



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 30th OF JANUARY, 2026

ARBITRATION CASE No. 125 of 2025

BEE AAR CONTROLS AND ENGINEERING PVT LTD

Versus

RONS TECHNOLOGIES LLP THROUGH

Appearance:

Mr. Siddharth Sijoria - Advocate for applicant.

Mr. Ankur Maheshwari - Advocate for respondent.

ORDER

This application under Section 11(6) of the Arbitration and Conciliation Act has been filed for appointment of arbitrator.

2. It is the case of applicant that there was an arbitration agreement dated 06/09/2024 between the applicant and respondent. On 08/10/2025, a request was made for referring the dispute to arbitration, and the said notice was received by respondent on 14/10/2025, and the same was replied by the respondent by its reply dated 19/10/2025, and not only the averments made in the notice were denied, but it was contended that the matter has to be adjudicated under the Micro, Small and Medium Enterprises Development Act, 2006 (in short "MSMED Act"). Accordingly, it is prayed that since the respondent had supplied defective and non-functional machinery as well as cables, therefore, respondent has failed to perform its contractual obligations relating to the supply, installation and commissioning of machinery under the purchase agreement dated 06/09/2024, warranting appointment of an



arbitrator.

3 . *Per contra*, application is vehemently opposed by counsel for respondent. It is submitted that both the parties, i.e., applicant and respondent, are registered under the MSMED Act. It is submitted that MSMED Act is a special Act providing a specialized, time-bound dispute resolution mechanism to safeguard small enterprises against delayed payments and contractual breaches. It is further submitted that as per Section 24 of the MSMED Act, provisions of Sections 15 to 23 of the MSMED Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. It is submitted that the Supreme Court in the case of **Silpi Industries & Ors. Vs. Kerala SRTC and Anr.** , reported in (2021) 18 SCC 790, has held that even if there is an agreement between the parties for resolution of disputes by arbitration, if a seller is covered by the MSMED Act, 2006, the seller can certainly approach the competent authority to make its claim. If any agreement between the parties is there, the same is to be ignored in view of the statutory obligations and mechanism provided under the MSMED Act, 2006. It is further submitted that respondent has already approached the Facilitation Council under the MSMED Act, therefore, in the light of the judgment passed by the Supreme Court in **Silpi Industries (supra)**, as well as in **Gujarat State Civil Supplies Corporation Limited Vs. Mahakali Foods Private Limited Unit 2 & Anr.**, reported in (2023) 6 SCC 401, and **Harcharan Dass Gupta Vs. Union of India**, reported in 2025 SCC OnLine SC 1111, the MSMED Act will have an overriding effect over the Arbitration Act, 1996, and thus, it is submitted that



once the respondent has already approached the Facilitation Council under the MSMED Act, appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act is not warranted.

4. Considered the submissions made by counsel for parties.

5. It is fairly conceded by counsel for applicant that respondent has already approached the Facilitation Council under the MSMED Act. However, it is submitted that respondent had approached the Facilitation Council after the first notice was given by applicant for appointment of arbitrator.

6. The only question for consideration is as to whether, in view of the fact that proceedings before the Facilitation Council under the MSMED Act are already pending, an arbitrator under Section 11(6) of the Arbitration and Conciliation Act can be appointed or not?

7. The Supreme Court in the case of *Silpi Industries (supra)* has 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. Further, apart from the provision under Section 23(2-A) of the 1996 Act, it is to be noticed that if counterclaim is not permitted, buyer can get over the legal obligation of compound interest at 3 times of the bank rate and the "75% pre-deposit" contemplated under Sections 16 and 19 of the Msmed Act."

8. The Supreme Court in the case of *Mahakali Foods Private Limited*



Unit 2 (supra) has held as under:

"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.

45. There cannot be any disagreement to the proposition of law laid down in various decisions of this Court, relied upon by the learned counsel for the buyers that the Court has to read the agreement as it is and cannot rewrite or create a new one, and that the parties to an arbitration agreement have an autonomy to decide not only on the procedural law to be followed but also on the substantive law, however, it is equally settled legal position that no agreement entered into between the parties could be given primacy over the statutory provisions. When the Special Act i.e. the Msmed Act, 2006 has been created for ensuring timely and smooth payment to the suppliers who are the micro and small enterprises, and to provide a legal framework for resolving the dispute with regard to the recovery of dues between the parties under the Act, also providing an overriding effect to the said law over any other law for the time being in force, any interpretation in derogation thereof would frustrate the very object of the Act.

46. The submission therefore that an independent arbitration agreement entered into between the parties under the Arbitration Act, 1996 would prevail over the statutory provisions of the Msmed Act, 2006 cannot be countenanced. As such, sub-section (1) of Section 18 of the Msmed Act, 2006 is an enabling provision which gives the party to a dispute covered under Section 17 thereof, a choice to approach the Facilitation Council, despite an arbitration agreement existing between the parties. Absence of the word "agreement" in the said provision could neither be construed as *casus omissus* in the statute nor be



construed as a preclusion against the party to a dispute covered under Section 17 to approach the Facilitation Council, on the ground that there is an arbitration agreement existing between the parties. In fact, it is a substantial right created in favour of the party under the said provision. It is therefore held that no party to a dispute covered under Section 17 of the Msmed Act, 2006 would be precluded from making a reference to the Facilitation Council under Section 18(1) thereof, merely because there is an arbitration agreement existing between the parties."

9. The Supreme Court in the case of **Harcharan Dass Gupta (supra)** has held as under:

"9. Further, the Court proceeds to hold that even the agreement between the parties stands overridden by the statutory provisions under the MSMED Act:

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.

45. ...

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MSMED Act, 2006 is an enabling provision which gives the party to a dispute covered under Section 17 thereof, a choice to approach the Facilitation Council, despite an arbitration agreement existing between the parties. Absence of the word "agreement" in the said provision could neither be construed as *casus omissus* in the statute nor be construed as a preclusion against the party to a dispute covered under Section 17 to approach the Facilitation Council, on the ground that there is an arbitration agreement existing between the parties. In fact, it is a substantial right created in favour of the party under the said provision. It is therefore held that no party to a dispute covered under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Facilitation Council under Section 18(1) thereof, merely because there is an arbitration agreement existing between the parties.

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 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.

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."

10. Thus, it is clear that once the respondent has already approached



the Facilitation Council under the MSMED Act, then applicant has every opportunity to raise his counterclaim before the Facilitation Council, and an arbitrator cannot be appointed by this Court under Section 11(6) of the Arbitration and Conciliation Act.

11. Accordingly, with liberty to applicant to take recourse as may be available to him under the MSMED Act, this application is **dismissed**.

(G. S. AHLUWALIA)
JUDGE

AKS