IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 8278/2022
a/w Arb. Case No. 206/2022
Decided on: 07.07.2026

CWP No.8278/2022

M/s Tynor Orthotics Pvt. Ltd. …..Petitioner

Versus

Himachal Pradesh Micro & Small Enterprises Facilitation Council, & Ors. .....Respondents

Arb. Case No. 206/2022

M/s Tynor Orthotics Pvt. Ltd. …..Petitioner

Versus

M/s Kunal Aluminium Company & Anr. .....Respondents

……………………………………………………………………………………

Coram
Ms. Justice Jyotsna Rewal Dua*, Judge.*

Whether approved for reporting?[1] Yes.

For the petitioners: **Mr. Suneet Goel, Sr. Advocate with Mr. Vivek Negi, Advocate in both the cases.**

For the respondents: **Mr. L.N. Sharma, Additional Advocate General, for respondent No.1 in CWP No. 8278/2022.**

Mr. Himanshu Thakur, Advocate for respondent No.1 in Arb. Case No. 206/2022.

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1 *Whether reporters of the local papers may be allowed to see the judgment?*

Mr. Lalit K. Sehgal, Advocate for respondent No.2 in CWP No. 8278/2022.

***Jyotsna Rewal Dua*, J.**

A dispute arose between the petitioner and respondent No.2. The parties could not resolve the dispute. Respondent No.2 made a reference to the Himachal Pradesh Micro & Small Enterprises Facilitation Council-respondent No.1 for recovery of Rs.2,60,65,515/- from the petitioner in accordance with the provisions of Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (the Act, in short). Amicable settlement could not be arrived at between the parties. Respondent No.1-Council took note of the same and, acknowledging failure of conciliation efforts, unanimously decided to refer the dispute to arbitration under Section 18(3) of the Act. Accordingly, on 27.05.2022 (Annexure A-19), the Council referred the matter to an arbitrator from the panel notified on 18.09.2015 by the State Government. Learned Arbitrator-respondent No.3 issued notice to the petitioner to appear before him on 25.07.2022. Petitioner, vide letter dated 29.06.2022, requested for changing the date. Petitioner's request was denied by the learned Arbitrator vide letter dated 03.07.2022. Petitioner again requested for another date vide letter dated 26.07.2022. Petitioner was proceeded against ex parte by the learned Arbitrator, and the ex parte award qua the petitioner was passed on 29.09.2022 (Annexure A-24).

Petitioner has taken recourse to Section 34 of the Arbitration and Conciliation Act, 1996 for assailing the ex parte award dated 29.09.2022 in Arbitration Case No. 206/2022. Simultaneously, the petitioner has instituted present writ petition seeking declaration that the award dated 29.09.2022 passed by respondent No.3 is a nullity, being without jurisdiction. It has been further contended that the assumption of jurisdiction by respondent No.1-Council in referring the dispute for adjudication by respondent No.3 is bad in law. Respondent No.1-Council could not have referred the dispute for adjudication by respondent No.3-an independent arbitrator, consequently, the award passed by respondent No.3 is *void ab initio*.

2. Heard learned counsel for the parties on both sides and considered the case file.

3. Learned Senior Advocate for the petitioner has raised the following two questions of law:

- Respondent No. 2 being a medium enterprise is not covered by the definition of 'supplier' under the Act. Therefore, respondent No. 1-Council could not have entertained the dispute raised by respondent No. 2 under Section 18 of the Act.

- In any case, respondent No.1-Council, by resorting to Section 18(3) of the Act, could not have referred the matter for adjudication to an independent arbitrator, i.e. respondent No. 3. The procedure adopted by respondent No. 1-Council was contrary to the mandate of Section 18(3) of the Act.

While elaborating the above two points, it was urged that the impugned award passed by respondent No. 3 is a nullity, as the reference made by respondent No. 1 of the dispute raised by respondent No. 2 for adjudication to respondent No. 3 (learned Arbitrator) was vitiated from the very beginning.

