

(2025) 02 DEL CK 1177

In the Delhi High Court

Case No : Arbitration Petition No. 1284 Of 2024

Idemia Syscom India Private Limited

APPELLANT

Vs

M/S Conjoinix Total Solutions Private Limited

RESPONDENT

Date of Decision : 24-02-2025

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11
Micro, Small And Medium Enterprises Development Act, 2006 — Section 15, 16, 17,
18, 18(1), 18(3), 18(4), 19, 20, 21, 22, 23, 24

Citation : (2025) 02 DEL CK 1177

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : Prateek Kumar, Shivam Grover, M.P. Sahay, Yaman Verma,
Khushboo, Kartik Jindal, Chitra Chanda

Final Decision : Dismissed

Judgement

Manoj Kumar Ohri, J

1. By way of present petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the 'A&C Act'), the petitioner seeks appointment of Arbitral Tribunal (hereafter, referred to as ' AT') comprising of a Sole Arbitrator, to adjudicate the disputes between the parties.

2. Petitioner has invoked Clause 8.2 of Service Framework Agreement dated 09.02.2022 (hereafter, referred to as "contract"), that the parties have executed under which the respondent was engaged by the petitioner for providing certain IT services in a project awarded to the petitioner by the State Transport Department, Orissa, for tracking of commercial vehicles. Petitioner has alleged breach and non- performance of the agreement by the respondent, which has resulted in disputes between them.

3. Petitioner states that arbitration was invoked by the respondent vide email dated 01.07.2024, wherein it had proposed the name of Ms. Shilpa Dogra as the

Sole Arbitrator, to which the petitioner had some reservations, and the arbitrator could not be appointed. Petitioner is therefore seeking the court's intervention in the appointment of the arbitrator.

4. It has been informed to this Court, that since the filing of the present petition, the respondent has initiated proceedings under Section 18 of the MSMED Act before the MSME facilitation council, Chandigarh, which are currently pending.

5. Per contra, learned counsel for the respondent has vehemently opposed the present petition. He submits that the respondent has been registered as a MSME and the same has been duly brought to the attention of the petitioner vide letters dated 20.09.2023 and 03.10.2023. It is contended that the respondent has already invoked the jurisdiction of the facilitation council under the MSMED Act and the same being a beneficial legislation containing non-obstante clauses, it would prevail over the A&C Act. He places reliance on *Silpi Industries and Ors. v. Kerala State Road Transport Corporation and Anr.*, reported as 2021 SCC OnLine SC 439, and *Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd Unit (2) and Anr.* reported as (2023) 6 SCC 401 .

6. Learned counsel for the petitioner has sought to counter the submissions by arguing that respondent approaching the facilitation council under the MSMED Act would not affect the maintainability of the present petition. It is submitted that at the time of filing of the present petition, no proceedings were pending under the MSMED Act. It is next contended that the jurisdiction of MSME Council is limited to recovery of amount due for any goods supplied or services rendered by the supplier, whereas the present dispute is much wider in scope and extends to determination of the liability of the respondent for breach of contract. It is submitted that the respondent itself has filed a trademark suit against the petitioner before the Additional District Judge, Chandigarh, which shows that the respondent itself is aware that the proceedings under the MSME Act have a limited scope.

7. Petitioner has further submitted that the contract in question governing the parties, is a works contract, which are outside the ambit of the MSMED Act and hence respondent's pending reference under Section 18 is not maintainable. Reliance in this regard is placed on *TATA Power Co. Ltd. v. Genesis Engineering Co.*, reported as 2023 SCC OnLine Del 2366 *M/s Shree Gee Enterprises v. Union of India and Anr.*, reported as 2015 SCC Online Del 13169 *Sterling and Wilson Private Limited and Anr. v. Union of India* reported as 2017 SCC Online Bom 6829, *M/s Surya International Pvt. Ltd. v. Union of India & Ors.*, reported as 2014 SCC Online All 15192 and *M/s Rahul Singh v. Union of India & 5 Ors.* reported as 2017 SCC Online All 3579.

8. Learned counsel for the respondent has denied that the contract in question is a works contract and submits that the dispute pertains to the supply of services and the interest on delayed payments, which is very much covered by the MSMED Act. He has argued that the arbitration agreement between the parties,

which is captured in Clause 8.2 of the Contract, cannot override the respondent's statutory right made available to it under Section 18 of the MSMED Act to approach the council for resolution of disputes. Respondent having already chosen to make a reference under Section 18, has clearly indicated its choice of forum for resolution of disputes, and now cannot be forced to accept the petitioner's preferred forum of private arbitration.

9. Respondent has referred to various provisions of the MSMED Act, to press its point that that MSMED Act, being a special legislation, will override the A&C Act, which is characterized as a general law, in the matters of dispute resolution, pertaining to a party which is an MSME, and has preferred to take recourse to the special dispensation provided to it under the MSME for dispute resolution.

10. I have heard learned counsel for the parties and gone through the records.

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.

12. While the A&C Act is the general law governing the field of arbitration, MSMED Act governs a very specific nature of disputes concerning MSME's and it sets out a statutory mechanism for the payment of interest on delayed payments. MSMED Act being the specific law, and A&C Act being the general law, the specific law would prevail over the general law. Even otherwise. MSMED Act has been enacted subsequent to the A&C Act and the legislature is presumed to have been aware about the existence of A&C Act when the act was enacted. Sub-sections (1) and (4) of Section 18 contain non obstante clauses which have the effect of overriding any other law for the time being in force. Section 24 of the Act states that the provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Thus, the legislative intent is clear that MSMED Act would have an overriding effect on the provisions of A&C Act. The provisions of MSMED Act would become ineffective if, by way of an independent arbitration agreement between the parties, the process mandated in Section 18 of the MSMED Act is sidestepped. Moreover, the fact that the petitioner has approached the Court under Section 11 of the A&C Act first would be of no help to him as the MSMED Act does not does not carve out any such exception to the non-obstante clause.

