



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CIVIL MISC. PETITION NO. 311 OF 2025

BETWEEN

M/S MOBISY TECHNOLOGIES PVT LTD.,
HAVING ITS REGISTERED OFFICE AT
3RD FLOOR, SRI ARUNACHALESHWARA BUIDLING,
75/1, BELLANDUR MAIN ROAD, BELLANDUR,
BANGALORE 560103
REP BY ITS AUTHORISED SIGNATORY,
MS.DEVIKA SIVARAMAN

.... PETITIONER

(BY SRI. CHRISTIPHER.E., ADVOCATE)

AND

M/S J G HOSIERY PVT LTD.,
HAVING ITS REGISTERED OFFICE AT
NO.5, J G GARDEN ROAD,
SOLIPALAYAM TIRUPUR,
TAMIL NADU 641652
REP BY ITS AUTHORISED SIGNATORY

.... RESPONDENT

(BY SRI. ABHILESH. J., ADVOCATE)

THIS CMP IS FILED UNDER SECTION 11(6) OF THE ARBITRATION AND CONCILIATION ACT, 1996 PRAYING TO APPOINT AN ARBITRATOR AS HER CLAUSE 11.10 OF THE AGREEMENT FROM THE PANEL OF ARBITRATORS FROM THE BENGALURU ARBITRATION CENTRE TO RESOLVE THE DISPUTE AT ANNEXURE B ARISING OUT OF THE AGREEMENT DATED 21.02.2023 BETWEEN THE PARTIES, IN THE INTEREST OF JUSTICE AND EQUITY.





THIS CMP COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 21.11.2025, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CAV ORDER

1. The Petitioner is before the Court seeking for the following relief:

"To appoint an Arbitrator as per clause 11.10 of the Agreement from the Panel of Arbitrators from the Bengaluru Arbitration Centre to resolve the dispute arising out of the Agreement dated 21.02.2023 at Annexure-B between the parties, in the interest of justice and equity."

2. The Petitioner and Respondent having entered into a 'Bizom Customer Agreement'. The said Agreement is governed by clause 11.10, which is reproduced hereunder for easy reference:

11.10. Dispute resolution: In the event of any dispute arising out of or in relation to this Agreement, the Parties shall try and resolve the dispute amicably in good faith through negotiations. In case the dispute is not resolved within a reasonable time, the Parties agree to submit the same for arbitration. The arbitration proceedings shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 and its amendments thereafter by a sole arbitrator to be appointed by mutual Agreement between the Parties. Arbitration proceedings shall be conducted in English language and the place,



venue and seat shall be at Bengaluru. The award of the arbitration proceedings shall be final and binding on the Parties.

3. There being a dispute between the parties, the Petitioner invoked the arbitration clause vide notice dated 12.12.2025 and nominated the arbitrator, same not having been accepted by the Respondent, contending that there are no disputes which are required to be arbitrated and no amounts are required to be paid by the Respondent, the Petitioner has filed the above petition.
4. Notice having been issued, the Respondent entered an appearance and filed its objections.
5. The submission of Sri. Christopher, learned counsel for the Petitioner, is that,
 - 5.1. The 'Bizon Customer Agreement' is governed by an arbitration clause; disputes having arisen, the matter will be required to be referred to arbitration as per clause 11.10, which is extracted hereinabove.



5.2. He relies upon the decision of the Bombay High Court in **Porwal Sales -v- Flame Control Industries¹**, more particularly para 22 and 28 thereof, which are reproduced hereunder for easy reference:

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 Rajeev 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.

¹ (2019 SCC Online Bom 1628)



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 Facilitation 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.*

27. *In any event, sub-section (4) of Section 18 cannot be read as a provision creating an absolute bar to institution of any proceedings other than as provided under section 18(1) of the MSMED Act, to seek appointment of an arbitral tribunal. If the argument as advanced on behalf of the Respondent that Section 18(4) creates a legal bar on a party who has a contract with a Small Scale Enterprise, to take recourse to Section 11 under the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator, then the legislation would have so*



