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

% ***Reserved on: 18th March, 2026***
Pronounced on: 09th April, 2026

\+ ARB.P. 2129/2025

M/S JUBILANT MARKETING PVT. LTD. .....Petitioner

Through: Ms. Sonal Sarda, Ms. Sunidhi Gupta, Ms. Jayantika Singh, Advocates
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versus

M/S ROBBINS TUNNELING AND TRENCHLESS TECHNOLOGY INDIA PVT. LTD. .....Respondent

Through: Mr. Utsav Saxena and Mr. Kartikey Singh, Advocate
Mob: 9597753146
Email: saxenautsav96@gmail.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

MINI PUSHKARNA, J.

INTRODUCTION:

1. The present petition has been filed under Section 11(6)(c) of the Arbitration and Conciliation Act, 1996 **("Arbitration Act")**, read with Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006 **("MSMED Act")**, seeking appointment of a sole arbitrator for the adjudication of the disputes between the parties, with respect to non-payment of outstanding dues by the respondent.

Brief Facts of the Case:

2. Relevant facts, as culled out from the pleadings on record, are as follows:

2.1. The petitioner, i.e., M/s. Jubilant Marketing Pvt. Ltd., is registered as a small enterprise with the Ministry of Micro, Small and Medium Enterprises **("MSME")**, Government of India, under the MSMED Act.

2.2. The petitioner, in January, 2018, commenced business with the respondent for supply of conveyor structures, wherein, pursuant to work orders issued by the respondent, the petitioner would supply goods as requested, and raise invoices accordingly, to the respondent.

2.3. On 06th June, 2023, the respondent made a payment of Rs. 8 Lacs, after which no payment has been received by the petitioner.

2.4. Aggrieved by the respondent's repeated failure in making the outstanding payments, the petitioner, in order to recover its alleged dues of Rs. 77,04,901/- against 14 invoices, approached the Micro and Small Enterprise Facilitation Council, New Delhi **("MSEF Council")**, by filing an application bearing *Application No. UDYAM-DL-11-0001801/S/00001* under Section 18(1) of the MSMED Act.

2.5. By way of notice dated 24th June, 2024, the MSEF Council admitted the petitioner's application, and thereby, directed the respondent to clear the outstanding dues, not later than 15 days from the receipt of the notice. Subsequently, the MSEF Council *vide* E-mail dated 02nd September, 2024 converted the application filed by the petitioner into a case bearing *MSEFC Case No. DL/11/S/NDC/01219*.

2.6. Thereafter, the MSEF Council issued multiple notices to the parties therein under Section 18(2) of the MSMED Act, intimating the holding of a

meeting to settle the matter and thereby, requesting the parties to appear in person.

2.7. By way of the order dated 22nd April, 2025, the MSEF Council categorically recorded that in the meeting held on 17th April, 2025, the respondent had submitted that the payment was pending and sought time of 7 to 10 days to file its reply. Thus, the MSEF Council gave one final opportunity to the respondent to file its final submissions, failing which the case would be forwarded to arbitration for further necessary action.

2.8. It is the case of the petitioner that the respondent effectively failed to file a response within the appropriate timeline and the MSEF Council subsequently, has not appointed any arbitrator since its last order dated 22nd April, 2025. Therefore, the present petition has come to be filed before this Court for appointment of an arbitrator.

Submissions of the Petitioner:

3. The submissions made by the petitioner, in the present case, are as follows:

3.1. The petitioner has filed its application under Section 18 of the MSMED Act before the MSEF Council, New Delhi, which has failed to appoint an arbitrator for adjudication of the disputes between the parties.

3.2. A statutory arbitration agreement exists between the parties, as Section 18(3) of the MSMED Act, creates an arbitration agreement as envisaged under Section 7 of the Arbitration Act between the enterprises covered under the MSMED Act. Further, all the provisions of the Arbitration Act, thereby, applies to the said arbitration agreement in terms of Section 18 of the MSMED Act, read with Section 2(4) of the Arbitration Act.

3.3. By way of order dated 22nd April, 2025, the MSEF Council categorically noted that the respondent has to file a reply, failing which the case would be forwarded for arbitration. However, despite a passage of long time from the said order, no date was forth coming by the MSEF Council for further proceedings.

3.4. Consequently, the petitioner, on 18th November, 2025, inquired at the MSEF Council and came to know that no reply has been filed by the respondent. However, there was no clarity with regard to further proceedings before the MSEF Council.

3.5. In view of the order dated 22nd April, 2025, as passed by the MSEF Council, the matter ought to have been taken up for arbitration either by MSEF Council itself or by reference to an institution.

3.6. Since the MSEF Council, being an institution under Section 11(6)(c) of the Arbitration Act, has failed to perform the aforesaid function, as entrusted to it under Section 18(3) of the MSMED Act, the petitioner has the right to invoke the jurisdiction of this Court under Section 11(6) of the Arbitration Act, for appointment of an arbitrator. The provisions of Section 18 of the MSMED Act are to be read harmoniously with Section 11 of the Arbitration Act.

3.7. Since there is no provision under the MSMED Act which deals with failure of MSEF Council to appoint an arbitrator, resort will have to be made to the general provision of Section 11(6) of the Arbitration Act for appointment of the arbitrator. Section 2(4) of the Arbitration Act makes *Part – I* of the Arbitration Act, including Section 11(6), applicable to all arbitrations under any enactment, as if the enactment was an arbitration agreement, as long as the provisions in Arbitration Act are not inconsistent

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with the provisions of the other enactment. Arbitration under the MSMED Act is a statutory arbitration, within the ambit of Section 2(4) of the Arbitration Act, thereby, making the enactment itself an arbitration agreement.

