of jurisdiction, more particularly when a Section 34 challenge to the very same Award, at the instance of the Respondent, is already pending adjudication before the competent court at New Delhi. It was denied that any attempt has been made by the Respondent to mislead this Court or to suppress any document, and it was reiterated that the jurisdiction for filing all applications arising from the Award has to be determined solely with reference to the exclusive jurisdiction clause agreed between the parties, and not with reference to the location of the Facilitation Council. It was accordingly prayed that the instant application be dismissed as not maintainable before this Court.

Legal Analysis

15. This Court heard the arguments advanced by the learned counsel for the parties and examined the documents and Judgments cited at Bar.

16. The core issues arising for consideration in the present matter are, first, whether this Court is the "Court" within the meaning of Section 2(1)(e) of the Arbitration and Conciliation Act, 1996, competent to entertain the present application under Section 29A of the said Act, notwithstanding that the arbitral proceedings under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 were conducted by the West Bengal Micro Small Enterprises Facilitation Council at Kolkata and the Award dated 18.09.2025 was passed by the said Council, particularly in view of the contractual stipulation conferring exclusive jurisdiction upon the Courts at New Delhi; and second, if the first issue is answered in the affirmative, whether, having regard to the nature of the arbitral proceedings, any extension of the arbitral mandate under Section 29A of the Arbitration and Conciliation Act, 1996 is required.

17. The legal position requires a distinction to be drawn between the jurisdiction of the Facilitation Council to undertake the statutory arbitration under Section 18 of the MSMED Act and the jurisdiction of a Court to entertain proceedings arising out of the arbitral award under the Arbitration Act, 1996.

18. Section 18 of the MSMED Act contains a non-obstante provision and, by virtue of sub-sections (1), (3) and (4) thereof read with Section 24, the statutory mechanism contemplated under the MSMED Act overrides any inconsistent contractual arrangement relating to the constitution or procedure of arbitration. The said position stands settled by the Hon'ble Supreme Court in ***Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd.*** *(Supra)*, and has subsequently been reiterated in ***Harcharan Dass Gupta*** *(supra)*. Thus, where the supplier is located

within the territorial jurisdiction of a particular Facilitation Council, the statutory jurisdiction of such Council to entertain and conduct the reference under Section 18 cannot be defeated by a private arbitration or jurisdiction clause contained in the underlying contract.

19. However, the aforesaid principle does not by itself, conclude the question of the territorial jurisdiction of the Court after the arbitral award has been rendered. Section 18(3) of the MSMED Act itself provides that where the Facilitation Council proceeds to arbitrate the dispute, the provisions of the Arbitration and Conciliation Act shall apply to the dispute as if the arbitration were pursuant to an arbitration agreement under Section 7 of the said Act. Consequently, once the statutory arbitral proceedings culminate in an award, any challenge to, or proceeding arising in relation to, such award is governed by the provisions of the Arbitration and Conciliation Act. The statutory location of the Facilitation Council, therefore, cannot by itself be treated as determinative of the territorial jurisdiction of the Court under Section 2(1)(e) of the Arbitration Act.

20. The distinction between the statutory venue of the proceedings before the Facilitation Council and the juridical seat or place of arbitration assumes significance in this context. In ***Gammon Engineers*** *(supra)*, the Hon'ble Bombay High Court, while considering a similar situation where the Facilitation Council was situated at a place different from that contemplated by the contractual jurisdiction clause, held that the operation of Section 18 of the MSMED Act overrides the agreed procedure for constitution of the arbitral tribunal, but does not obliterate the parties' agreement conferring exclusive jurisdiction upon a particular Court once the award has been rendered. The Court held that the place where the

Facilitation Council is situated may constitute the venue of the statutory arbitration, but the agreed exclusive jurisdiction continues to determine the Court competent to entertain a challenge to the award under Section 34 of the Arbitration and Conciliation Act.

21. The same principle has been applied by a coordinate Bench of this Court in ***Odisha Power Generation Corporation Ltd.*** *(supra)*. The said decision is of particular relevance as it considered an award rendered pursuant to proceedings before the West Bengal Micro Small Enterprises Facilitation Council. The Court held, in substance, that the fact that the Facilitation Council is situated within the territorial jurisdiction of this Court does not, by itself, confer jurisdiction upon this Court to entertain proceedings under the Arbitration Act where the parties have otherwise agreed upon the exclusive jurisdiction of another Court. The statutory intervention under Section 18 of the MSMED Act operates upon the arbitral mechanism and does not, merely by reason of the Council conducting the proceedings, displace the parties' agreement as to the Court having exclusive jurisdiction over proceedings arising from the arbitration. This principle is consistent with the law laid down by the Hon'ble Supreme Court in ***Swastik Gases Pvt. Ltd. v. Indian Oil Corporation Ltd.,*** reported as ***(2013) 9 SCC 32*** and ***Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd.,*** reported as ***(2017) 7 SCC 678***, that where parties have validly and unambiguously conferred exclusive jurisdiction upon a particular Court in relation to the arbitration, such Court alone would exercise jurisdiction over the arbitral proceedings and proceedings arising therefrom.