expressly provided, namely that in case one such party falls under the present Act, the arbitration agreement, as entered between the parties would not be of any effect and the parties would be deemed to be governed under the MSMED Act in that regard. However, Subsection (4) of Section 18 of the MSMED Act does not provide for such a blanket consequence in the absence of any reference made by a party to the Facilitation Council. Also if Section 18 is read in the manner the Respondent is insisting, it would lead to a two-fold consequence - firstly, it would amount to reading something in the provision which the provision itself does not provide, which would be doing a violence to the language of the provision; secondly such interpretation in a given situation would render meaningless an arbitration agreement between the parties and it may create a situation that the party who is not falling within the purview of Section 17 and Section 18(1) would be foisted a remedy, which the law does not actually prescribe. Further sub-section (1) uses the word "may" in the context of a dispute which may arise between the parties under Section 17. In the present context, the word "may" as used in sub-section (1) of Section 18 cannot be read to mean "shall" making it mandatory for a person who is not a supplier (like the Petitioner) to invoke the jurisdiction of the Facilitation Council. Thus, the interpretation of sub-section (4) of Section 18 as urged on behalf of the Respondent of creating a legal bar against the Petitioner to file a petition under section 11 of the Arbitration and Conciliation Act cannot be accepted.

28. *In regard to the decisions as relied by the learned counsel for the respondents, in my opinion, these decisions are certainly not applicable in the facts of the present case. In each of these cases, there was admittedly a reference made to the Facilitation Council and once a reference was made to the Facilitation Council, the Court, in the facts of*



each of these cases, has come to the conclusion that an argument would not be available to urge that the Facilitation Council has no jurisdiction. There cannot be any dispute on this proposition these decision(s) advance. Moreover this Court following the decision of Division Bench of this Court in Gujarat State Petronet Ltd. v. Micro and Small Enterprises Facilitation Council⁵, has also consistently taken a view that once a reference is already made to the Facilitation Council, an application under section 11 of the Act would not be maintainable. In fact in a dispute which has arisen between the present Respondent and another entity connected with the Petitioner, namely, M/s. Adhinath Sales, this Court has passed an order rejecting Section 11 Application, permitting the Petitioner therein to approach the Facilitation Council and make a claim, as the Respondent had already invoked the jurisdiction of the Himachal Pradesh Facilitation Council under Section 18 of the Act. However, such is not the situation in the present case as noted above.

5.3. By relying on **Porwal Sales' case**, his submission is that Subsection (4) of Section 18 does not create an absolute bar to any proceedings other than those provided under Section 18 of the MSMED Act. The word used in the provision 'may', it is left to the discretion of MSME whether to approach the facilitation council or to invoke a separate invocation



clause under the Agreement entered into between the parties.

5.4. He relies on the decision of the Delhi High Court in **Total Application Software Co.Pvt.Ltd TASC -v- Ashoka Distillers and Chemicals Pvt. Ltd²**. more particularly para 13, 14 and 15 thereof, which are reproduced hereunder for easy reference:

***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*

² (2025 SCC Online Del 4562)



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.*

5.5. Relying on the **Total Application software**

Co.Pvt.Ltd. TASC case, he submits that the

Hon'ble Delhi High Court has referred to the



decision in **Gujarat State Civil Supplies Corporation Ltd's** case and has come to a categorical conclusion that there is no bar under Subsection (3) of Section 18 for arbitration to continue outside the purview of MSMED Act.

5.6. Lastly his submission is that the Petitioner is not a micro or small enterprise, but in fact, medium enterprise and in terms of Subsection (n) of Section 2, a supplier can only be a micro or small enterprise, a medium enterprise is not contemplated under Subsection (n), as such, would not come under the purview of Chapter-V which relates to delayed payments to micro and small enterprises.

5.7. Section 18 relates to supply made by micro and small enterprises which could be referred to as the Micro and small enterprises facilitation council, the word 'medium' being absent from



the said Council and absent from the definition of 'supply' under of Section 2, he submits that a dispute by a medium enterprise cannot be raised under Section 18 of the MSMED Act.

5.8. On all the above grounds, he submits that the writ petition should be allowed.

6. The submission of Sri.Abhilesh, learned counsel for the Respondent, is that,

6.1. The Petitioner being a medium enterprise, it would be governed by the Micro, Small and Medium Enterprises Development Act, 2006 ['MSMED Act', for short] and in terms of Section 18 thereof, any proceedings for recovery or otherwise would have to be filed in terms of Section 18 and the proceedings under Subsection (6) of Section 11 of the Arbitration and Conciliation Act, 1996 ['A&C Act', for short] to appoint an arbitrator is not maintainable.



