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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 05.11.2026

\# **CNR No. DLHC010549832025**

\+ ARB.P. 1182/2025

M/S I HUB EXPRESS PRIVATE LIMITED.
THROUGH ITS DIRECTOR .....Petitioner

Through: Mr. Piyush Sanghi, Ms. Khushbu Sahu, Mr. Nikhil Singh, Ms. Sana Parveen, Mr. Ashish Mishra, Mr. Raahithya Raj Mishra, Mr. Jayant Yadav, Mr. Sharmishta Solanki, Mr. Aditya Singh Raghuvanshi and Ms. Arshiya Goel, Advocates. [M:-9899699242]

versus

M/S INSTAKART SERVICES
PRIVATE LIMITED .....Respondent

Through: Appearance not given.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

PRATEEK JALAN, J. (ORAL)

1. By way of this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 [hereinafter, "the Arbitration Act"], the petitioner seeks appointment of an arbitrator to adjudicate the disputes which have arisen between the parties in respect of supply of logistic services by the petitioner to the respondent.

2. I have heard learned counsel for the parties.

A. BACKGROUND OF THE CASE

3. The petitioner claims to be a micro enterprise within the meaning

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of The Micro, Small and Medium Enterprises Development Act, 2006 [hereinafter, "the MSMED Act"]. The document evidencing the petitioner's registration under the MSMED Act has been filed as Document No. 2 to the petition. Alongwith the petition, the petitioner has filed copies of certain "*Addendum Agreements*", which referred to a "*Principal Agreement*" dated 30.08.2019. The aforesaid agreements contained terms and conditions, upon which the petitioner claims to have provided logistics services to the respondent.

4. The petitioner raised various invoices upon the respondent, which, according to the petitioner, remain unpaid. It therefore filed a reference before the Delhi Micro and Small Enterprises Facilitation Council [hereinafter, "the Facilitation Council"] under Section 18 of the MSMED Act. It is stated in the petition that the Facilitation Council has, after the first hearing on 20.12.2023, neither scheduled a mediation session nor appointed an arbitrator till date. The petitioner therefore seeks appointment of an arbitrator by this Court.

5. Learned counsel for the parties have joined issue on two points: a) the jurisdiction of this Court, and b) the requirement of conciliation proceedings under the MSMED Act, prior to a reference to arbitration.

B. JURISDICTION OF THIS COURT

6. With regard to the jurisdiction of this Court, learned counsel for the respondent submits that the Principal Agreement dated 30.08.2019 has deliberately been suppressed from this petition, on account of the fact that it contains a contractual provision for arbitration [Clause 11.1], which provides for the arbitration proceedings to be held at Bangalore. Clause 11.2 also vests exclusive jurisdiction upon the Courts in Bangalore. She

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submits that, in these circumstances, the present petition has wrongly been filed in this Court.

7. Learned counsel for the petitioner, however, submits that the petitioner seeks arbitration under Section 18 of the MSMED Act, which overrides the contractual arbitration provision, as held by the Supreme Court in *Gujarat State Civil Supplies Corporation Limited v. Mahakali Foods Private Limited (Unit 2) and Another*[1], and *Harcharan Dass Gupta v. Union of India*[2].

8. Section 18 of the MSMED Act reads as follows:

> "***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 disputes 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***

[1] (2023) 6 SCC 401 [hereinafter, "*Mahakali*"].
[2] 2025 SCC OnLine SC 1111 [hereinafter, "*Harcharan Dass Gupta*"].

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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."[3]

9. In *Mahakali*, the Supreme Court held that the arbitration provision in the MSMED Act would prevail over contractual provisions for arbitration. Reference in this connection may be made to paragraphs 44, 46, 47 and 48 of the judgment, which read as follows:

> *"**44.** The submissions made on behalf of the counsel for the buyers that a conscious omission of the word "agreement" in sub-section (1) of Section 18, which otherwise finds mention in Section 16 of the MSMED Act, 2006 implies that the arbitration agreement independently entered into between the parties as contemplated under Section 7 of the Arbitration Act, 1996 was not intended to be superseded by the provisions contained under Section 18 of the MSMED Act, 2006 also cannot be accepted. A private agreement between the parties cannot obliterate the statutory provisions.* ***Once the statutory mechanism under sub-section (1) of Section 18 is triggered by any party, it would override any other agreement independently entered into between the parties, in view of the non obstante clauses contained in sub-sections (1) and (4) of Section 18****. The provisions of Sections 15 to 23 have also overriding effect as contemplated in Section 24 of the MSMED Act, 2006 when anything inconsistent is contained in any other law for the time being in force. It cannot be gainsaid that while interpretating a statute, if two interpretations are possible, the one which enhances the object of the Act should be preferred than the one which would frustrate the object of the Act. If submission made by the learned counsel for the buyers that the party to a dispute covered under the MSMED Act, 2006 cannot avail the remedy available under Section 18(1) of the MSMED Act, 2006 when an independent arbitration agreement between the parties exists is accepted, the very purpose of enacting the MSMED Act, 2006 would get frustrated."*
>
> *xxx xxx xxx*
>
> ***46.*** ***The submission therefore that an independent arbitration agreement entered into between the parties under the Arbitration Act, 1996 would prevail over the statutory provisions of the MSMED Act, 2006 cannot be countenanced****. As such, sub-section (1) of Section 18 of the MSMED Act, 2006 is an enabling provision which gives the party*

[3] Emphasis supplied.