4. Consideration

4(i) Status of respondent No. 2 vis-à-vis the provisions of the Act:

Respondent No. 2 had invoked Section 18 of the Act for resolving the dispute between respondent No. 2 and the petitioner. Section 18 falls within the ambit of Chapter V of the Act that contains Sections 15 to 25 and bears the heading **"**Delayed Payments to Micro and Small Enterprises." In terms of Section 18(1), which provides for a reference to the Micro and Small Enterprises Facilitation Council, any party to a dispute with regard to any amount due under Section 17 may make a reference to the Micro and Small Enterprises Facilitation Council. Under Section 17, the buyer is liable to pay the amount, along with interest, for any goods supplied, as provided under Section 16, to the 'Supplier'. Section 16 prescribes the date from which as also the rate at which interest is payable to the 'Supplier'. Section 15 makes the buyer liable to make payment to the 'Supplier'. Sections 15, 16, 17, and 18(1), in reverse order, read as under: -

> *"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…..*
>
> *17. Recovery of amount due.—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.*
>
> *16. Date from which and rate at which interest is payable.—Where any buyer fails to make payment of the amount to the* ***supplier,*** *as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the* ***supplier*** *or in any law for the time being in force, be liable to pay compound interest with monthly rests to the* ***supplier*** *on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.*
>
> *15. Liability of buyer to make payment.—Where any* ***supplier*** *supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day: Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.*

- The word "supplier" has been defined in Section 2(n) to mean a micro or small enterprise that has filed a memorandum with the authority referred to in sub-section (1) of Section 8. The definition reads as under: -

> *"2. Definitions.—In this Act, unless the context otherwise requires,—*
> *(n) "supplier" means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes,*
> *(i) the National Small Industries Corporation, being a company, registered under the*
> *Companies Act, 1956 (1 of 1956);*
> *(ii) the Small Industries Development Corporation of a State or a Union territory, by*
> *whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956);*
> *(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;"*

- Micro enterprise has been defined in Section 2(h) as under: -

> *"(h) "micro enterprise" means an enterprise classified as such under sub-clause (i) of clause (a) or sub-clause (i) of clause (b) of sub-section (1) of section 7;"*

- Medium enterprise has been defined in Section 2(g) as under: -

"*(g) "medium enterprise" means an enterprise classified as such under sub-clause (iii) of clause (a) or sub-clause (iii) of clause (b) of sub-section (1) of section 7;*

- Small enterprise as per Section 2(m) is an enterprise classified as such under sub-clause (ii) of clause (a) or sub-clause (ii) of clause (b) of sub-section (1) of Section 7.

In view of the definitions of micro, small and medium enterprises as contained in Section 2 of the Act, it would also be appropriate to notice the classification of such enterprises under Section 7 of the Act, the relevant portion of which reads as under: -

"7. Classification of enterprises.—(1) Notwithstanding anything contained in section 11B of the Industries (Development and Regulation) Act, 1951 (65 of 1951),the Central Government may, for the purposes of this Act, by notification and having regard to the provisions of sub-sections (4) and (5), classify any class or classes of enterprises, whether proprietorship, Hindu undivided family, association of persons, co-operative society, partnership firm, company or undertaking, by whatever name called,—

(a) in the case of the enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951),as—

(i) a micro enterprise, where the investment in plant and machinery does not exceed twentyfive lakh rupees;

(ii) a small enterprise, where the investment in plant and machinery is more than twenty-five lakh rupees but does not exceed five crore rupees; or

(iii) a medium enterprise, where the investment in plant and machinery is more than five crore rupees but does not exceed ten crore rupees;

(b) in the case of the enterprises engaged in providing or rendering of services, as—

(i) a micro enterprise, where the investment in equipment does not exceed ten lakh rupees;

(ii) a small enterprise, where the investment in equipment is more than ten lakh rupees but does not exceed two crore rupees; or

(iii) a medium enterprise, where the investment in equipment is more than two crore rupees but does not exceed five crore rupees.

Explanation 1.—For the removal of doubts, it is hereby clarified that in calculating the investment in plant and machinery, the cost of pollution control, research and development, industrial safety devices and such other items as may be specified, by notification, shall be excluded.

Explanation 2.—It is clarified that the provisions of section 29B of the Industries (Development and Regulation) Act, 1951 (65 of 1951), shall be applicable to the enterprises specified in sub-clauses (i) and (ii) of clause (a) of sub-section (1) of this section."

