



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 208 OF 2023

M B Sugars & Pharmaceuticals Private Limited ...Petitioner

Versus

Micro Small Enterprises Facilitation Council & Anr ...Respondents

Mr. Sagar Kasar a/w *Vivekanand Krishnan, Chaitali Bhogle & Rishabh Tiwari* i/by *Amol Wagh*, for the Petitioner.

None for Respondents.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : JUNE 18, 2025

Oral Judgement:

1. This is a Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) in view of Respondent No.1, Micro Small Enterprises Facilitation Council, Nashik (“**MSEFC, Nashik**”), not having initiated conciliation proceedings as a precursor to arbitration in terms of Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (“**MSME Act**”). The Petitioner had executed a purchase order June 8, 2018 and supplied goods pursuant to a purchase order dated June 8, 2018 (page 57), which is a purchase order placed on the Petitioner by Respondent No.2. Various supplies

were made and invoices were raised, and it is the case of the Petitioner that the amounts payable under the invoices remain unpaid.

2. Consequently, a reference was made to the MSEFC, Nashik on April 24, 2023. It is the case of the Petitioner that the MSEFC, Nashik has not acted at all. This Application has been filed under Section 11 of the Arbitration Act on the premise that the arbitral institution which is meant to appoint the arbitrator has failed to do so. Under Section 18 of the MSME Act¹, an arbitration agreement as envisaged in Section 7 of the Arbitration Act is statutorily created between the enterprise covered by the MSME Act and its contractual counter-party. All provisions of the Arbitration Act would then apply to such arbitration agreement in terms of Section 18 of the MSME Act. Therefore, an arbitration agreement is statutorily in existence between the Petitioner and Respondent No.2. Therefore, the failure of Respondent No.1 i.e MSEFC, Nashik to act by taking up the processes required of it under the MSME Act enables the jurisdiction of this Court under Section 11(6) of the Arbitration Act being legitimately invoked.

¹ The current version of Section 18(4) is in substance similar to Section 18(3) as it existed prior to September 14, 2023, when Section 18 was amended

3. A plain reading of these three provisions, namely, Section 18 of the MSME Act, coupled with Section 7 and Section 11 of the Arbitration Act, would make it clear that this Court would have jurisdiction to appoint an arbitrator in the event of a failure by the MSEFC, Nashik. Section 7 of the Arbitration Act creates an arbitration agreement. Section 18 requires an institution (the MSEFC, Nashik) to appoint an arbitrator. Failure to do so, brings the matter within the jurisdiction of Section 11 of the Arbitration Act.

4. Consequently, no useful purpose would be served in keeping this Petition pending any further. This matter has remained pending for two years after it was filed in this Court. I am satisfied that the approach of this Court has been made only after the failure by the MSEFC, Nashik to appoint an arbitrator. It has not even initiated statutory mediation before arbitration.

5. In these circumstances, it was put to the Petitioner to ascertain whether any conciliation efforts were undertaken independently of the MSEFC, Nashik between the Petitioner and Respondent No.2. In response, Learned Counsel for the Petitioner submits that in fact there is no dispute about the payment obligation,

inasmuch as cheques were issued on behalf of Respondent No.2 but have been dishonoured. Consequently, I am satisfied that a case has been made out to directly appoint an arbitrator, particularly, since the MSEFC, Nashik has not acted on its statutory mandate of initiating a process for the appointment of an arbitrator.

6. Toward this end, this view is fortified by decisions cited on behalf of the Petitioner, namely, ***Microvision***² and ***Vallabh Corporation***³, where in identical circumstances, the Section 11 Court proceeded to appoint an arbitrator. In particular, Paragraphs 32 to 36 of ***Microvision*** would reiterate and same are extracted below:-

32. Another factor to be considered is that the Application made by the Petitioner was under Section 11(6) (c) of the Arbitration Act for referring the dispute to arbitration. This provision specifically provides as under:-

"a person, including an institution, fails to perform any function entrusted to him or it under that procedure, a party may request the Chief Justice or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment".

² *Microvision Technologies Pvt. Ltd. Vs. Union of India – 2023 SCC OnLine Bom 1848*

³ *Vallabh Corporation Vs. SMS India Pvt. Ltd. – 2025 SCC OnLine Del 1795*

33. Thus, an Application under Section 11(6) is made when the institution as in the present case, the Facilitation Council fails to perform any function entrusted to it under the procedure contemplated in Section 18(3) of the (MSMED Act) and pursuant to which appointment is made for referring the disputes to arbitration. This Court in the said Order dated 15th May, 2020 has treated the application as if it was made under Section 11(5) and not under Section 11(6) of the Arbitration Act. Thus, this Court in the said Order has overlooked the relevant provision of law.

34. Under Section 18(3) of the MSMED Act, the following is provided:

"(3) Where the conciliation initiated under subsection (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".

35. The said provision expressly provides for the Facilitation Council in the event conciliation is not successful and stands terminated without any settlement between the parties to refer to any institution or centre providing alternate dispute resolution services for such arbitration and then the provisions of Arbitration Act shall 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. Upon the failure on the part of the Facilitation Council to refer the dispute to arbitration, an Application may be made under Section 11(6) (c) and accordingly in the present case the application was made for appointment of an Arbitrator. Thus, Section 18 of the MSMED

Act has to be read harmoniously with Section 11 of the Arbitration Act.

36. I find no merit in the submission on behalf of the Respondent that in the event the Facilitation Council failed to refer the dispute to arbitration, the only remedy available to the Applicant was to file a Writ Petition seeking such direction against the Facilitation Council. This submission overlooks the fact that *there is an in built provision under the Arbitration Act, viz. Section 11(6) (c), which provides for appointment of an Arbitrator in such cases.* Thus, there is a patent error of law on the face of the record in that Section 11(6) (c) of the Arbitration Act has been completely given a go by to in the said order of this Court.

[Emphasis Supplied]

7. Consequently, this Petition is ***finally disposed of*** appointing the arbitrator in the following terms:-

A) Mr. Rohan Deshpande, a learned advocate of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above;

Office Address:-

Mumbai office address
(primary address for communications)–
1st Floor, DBS Heritage House,
Prescott Road, Near Cathedral School,

Fort, Mumbai 400001.

Residential address in Nashik
(to be used only if needed, otherwise
above Mumbai office address to be used):
Nakshatra Bungalow Serene Meadows Colony,
1st Street, Opp Paradise Apartment,
Gangapur Road, Nashik – 422013.

Email ID: rohan@rohandeshpande.in

B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioner within a period of one week from the date of upload of this order. The Petitioner shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the Advocates for the Petitioner so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Petition and a copy of the same shall

be furnished by the Advocates for the Petitioner to the Respondent;

D) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

E) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

8. The Learned Arbitral Tribunal appointed hereby is requested to encourage the parties to reconcile their disputes acting as an *amiable compositeur* as a first step. Should the Learned Arbitral Tribunal come to a view within four weeks that the parties would be unable to resolve their disputes without formal arbitration, the arbitration proceedings shall be commenced.

9. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the parties. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

10. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]