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

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Date of decision: 27th May, 2025+ **ARB.P. 206/2025****M/S TOTAL APPLICATION SOFTWARE CO PVT
LTD TASC**

.....Petitioner

Through: Mr. K.S. Negi and Mr. Nikhil Rajput,
Advocates.

versus

**M/S ASHOKA DISTILLERS AND CHEMICALS
PVT LTD**

.....Respondent

Through: Ms. Vinita Sasidharan, Mr. Vasu Vats
and Ms. Aadya Malik, Advocates.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This petition is filed on behalf of the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('1996 Act') for appointment of an Arbitrator for adjudicating the disputes between the parties.
2. Case of the Petitioner is that on 16.12.2022, Petitioner Company was registered as a Micro Enterprise in Ministry of Micro, Small and Medium Enterprises. On 10.05.2023, Respondent placed a purchase order on the Petitioner for purchase of SAP Business One License and its implementation/AMC on terms and conditions mentioned in the Agreement. On invoices being sent for the work done, Respondent delayed and withheld payments of invoices dated 05.07.2024 and 16.07.2024 and other payments and despite itself being at fault, unlawfully terminated the license on 14.09.2024.



3. Petitioner avers that disputes having arisen, it sent a legal/invocation notice on 28.10.2024 proposing the name of a Sole Arbitrator since the Purchase Order contains Clause 14.1 providing reference of disputes arising in respect of the license to arbitration. This notice was returned unserved, whereafter Petitioner sent another notice by Speed Post on 14.11.2024 at the registered address of the Respondent, which was returned with the remark 'refused' and Petitioner had no option but to approach this Court.

4. Reply has been filed by the Respondent. Learned counsel for the Respondent takes a preliminary objection to the maintainability of this petition on the ground that being a Micro, Small and Medium Enterprise ('MSME'), Petitioner is bound to take recourse to the dispute resolution mechanism under Micro, Small and Medium Enterprises and Development Act, 2006 ('MSME Act'). It is urged that MSME Act is a special law, while 1996 Act is a general law and therefore, provisions of MSME Act will take precedence over 1996 Act. MSME Act governs specific nature of dispute arising between special categories of persons, to be resolved by following a specific process. Reliance is placed on Section 18 of MSME Act to support this plea. It is further urged that Section 24 of MSME Act clearly provides that being a special statute, provisions of Sections 15 to 23 of the said Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Learned counsel submits that this position of law is reaffirmed by the Supreme Court in ***Gujarat State Civil Supplies Corporation Limited v. Mahakali Foods Private Limited (Unit 2) and Another, (2023) 6 SCC 401***. Reliance is also placed on the judgment of this Court in ***Bharat Heavy Electricals Limited v. The Micro***



and Small Enterprises Facilitations Centre & Anr., (2017) SCC OnLine Del 10604 to bring home the point.

5. *Per contra*, learned counsel for the Petitioner argues that there is no merit in the preliminary objection. Section 18(1) of MSME Act no doubt provides that 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 ('Council') but there is no mandate that the party registered as Micro, Small or Medium Enterprise must necessarily take recourse to the mechanism under MSME Act for resolution of its dispute, *albeit* having invoked the jurisdiction of the Council, party cannot resort to arbitration unless the Council refers the matter to arbitration. Learned counsel relies on the judgment of the Bombay High Court in *Porwal Sales v. Flame Control Industries, 2019 SCC OnLine Bom 1628*, to make good his submission.

6. Heard learned counsels for the parties and examined their rival contentions.

7. Indisputably, Petitioner Company is registered as a Micro Enterprise in Ministry of Micro, Small and Medium Enterprises. The neat legal nodus that arises in the present case is whether this Court has jurisdiction to entertain this petition under Section 11 of 1996 Act. Respondent urges that in light of Section 18 of MSME Act, which is a special statute with an overriding effect, the only recourse open to the Petitioner for resolution of the disputes is to approach the Council, while Petitioner urges that mechanism under MSME Act is only an alternate mechanism at the discretion of the party raising claims and this Court has the jurisdiction to appoint an Arbitrator under Section 11 of 1996 Act.



8. Having given my thoughtful consideration to the rival pleas, I am of the view that there is no merit in the preliminary objection raised by the Respondent. To appreciate the controversy, it is necessary to examine the scheme of MSME Act. Section 17 of MSME Act provides that for any goods supplied or services rendered by the supplier, buyer shall be liable to pay the amount with interest thereon as provided under Section 16. Section 18(1) comes into picture when an amount is due to a supplier under Section 17. Notwithstanding anything contained in any other law for the time being in force, the supplier becomes entitled to invoke Section 18(1) and make a reference to the Council. On receipt of the reference, Council shall either conduct mediation itself or refer the matter to any mediation service provider under Section 18(2). Sub-Section (4) of Section 18 provides that where the mediation is not successful and stands terminated without any settlement, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services and provisions of 1996 Act shall then apply to the dispute as if the arbitration was in pursuance of an Arbitration Agreement referred to in Section 7(1) of the said Act.