The above provisions of the Act leave no manner of doubt that recourse to Section 18 could have been taken by respondent No. 1 in the matter only if the supplier-respondent No.2 herein had been a micro or small enterprise, and not otherwise.

4(i)(b) Elaborating upon status of respondent No.2, during hearing of the case, it was pointed out on behalf of the petitioner that respondent No. 2 had itself projected its status as a medium enterprise before respondent No. 1-Council as also before the learned Arbitrator (respondent No. 3). The claim filed by respondent No. 2 before respondent No. 3-learned Arbitrator is available in the case file at page

99 of the paper book. Respondent No. 2 has given its status there as a medium enterprise. The certificate dated 24.02.2021 (Annexure A-25) shows the registration of respondent No. 2 as a medium enterprise. It appears that respondent No. 1-Council did not even consider it appropriate to verify the status of respondent No. 2 before entertaining respondent No.2's reference under Section 18(1) and thereafter adopting the procedure under Section 18(3) of the Act by referring the matter to the learned Arbitrator. Such verification exercise ought to have been carried out by respondent No. 1-Council before adopting the procedure under Section 18(3) of the Act in order to ascertain the eligibility of respondent No. 2 to seek adjudication of the reference under Section 18 of the Act. Be that as it may, the question of fact raised by the petitioner has now been answered by respondent No. 2 in its reply filed to the writ petition, stating that it was registered as a small enterprise between 03.05.2018 and 29.07.2019. The certificate dated 26.04.2018 has been placed on record showing respondent No. 2 to have been registered as a small enterprise.

Learned counsel for respondent No. 2 submitted that the issue raised by the said respondent related to the period when it was registered as a small enterprise.

At the cost of brevity, it again has to be reiterated & emphasized that it was the bounden duty of respondent No. 1-Council to verify the status of respondent No. 2 before taking further action upon the reference made to it by respondent No. 2 under Section 18 of the Act. Since it has now come out that respondent No. 2 was indeed a small enterprise for the period in respect of which the dispute was raised, it is held that respondent No. 2 could have invoked the provisions of Section 18 of the Act.

4(ii) Whether respondent No.1-Council was legally justified in referring the dispute raised by respondent No.2 to respondent No.3 (the learned Arbitrator).

4(ii)(a) Before proceeding further, it will be in place to reproduce Section 18: -

> *"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 it to 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."

As per Section 18(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 institution or centre for conducting conciliation, and the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply to such a dispute as if the conciliation was initiated under Part III of that Act. Where the conciliation initiated under Section 18(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 it to any institution or centre providing alternate dispute resolution services for such arbitration. Provisions of the Arbitration and Conciliation Act, 1996 shall then apply to the dispute. Thus, in terms of Section 18(3), where the conciliation is not successful and stands terminated without any settlement between the parties, the Council is empowered to either itself take up the dispute for arbitration or refer the same to any institution or centre providing alternate dispute resolution services for such arbitration.

It would also be appropriate to refer to Section 19 of the Act, which provides for setting aside such decree, award, or other order that has been made/passed either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference has been made by the Council. The said section reads as under: -

> *"19. Application for setting aside decree, award or order.—No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent. of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:*
> *Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose."*

4(ii)(b) State of Himachal Pradesh had framed Himachal Pradesh Micro and Small Enterprises Facilitation Council Rules, 2007 in exercise of powers conferred by Section 30 read with Sub-Section (3) of Section 21 of the Act. The said rules have been repealed by the Himachal Pradesh Micro and Small Enterprises Facilitation Council

Rules, 2018 notified on 16.04.2018. Rule 4 of 2018 Rules gives out the prescribed procedure to be followed by the Council in discharge of its functions. Sub Rule (ix) thereof provides for referring the dispute for arbitration to an institution. The said rule reads as under: -

> *"4. Procedure to be followed in the discharge of functions of the Council:-*
>
> *(ix) Where the conciliation is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for further action i.e. arbitration or refer it to an 'institution' for the same."*

Following Rule 2(f) of 2018 Rules defines the institution to mean any institution or centre providing alternate dispute resolution service referred to in sub-sections (2) and (3) of Section 18 of the Act: -