6.2. Any and every disputes pertaining to Micro, medium and small enterprises is required to undergo the procedure required under the MSMED Act, more particularly Chapter-V relating to delayed payments. It is for the Petitioner to have approached the said facilitation council for adjudication of any disputes. In this regard, he relies upon the decision in **Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods (P) Ltd³**. more particularly para 11, 32 and 37 thereof, which are reproduced hereunder for easy reference:

11. *In the background of aforesaid spectrum of cases, the following common questions of law arise for consideration:*

11.1. *(i) Whether the provisions of Chapter V of the Msmmed Act, 2006 would have an effect overriding the provisions of the Arbitration Act, 1996?*

11.2. *(ii) Whether any party to a dispute with regard to any amount due under Section 17 of the Msmmed Act, 2006 would be precluded from making a*

³ (2023)6 SCC 401)



reference to the Micro and Small Enterprises Facilitation Council under sub-section (1) of Section 18 of the said Act, if an independent arbitration agreement existed between the parties as contemplated in Section 7 of the Arbitration Act, 1996?

11.3. *(iii) Whether the Micro and Small Enterprises Facilitation Council, itself could take up the dispute for arbitration and act as an arbitrator, when the Council itself had conducted the conciliation proceedings under sub-section (2) of Section 18 of the Msmed Act, 2006 in view of the bar contained in Section 80 of the Arbitration Act, 1996?*

32. *Now, the first and foremost issue involved in these appeals is whether the provisions contained in Chapter V of the Msmed Act, 2006 with regard to the Delayed Payments to Micro and Small Enterprises would have precedence over the provisions contained in the Arbitration Act, 1996, more particularly when the parties by execution of an independent agreement as contemplated in Section 7 of the Arbitration Act had agreed to submit to arbitration the disputes arising between them? In other words, whether the provisions contained in Chapter V of the Msmed Act, 2006 would have an effect overriding the provisions contained in the Arbitration Act, 1996?*

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 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.

6.3. By relying on **Gujarat State Civil Supplies Corporation Ltd's** case, he submits that the Hon'ble Apex Court has categorically come to a conclusion that Chapter-V of MSMED Act relating to delayed payments to Micro and small enterprises would have an overriding effect of A&C Act, as such, a separate proceedings for appointment of arbitrator in terms of Agreement Section 7 of A&C Act is not permissible. Any dispute in which MSMED is involved would have to be referred to



conciliation and arbitration in terms of MSMED, 2006. In that background, he submits that the above petition is required to be dismissed.

7. Heard Sri.Christopher, learned counsel for the Petitioner and Sri.Abhilesh, learned counsel for the Respondent. Perused papers.
8. The points that would arise for consideration are:
 - i. **Whether micro, small or medium enterprises would be required to proceed under Chapter V of the MSME Act, requiring the micro, small or medium enterprise to refer all disputes to the facilitation council in terms of Section 18 of the MSME Act, 2006?**
 - ii. **Whether a medium enterprise would also be covered under Section 18 of the MSME Act, 2006?**
 - iii. **In the present case, is the invocation of the arbitration clause in the 'Bizon Customer Agreement' by the Petitioner required to be accepted, and an arbitrator to be appointed?**
 - iv. **What order?**
9. I answer the above points as follows.
10. **ANSWER TO POINT NO.1: Whether micro, small or medium enterprises would be required to proceed under Chapter V of the MSME Act, requiring the micro, small or medium enterprise**



to refer all disputes to the facilitation council in terms of Section 18 of the MSME Act, 2006?

10.1. The learned counsel for the Petitioner submits that Chapter V of the MSMED Act, 2006 does not create an absolute and exclusive bar on recourse to the Arbitration and Conciliation Act, 1996 for all disputes involving micro, small or medium enterprises. He places reliance on **Porwal Sales -v- Flame Control Industries**, where the Bombay High Court has held that sub-section (4) of Section 18 of the MSMED Act cannot be read in isolation, and must be read together with sub-section (1). According to the Petitioner, the statutory mechanism under Section 18 is attracted only when a party actually invokes the jurisdiction of the Micro and Small Enterprises Facilitation Council in respect of an amount due under Section 17.



10.2.The Petitioner emphasises that in **Porwal Sales -v- Flame Control Industries**, the Bombay High Court has clearly observed that in the absence of any reference to the Facilitation Council, there is no bar under Section 18(4) to the institution of proceedings under Section 11 of the Arbitration and Conciliation Act. The High Court has cautioned against reading into Section 18(4) a blanket consequence which the legislature has not provided, namely, that the arbitration agreement would automatically stand superseded even when the statutory mechanism is not invoked.

10.3.The Petitioner further relies upon **Total Application Software Co.Pvt.Ltd TASC -v- Ashoka Distillers and Chemicals Pvt. Ltd**, where the Hon'ble Delhi High Court has analysed the judgment of the Hon'ble Supreme Court in **Gujarat State Civil Supplies**



Corporation Ltd. v. Mahakali Foods (P) Ltd.