3.8. Further, Section 2(5) extends the applicability of *Part - I* to all arbitrations and all proceedings relating thereto.

3.9. Thus, where the MSME Act is silent as to the procedure to be followed when the MSEF Council fails to take the matter for arbitration, either itself or by making a reference, recourse has to be made to the Section 11(6) of the Arbitration Act, which shall act as the governing procedure for appointment of an arbitrator even under the MSMED Act.

3.10. As per Section 24 of the MSMED Act, Sections 15 to 23 of the MSMED Act shall override any other law inconsistent with it. However, as no similar provision exists under the MSMED Act, there is no inconsistency with the Arbitration Act, and therefore, Section 11(6) of the Arbitration Act shall prevail.

3.11. Upon failure of the MSEF Council to refer the dispute, a remedy under writ jurisdiction would not lie, as Section 11(6)(c) of the Arbitration Act operates as an in-built provision for appointment of an arbitrator.

Submissions of the Respondent:

4. The submissions made by the respondent to rebut the contentions of the petitioner, are as follows:

4.1. A petition under Section 11 of the Arbitration Act is not maintainable, as no valid arbitration agreement exists between the parties, in terms of Section 7 read with Section 2(b) of the Arbitration Act.

4.2. Section 11(6) of the Arbitration Act only applies in cases of failure to follow an appointment procedure as agreed between the parties. Thus, at the stage of Section 11(6) of the Arbitration Act, the existence of a valid, written arbitration agreement, which shows the *ad idem* intention of the parties to submit their disputes to arbitration is a *sine qua non*.

4.3. It is an admitted case that there exists no such independent arbitration agreement between the petitioner, whether in the work order or otherwise. Thus, the Courts cannot refer the parties to arbitration under Section 11(6) of the Arbitration Act.

4.4. It is settled that once the mechanism under Section 18(1) of the MSMED Act has been triggered by a party, the statutory scheme under the MSMED Act overrides any independent arbitration agreement.

4.5. The petitioner has consciously elected the statutory remedy under the MSMED Act and has also participated in conciliation proceedings and the meetings convened by the MSEF Council. Accordingly, the petitioner, after invoking the jurisdiction of the MSEF Council, is obliged to follow the MSME mechanism to its logical conclusion, and cannot abandon it midway on the grounds that the MSEF Council *'failed to initiate arbitration'*.

4.6. The provisions of the Arbitration Act do not apply prior to the stage of MSEF Council initiating arbitration proceedings.

4.7. The words *"shall then"*, as appearing in Section 18(3) of the MSMED Act, reflects the intention of the legislature that the provisions of the Arbitration Act shall come into play only when the conciliation proceedings between the parties stands formally terminated, and the MSEF Council either takes up the dispute itself or refers it to any institution for arbitration.

4.8. In the present case, it is an admitted position that the MSEF Council is still seized of the matter and is yet to appoint an arbitrator.

4.9. Further, the direction of the MSEF Council that if respondent failed to file its final submissions, the case will be forwarded to arbitration, is only a conditional observation, and thus, is not equivalent to actual commencement of arbitration under Section 18(3) of the MSMED Act. Therefore, the pre-conditions for deeming an arbitration agreement under Section 18(3) of the MSMED Act are not satisfied in the present case.

4.10. Although, the petitioner has contended that the petitioner's counsel enquired at the MSEF Council with respect to further proceedings in the matter, the petitioner has failed to place on record any proof thereto.

4.11. Thus, the present petition has come to be filed upon an erroneous understanding of law that exists between the parties and the provisions of Arbitration Act will apply to such arbitration agreement in terms of Section 18(3) of the MSMED Act.

ANALYSIS AND FINDINGS:

5. The instant petition has been filed by the petitioner, which is duly registered as a small enterprise in terms of the MSMED Act, seeking appointment of an arbitrator under Section 11(6) of the Arbitration Act, on account of failure of the MSEF Council to appoint an arbitrator under Section 18(3) of the MSMED Act.

6. Pertinently, conciliation proceedings in terms of Section 18(2) of the MSMED Act are pending adjudication, and there is no formal order of termination of the said proceedings or reference of the dispute to arbitration by the MSEF Council under Section 18(3) of the MSMED Act. It is further

to be noted that admittedly there exists no valid written arbitration agreement between the parties.

7. Accordingly, in the facts and circumstances of the present case, the moot question arising before this Court is *"where conciliation proceedings are pending before the MSEF Council, and the matter is yet to be taken up for arbitration, either by the MSEF Council itself or by reference to an arbitration institution, can the petitioner approach the Court under Section 11(6)(c) read with Section 2(4) of the Arbitration Act for appointment of an arbitrator?"*

8. To appreciate the issue in question, this Court deems it appropriate to examine the intent and scheme of the legislature behind the MSEMD Act. In this regard, it would be apposite to refer to the decision of the Supreme Court in the case of ***Gujarat State Civil Supplies Corporation Limited Versus Mahakali Foods Private Limited (Unit 2) and Another***[1], wherein, it was observed that the object of the MSMED Act is to ensure timely and smooth flow of credit to MSMEs, and provide an expeditious dispute resolution mechanism for resolving the disputes of non-payment of dues to the MSMEs, in the following manner:

> *"xxx xxx xxx*
>
> *12. Before adverting to the aforestated questions of law, beneficial would be to glance through the legislative history and the Objects and Reasons as also the relevant provisions of the MSMED Act, 2006 and of the Arbitration Act, 1996.* ***So far as the legislative history of the MSMED Act, 2006 is concerned, it appears that in order to promote and strengthen the small, tiny and medium scale industrial undertakings, the "Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993" (hereinafter referred to as "The Delayed Payments Act") was enacted by Parliament. The object of the said enactment was to provide for and regulate the***

[1] (2023) 6 SCC 401.

payment of interest on delayed payments to the small scale and ancillary industrial undertakings.