13. Reference in this regard may be made to the decision of Supreme Court in *Silpi Industries and Ors. v. Kerala SRTC and Anr.*, reported as (2021) 18 SCC 790 wherein it was held as under:-

"39. Thus, it is clear that out of the two legislations, the provisions of the MSMED Act will prevail, especially when it has overriding provision under Section 24 thereof. Thus, we hold that the MSMED Act, being a special statute, will have an overriding effect vis-à-vis the Arbitration and Conciliation Act, 1996, which is a general Act. Even if there is an agreement between the parties for resolution of disputes by arbitration, if a seller is covered by Micro, Small and Medium Enterprises Development Act, 2006, the seller can certainly approach the competent authority to make its claim. If any agreement between the parties is there, same is to be ignored in view of the statutory obligations and mechanism provided under the 2006 Act..."

14. It is also deemed apposite to refer to the decision of the Supreme Court in *Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd.*, reported as (2023) 6 SCC 401, wherein the Court, while affirming the decision in *Silpi Industries (Supra)*, held as under:-

"42. Thus, the Arbitration Act, 1996 in general governs the law of Arbitration and Conciliation, whereas the MSMED Act, 2006 governs specific nature of disputes arising between specific categories of persons, to be resolved by following a specific process through a specific forum. Ergo, the MSMED Act, 2006 being a special law and the Arbitration Act, 1996 being a general law, the provisions of the MSMED Act would have precedence over or prevail over the Arbitration Act, 1996. In *Silpi Industries case* [*Silpi Industries v. Kerala SRTC*, (2021) 18 SCC 790 : 2021 SCC OnLine SC 439] also, this Court had observed while considering the issue with regard to the maintainability and counter-claim in arbitration proceedings initiated as per Section 18(3) of the MSMED Act, 2006 that the MSMED Act, 2006 being a special legislation to protect MSMEs by setting out a statutory mechanism for the payment of interest on delayed payments, the said Act would override the provisions of the Arbitration Act, 1996 which is a general legislation. Even if the Arbitration Act, 1996 is treated as a special law, then also the MSMED Act, 2006 having been enacted subsequently in point of time i.e. in 2006, it would have an overriding effect, more particularly in view of Section 24 of the MSMED Act, 2006 which specifically gives an effect to the provisions of Sections 15 to 23 of the Act over any other law for the time being in force, which would also include the Arbitration Act, 1996.

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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 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.

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52. The upshot of the above is that:

52.1. Chapter V of the MSMED Act, 2006 would override the provisions of the Arbitration Act, 1996.

52.2. No party to a dispute with regard to any amount due under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Micro and Small Enterprises Facilitation Council, though an independent arbitration agreement exists between the parties.

52.4. The proceedings before the Facilitation Council/institute/centre acting as an arbitrator/Arbitral Tribunal under Section 18(3) of the MSMED Act, 2006 would be governed by the Arbitration Act, 1996.

52.5. The Facilitation Council/institute/centre acting as an Arbitral Tribunal by virtue of Section 18(3) of the MSMED Act, 2006 would be competent to rule on its own jurisdiction as also the other issues in view of Section 16 of the Arbitration Act, 1996."

15. The petitioner has not denied the factum of the respondent being registered as an MSME at the time of entering into the contract. It has also not denied that the respondent has approached the MSME facilitation council under Section 18 of the Act. It is the petitioner's case that the subject contract is a works contract and hence not covered under the MSMED Act. He has relied on a number of decisions to that effect. However, the respondent has denied that the contract is a works contract. Since the parties are at odds about the nature of the contract, this becomes a triable issue requiring adjudication and the same would involve detailed appreciation of evidence. The scope of enquiry vested with the Court under Section 11 of the Arbitration and Conciliation Act is no longer Res

integra. The same is limited to forming a prime facie opinion as to the existence of an agreement between the parties. (Ref: SBI General Insurance Co. Ltd. vs. Krish Spinning. reported as 2024 INSC 532) Since the dispute in question would require detailed appreciation of evidence and interpretation of the terms of the contract, it would not be appropriate for this Court at the stage of a petition under Section 11 of the A&C Act to undertake the same. It may very well happen that the parties resolve their issues in the conciliation and the question becomes merely an academic one. Even if the conciliation fails, the parties would still have recourse to arbitration under the MSMED Act and the AT so constituted would be the most suited forum for the parties to put forth their respective contentions.

16. Looking from another angle, even if the petitioner's contention regarding works contracts can be said to have some merit, the same essentially becomes a question regarding the jurisdiction of the AT constituted under Section 18 of the MSMED Act. It is no longer *Res integra* that the AT would be competent to rule on its own jurisdiction. The same has been reiterated by the Supreme Court in *Mahakali Foods* (*Supra*) in the context of an AT constituted under MSMED Act:-

"48. When the Facilitation Council or the institution or the centre acts as an arbitrator, it shall have all powers to decide the disputes referred to it as if such arbitration was in pursuance of the arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996 and then all the trappings of the Arbitration Act, 1996 would apply to such arbitration. It is needless to say that such Facilitation Council/institution/centre acting as an Arbitral Tribunal would also be competent to rule on its own jurisdiction like any other Arbitral Tribunal appointed under the Arbitration Act, 1996 would have, as contemplated in Section 16 thereof."

17. In view of the above, the present petition is dismissed.