The Petitioner submits that in **Total Application Software Co.Pvt.Ltd TASC -v- Ashoka Distillers and Chemicals Pvt. Ltd,** the Delhi High Court has held that the MSMED Act, being a special law, would prevail over the Arbitration and Conciliation Act, 1996 once the statutory mechanism under Section 18(1) is triggered. However, where there is no such trigger by invocation of the jurisdiction of the Council, the parties are not precluded from resorting to an independent arbitration agreement for the resolution of their disputes.

10.4. The Petitioner therefore contends that, on a correct reading of the MSMED Act and the above decisions, the scheme of Chapter V is enabling and supplemental. It provides an additional forum and mechanism for micro and small enterprises in respect of delayed payment



disputes, but does not, in itself, extinguish or nullify pre-existing arbitration agreements in all circumstances. The Petitioner submits that the use of the word "may" in Section 18(1) is significant and indicates that the legislature intended to confer an option on the parties, and not to mandate that every dispute must necessarily be taken only to the Facilitation Council.

10.5. The Petitioner argues that the Respondent's contention, if accepted, would mean that even where neither party has chosen to invoke the statutory mechanism, the mere existence of the MSMED Act would foreclose resort to arbitration, thereby doing violence to the contractual bargain and the statutory recognition of party autonomy under the Arbitration and Conciliation Act, 1996. Such an interpretation, according to the Petitioner,



would go far beyond what **Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods (P) Ltd** actually holds, and would be inconsistent with **Porwal Sales -v- Flame Control Industries** and **Total Application Software Co.Pvt.Ltd TASC -v- Ashoka Distillers and Chemicals Pvt. Ltd.**

10.6. The learned counsel for the Respondent, on the other hand, submits that once the parties fall under the MSMED Act, any dispute with regard to amounts due must be governed by the scheme of Chapter V, and that the jurisdiction of the Facilitation Council under Section 18 is intended to override all other forums, including contractual arbitration. He places reliance on **Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods (P) Ltd** to contend that the provisions of the MSMED Act, being special, must prevail over the general law of



arbitration in all disputes involving micro and small enterprises.

10.7. According to the Respondent, the MSMED Act has created a self-contained mechanism for adjudication of disputes arising out of delayed payments to micro and small enterprises, and the parties are obliged to follow that mechanism. It is contended that permitting arbitration under Section 11 in parallel to or in place of the statutory mechanism would result in multiplicity of proceedings and would undermine the legislative objective of providing a speedy and efficacious remedy to micro and small enterprises.

10.8. The question under this Point is a pure question of law: whether micro, small or medium enterprises are, in all cases, required to proceed only under Chapter V of the MSMED Act and to refer all disputes to the Facilitation



Council under Section 18, or whether recourse to the Arbitration and Conciliation Act, 1996 remains available in appropriate cases.

- 10.9. It is necessary to begin with the text of Section 18(1). The provision uses the phrase *"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"* (emphasis supplied). The use of the word "may" indicates that the legislature has conferred a discretion on the party to a dispute to invoke the jurisdiction of the Facilitation Council. The provision does not state that the party *"shall"* or *"must"* approach the Council; nor does it contain any express negative language prohibiting recourse to other lawful remedies when the statutory mechanism is not invoked.



10.10. Porwal Sales -v- Flame Control Industries

has considered this very language and has held that Section 18(4) of the MSMED Act cannot be read as a provision creating an absolute bar to institution of proceedings under Section 11 of the Arbitration and Conciliation Act in every case where one of the parties happens to be a micro or small enterprise. The Bombay High Court has reasoned that such an interpretation would entail adding words to the statute which the legislature has not used, and would result in obliterating the arbitration agreement between the parties even when neither party has chosen to approach the Facilitation Council.

10.11. The Hon'ble Bombay High Court has also emphasised that Section 18(3) and (4) operate in a specific context: namely, where a reference has actually been made to the Facilitation Council under Section 18(1), conciliation has



been attempted, and has failed, and the Council has then either itself taken up the dispute for arbitration or referred it to an arbitral institution. In such a situation, once the statutory process is triggered, the MSMED Act mechanism prevails and other routes, including Section 11, would not be parallelly available. That, however, is different from saying that in the absence of any reference to the Council, Section 11 is automatically barred.