13. Though Sections 4 and 5 of the Delayed Payments Act, made the provisions of the recovery of amount and computation of compound interest and Section 10 thereof provided for the effect overriding the other laws for the time being in force, ***it did not provide for any dispute resolution mechanism through which a small enterprise could avail of its remedies. The small enterprises, therefore, had to file a suit or to follow the contractual terms as contained in the arbitration agreement for the recovery of their dues***.

14. The Government of India, Ministry of Industry, the Department of Small Scale Industries and Argo and Rural Industries, ***realising the need for reforms in the then existing policies and to design new policies for the development of small and medium enterprises constituted "an expert committee on small enterprises" vide the order dated 29-12-1995. The committee recommended for enacting an Act for the inclusion of stringent provisions for non-payment of dues to the small scale. This was followed by the Small and Medium Enterprises Development Bill, 2005 in August 2005***.

15. The said Bill was referred to the Parliamentary Standing Committee on Industry, which submitted its 176th Report on the said Bill of 2005. The recommendations of the said committee culminated into the MSMED Bill, which sought to achieve the following amongst other objects:

(i) To make provisions for ensuring timely and smooth flow of credit to small and medium enterprises to minimise the incidence of sickness among and enhancing the competitiveness of such enterprises, in accordance with the guidelines or instructions of the Reserve Bank of India;

(ii) 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.

16. The MSMED Bill having been passed by both the Houses of Parliament, received the assent of the President on 16-6-2006 and came into the statute book as the MSMED Act, 2006 (27 of 2006). ***The long title of the Act states that the said Act has been enacted to provide for facilitating the promotion and development, and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental***

thereto. The Act has been divided into six Chapters, and Chapter V pertains to the "Delayed payments to micro and small enterprises*".*

xxx xxx xxx

34. One of principles of statutory interpretation relevant for our purpose is contained in the Latin maxim leges posteriores priores contrarias abrogant (the later laws shall abrogate earlier contrary laws). Another relevant rule of construction is contained in the maxim generalia specialibus non derogant (General laws do not prevail over Special laws). ***When there is apparent conflict between two statutes, the provisions of a general statute must yield to those of a special one****.*

35. As observed in Kaushalya Rani v. Gopal Singh [Kaushalya Rani v. Gopal Singh, AIR 1964 SC 260], ***a "Special Law" means a law enacted for special cases, in special circumstances, in contradiction to the general rules of law laid down, as applicable generally to all cases with which the general law deals****.*

36. Keeping in view the aforestated principles of statutory interpretations as also the proposition of law laid down by this Court with regard to the general rules of construction, let us proceed to examine whether the MSMED Act, 2006 is a special enactment having an effect overriding the Arbitration Act, 1996 which is perceived to be a general enactment? ***As stated earlier, the very object of enacting the MSMED Act, 2006 was to facilitate the promotion and development, and enhance the competitiveness of micro, small and medium enterprises. The Act also aimed to ensure timely and smooth flow of credit to the micro, small and medium enterprises, and to minimise the incidence of sickness. One of the main objects of the Act was to delete the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, and to include stringent provisions as also to provide dispute resolution mechanism for resolving the disputes of non-payment of dues to the micro and small enterprises. Thus, the seed of the MSMED Act, 2006 had sprouted from the need for a comprehensive legislation to provide an appropriate legal framework and extend statutory support to the micro and small enterprises to enable them to develop and grow into medium ones****.*

37. Sections 15 to 25 contained in Chapter V of the MSMED Act, 2006 pertain to the "delayed payments to micro and small enterprises". A bare perusal of the said provisions contained in Chapter V shows that a strict liability is fastened on the buyer to make payment to the supplier who supplies any goods or renders any services to the buyer, prescribing the time-limit in Section 15. Section 16 further fastens the

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liability on the buyer to pay compound interest if any buyer fails to make payment to the supplier as required under Section 15. Such compound interest is required to be paid at three times of the bank rate notified by the Reserve Bank, notwithstanding contained in any agreement between the buyer and supplier or in any law for the time being in force. An obligation to make payment of the amount with interest thereon as provided under Section 16 has been cast upon the buyer and a right to receive such payment is conferred on the supplier in Section 17. ***Thus, Section 17 is the ignition point of any dispute under the MSMED Act, 2006. Section 18 thereof provides for the mechanism to enable the party to the dispute with regard to any amount due under Section 17, to make a reference to the Micro and Small Enterprises Facilitation Council****.*

xxx xxx xxx"

(Emphasis Supplied)

9. It is apposite to refer to the provisions of the MSMED Act that are relevant to the present matter, and the same are reproduced as under:

"xxx xxx xxx

Section 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 time 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.*

Section 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*.*

Section 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***

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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.

(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 disputes 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."

xxx xxx xxx"

(Emphasis Supplied)

10. A bare reading of the aforementioned Sections makes it abundantly clear that Section 17 of the MSMED Act deals with the recovery of dues from the buyer for goods or services supplied/rendered by the supplier. Further, where an amount is due under Section 17 of the MSMED Act, any party may make a reference to the MSEF Council under Section 18(1) of the MSMED Act.