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

47. *The aforesaid legal position also dispels the arguments advanced on behalf of the counsel for the buyers that the Facilitation Council having acted as a Conciliator under Section 18(2) of the MSMED Act, 2006 itself cannot take up the dispute for arbitration and act as an arbitrator. Though it is true that Section 80 of the Arbitration Act, 1996 contains a bar that the Conciliator shall not act as an arbitrator in any arbitral proceedings in respect of a dispute that is subject of conciliation proceedings, the said bar stands superseded by the provisions contained in Section 18 read with Section 24 of the MSMED Act, 2006. As held earlier, the provisions contained in Chapter V of the MSMEDAct, 2006 have an effect overriding the provisions of the Arbitration Act, 1996. The provisions of the Arbitration Act, 1996 would apply to the proceedings conducted by the Facilitation Council only after the process of conciliation initiated by the Council under Section 18(2) fails and the Council either itself takes up the dispute for arbitration or refers to it to any institute or centre for such arbitration as contemplated under Section 18(3) of the MSMED Act, 2006.*

48. *When the Facilitation Council or the institution or the centre acts as an arbitrator, it shall have all powers to decide the disputes referred to it as if such arbitration was in pursuance of the arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996 and then all the trappings of the Arbitration Act, 1996 would apply to such arbitration. It is needless to say that such Facilitation Council/institution/centre acting as an Arbitral Tribunal would also be competent to rule on its own jurisdiction like any other Arbitral Tribunal appointed under the Arbitration Act, 1996 would have, as contemplated in Section 16 thereof."*[4]

10. In *Harcharan Dass Gupta*, these observations were applied to the

[4] Emphasis supplied

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context of the seat of arbitration, as follows:

> "***10. <u>The issue relating to 'seat of arbitration' in all cases covered under the MSMED Act is settled in view of the pronouncement of this Court in Mahakali</u>.*** *This position is also true by virtue of the specific provision of the MSMED Act, that is,* ***<u>sub-Section (4) of Section 18, which vests jurisdiction for arbitration in the Facilitation Council where the supplier is located</u>****:*
>
> > *"(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."*
>
> ***11.*** *There is no dispute about the fact that the appellant-MSME is located in Delhi and as such the Facilitation Council, (South-West), GNCTD, Old Terminal Tax Building, Kapashera, New Delhi-110037. In exercise of its power, the said Council entrusted the conduct of arbitration through the institutional aegis of the Delhi Arbitration Centre. The conclusions drawn by us are the logical consequence of the statutory regime as also declared by this Court in* ***Mahakali****."*[5]

11. I am of the view that the petitioner, in the interest of full disclosure, ought to have filed the Principal Agreement dated 30.08.2019 alongwith the petition, particularly when it filed the Addendum Agreements thereto. The conduct of the petitioner, in failing to do so, is deprecated.

12. However, having regard to the aforesaid judgments, I am of the view that the arbitration clause contained in the Principal Agreement dated 30.08.2019 would be overridden by Section 18 of the MSMED Act, which specifically vests jurisdiction in the Facilitation Council or any institution or centre providing alternative dispute resolution services, which have jurisdiction over the supplier's place of business.

13. Consequently, the petitioner being registered in New Delhi, I am of

[5] Emphasis supplied.

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the view that the petitioner has rightly approached this Court.

C. THE REQUIREMENT OF CONCILIATION PROCEEDINGS

14. The orders in the present case record that the respondent entered appearance on 13.10.2025, when the following order was passed:

> "*1. Learned counsels for the parties jointly submit that parties are willing to explore the possibility of amicable settlement of their dispute. Counsel for the Respondent submits that since the Petitioner is a Micro, Small and Medium Enterprise, it may take recourse to mediation as per procedure prescribed in Section 18 of the MSME Act, 2006.*
> *2.* ***Without prejudice to the rights and contentions of the parties in this petition, it is left open to them to take recourse to mediation as per prescribed procedure under the MSME Act, 2006 or alternatively, attempt settlement amongst themselves****.*
> *3. List on 02.12.2025.*"[6]

15. It appears that the parties did not take recourse either to mediation under the MSMED Act, or to settle the disputes amongst themselves. On the next date of hearing, i.e. 02.12.2025, the respondent again sought time to explore the possibility of an amicable settlement, and a Senior Counsel was requested to mediate between them. It appears that the aforesaid effort was also fruitless, but *vide* order dated 08.01.2026, they were again referred to mediation before the Mediation Centre of this Court. The said mediation has resulted in a Report dated 16.02.2026 stating that the mediation ended as "Not-Settled".

