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

\+ LPA 492/2025, CM APPL. 46777/2025, CM APPL. 46778/2025, CM APPL. 46779/2025 & CM APPL. 46780/2025

MDD MEDICAL SYSTEMS (INDIA) PVT LTD .....Appellant

Through: Mr. Animesh Kumar, Mr. Nishant Kumar, Ms. Krishna Saraff, Dr. Sumit Kumar, Ms. Aprajita, Ms. Palak Joshi and Mr. Shikhar Khanna, Advocates.

versus

DELHI INTERNATIONAL ARBITRATION CENTRE & ORS. .....Respondents

Through: Mr. Tushar Sannu, Mr. Aman Kumar and Ms. Ishika Jain, Advocates for R-2.

Mr. Shreesh Chadha, Mr Aman Singh Bakhshi, Mr. Divjot Singh Bhatia, Mr. Shaurya Agarwal and Mr. Vidhit Verma, Advocates for R-3.

Mr. Farman Ali, Senior Panel Counsel with Ms. Laavanya Kaushik, GP, Ms. Usha Jamwal and Ms. Khyaati Bansal, Advocates for UOI.

(42)

\+ LPA 493/2025, CM APPL. 46783/2025, CM APPL. 46784/2025, CM APPL. 46785/2025 & CM APPL. 46786/2025

LSR MEDICAL PVT LTD .....Appellant

Through: Mr. Animesh Kumar, Mr. Nishant Kumar, Ms. Krishna Saraff, Dr. Sumit Kumar, Ms. Aprajita, Ms. Palak Joshi and Mr. Shikhar Khanna, Advocates.

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.....Respondents

Through: Mr. Tushar Sannu, Mr. Aman Kumar and Ms. Ishika Jain, Advocates for R-2.
Mr. Shreesh Chadha, Mr Aman Singh Bakhshi, Mr. Divjot Singh Bhatia, Mr. Shaurya Agarwal and Mr. Vidhit Verma, Advocates for R-3.
Mr. Farman Ali, Senior Panel Counsel with Ms. Laavanya Kaushik, GP, Ms. Usha Jamwal and Ms. Khyaati Bansal, Advocates for UOI.

% **Date of Decision: 01.08.2025**

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J: (ORAL)

1. The present Letters Patent Appeals have been filed by the appellants challenging the order dated 25.04.2025 passed by the learned Single Judge in W.P.(C) 10850/2019 & W.P.(C) 10859/2019 titled *"MDD Medical Systems (India) Pvt. Ltd. vs. Delhi International Arbitration Centre & Ors."*, and *"LSR Medical Pvt Ltd vs. Delhi International Arbitration Centre & Ors."*, whereby the learned Single Judge dismissed the petitions holding that the appellants may raise all questions as to the jurisdiction of the Arbitral Tribunal or the maintainability of the proceedings before the

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Arbitral Tribunal under section 16 of the Arbitration & Conciliation Act, 1996, which could adjudicate upon the same as a preliminary issue.

2. We are not noting the facts already recorded by the learned Single Judge and shall refer to only such facts as are germane to the present appeals.

3. As per the appellants, the respondent no.3 approached the respondent no.2/Micro and Small Enterprises Facilitation Council (hereinafter referred to as *"MSEFC"*) under section 18(3) of Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as *"MSMED Act"*). The respondent no.2/MSEFC closed the conciliation proceedings *vide* reference letters dated 13.06.2018 and 21.06.2018 and referred the dispute to the respondent no.1/Delhi International Arbitration Centre (hereinafter referred to as *"DIAC"*). The DIAC issued letters dated 10.09.2018 and 03.10.2018 in the case of the appellant/MDD Medical systems and letters dated 28.07.2018 and 19.09.2018 in the case of the petitioner/LSR Medical Pvt Ltd to respondent no.3 with a direction to file the Statement of Claim (hereinafter referred to as *"SOC"*), which the respondent no.3 failed to do, despite reminder letters sent by the DIAC on 03.10.2018.