> *"2. Definitions: (1) In these rules, unless the context otherwise requires: -*
>
> *(f) "Institution" means any institution or centre providing alternate dispute resolution service referred to in sub-sections (2) and (3) of Section 18 of the Act."*

Under the 2007 Rules, the term "Institution" was defined under Rule 2(f) as any institution or center providing alternate dispute resolution services referred to in Sub-section (2) & (3) of Section 18 of the Act. The then-existing Rule 4(10) of the 2007 Rules provided as under for referring disputes to arbitration: -

> *"Rule - 4. Procedure to be followed in the discharge of functions of the Council.*

(10) When the conciliation mentioned in sub rule (9) above does not lead to settlement of the dispute, the Council shall either itself act as an Arbitrator for final settlement of the dispute or refer it to an institute for arbitration, in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The supplier and the buyer may, either in person or through their legal representatives, present his case before the Council or the institute during the arbitral proceedings. The institute shall submit its report to the Council within such time as the Council may stipulate.

As noticed earlier, the 2007 Rules stand repealed by the 2018 Rules, as under: -

"8. Repeal and Savings: - (1) The Himachal Pradesh Micro and Small Enterprises Facilitation Council Rules, 2007 is hereby repealed.
(2) Notwithstanding such repeal any action taken or anything done under the rules so repealed shall be deemed to have been taken or done under the corresponding provisions of these rules."

Thus, 2018 Rules also provide for referring the dispute by the Council to an institution or centre providing alternate resolution service, and not to an individual arbitrator.

4(ii)(c) At this juncture, it would also be relevant to refer to Section 11 of the Arbitration and Conciliation Act, 1996: -

"11. Appointment of Arbitrators –(1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.
(2) Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.
(3) Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

(3A) The Supreme Court and the High Court shall have the power to designate, arbitral institutions, from time to time, which have been graded by the Council under section 43-I, for the purposes of this Act:

Provided that in respect of those High Court jurisdictions, where no graded arbitral institution are available, then, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institution and any reference to the arbitrator shall be deemed to be an arbitral institution for the purposes of this section and the arbitrator appointed by a party shall be entitled to such fee at the rate as specified in the Fourth Schedule:

Provided further that the Chief Justice of the concerned High Court may, from time to time, review the panel of arbitrators.

(4) If the appointment procedure in sub-section (3) applies and—

(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be;

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made on an application of the party in accordance with the provisions contained in sub-section (4);

(6) Where, under an appointment procedure agreed upon by the parties,-

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(6A) ……..

(6B) The designation of any person or institution by the Supreme Court or, as the case may be, the High Court, for the purposes of this section shall not be regarded as a delegation of judicial power by the Supreme Court or the High Court.

(7) ……..

(8) The arbitral institution referred to in sub-sections (4), (5) and (6), before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of sub-section (1) of section 12, and have due regard to—

(a) any qualifications required for the arbitrator by the agreement of the parties; and

(b) the contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, the arbitral institution designated by the Supreme Court may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

10 ……..

(11) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to different arbitral institutions, the arbitral institution to which the request has been first made under the relevant sub-section shall be competent to appoint.

(12) Where the matter referred to in sub-sections (4), (5), (6) and (8) arise in an international commercial arbitration or any other

arbitration, the reference to the arbitral institution in those sub-sections shall be construed as a reference to the arbitral institution designated under subsection (3A).

(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the arbitral institution within a period of thirty days from the date of service of notice on the opposite party.

(14) The arbitral institution shall determine the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal subject to the rates specified in the Fourth Schedule.

Explanation.-- For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitrations (other than international commercial arbitration) where parties have agreed for determination of fees as per the rules of an arbitral institution."

As per Section 11(3A), the Hon'ble Supreme Court and the High Court have the power to designate, arbitral institutions, from time to time which have been graded by the Council under section 43-I, for the purposes of this Act. Proviso thereto is to the effect that in respect of those High Court jurisdictions, where no graded arbitral institution is available, then, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institution and any reference to the arbitrator shall be deemed to be an arbitral institution for the purposes of this section.

Section 2(1)(ca) of the Arbitration & Conciliation Act defines 'Arbitral Institution' as an institution designated by the Supreme Court or a High Court under the Arbitration & Conciliation Act, 1996, and reads as under;-

"2. Definitions-(1) In this Part, unless the context otherwise requires.