9. Sections 17 and 18 of MSME Act cannot be read in isolation and when read conjointly, it is clear as day that Section 18(1) enables any party to a dispute with regard to any amount due under Section 17 to invoke the jurisdiction of the Council. Provisions of Section 18 cannot be construed to mean that in the event of a dispute envisaged under Section 17, the party must mandatorily take recourse to resolution of the dispute through the Council under Section 18(1). Most certainly, once the party invokes the jurisdiction of the Council, the mechanism for dispute resolution provided in



Section 18 will come into play and the party cannot abandon the procedure and seek appointment of an Arbitrator under Section 11 of 1996 Act. In other words, in a case where the party does not invoke the jurisdiction of the Council and consequently, no proceedings are pending under Section 18, it cannot be urged that the party having a dispute arising out of a contractual relationship with another party, is precluded from taking recourse directly under provisions of 1996 Act for appointment of an Arbitrator.

10. As rightly flagged by the counsel for the Petitioner, the Bombay High Court in *Porwal Sales (supra)* has decided this issue holding that Section 18(4) cannot be read as a provision creating an absolute bar to institution of any proceeding other than under Section 18(1) of MSME Act to seek appointment of an Arbitral Tribunal. It was observed that if the argument that this provision creates a legal bar on a party who has a contract with a small scale enterprise, to take recourse to Section 11 of 1996 Act, then the Legislature would have so expressly provided, namely that in case one such party falls under MSME Act, the Arbitration Agreement, as entered between the parties would have no effect and parties would be deemed to be governed under MSME Act in this regard. However, Section 18 does not provide such a blanket consequence in the absence of any reference made by a party to the Council. Moreover, this interpretation in a given situation would render meaningless the Arbitration Agreement between the parties and may create a situation that a party who does not fall under Section 17 and Section 18(1) would be foisted a remedy, which law does not prescribe.

11. There is another facet to this. The Legislature in its wisdom has used the word 'may' in Section 18(1), which indicates that the intent of the Legislature was to leave it to the discretion of the aggrieved party to either



take recourse to Section 18 of MSME Act and invoke the jurisdiction of the Council or to resort to procedure under 1996 Act and there is no reason why this Court should interpret the word ‘may’ as ‘shall’. In my view, MSME Act does not mandate resorting to the procedure under Section 18, *albeit* it must be stated that having triggered the process under the said Act, party will be obliged to follow the mechanism prescribed therein till its logical conclusion. Relevant paragraphs from the judgment in *Porwal Sales (supra)* are as follows:-

“22. Now coming to the next submission as advanced on behalf of the respondent on the MSMED Act. Learned counsel for the respondent has argued that in view of the provisions of Section 18 of the MSMED Act, this Court would not have jurisdiction to entertain this Petition under Section 11 of the Arbitration and Conciliation Act. In support of this submission, learned counsel for the respondent has placed reliance on the decision of the Division Bench of the Allahabad High Court in Paper & Board Convertors through partner Rajeew Agarwal v. U.P. State Micro and Small Enterprise²; in Bharat Heavy Electricals Ltd. v. The Micro and Small Enterprises Facilitations Centre of the learned Single Judge of the Delhi High Court³; and in Welspun Corporation Ltd. v. Micro and Small, Medium Enterprises Facilitation Council, Punjab of the learned Single Judge of Punjab and Harayana High Court⁴. The contention as urged on behalf of the respondent referring to these decisions is that Section 18(4) of MSMED Act creates a bar on the jurisdiction of this Court to entertain any application under section 11 of the Act and/or that the arbitration agreement between the parties stands obliterated, extinguished and superseded by the provisions of sub-section (4) of Section 18 of MSMED Act.

23. To appreciate this submission as urged on behalf of the respondent, Sections 17 and 18 of MSMED Act is required to be noted, which reads thus:

“Section 17 - Recovery of amount due

17. 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 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 to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.”