4. Consequently, the DIAC closed both the arbitration proceedings *vide* letter dated 22.10.2018 and 27.10.2018 in the matter due to non-filing of the SOC. Thereafter, on 30.07.2019 and 03.08.2018, the appellants were informed that respondent no.3 has filed its SOC and DIAC directed the appellants to file their Statement of Defence (hereinafter referred to as *"SOD"*).

5. Aggrieved by the said communication, the appellants filed the underlying writ petition seeking to quash the communications dated

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30.07.2019 and 03.08.2019 issued by the DIAC. These writ petitions were disposed of by the learned Single Judge relegating the appellants to approach Arbitral Tribunal under section 16 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as *"A&C Act"*). Assailing the said judgement, the instant appeals have been preferred.

6. Learned counsel for the appellants submits that the moot questions that require consideration by this Court are twofold: i) Whether the DIAC has power to revive the reference given by MSEFC after closure or not? ii) Whether the question of maintainability of proceedings on the ground of procedural lapses by the DIAC can be looked into by the Arbitrator under section 16 of the A&C Act ?

7. Learned counsel for the appellants submits that the reference to DIAC was made under section 18 of the MSMED Act and section 18(5) stipulates for completion of every reference made under this section within a period of 90 days of reference. Consequently, learned counsel submits that the mandate given to DIAC by MSEFC stood terminated *vide* the aforesaid letters dated 22.01.2018 and 27.10.2018 and revival of such proceedings after over nine months without any fresh reference is completely against the provisions of MSMED Act and without any authority of law.

8. Learned counsel for the appellants draws attention of this Court to section 25 of the A&C Act to argue that the mandate of Arbitral Tribunal also stood terminated due to non-filing of SOC by the respondent no.2. He contends that even if a belated SOC can be accepted as per section 25 of the A&C Act, sufficient cause was never shown by the respondent no.3 for not filing the SOC. Moreover, he contends that the DIAC did not have the jurisdiction to revive the proceedings automatically without any fresh

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request and the same should have been adjudicated by the Arbitral Tribunal, however, no such request was made.

9. We have heard the learned counsel appearing for the appellants and perused the impugned order.

10. Learned counsel for the appellants was at pains to contend that section 18(5) of the MSMED Act mandates that a reference made under the said Act ought to be completed within a period of 90 days of the reference. Since the same stood terminated by the letters dated 21.02.2018 and 27.02.2018, the question of revival of the closed proceedings that too without a fresh reference is contrary to the provisions of MSMED Act and is *non-est* in law. We are unable to appreciate the said argument for the reason that the period stipulated in section 18(5) of the MSMED Act only refers to completion of the reference within 90 days and not the arbitral proceedings. It is apparent that the appellants have misinterpreted and misconstrued the provisions of the said Act. Broadly, section 18 of the MSMED Act is in respect of, and the procedure to be followed while referring to a dispute. Nothing more can or ought to be read into such a provision else, such overarching interpretation would do violence to the said provision.

11. Moreover, learned Single Judge has rightly observed that though section 18(5) prescribes a timeline, it does not lay down any consequences of its breach and, therefore, the timeline prescribed is directory and not mandatory. Learned Single Judge has, and rightly so, contrasted the provisions of section 18(5) of the MSMED Act with section 29A of the A&C Act and concluded that since clear consequences of non-adherence to the timelines prescribed in the A&C Act are stipulated i.e. termination of the mandate of the arbitrator, the non-specification of the consequences of

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violation of provisions of section 18 of the MSMED Act, would render it directory. We concur with such reasoning. That apart, there are a number of Acts like The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Industrial Disputes Act, 1947 etc., where certain timelines are provided for certain procedures prescribed therein without consequences and those have been held to be directory. [See: ***C. Bright vs. The District Collector & Ors.: (2021) 2 SCC 392*** and ***Remington Rand of India Ltd. vs. Workmen: AIR 1968 SC 224***]. The relevant paragraph of ***Remington Rand of India Ltd.*** *(supra)* is extracted hereunder:-