(ca) 'Arbitral Institution' means an arbitral institution designated by the Supreme Court or a High Court under this Act."

Sections 43A and 43N pertain to the Arbitration Council of India. Section 43-I provides the general norms for the grading of arbitral institutions by the Arbitration Council of India. During the hearing of the case, it was apprised that the said Council is not in existence as on date.

4(ii)(d) Provisions of the H.P. Micro, Small and Medium Enterprises Development Act, 2006, the Himachal Pradesh Micro and Small Enterprises Facilitation Council Rules, 2018, and the Arbitration and Conciliation Act, 1996 (as extracted above) unequivocally and unambiguously provide that, in case conciliation between the parties is not possible in terms of Section 18(2) of the Act, respondent No.1-Council is either to decide the dispute for arbitration itself or refer it to any institution or centre providing alternative dispute resolution services for such arbitration.

There is no provision either under the Act or the applicable Rules for referring the dispute for arbitration to an individual arbitrator. At this stage, it would also be in place to refer to ***Bharat Heavy Electrical Ltd. vs. The Micro and Small Enterprises Facilitations***

Centre[2]***,*** holding there being no scope for non-institutional arbitration under Section 18(3) of the Act. Relevant pars from the judgment reads as under: -

> *"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.*
>
> *21. If one examines the scheme of the provision of Section 15 to 23 of the Act, it is apparent that the scheme is to provide a statutory framework for Micro and Small Enterprises to expeditiously recover the amounts due for supplies made by them. This is in conformity with the object of the Act to minimise the incidence of sickness in Small and Medium Enterprises and to enhance their competitiveness. It is understood that the Small and Medium Enterprises do not command a significant bargaining power and -as indicated in the statement of object and reasons of the Act - the object of the Act is, inter alia, to extend the policy support and provide appropriate legal framework for the sector to facilitate its growth and development. It is, apparently, for this reason that Section 18 (3) does not contemplate an arbitration to be conducted by an arbitrator which is to be appointed by either party, but expressly provides that the same would be conducted by MSEFC or by any institution or a centre providing alternate dispute resolution services.*
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> *28. This Court - for the reasons as stated hereinbefore - is unable to subscribe to the view that there is no inconsistency between the arbitration agreement and section 18(3) of the Act; Section 18(3) contemplates only an institutional arbitration and not an ad hoc arbitration. In the present case, the provision that only BHEL would appoint the arbitrator, plainly, runs contrary to the mechanism under section 18(3) of the Act. Further, in terms of Section 19 of the*

[2] 2017 SCC Online Del 10604

Act, the award rendered pursuant to an arbitration under Section 18(3) of the Act cannot be assailed by the party (other than the supplier), without depositing seventy-five percent of the amount awarded. Concededly, Section 19 would be inapplicable to an award, which is rendered pursuant to an arbitration that is not conducted in terms of Section 18(3) of the Act."

In ***Paper & Board Convertors Thru' Partner Rajeevv Agrawal Vs. U.P. State Micro & Small Enterprises and Ors***[3]. the Allahabad High Court held as under: -

"13. Certain salient aspects of Section 18 would merit emphasis. Sub-section (1) of Section 18 provides for a reference to the Micro and Small Enterprises Facilitation Council notwithstanding anything contained in any other law for the time being in force, by any party to a dispute, with regard to any amount due under Section 17. Consequently, what Section 18 (1) does, is to stipulate a statutory reference to the Facilitation Council for the resolution of disputes. Under sub-section (2), on receipt of a reference, the Council shall either conduct a conciliation in the matter itself or ***seek assistance of any institution or centre providing alternate dispute resolution services****. Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 are to apply to such a dispute. Sub-section (3) provides for the consequences if the conciliation is not successful. Once the conciliation proceeding is terminated without any settlement, the Council has one of two courses of action open. The Council may either itself take up the dispute for arbitration or refer the dispute to an institution or centre providing alternate dispute resolution services for such arbitration. Thereupon the provisions of the Arbitration and Conciliation Act, 1996 apply as if the arbitration was in accordance with the provisions of Section 7 (1) of the Act of 1996. Sub-section (3) of Section 18, therefore, contains a statutory reference to arbitration. This is not dependent on the existence of an arbitration agreement in the contract between the parties."*