11. Upon such a reference being made to the MSEF Council, the MSEF Council under Section 18(2) of the MSMED Act shall either conduct conciliation itself, or refer the matter to an institution for conciliation, and the provisions of Sections 65 to 81 of the Arbitration Act, shall apply to such a dispute as if the conciliation was initiated under Part-III of the Arbitration Act. Reference in this regard may be made to the judgment in the case of

Idemia Syscom India Private Limited Versus Conjoinix Total Solutions Private Limited[2], wherein, it has been held as follows:

> *"xxx xxx xxx*
>
> ***11. MSMED Act has been enacted for the facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto. Section 17 of the MSMED Act provides for the recovery of dues of the supplier from the buyer for goods supplied or services rendered. Section 18 (1) of the MSMED Act contains a non-obstante clause and provides that for any amount due under Section 17, any party to the dispute may make a reference to the Micro and Small Enterprises Facilitation Council. Thereafter, the facilitation council would either conduct conciliation itself or refer the matter for conciliation to any institution or centre providing alternate dispute resolution services. Only upon failure of such conciliation proceedings, arbitration proceedings are initiated, either by itself or by reference to any institution***.
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

12. In addition, Section 18(3) of the MSMED Act further provides that where the conciliation proceeding, as aforesaid, initiated under Sub-Section (2) is not successful and stands terminated without any settlement between the parties, the MSEF Council shall take up the dispute for arbitration, either itself or by referring it to any institution. Section 18(3) further provides that the provisions of the Arbitration Act shall then apply to the disputes *"as if"* the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act. Reliance, in this regard, is placed upon the judgment in the case of ***Jharkhand Urja Vikas Nigam Limited Versus State of Rajasthan and Others***[3], wherein, the Supreme Court has held as follows:

[2] 2025 SCC OnLine Del 1023.
[3] (2021) 19 SCC 206.

"xxx xxx xxx

14. From a reading of Sections 18(2) and 18(3) of the MSMED Act it is clear that the Council is obliged to conduct conciliation for which the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 would apply, as if the conciliation was initiated under Part III of the said Act. ***Under Section 18(3), when conciliation fails and stands terminated, the dispute between the parties can be resolved by arbitration. The Council is empowered either to take up arbitration on its own or to refer the arbitration proceedings to any institution as specified in the said section. It is open to the Council to arbitrate and pass an award, after following the procedure under the relevant provisions of the Arbitration and Conciliation Act, 1996, particularly Sections 20, 23, 24 and 25****.*

xxx xxx xxx"

(Emphasis Supplied)

13. The scheme of Section 18 of the MSMED Act makes it clear that once the statutory mechanism under Section 18 is triggered, the same has to be followed to its logical end. Thus, the Supreme Court in the case of ***Gujarat State Civil Supplies Corporation Limited Versus Mahakali Foods Private Limited (Unit 2) and Another***[4], has clearly observed that by way of the *non-obstante* clauses in Section 18(1) and (4), the MSMED Act will have an overriding effect, once the statutory mechanism contemplated under Section 18 of the MSMED Act is triggered by a party, on its own volition. The relevant paragraph in this regard is reproduced as under:

"xxx xxx xxx

44. The submissions made on behalf of the counsel for the buyers that a conscious omission of the word "agreement" in sub-section (1) of Section 18, which otherwise finds mention in Section 16 of the MSMED Act, 2006 implies that the arbitration agreement independently entered into between the parties as contemplated under Section 7 of the Arbitration Act, 1996 was not intended to be superseded by the provisions contained under Section 18 of the MSMED Act, 2006 also cannot be accepted. ***A private agreement between the parties cannot obliterate the statutory provisions. Once***

[4] (2023) 6 SCC 401.

> ***the statutory mechanism under sub-section (1) of Section 18 is triggered by any party, it would override any other agreement independently entered into between the parties, in view of the non obstante clauses contained in sub-sections (1) and (4) of Section 18. The provisions of Sections 15 to 23 have also overriding effect as contemplated in Section 24 of the MSMED Act, 2006 when anything inconsistent is contained in any other law for the time being in force.*** *It cannot be gainsaid that while interpreting a statute, if two interpretations are possible, the one which enhances the object of the Act should be preferred than the one which would frustrate the object of the Act.* ***If submission made by the learned counsel for the buyers that the party to a dispute covered under the MSMED Act, 2006 cannot avail the remedy available under Section 18(1) of the MSMED Act, 2006 when an independent arbitration agreement between the parties exists is accepted, the very purpose of enacting the MSMED Act, 2006 would get frustrated****.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

14. Moreover, in the case of ***Total Application Software Co. Pvt. Ltd. TASC Versus Ashoka Distillers and Chemicals Pvt. Ltd.***[5], this Court while observing that the MSMED Act being a special law, will have precedence over the Arbitration Act, has held that once MSMED Act is invoked, the procedure must be taken to its logical end. However, if there is no trigger to the mechanism provided in the MSMED Act, the party will have the liberty to resort to any other mechanism for resolution of disputes. The relevant paragraph is reproduced as under:

> *"xxx xxx xxx*
>
> *13. Reliance of the Respondent on the judgment of the Supreme Court in Gujarat State Civil Supplies Corporation Limited (supra) and of this Court in Bharat Heavy (supra) is misplaced in the facts of this case. In Gujarat State Civil Supplies Corporation Limited (supra), the Supreme Court observed that 1996 Act in general governs the law of arbitration and conciliation, whereas MSME Act governs specific nature of disputes arising between specific categories of persons, to be resolved by following a specific process through a specific forum.* ***Ergo, MSME Act being a special law and 1996 Act being a general***

[5] 2025 SCC OnLine Del 4562.