10.12. The Hon'ble Delhi High Court in **Total Application Software Co.Pvt.Ltd TASC -v- Ashoka Distillers and Chemicals Pvt. Ltd** has considered **Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods (P) Ltd** and has read it in a manner consistent with this position. The Hon'ble Delhi High Court has recognised that the MSMED Act, being a special law, has precedence over the Arbitration and



Conciliation Act, but has drawn a clear distinction between cases where the statutory mechanism under Section 18(1) has been actually invoked and those where it has not. The Hon'ble Delhi High Court has held that once a party triggers the mechanism under Section 18(1), the special law overrides the arbitration agreement by virtue of the non-obstante clauses in Section 18(1) and (4). But where there is no such trigger, the special mechanism remains dormant and does not, by itself, extinguish the parties' rights under their arbitration agreement.

10.13. Turning to **Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods (P) Ltd**, the Hon'ble Supreme Court was dealing with a batch of matters where the Facilitation Council had already been approached and had entered upon reference. The Hon'ble Supreme Court



has examined whether the statutory mechanism under Chapter V would have precedence over the general law of arbitration in respect of disputes relating to delayed payments to micro and small enterprises once a reference is made under Section 18(1). The Hon'ble Apex Court has answered that question in the affirmative, holding that the special procedure under the MSMED Act prevails once invoked.

10.14. However, **Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods (P) Ltd** does not lay down as an abstract proposition that in every case where one party is a micro or small enterprise, the very existence of the MSMED Act renders the arbitration agreement inoperative, irrespective of whether the statutory mechanism is invoked or not. The binding ratio of the Hon'ble Supreme Court's



decision is that the MSMED Act overrides the Arbitration and Conciliation Act when the dispute is brought within the fold of the special statute through a reference under Section 18(1), and that in such a situation the Facilitation Council (or the institution to which it refers the matter) alone would have jurisdiction to act as arbitrator/conciliator.

10.15. The contention of the Respondent that even in the absence of any reference to the Facilitation Council, the mere applicability of the MSMED Act precludes resort to Section 11 of the Arbitration and Conciliation Act is, therefore, an over-extension of the Supreme Court's ratio. It would effectively render the word "may" in Section 18(1) otiose and convert the permissive statutory option into a mandatory and exclusive route, which the legislature has not chosen to do.



10.16. In the present case, it is undisputed that no reference has been made by either party to the Micro and Small Enterprises Facilitation Council. There is no material to show that the statutory mechanism under Section 18(1) has been triggered at all. In such a situation, the question is not one of concurrent jurisdiction between the Facilitation Council and the arbitral forum under the agreement; rather, the question is whether the existence of a possible statutory remedy under the MSMED Act, which has not been invoked, can by itself deprive the parties of their right to seek appointment of an arbitrator under Section 11 in terms of their contract.

10.17. Having regard to the language of Section 18(1), the interpretation placed in **Porwal Sales -v- Flame Control Industries** and **Total Application Software Co.Pvt.Ltd TASC -v-**



Ashoka Distillers and Chemicals Pvt. Ltd,
and the correct reading of **Gujarat State Civil**
Supplies Corporation Ltd. v. Mahakali
Foods (P) Ltd, I'am of the view that micro and
small enterprises are not, in all cases,
compelled to approach the Facilitation Council
as an exclusive remedy to the exclusion of
arbitration under their contracts. The statutory
mechanism is available to them as a special
forum, and once invoked, it overrides the
arbitration agreement. But until such invocation
takes place, the arbitration agreement
continues to be operative, and recourse to
Section 11 of the Arbitration and Conciliation
Act is not barred.

10.18.As regards medium enterprises, the text and
scheme of the Act, which will be discussed in
more detail while answering Point No.II, make
it clear that medium enterprises are not within



the definition of "supplier" under Section 2(n) and that Chapter V is expressly confined to "micro and small enterprises". Therefore, even the possibility of a statutory bar under Chapter V does not arise in the case of medium enterprises.

10.19. Thus, I'am of the considered opinion that:

10.19.1. Micro and small enterprises have a statutory option to invoke the special mechanism under Section 18 of the MSMED Act for delayed payment disputes. Once they do so, that mechanism prevails over any contractual arbitration clause.

10.19.2. In the absence of such an invocation, the arbitration agreement under the contract remains fully effective, and the parties are entitled to seek appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act.



10.19.3. Medium enterprises are outside the scope of Chapter V and are governed by their contractual dispute resolution mechanisms.

10.20. Accordingly, it cannot be said, as an absolute proposition, that micro, small or medium enterprises are required in every case to proceed only under Chapter V of the MSMED Act and to refer all disputes to the Facilitation Council under Section 18. The requirement arises only upon invocation of the statutory mechanism in the case of micro and small enterprises, and does not arise at all in the case of medium enterprises.