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[3] 2014 SCC Online ALL 5825

In Silpi Industries & Ors. Vs. Kerala State Road Transport Corporation & Anr.[4] the Hon'ble Apex Court held as under: -

> *"33. **From a reading of Section 18(3) of the 2006 Act it is clear that when the conciliation initiated under sub-section (2) of Section 18 of the said Act is not successful, the Council shall either itself take up the dispute for arbitration or refer to any institution for arbitration**. Further Section 18(3) of the said Act also makes it clear that the provisions of 1996 Act are made applicable as if there is an agreement between the parties under sub-section (1) of Section 7 of the 1996 Act. Section 23 of the 1996 Act deals with the statement of claim and defence. Section 23(2A), which gives a right to respondent to submit a counter claim or plead set-off with regard to claims within the scope of the arbitration agreement, is brought into Statute by Amending Act 3 of 2016. If we look at the Statement of Objects and Reasons of the Amending Act, same is also enacted to provide for speedy disposal of cases relating to arbitration with least court intervention. Clause 11 of the Bill, by which sub-section (2A) was proposed to be inserted, states that sub-section (2A) was intended to give an opportunity to the respondent, in support of his case, to submit counter-claim or a set-off if such counter- claim or set-off falls within the scope of arbitration agreement. When Section 18(3) makes it clear that in the event of failure by the Council under Section 18(2) if proceedings are initiated under Section 18(3) of the 1996 Act, the provisions of 1996 Act are not only made applicable but specific mention is made to the effect as if the arbitration was in pursuance to an arbitration agreement referred to in sub-section (1) of Section 7 of the 1996 Act. When there is a provision for filing counter-claim and set-off which is expressly inserted in Section 23 of the 1996 Act, there is no reason for curtailing the right of the respondent for making counter-claim or set-off in proceedings before the Facilitation Council.*
>
> *37. The Act of 2006 contemplates a statutory arbitration when conciliation fails. A party which is covered by the provisions of 2006 Act allows a party to apply to the Council constituted under the Act to first conciliate and then arbitrate on the dispute between it and other parties. There are fundamental differences in the settlement mechanism under the 2006 Act and the 1996 Act. The first difference is, the Council constituted under the 2006 Act to undertake mandatory conciliation before the arbitration which is not so under the 1996 Act. Secondly, in the event of failure of conciliation under the 2006 Act, the Council or C.A.Nos.1570-1578 of 2021 etc. the centre or institution is identified by it for arbitration. The 1996 Act allows resolution of disputes by agreed forum. The third difference is that, in the event of award in favour of seller and if the same is to be*

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[4] (2021) 18 SCC 790 decided a/w connected matter

challenged, there is a condition for pre- deposit of 75% of the amount awarded. Such is not the case in the 1996 Act. When such beneficial provisions are there in the special enactment, such benefits cannot be denied on the ground that counter-claim is not maintainable before the Council. In any case, whenever buyer wish to avoid the jurisdiction of the Council, the buyer can do on the spacious plea of counter-claim, without responding to the claims of the seller. When the provisions of Sections 15 to 23 are given overriding effect under Section 24 of the Act and further the 2006 Act is a beneficial legislation, we are of the view that even the buyer, if any claim is there, can very well subject to the jurisdiction before the Council and make its claim/ counter claim as otherwise it will defeat the very objects of the Act which is a beneficial legislation to micro, small and medium enterprises. Even in cases where there is no agreement for resolution of disputes by way of arbitration, if the seller is a party covered by Micro, Small and Medium Enterprises C.A.Nos.1570-1578 of 2021 etc. Development Act, 2006, if such party approaches the Council for resolution of dispute, other party may approach the civil court or any other forum making claims on the same issue. If two parallel proceedings are allowed, it may result in conflicting findings."