law, provisions of MSME Act will have precedence over 1996 Act. However, it is of significance to note that in the same judgment, the Supreme Court held that once the statutory mechanism under Section 18(1) of MSME Act is triggered by any party, it would override any other agreement independently entered into between the parties, in view of non-obstante clauses contained in sub-Sections (1) and (4) of Section 18. This is exactly the point Petitioner makes. Once the mechanism under MSME Act is triggered by any party, the procedure has to be taken to its logical end. However, once there is no trigger by invoking the jurisdiction of the Council, party cannot be precluded from resorting to any other mechanism for resolution of its disputes*.*

xxx xxx xxx"

(Emphasis Supplied)

15. From the aforesaid discussion, it is evident that the legislative intent behind the use of the word *"may"* in Section 18(1) of the MSMED Act is not to mandatorily compel an aggrieved party to refer every dispute arising in terms of the provisions of the MSMED Act, to the MSEF Council. In contrast, a plain reading of Section 18(1) brings forth the fact that the aggrieved party has discretion to decide whether to invoke the jurisdiction of the MSEF Council in respect of the disputes contemplated under Section 17 of the MSMED Act.

16. However, the scheme of MSMED Act makes it equally clear that once the dispute is, in fact, referred to the MSEF Council, the statutory mechanism for dispute resolution therein comes into picture. Consequently, the parties are bound to adhere to the procedure prescribed therein, and such proceedings once triggered, have to be followed to its logical end, in accordance with the provisions of the MSMED Act.

17. Now, adverting to the facts of the present case, it is an admitted position that the petitioner has invoked the jurisdiction of the MSEF Council under Section 18 of the MSMED Act, by way of an application dated 24th June, 2024. It is further not in dispute that the conciliation proceedings

pursuant thereto are presently pending before the MSEF Council. Consequently, in terms of Section 18(3) of the MSMED Act, the dispute has not been referred to arbitration.

18. Upon a bare perusal of the admitted case by the petitioner, it is abundantly clear that the petitioner has consciously chosen to avail the statutory remedy under the MSMED Act. Once a party initiates the mechanism envisaged under Section 18 of the MSMED Act, it is bound to adhere to the statutory framework and cannot be permitted to abandon the process midway. Further, the proceedings initiated thereunder must necessarily be taken to their logical conclusion. Such party cannot seek recourse under Section 11(6) of the Arbitration Act, for appointment of an arbitrator.

19. The petitioner has contended that where conciliation proceedings are pending before the MSEF Council, and the matter is yet to be referred to arbitration, recourse can be sought under the Arbitration Act for appointment of an Arbitrator. The said contention is untenable.

20. The provisions of the Arbitration Act to MSMED cases become applicable only upon the failure of the conciliation proceedings, as prescribed in Section 18(3) of the MSMED Act. A bare perusal of Section 18(3) of MSMED Act makes it abundantly clear that where the conciliation between the parties is not successful, and stands terminated without any settlement between the parties, only then the MSEF Council shall take up the dispute for arbitration either itself, or refer it to any institution providing arbitration services. The provisions of the Arbitration Act, shall then apply to the dispute.

21. Thus, in the case of ***Gujarat State Civil Supplies Corporation Limited Versus Mahakali Foods Private Limited (Unit 2) and Another***[6], the Supreme Court held that the legislature had consciously made the provisions of the Arbitration Act applicable to the disputes under the MSMED Act at a stage when the conciliation process failed and when the MSEF Council itself takes up the disputes for arbitration or refers it to any institution, in the following manner:

> *"xxx xxx xxx*
>
> *43. The Court also cannot lose sight of the specific non obstante clauses contained in sub-sections (1) and (4) of Section 18 which have an effect overriding any other law for the time being in force. When the MSMED Act, 2006 was being enacted in 2006, the legislature was aware of its previously enacted Arbitration Act of 1996, and therefore, it is presumed that* ***the legislature had consciously made applicable the provisions of the Arbitration Act, 1996 to the disputes under the MSMED Act, 2006 at a stage when the conciliation process initiated under sub-section (2) of Section 18 of the MSMED Act, 2006 fails and when the Facilitation Council itself takes up the disputes for arbitration or refers it to any institution or centre for such arbitration. It is also significant to note that a deeming legal fiction is created in Section 18(3) by using the expression "as if" for the purpose of treating such arbitration as if it was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996.*** *As held in K. Prabhakaran v. P. Jayarajan [K. Prabhakaran v. P. Jayarajan, (2005) 1 SCC 754: 2005 SCC (Cri) 451], a legal fiction presupposes the existence of the state of facts which may not exist and then works out the consequences which flow from that state of facts.* ***Thus, considering the overall purpose, objects and scheme of the MSMED Act, 2006 and the unambiguous expressions used therein, this Court has no hesitation in holding that the provisions of Chapter V of the MSMED Act, 2006 have an effect overriding the provisions of the Arbitration Act, 1996****.*
>
> *xxx xxx xxx*
>
> *47. The aforesaid legal position also dispels the arguments advanced on behalf of the counsel for the buyers that the Facilitation Council having acted as a Conciliator under Section 18(2) of the MSMED Act, 2006 itself cannot take up the dispute for arbitration and act as an*

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> *arbitrator. Though it is true that Section 80 of the Arbitration Act, 1996 contains a bar that the Conciliator shall not act as an arbitrator in any arbitral proceedings in respect of a dispute that is subject of conciliation proceedings, the said bar stands superseded by the provisions contained in Section 18 read with Section 24 of the MSMED Act, 2006.* ***As held earlier, the provisions contained in Chapter V of the MSMED Act, 2006 have an effect overriding the provisions of the Arbitration Act, 1996. The provisions of the Arbitration Act, 1996 would apply to the proceedings conducted by the Facilitation Council only after the process of conciliation initiated by the Council under Section 18(2) fails and the Council either itself takes up the dispute for arbitration or refers to it to any institute or centre for such arbitration as contemplated under Section 18(3) of the MSMED Act, 2006****.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