10.21. I answer Point No.I is by holding that micro and small enterprises are not mandatorily required, in all circumstances, to proceed under Chapter V of the MSMED Act, and that medium



enterprises are in any event outside the purview of Section 18.

11. Answer to Point No. II: Whether a medium enterprise would also be covered under Section 18 of the MSME Act, 2006?

11.1. The learned counsel for the Petitioner submits that the Petitioner is a medium enterprise within the meaning of Section 7 of the MSMED Act. He argues that Section 2(n), which defines "supplier", expressly refers only to micro and small enterprises, and does not include medium enterprises. He submits that the heading of Chapter V, namely "Delayed payments to micro and small enterprises", also indicates that the provisions contained therein are intended to apply only to micro and small enterprises and not to medium enterprises.

11.2. The Petitioner submits that the absence of the word "medium" in Section 2(n) and in the nomenclature of the "Micro and Small



Enterprises Facilitation Council" is a conscious legislative choice. On this basis, the Petitioner contends that medium enterprises are not covered under Section 18 of the MSMED Act and cannot invoke or be compelled to invoke the Facilitation Council mechanism. Consequently, disputes involving medium enterprises are to be resolved through the ordinary fora, including arbitration under valid contractual clauses and civil suits.

- 11.3. The Petitioner submits that this interpretation not only accords with the plain language of the statute but also with the legislative object, as the special protections of Chapter V are intended for micro and small enterprises which are comparatively more vulnerable. Medium enterprises, being larger entities with greater resources, are expected to negotiate and enforce their contractual rights, including



arbitration agreements, without requiring the additional statutory protection of Chapter V.

11.4. The learned counsel for the Respondent argues that the MSMED Act is a composite legislation enacted for "Micro, Small and Medium Enterprises Development" and that, therefore, the dispute resolution mechanisms under the Act, including those under Chapter V, should be read as applicable to all three categories of enterprises. He submits that to exclude medium enterprises from the ambit of Section 18 would be to deny them the benefit of the special mechanism, which would be contrary to the spirit of the Act.

11.5. The Respondent contends that while the definition of "supplier" in Section 2(n) refers only to micro and small enterprises, the Court should adopt a purposive interpretation and treat medium enterprises, at least for dispute



resolution purposes, as falling within the same protective umbrella, especially when they are similarly situated in terms of bargaining power with large buyers.

11.6. The issue under this Point is again a question of statutory interpretation, namely, whether medium enterprises can be brought within the fold of Section 18 despite the language of Section 2(n) and the heading of Chapter V.

11.7. Section 2(n) defines "supplier" to mean "a micro or small enterprise" which has filed a memorandum with the competent authority, and includes certain public sector entities. The provision does not mention medium enterprises. When the legislature wishes to cover micro, small and medium enterprises together, it uses language to that effect, as seen in other provisions of the Act.



11.8. Chapter V is titled "Delayed payments to micro and small enterprises". The title of a Chapter, while not controlling, is certainly a relevant internal aid to construction, and here it aligns with the restrictive definition of "supplier" in Section 2(n). Sections 15, 16, 17 and 18 all proceed on the basis of obligations owed by a "buyer" to a "supplier". Since "supplier" is a defined term, its meaning cannot be expanded by implication to include medium enterprises, when the statutory text does not do so.

11.9. It is well settled that where the legislature has used clear and unambiguous language, courts cannot add words to a statute under the guise of purposive interpretation. The maxim "casus omissus pro omisso habendus est" applies with full force. The omission of "medium" from Section 2(n) and from the title and text of



Chapter V must be treated as an intentional legislative choice.

11.10. In this context, the argument of the Respondent that the Court should, in effect, read "medium" into Section 2(n) so as to extend the benefit of the Chapter V mechanism to medium enterprises cannot be accepted. Such a course would amount to judicial legislation, which is impermissible.

11.11. The legislative policy appears to be that micro and small enterprises, being at the lower end of the scale and more vulnerable to delayed payments, require special statutory protection in the form of Chapter V, whereas medium enterprises, being larger in scale and capability, do not. This policy choice is within the competence of the legislature and cannot be substituted by the Court's own notions of fairness or uniformity.



11.12. Accordingly, I have no hesitation in holding that medium enterprises are not covered under Section 18 of the MSMED Act, 2006. Chapter V, including the special mechanism of the Micro and Small Enterprises Facilitation Council, applies only to micro and small enterprises which qualify as "suppliers" under Section 2(n).