4(iii) Despite the opportunity granted, respondent No.1 has not filed its response to the writ petition. Following order was passed in this writ petition on 19.05.2026 : -

"Learned Senior Advocate for the petitioners, while *pointing out Annexure P-19 i.e. the reference made by respondent No.1 referring the dispute raised by respondent No.2 to the learned Arbitrator, flags out two issues at this stage. Firstly, respondent No.1, being the Himachal Pradesh Micro & Small Enterprises Facilitation Council, could not have referred the dispute raised by respondent No.2, a Medium Enterprise, under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006. Secondly, the reference so made by respondent No.1 was in breach of the mandate of Section 18(3), in terms of which, according to learned Senior Advocate for the petitioners, in case, conciliation between the parties under Section 18(2) is not successful, the Council is either to itself take up the dispute for arbitration or refer it to any institution or centre providing alternative dispute resolution services for such arbitration. Learned Senior Advocate further submits that Section 18(3) does not provide for referring the dispute to an individual Arbitrator.*

Learned Additional Advocate General representing respondent No.1 to have instructions in the matter.

*List on **23.06.2026**."*

Despite above specific order, respondent No.1 has not filed any response. Learned Additional Advocate General only placed on record instructions dated 20.06.2026 conveying that respondent No.1 does not intend to file any reply to the writ petition.

Learned counsel for respondent No.2 urges that reference of the dispute by respondent No.1 to respondent No.3-an individual arbitrator, was in terms of the notification dated 18.09.2015 issued by the State Government empanelling the arbitrators. Firstly, it is to be noticed that the empanelment of an arbitrator by the State Government would not make such arbitrators fall within the definition of the word 'Institution' or 'centre' of arbitration' as assigned in the Act and the Rules framed thereunder. Even if empanelled by the State Government, the arbitrator so empanelled would remain an individual arbitrator. There is no such power with respondent No.1-Council under the Micro, Small and Medium Enterprises Development Rules, 2018, as provided under Section 11 of the Arbitration and Conciliation Act, to refer the dispute for arbitration to an individual arbitrator and then treat it as an institutional arbitration so as to fall within the definition of Section 2(1)(ca) of the Arbitration and Conciliation Act. As per Section 18(3) of the Act, the only course available to respondent No.1-Council, in case of non-resolution of the dispute between the concerned parties, is either to decide the dispute by arbitration itself or to refer the same to any institution or centre providing alternate dispute resolution services for such arbitration. Further, the notification dated 18.09.2015 could not have been resorted to by respondent No.1 in any case, as the State Government, on 16.04.2018 had notified the Himachal Pradesh Micro and Small Enterprises Facilitation Council Rules, 2018, thereby repealing the 2007 Rules under which the notification dated 18.09.2015 had been issued.

5. For the foregoing reasons, this writ petition is allowed. The reference made by respondent No.1-Council on 27.05.2022 (Annexure A-19) to respondent No.3 is quashed and set aside. Consequently, all further proceedings conducted by respondent No.3, culminating in the ex parte award dated 29.09.2022 (Annexure A-24), are also set aside. The ex parte award dated 29.09.2022 is also set aside. The following directions are also issued in the matter: -

- Before entertaining any dispute referred to it under Section 18 of the Act, respondent No.1-Council shall first verify whether the aggrieved party raising the dispute falls within the ambit of the definition of **'**supplier**'** in terms of the provisions of the Micro, Small and Medium Enterprises Development Act, 2006.
- On receipt of a reference under Section 18(1), respondent No.1-Council shall either itself conduct conciliation in the matter or

seek the assistance of any institution or centre providing alternate dispute resolution services for such conciliation.

- In case the conciliation initiated under Section 18(2) is not successful, respondent No.1-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.
- Respondent No.1-Council shall not refer any dispute under Section 18 of the Act to any individual arbitrator.

The Office of the learned Advocate General shall communicate this order to respondent No.1-Council.

With above directions/observations, the instant petition to stand disposed of. Pending application(s), if any, also stand disposed of accordingly.

Arb. Case No. 206/2022

In view of the above order passed in CWP No. 8278/2022, whereby the ex parte award dated 29.09.2022, objected to in the present arbitration case, has already been set aside, the objections preferred by the petitioner have been rendered infructuous. Accordingly, the instant case to stand disposed of. Pending application(s), if any, also stand disposed of accordingly.

Jyotsna Rewal Dua
Judge

07th July, 2026 **(rohit)**