22. In this regard, the use of the words *"shall then"* under Sub-Section (3) of Section 18 of MSMED Act is of significance as it clearly postulates that the provisions of the Arbitration Act shall come into play only when the conciliation proceedings between the parties, as initiated under Section 18(3) of the MSMED Act, stand formally terminated and the MSEF Council either takes up the dispute itself or refers the same to any arbitration institution. It is only after the said two pre-conditions are fulfilled, that the deeming fiction of the arbitration being in pursuance of an arbitration agreement in terms of Section 7 of the Arbitration Act arises, and then the provisions of the Arbitration Act shall apply.

23. It is a settled proposition of law that where the words/language used in the legislation are plain, clear, and unambiguous, the same shall be interpreted literally and they must be given their natural and ordinary meaning. In this context, the use of the words *"shall then"* in Section 18(3) of the MSMED Act leaves no manner of doubt that the deeming fiction will not come into existence till conciliation has failed and the same has been terminated, followed by the MSEF Council taking up the dispute for

arbitration or referring it to an appropriate arbitral institution. Consequently, the provisions of the Arbitration Act shall not apply prior thereto.

24. Further, perusal of Section 18(3) of the MSMED Act makes it clear that the reference to arbitration/appointment of an arbitrator, is a statutory exercise under the MSMED Act, and is not under the aegis of the Arbitration Act. The words *"shall then"* in Section 18(3) of MSMED Act reflects the intention of the legislature that the provisions of the Arbitration Act shall apply only at the post-referral stage, and not at the referral stage, and the power of referral has been specifically envisaged in the MSEF Council by the MSMED Act.

25. Reference in this regard may be made to the judgment in the case of ***Shobhana Gupta Versus Atlas Cycles Haryana Ltd.***[7]**,** wherein, this Court dismissed the petition under Section 11(6) of the Arbitration Act and held that the deeming fiction under Section 18(3) of the MSMED Act for presuming existence of an arbitration agreement gets attracted only once the arbitration proceedings are initiated thereunder, and the provisions of the Arbitration Act do not apply prior to that stage. Thus, it was held as under:

> *"xxx xxx xxx*
>
> *3.* ***Admittedly, there is no Arbitration Agreement in writing between the parties contained either in the Purchase Orders or otherwise****.*
>
> *4. The petitioner being aggrieved of the non-payment of its alleged dues by the respondent, invoked the procedure under Section 18(1) of the Micro, Small & Medium Enterprises Development Act, 2006 (hereinafter referred as to the 'MSMED Act') before the Micro, Small & Medium Enterprises Facilitation Council, District North-West, Delhi (hereinafter referred to as the 'Facilitation Council').*
>
> *5.* ***The conciliation proceedings before the Facilitation Council failed on 20.05.2022. The Facilitation Council, however, refused to act as an Arbitrator or refer the disputes to an institution for***

[7] 2023 SCC OnLine Del 1473.

appointment of an Arbitrator, *observing as under: "Respondent informed that the company is under insolvency and the matter is before NCLT Principal Bench. Since the matter is pending in NCLT, Claimant may take action as per provisions of NCLT Act. No purpose will be served in keeping the case pending in this council. Hence the case is closed."*

xxx xxx xxx

11. ***A reading of the above provision would show that where the conciliation proceedings initiated under sub-Section 2 of Section 18 of the MSMED Act are not successful and stand terminated without settlement between the parties, the Facilitation Council is empowered to either itself take up the dispute for arbitration or refer it to any institution or Centre providing alternate dispute resolution services for such arbitration. The provision further states that upon taking up of arbitration by the Facilitation Council itself or upon such reference to any institution or centre, the provisions of the Arbitration Act shall 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 the Arbitration Act. The use of the word "then" clearly indicates the intent of the legislature that it is only when the arbitration proceedings are initiated in form of the Facilitation Council itself taking it up or referring the dispute to any institution or Centre providing alternate dispute resolution services for such arbitration that the provisions of the Arbitration Act are to apply. The deeming fiction under Section 18(3) of presuming existence of an Arbitration Agreement gets attracted only once the arbitration proceedings are initiated thereunder. The provisions of the Arbitration Act do not apply prior to that stage***.

xxx xxx xxx

13. ***A reading of the above would show that the Supreme Court also observed that the provisions of the Arbitration Act would apply only after the process of Conciliation initiated by the Facilitation Council under Section 18(2) of the MSMED Act fails and the Council either itself takes up the dispute for arbitration or refers it to any institution or Centre for such arbitration as contemplated under Section 18(3) of the MSMED Act. The provisions of the Arbitration Act have no application prior thereto***.

xxx xxx xxx

15. The above provision can be invoked only where inter-alia the institution which has been entrusted to perform any function under the appointment procedure agreed upon by the parties fails to perform such function. ***The existence of an arbitration agreement as defined***

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in Section 7 of the Arbitration Act, therefore, is a sine qua non for exercise of jurisdiction under Section 11(6) of the Arbitration Act. It is only on the failure of the institution to act in accordance with a duty cast upon it under the appointment procedure agreed upon in the arbitration agreement as provided in Section 7(1) of the Arbitration Act, that the jurisdiction of the Court under Section 11(6) of the Arbitration Act can be invoked*.*