11.13. In the present case, the Petitioner asserts that it is a medium enterprise. If that assertion is correct, it would follow that the Petitioner is outside Chapter V and cannot either invoke or be compelled to invoke Section 18. Its disputes are to be resolved through ordinary fora including arbitration, subject, of course, to the existence and validity of an arbitration agreement and the presence of arbitrable disputes.



11.14. I answer Point No. II by holding that a medium enterprise is not covered under Section 18 of the MSMED Act, 2006.

12. **Answer to Point No. III: In the present case, is the invocation of the arbitration clause in the 'Bizon Customer Agreement' by the Petitioner required to be accepted, and an arbitrator to be appointed?**

12.1. The learned counsel for the Petitioner submits that the Petitioner and Respondent have entered into a 'Bizon Customer Agreement' dated 21.02.2023, which contains an arbitration clause at clause 11.10. He submits that disputes have arisen between the parties relating to amounts allegedly due from the Respondent to the Petitioner for services rendered under the agreement.

12.2. The Petitioner states that it issued a notice dated 12.12.2025 invoking the arbitration clause and nominating a sole arbitrator. The Respondent did not concur in the appointment



and took the stand that there are no arbitrable disputes and that no amount is due. It is in these circumstances that the Petitioner has approached this Court under Section 11(6) of the Arbitration and Conciliation Act seeking appointment of an arbitrator.

12.3. The Petitioner submits that clause 11.10 is a valid arbitration agreement within the meaning of Section 7 of the Arbitration and Conciliation Act. The requirements of Section 11 are, therefore, satisfied, inasmuch as (i) there is a valid arbitration agreement, (ii) disputes have arisen between the parties, and (iii) the agreed procedure for appointment has failed due to the Respondent's non-cooperation.

12.4. The Petitioner further submits that, the Petitioner is a medium enterprise not covered under Section 18 of the MSMED Act, there is no statutory bar arising from Chapter V of the



MSMED Act. Even if the Petitioner were to be regarded as a micro or small enterprise, the decisions in **Porwal Sales -v- Flame Control Industries** and **Total Application Software Co.Pvt.Ltd TASC -v- Ashoka Distillers and Chemicals Pvt. Ltd** make it clear that, in the absence of any reference to the Facilitation Council, the arbitration agreement remains operative and recourse to Section 11 is maintainable.

12.5. The Petitioner emphasises that at the Section 11 stage, this Court is not required to undertake a detailed adjudication of the merits of the disputes. The Court's remit is confined to a prima facie examination of the existence of a valid arbitration agreement and the presence of disputes thereunder. Questions regarding whether any amounts are ultimately due or



whether there were breaches of the agreement are matters for the arbitral tribunal to decide.

12.6. The learned counsel for the Respondent reiterates that there are no genuine disputes warranting arbitration, as, according to the Respondent, the Petitioner has failed to perform its obligations and no amount is due. He also contends, as under Point No.I, that the MSMED Act mechanism alone should be followed in such cases, and that resort to Section 11 is not appropriate.

12.7. The Respondent submits that the Petitioner's invocation of the arbitration clause is premature and not in consonance with the requirement under clause 11.10 to first "try and resolve the dispute amicably in good faith through negotiations".

12.8. In view of the answers to Point Nos. I and II, the position emerging in law is as follows:



12.9. Medium enterprises are outside the ambit of Section 18 and Chapter V of the MSMED Act.

12.10. Even in respect of micro and small enterprises, the mechanism under Section 18 is optional in the sense that it is triggered only upon a reference being made; until such reference, the arbitration agreement remains operative, as recognised in **Porwal Sales -v- Flame Control Industries** and **Total Application Software Co.Pvt.Ltd TASC -v- Ashoka Distillers and Chemicals Pvt. Ltd,** and **Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods (P) Ltd** does not lay down any contrary absolute bar.

12.11. On the factual matrix of this case, there is nothing to show that any reference has been made by either party to the Facilitation Council. Therefore, the situation where the special statutory mechanism is already in play does not



arise. The parties stand only on the footing of their contract, which contains a valid and operative arbitration clause.

12.12. Clause 11.10 of the 'Bizom Customer Agreement' is a standard arbitration clause recognising the parties' obligation to first attempt an amicable settlement through negotiations and, if that fails within a reasonable time, to submit the dispute to arbitration governed by the Arbitration and Conciliation Act, 1996.