22. Applying the aforesaid principles to the facts of the present case, it is not in dispute that the Petitioner, being the supplier, invoked Section 18 of the MSMED Act before the West Bengal Micro Small Enterprises Facilitation Council at Kolkata and that the arbitral reference was thereafter conducted by the said Council. The jurisdiction of the Facilitation Council to undertake the statutory reference is, therefore, not in question. The mere fact that the Council is situated at Kolkata, however, cannot be treated as conferring exclusive territorial jurisdiction upon this Court for all proceedings arising after the Award. The Award dated 18.09.2025 having been rendered, the present application under Section 29A has to be considered with reference to the jurisdictional principles contained in the Arbitration Act.

23. In the present case, the parties had expressly agreed under the underlying agreement to confer exclusive jurisdiction upon the Courts at New Delhi. There is no material placed before this Court to demonstrate that the parties had subsequently altered the said arrangement or that Kolkata had been designated as the juridical seat of arbitration so as to displace the agreed exclusive jurisdiction of the Courts at New Delhi. The fact that the statutory arbitration was conducted by the Facilitation Council at Kolkata is, therefore, insufficient to override the express contractual stipulation conferring exclusive jurisdiction upon the Courts at New Delhi.

24. The Petitioner's contention that the jurisdiction of this Court necessarily follows from the location of the Facilitation Council cannot be accepted. Such an interpretation would effectively treat the statutory venue of the MSME arbitration as determinative of the Court's jurisdiction even after the award, notwithstanding the express provisions of Section 18(3) of the

MSMED Act and the settled distinction between the venue of arbitration and the juridical seat or the Court having supervisory jurisdiction over the arbitral proceedings. The judgment of the Hon'ble Supreme Court in ***Harcharan Dass Gupta*** *(supra)* does not, in my view, lay down any contrary proposition. The said decision is concerned principally with the statutory jurisdiction of the Facilitation Council and the overriding effect of Section 18 of the MSMED Act over the contractual arbitral mechanism. It does not hold that the location of the Facilitation Council, after an award has been rendered, necessarily determines the territorial jurisdiction of the Court under Section 2(1)(e) of the Arbitration Act, notwithstanding an otherwise valid and binding exclusive jurisdiction clause.

25. The fact that the Respondent has already instituted proceedings under Section 34 of the Arbitration Act before the Courts at New Delhi in OMP (COMM.) No. 184 of 2025 is also a relevant circumstance. While the pendency of such proceedings by itself cannot confer jurisdiction upon a Court otherwise lacking jurisdiction, it demonstrates that the Respondent has invoked the very contractual forum which the parties had agreed to confer with exclusive jurisdiction for proceedings arising out of the arbitration and the Award. The Petitioner's attempt to invoke the jurisdiction of this Court in respect of the same Award, solely on the basis of the location of the Facilitation Council, cannot be sustained.

26. Accordingly, this Court is of the considered view that the statutory jurisdiction of the West Bengal Micro Small Enterprises Facilitation Council to conduct the arbitral reference under Section 18 of the MSMED Act does not, by itself, confer territorial jurisdiction upon this Court in respect of post-award proceedings under the Arbitration Act. The

contractual stipulation conferring exclusive jurisdiction upon the Courts at New Delhi continues to operate in respect of proceedings arising out of the Award. Consequently, the present application under Section 29A, being a proceeding arising in relation to the arbitral reference and the Award, having been instituted before this Court contrary to the agreed exclusive jurisdiction clause, is not maintainable before this Court for want of territorial jurisdiction.

27. In view of the aforesaid discussion, this Court is of the considered view that the present petition is not maintainable before this Court for want of territorial jurisdiction. The contractual stipulation conferring exclusive jurisdiction upon the Courts at New Delhi continues to govern the post-award proceedings, and the mere fact that the arbitral proceedings were conducted and the Award was rendered by the West Bengal Micro Small Enterprises Facilitation Council at Kolkata does not confer jurisdiction upon this Court. Accordingly, this Court declines to exercise jurisdiction over the present petition. In view of the finding on jurisdiction, this Court considers it unnecessary to enter into or express any opinion on the other issue as to whether an extension of the arbitral mandate under Section 29A of the Arbitration and Conciliation Act, 1996 is required.

28. The application is, accordingly, dismissed as not maintainable before this Court, leaving it open to the Petitioner to pursue such remedy as may be available before the competent Court in accordance with law.

(GAURANG KANTH, J.)

SAKIL AMED (P.A)