16. ***In the present case, as admittedly there is no arbitration agreement between the parties, the present petition is not maintainable****.*

17. ***The present petition is, accordingly, dismissed, leaving it open to the petitioner to avail of its remedy against the order dated 20.05.2022 passed by the Facilitation Council or such other remedy as may be available to it in law****.*

xxx xxx xxx"

(Emphasis Supplied)

26. Even otherwise, the contention of the petitioner that where the conciliation proceedings remain pending and the MSEF Council has failed to perform its function of forwarding the matter to arbitration, Section 11(6)(c) read with Section 2(4) of the Arbitration Act will be applicable, is misplaced, as for a Court to exercise its jurisdiction under Section 11(6) of the Arbitration Act, and to appoint an arbitrator thereto, the existence of an arbitration agreement as per Section 7 of the Arbitration Act or mutual consent is a *sine qua non*.

27. Reference in this regard to Section 11(6) of the Arbitration Act, makes it clear that in order for this Court to exercise its powers for appointment of an arbitrator under the said Section, there must exist an appointment procedure which has been agreed upon by and between the parties. Section 11(6) of the Arbitration Act, reads as under:

"xxx xxx xxx

11. ***Appointment of arbitrators*** *.....*

xxx xxx xxx

> *(6)* ***Where, under an appointment procedure agreed upon by the parties****,—*
>
> *(a) a party fails to act as required under that procedure; or*
>
> *(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or*
>
> *(c) a person, including an institution, fails to perform any function entrusted to him or it* ***under that procedure****, a party may request 1 [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court] to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.*
>
> *[(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.*
>
> *(6B) The designation of any person or institution by the Supreme Court or, as the case may be, the High Court, for the purposes of this section shall not be regarded as a delegation of judicial power by the Supreme Court or the High Court.]*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

28. The words *"under that procedure"* as appearing in Section 11(6)(c) of the Arbitration Act, has to be read as the *"procedure agreed between the parties"*. Further, the word *"agreed"* simply refers to the arbitration agreement, as provided in Section 7 of the Arbitration Act. Thus, Section 11 envisages an arbitration agreement between the parties and refers to the procedure for appointment in the said agreement between the parties.

29. In this regard, it is to be noted that Section 2(b) of the Arbitration Act defines an arbitration agreement to mean an agreement referred to in Section 7 of the Arbitration Act. In terms of Section 7 of the Arbitration Act, an arbitration agreement is an agreement by and between the parties to submit to arbitration, all or certain disputes which have arisen or which may arise between them. Further, while Section 7(2) of the Arbitration Act stipulates

that an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement, Section 7(3) expressly provides that an arbitration agreement between the parties shall be in writing. Section 7 of the Arbitration act, reads as under:

> *"xxx xxx xxx*
>
> ***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 1 [including communication through electronic means] 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.*
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

30. Holding that it is not permissible to appoint an arbitrator to adjudicate disputes between the parties in the absence of an arbitration agreement or mutual consent, the Supreme Court in the case of ***Jagdish Chander Versus Ramesh Chander and Others***[8], held as follows:

[8] (2007) 5 SCC 719.

"xxx xxx xxx

11. ***The existence of an arbitration agreement as defined under Section 7 of the Act is a condition precedent for exercise of power to appoint an arbitrator/Arbitral Tribunal, under Section 11 of the Act by the Chief Justice or his designate. It is not permissible to appoint an arbitrator to adjudicate the disputes between the parties, in the absence of an arbitration agreement or mutual consent. The designate of the Chief Justice of Delhi High Court could not have appointed the arbitrator in the absence of an arbitration agreement****.*

xxx xxx xxx"

(Emphasis Supplied)

31. In the present case, the petition has been filed under Section 11(6) of the Arbitration Act, seeking appointment of an independent arbitrator for adjudication of the disputes between the parties. Undisputedly, the present petition does not arise out of an independent arbitration clause and has been filed on the premise of a purported *"statutory arbitration agreement"*, alleged to be created by Section 18(3) of the MSMED Act.

32. It is an admitted position that upon an application made by the petitioner herein to the MSEF Council, the conciliation proceedings were commenced between the parties, and as per the order dated 22nd April, 2025, the respondent was directed to file its final submissions within 10 days, and in case of failure to do so, the matter would be forwarded for arbitration. However, no final order/direction terminating the conciliation or referring the matter to arbitration has been passed by the MSEF Council. Thus, it is manifest that the MSEF Council is still seized of the matter as a conciliator.

33. Consequently, no deeming fiction as to the existence of *"statutory arbitration agreement"*, as provided in Section 18(3) of the MSMED Act has arisen. It is evident that the provisions of the Arbitration Act shall only be applicable once the conciliation proceedings under Section 18(2) of the MSMED Act stand terminated, and the MSEF Council refers the disputes

between the parties to arbitration. Prior to that stage, the provisions of the Arbitration Act shall not be applicable to any proceedings under the MSMED Act. Since no *"statutory arbitration agreement"* exists between the parties, the condition precedent for exercising the jurisdiction under Section 11 of the Arbitration Act has not been satisfied. Thus, the present petition is not maintainable.