16. Learned counsel for the respondent, however, submits that notwithstanding the above efforts at mediation having failed, the present petition under Section 11 of the Arbitration Act is pre-mature and the parties are required to be referred to conciliation under Section 18(2) of

[6] Emphasis supplied.

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the MSMED Act.

17. I am unable to accept this contention. Prior to filing of the present petition, the petitioner had filed a reference before the Facilitation Council as far back as on 07.09.2023. As the proceedings before the Facilitation Council were not taken up, it approached this Court in the year 2025. The judgment of a coordinate Bench in *M/s Vallabh Corporation v. SMS India Pvt Ltd* [ARB.P. 1119/2024, decided on 17.03.2025] [hereinafter, "*Vallabh Corporation*"] deals with a similar situation in the following terms:

> "***18.*** *The provisions of 1996 Act are not inconsistent with MSME Act as there is no other mechanism for appointment of an Arbitrator except under Section 18 of MSME Act. Relying on section 11(6) of 1996 Act, it says that if any institution fails to appoint any arbitrator, as the case may be, the Supreme Court or High Court will appoint the same.*
> ***19. Accordingly, the petitioner, in the present case, wrote to MSME Council on 16.05.2024 seeking reference to mediation under the MSME Act as per the provisions of Section 18 of 1996 Act. The petitioner moved this Court on 16.07.2024, till that period, there was no response by the MSME Facilitation Council. Even more, till today, there has been no response by the Facilitation Council****.*
> ***20. In addition, the parties have undertaken the exercise of mediation vide Order dated 27.01.2025 before the Delhi High Court Mediation and Conciliation Centre and the same has failed****.*
> ***21. I am of the view that the MSME Facilitation Council did not initiate the process of mediation under section 18 of MSME Act and hence, the present petition filed under section 11(6) of 1996 Act needs to be allowed****.*
> ***22.*** *In* ***Microvision Technologies (P) Ltd. (supra),*** *the Bombay High Court has observed as under:—*
>
> > *"32. Another factor to be considered is that the Application made by the Petitioner was under Section 11(6)(c) of the Arbitration Act for referring the dispute to arbitration.....*
> > *33. Thus, an Application under Section 11(6) is made when the institution as in the present case, the Facilitation Council fails to perform any function entrusted to it under the procedure contemplated in Section 18(3) of the (MSMED Act) and pursuant to which appointment is made for referring the disputes to arbitration. This Court in the said Order dated*

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15th May, 2020 has treated the application as if it was made under Section 11(5) and not under Section 11(6) of the Arbitration Act. Thus, this Court in the said Order has overlooked the relevant provision of law.

……. ……. …….

35. The said provision expressly provides for the Facilitation Council in the event conciliation is not successful and stands terminated without any settlement between the parties to refer to any institution or centre providing alternate dispute resolution services for such arbitration and then the provisions of Arbitration Act shall apply to the disputes as if the arbitration was in pursuance of an arbitration agreement referred to in Sub Section 1 of Section 7 of that Act. Upon the failure on the part of the Facilitation Council to refer the dispute to arbitration, an Application may be made under Section 11(6)(c) and accordingly in the present case the application was made for appointment of an Arbitrator. Thus, Section 18 of the MSMED Act has to be read harmoniously with Section 11 of the Arbitration Act.

(Emphasis added)"[7]

18. As in *Vallabh Corporation*, in the present case also, the Facilitation Council did not act for a considerable period before this Court was approached under Section 11 of the Arbitration Act. Further, in the present case also, as in *Vallabh Corporation*, efforts have been made, after the filing of the petition under Section 11 of the Arbitration Act, for amicable settlement. Neither party took advantage of the liberty granted *vide* order dated 13.10.2025 and two attempts at mediation have thereafter failed.

19. In these circumstances, I am of the view that the disputes between the parties are now required to be referred to arbitration.

D. CONCLUSION

20. It may be noted that arbitration under MSMED Act in Delhi are

[7] Emphasis supplied.

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referred, *inter alia*, to the Delhi International Arbitration Centre [hereinafter, "DIAC"]. In view of the fact that the present arbitration is also sought in terms of the provisions of the MSMED Act, learned counsel for the parties agree that the reference may be made under the aegis of DIAC.

21. Having regard to the aforesaid, the petition is disposed of, with the following directions:

a. Disputes between the parties under the Agreement are referred to arbitration to be held under the aegis of the DIAC.
b. DIAC is requested to nominate an Arbitrator from its panel.
c. The arbitration will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.
d. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Arbitration Act, prior to entering upon the reference.

22. The petition, alongwith pending applications, if any, stands disposed of in terms of the above.

23. Needless to say, all rights and contentions of the parties, including as to the arbitrability and maintainability of the claims and on merits, are left open for adjudication by the learned Arbitrator.

PRATEEK JALAN, J

NOVEMBER 5, 2026
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