> ***"3.*** *Mr Gokhale also referred us to the case of State of Uttar Pradesh v. Babu Ram Upadhya [(1961) 2 SCR 679 @710] where there is an elaborate discussion as to whether the use of the word "shall" in a Statute made the provision mandatory. It was observed by Subba Rao, J. (as he then was) speaking for the majority of the Court that:*
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> > *"For ascertaining the real intention of the legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."*
>
> ***Keeping the above principles in mind, we cannot but hold that a provision as to time in Section 17(1) is merely directory and not mandatory. Section 17(1) makes it obligatory on the Government to publish the award. The limit of time has been fixed as showing that the publication of the award ought not to be held up. But the fixation of the period of 30 days mentioned therein does not mean that the publication beyond that time will render the award invalid. It is not difficult to think of circumstances when the publication of the award within thirty days may not be possible. For instance, there may be a strike in the press or there may be any other good and sufficient cause by reason of which the publication could not be made within thirty days. If we were to hold that the award would therefore be rendered invalid, it would be attaching undue importance to a provision not in the mind of the***

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> ***legislature. It is well known that it very often takes a long period of time for the reference to be concluded and the award to be made. If the award becomes invalid merely on the ground of publication after thirty days, it might entail a fresh reference with needless harassment to the parties. The non-publication of the award within the period of thirty days does not entail any penalty and this is another consideration which has to be kept in mind.*** *What was said in the earlier passage from the judgment in Sirsilk Ltd. v. Government of Andhra Pradesh merely shows that it was not open to Government to withhold publication but this Court never meant to lay down that the period of time fixed for publication was mandatory."*

(emphasis supplied)

12. Learned counsel relied upon provisions of section 25 of the A&C Act to argue that the action on the part of the DIAC in closing the proceedings on the failure of submission of SOC by the respondent/claimant, culminated in termination of the mandate of the arbitral tribunal. Additionally, he submits that even if a belated SOC could be accepted, no sufficient cause was shown by the respondent/claimant and thus the DIAC, *suo moto*, could not have extended a timeline which action is illegal, unlawful and *non-est* in law.

13. In so far as the aforesaid argument is concerned, we have perused para 11 of the impugned judgment and find that the question as to the revival of the proceedings was justified or not was left open by the learned Single Judge in order to be raised before the arbitrator on the premise that it essentially questions the jurisdiction of the Arbitral Tribunal itself. In order to arrive at the aforesaid opinion, the learned Single Judge relied upon the judgment of the Hon'ble Supreme Court in ***Vidya Drolia vs. Durga Trading Corporation: (2021) 2 SCC 1*** and ***Cox & Kings Ltd vs. SAP India (P) Ltd.: (2024) 4 SCC 1***. Apart from the fact that the aforesaid judgments of the Hon'ble Supreme Court are an enunciation of law in respect of the jurisdiction of the Arbitral Tribunal under Section 16 of the A&C Act, the

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Hon'ble Supreme Court has in ***Bhaven Constructions vs. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd. & Anr.: (2022) 1 SCC 75,*** clearly held that once arbitral proceedings are commenced, Courts would ordinarily not exercise the power under Article 226 of the Constitution of India except in rare occasions. In other words, having regard to the fact that the arbitral proceedings have already commenced and the issued raised by the appellants appears to be intrinsically intertwined with the very jurisdiction of the tribunal, it would be appropriate to relegate the appellants to their remedies under section 16 of the A&C Act and refrain from interfering with the arbitration proceedings.

14. We do not find any merit in the instant appeals. Accordingly, the appeals are dismissed alongwith pending applications, if any.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

AUGUST 1, 2025*/rl/yrj*

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