24. *On a plain reading of sub-section (1) of Section 18, it is quite clear that sub-section (1) would be applicable when any amount is due under section 17 to a supplier and when there is a liability of the buyer to make payment to the supplier. Thus the supplier falling under the provisions of the Act “notwithstanding anything contained in any other law for the time being in force” would be entitled to make a reference to Micro and Small Enterprises Facilitation Council. Subsection (2) provides for a conciliation after such reference is received. Sub-section (3) provides for a situation when the conciliation is not successful, then the ‘Facilitation 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 for such reference, the provisions of the Arbitration and Conciliation Act, 1996 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 and Conciliation Act, 1996. Sub-section (4) saves the jurisdiction of the 'Facilitation Council', notwithstanding anything contained in any other law for the time being in force, to act as an Arbitrator or Conciliator in respect of a dispute between between the supplier located within its jurisdiction and a buyer located anywhere in India.

25. Considering the scheme of Sections 17 and 18, in my opinion sub-section (4) of Section 18 cannot be read in isolation. It is required to be read in conjunction with sub-section (1) of Section 18. Section 18 of the MSMED Act is attracted when the jurisdiction of the Facilitation Council is invoked by a party to a dispute with regard to any amount due under section 17 of the Act.

26. In the present case, it is not in dispute that the respondent has so far not raised any claim against the petitioner and the jurisdiction of the Felicitation Council has not been invoked by either the respondent or the petitioner. It thus cannot be accepted that the provisions of subsection (4) of Section 18 of MSMED Act are attracted in any manner in the absence of any reference being made to the Facilitation Council. When there are no proceedings before the Facilitation Council, it is difficult to accept the submission as urged on behalf of the respondents that provisions of Section 18 of the MSMED Act are attracted in the facts of the present case."

12. Coming home to the facts of this case, it is an undisputed position that Petitioner has so far not invoked the jurisdiction of the Council under Section 18(1) of MSME Act and therefore, it cannot be said that any proceedings are pending before the Council. In light of the aforesaid judgment of the Bombay High Court and clear provisions of Section 18 of MSME Act, I cannot accept the objection of the Respondent that Section 18 comes as a bar and proscribes the Petitioner from approaching this Court under Section 11(6) of 1996 Act for appointment of an Arbitrator.

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 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.

14. The judgment in ***Bharat Heavy (supra)*** is also of no avail to the Respondent. Reading of the judgment reflects that the question involved before the Court was whether the Council could under Section 18(3) of MSME Act refer the disputes for arbitration under the aegis of Delhi International Arbitration Centre ('DIAC') considering that disputing parties had also entered into an Arbitration Agreement. BHEL contended that Council did not have jurisdiction to override the Arbitration Agreement and refer the disputes to DIAC. Respondents refuted this submission and urged that in terms of Section 18(3), if the conciliation proceedings were not successful, Council was enjoined to adjudicate the disputes or to refer them for arbitration to any institution or centre, providing alternate disputes



resolution services as Section 18(3) would override the Arbitration Agreement between the disputing parties. In the backdrop of this controversy, the Court held as follows:-

“14. A plain reading of Section 18(2) of the Act indicates that on receipt of a reference under Section 18(1) of the Act, the Council [MSEFC] would either conduct conciliation in the matter or seek assistance of any institution or centre providing alternate dispute resolution services. It also expressly provides that Section 65 to 81 of the A&C Act would apply to such a dispute as it applies to conciliation initiated under the Part III of the A&C Act.

15. It is clear from the provisions of Section 18(2) of the Act that the legislative intention is to incorporate by reference the provisions of Section 65 to 81 of the A&C Act to the conciliation proceedings conducted by MSEFC.

16. Section 18(3) of the Act expressly provides that in the event the conciliation initiated under Section 18(2) of the Act does not fructify into any settlement, MSEFC would take up the disputes or refer the same to any institution or centre providing alternate dispute resolution services for such arbitration.

17. It is at once clear that the provision of Section 18(3) of the Act do not leave any scope for a non-institutional arbitration. In terms of Section 18(3) of the Act, it is necessary that the arbitration be conducted under aegis of an institution-either by MSEFC or under the aegis of any “Institution or Centre providing alternate dispute resolution services for such arbitration”.”

15. It is thus clear that what the Court decided was that provision of Section 18(3) does not leave any scope for a non-institutional arbitration and it is mandatory that arbitration is conducted under the aegis of an institution, either by the Council or and institution or centre providing alternate dispute resolution services. Counsel for the Respondent is unable to point out in this judgment that the Court has held that invoking the jurisdiction of a Council under Section 18(1) is a mandate.

16. For all the aforesaid reasons, the preliminary objection is rejected and the petition is allowed. Learned Coordinator, Delhi International Arbitration



Centre ('DIAC') is requested to take steps towards appointment of a Sole Arbitrator to adjudicate the disputes between the parties. Arbitration proceedings will be held under the aegis of DIAC and as per its Rules. Fee of the Arbitrator shall be as per the DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.

17. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.

18. It is made clear that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the respective parties are left open.

19. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

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