12.13. The material on record indicates that the Petitioner has raised a claim for amounts allegedly due for services rendered, and that the Respondent has disputed the same. At this stage, a detailed inquiry into whether the Petitioner actually performed its obligations or whether the Respondent was justified in withholding payment would amount to a mini-



trial, which is beyond the scope of Section 11 proceedings.

12.14. The law as it stands, post the amendments to the Arbitration and Conciliation Act and as interpreted by the Hon'ble Supreme Court, confines the Court's scrutiny at the Section 11 stage primarily to the existence of an arbitration agreement and the presence of a live dispute. Unless the case falls into one of the narrow categories where the arbitration agreement is *ex facie* invalid or where the dispute is clearly non-arbitrable, the Section 11 Court is expected to lean in favour of reference to arbitration, leaving contentious issues to be decided by the arbitral tribunal.

12.15. In the present case, there is no contention that clause 11.10 is invalid or inoperative on any recognised ground such as fraud, coercion, or incapacity. Nor is it suggested that the subject-



matter is non-arbitrable. The only objection is that the MSMED Act mechanism should be preferred, coupled with a factual assertion that no amounts are due. For the reasons already recorded under Point Nos. I and II, the first objection does not hold. The second objection relates to the merits of the dispute and must be left to the arbitrator.

12.16. As regards the alleged non-compliance with the pre-arbitral amicable settlement requirement in clause 11.10, the record shows that the Petitioner has issued a notice and that there has been an exchange of correspondence. Whether the steps taken amount to a sufficient attempt at amicable settlement is, at best, a procedural issue which the arbitral tribunal can examine if raised. It would not, in the facts of this case, justify a refusal by this Court to



exercise its jurisdiction under Section 11 when the core statutory preconditions are satisfied.

12.17. The Respondent has pressed into service **Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods (P) Ltd** to argue that the MSMED Act must, in all cases involving enterprises covered by that Act, take precedence over arbitration. As already discussed, that judgment does not support such an absolute proposition. It is restricted to situations where the statutory mechanism has been invoked and the Facilitation Council is in seisin of the dispute. In the absence of such invocation, there is no occasion for a conflict between the special mechanism and the contractual arbitration clause.

12.18. On a holistic consideration of the submissions, the statutory scheme, and the cited case law, this Court is satisfied that the present case is a



fit one for the appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act. The existence of the arbitration agreement at clause 11.10 is admitted, the presence of disputes is evident from the rival stands, and there is no legal bar arising from the MSMED Act in the circumstances of this case.

12.19.I answer point No.III, by holding that the invocation of the arbitration clause in the 'Bizom Customer Agreement' by the Petitioner is required to be accepted, and that an arbitrator is to be appointed.

13. **Answer to Point No. IV: What order?**

13.1.In view of the findings on Point Nos. I, II and III,

13.1.1. The MSMED Act does not, in all cases, compel micro and small enterprises to resort exclusively to the Facilitation



Council and does not bar arbitration under a valid contractual clause when the statutory mechanism has not been invoked.

13.1.2. Medium enterprises are not covered under Section 18 and Chapter V of the MSMED Act at all.

13.1.3. In the present case, there is a valid arbitration agreement at clause 11.10 of the 'Bizom Customer Agreement'; disputes have arisen thereunder; no reference has been made to the Facilitation Council; and there is no legal bar to the appointment of an arbitrator.

13.1.4. Therefore, the petition deserves to be allowed by appointing an arbitrator in terms of the arbitration agreement, leaving all other questions, including those relating to classification of the



Petitioner under the MSMED Act, the existence and quantum of liability, and compliance with pre-arbitral steps, to be decided by the arbitral tribunal.

13.2. Hence, I pass the following

ORDER

- i. The CMP is Allowed.
- ii. Shri. Justice (Retd.) Nagmohan Das former Judge of this Court, is hereby appointed as the sole arbitrator to adjudicate the disputes between the Petitioner and the Respondent arising out of the 'Bizom Customer Agreement' dated 21.02.2023.
- iii. Registry is directed to forward a copy of this order to the Director, Arbitration & Conciliation Centre for doing the needful.
- iv. Since the order is passed in the presence of both the counsels, the counsels are directed to appear before the Director, Arbitration & Conciliation



Centre without requirement of any notice at **2.30 p.m. on 19.02.2026.**

- v. All contentions are left open.
- vi. Registry is directed to return the original and/or certified copies, if produced, to the respective parties who have produced it/them by following due procedure.

**SD/-
(SURAJ GOVINDARAJ)
JUDGE**

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List No.: 2 SI No.: 52