34. Reliance in this regard is placed on the judgment of Bombay High Court in the case of ***Bafna Udyog Versus Micro & Small Enterprises and Another***[9], wherein, it was held as follows:

> *"xxx xxx xxx*
>
> *10.* ***The bare reading of Section 18 clearly provides for a specific mechanism being firstly, the counsel shall conduct conciliation in the matter or make a reference to any institution for conducting conciliation. If the conciliation fails, then sub clause (3) is invoked and the council shall take up the dispute for arbitration itself or refer to any institution or centre. It is only then that the provisions of the Act shall apply to the dispute as if the arbitration was in pursuance of Section 7 of the Act. Thus, it is only when the council or its designate enters into reference that the provisions of the Act will apply****.*
>
> *11.* ***Section 11(6)(c) of the Act provides for vesting of jurisdiction in the Court to appoint an arbitrator if a person, including an institution fails to perform the function entrusted to it "under that procedure". The words 'under that procedure' contemplates a procedure as agreed between the parties. This is clear from the plain reading of the provision itself which commences with the words "(6) Where, under an appointment procedure agreed upon by the parties,- ……". The word 'agreed' directly refers to an Arbitration Agreement referred to in Section 7 of the Act. None of the criteria laid down in Section 7 is met in the present case to indicate existence of any arbitration agreement, either express or implied. Thus, in the absence of an arbitration agreement, Section 11(6)(c) cannot be invoked****.*
>
> *12.* ***I have gone through the decision in Microvision Technologies Private Limited (Supra) relied upon by Mr. Kirpekar. In the said case there was a separate arbitration agreement between the parties.***

[9] 2024 SCC OnLine Bom 110.

> ***It is on the basis of existence of an arbitration agreement that an arbitrator was appointed when there was inaction on the part of the council to proceed with the statutory arbitration. Hence, this decision is not applicable to the facts of the present case. Even in the decision of Gujarat State Civil Supplies Corporation Limited (Supra), the Supreme Court has held that the MSMED Act will override the provisions of the Act. In the decision in the matter of Silpi Industries (Supra) the Supreme Court has also held that MSMED Act being a special statute, will have an overriding effect vis-a-vis the Arbitration Act. Thus, the decisions in above two matters are also of no assistance to the Petitioner****.*
>
> *13.* ***The Supreme Court referring to its prior decision in various matters, has, in the decision of Mahanadi Coal Fields v. IVRCL AMR. Joint Venture[4] held that the invocation of the jurisdiction of the High Court under Section 11(6) of the Act was not valid and there being no arbitration agreement between the parties, no reference to arbitration could have been made by the High Court. Thus, inaction by the MSMED in referring to arbitration shall not entitle the Petitioner to invoke the provisions of 11(6) of the Act and seek appointment of an arbitrator dehors existence of an arbitration agreement****.*
>
> *14. The contention of the Petitioner that acknowledgment of debt by the Respondent No. 2 and the consequent non-payment implies termination of conciliation proceedings without even reference to the MSEFC cannot be accepted since the conciliation proceedings are to be conducted by the council at the first stage and it is only upon failure of the proceedings conducted by the council that the subsequent step of reference to arbitration arises. On this ground also, the present petition is premature.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

35. The position of law is, thus, clear that the provisions of Arbitration Act shall only apply once the dispute is taken up for arbitration by the MSEF Council, either itself or by referring it to an institution. Further, for referring the parties to arbitration under Section 11(6) of the Arbitration Act, existence of a valid written agreement, which shows the *ad idem* intention of the parties to submit to arbitration as a dispute resolution mechanism, is *sine qua non*. Accordingly, in the absence of a valid written arbitration agreement, or any statutory presumption of an arbitration agreement, a

petition under Section 11(6) of the Act shall not be maintainable. Consequently, Section 11(6) of the Arbitration Act cannot be invoked in the facts and circumstances of the present case.

36. The judgment in the case of ***Vallabh Corporation Versus SMS India Pvt. Ltd.***[10]**,** as relied upon by the petitioner is distinguishable, and does not apply to the facts and circumstances of the present case. In the said case, there existed an arbitration clause between the parties. Therefore, a petition under Section 11(6) of the Arbitration Act was maintainable. However, in the present case, admittedly there is no valid written arbitration agreement between the parties. Furthermore, it has been specifically recorded in the said judgment that the MSEF Council did not initiate the process of conciliation under Section 18 of the MSMED Act, and in view of the same, the petition under Section 11(6) of the Arbitration Act was allowed in the said case. However, in the present case, the process of conciliation under Section 18 of the MSMED Act has already been initiated, and the same is pending adjudication.

37. Similarly, the judgment in the case of ***Microvision Technologies Pvt. Ltd. Versus Union of India***[11], as relied upon by the petitioner, is also distinguishable. In the said case as well, there existed an independent arbitration agreement between the parties, therefore, a petition under Section 11(6) of the Arbitration Act was maintainable. However, there is no arbitration agreement between the parties in the present case.

38. Likewise, the judgment in the case of ***M. B. Sugars & Pharmaceuticals Private Limited Versus Micro Small Enterprises***

[10] 2025 SCC OnLine Del 1795.
[11] 2023 SCC OnLine Bom 1848.

Facilitation Council and Ors.[12], relied by the petitioner is distinguishable and not applicable to the facts and circumstances of the present case. It is specifically recorded in the said judgment that the MSEF Council had not initiated the process of statutory mediation under Section 18 of the MSMED Act. However, in the present case, the process of mediation under Section 18 of the MSMED Act has already been initiated and the same is pending adjudication.

39. Considering the detailed discussion hereinabove, no merit is found in the present petition.

40. However, in view of the long pendency of the conciliation proceedings before it, the MSEF Council is directed to expeditiously finalize the said proceedings and take further recourse thereto, preferably, within a period of two months, from today.

41. The present petition is dismissed, in the aforesaid terms.

MINI PUSHKARNA
(JUDGE)

APRIL 09, 2026/KR/AK/SK

[12] MANU/MH/3512/2025