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

Date of decision: 17.04.2026

\+ ARB.P. 2108/2025

JINDAL FERROUS LIMITED .....Petitioner

Through: Mr. Sarad Kumar Sunny and Ms. Madhav Binzani, Advocates.

versus

A TO Z COMPANY .....Respondent

Through: Mr. Alok Raj, Mr. Madhav Suri, Mr. Akhand Shresth Pandey, Mr. Anurag Kumar Singh, Mr. Ashish Kumar Singh, Mr. Ashutosh Pandey and Ms. Akanksha Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% **JUDGEMENT (ORAL)**

1. The present petition has been filed under Section 11(6) of the **Arbitration and Conciliation Act, 1996**[1], seeking the appointment of a Sole Arbitrator to adjudicate upon the disputes arising out of the **Service Order dated 02.02.2023**[2].

2. The Agreement is stated to contain a Dispute Resolution Clause, which contemplates adjudication of disputes arising out of the Agreement, *inter se* the parties, by way of Arbitration. In this regard,

[1] Act
[2] Agreement

reliance is place on Clause 16 of the Agreement, which reads as under:

> "16. GOVERNING LAW AND ARBITRATION
>
> This Agreement shall be governed by and construed in accordance with the laws of India. The Parties shall endeavor to settle all disputes and differences relating to and/ or arising out of this Agreement amicably. In the event the Parties fail to resolve any dispute amicably, the same shall be referred to arbitration of a sole arbitrator, mutually appointed by the Parties. The arbitration proceedings shall be in accordance with the Arbitration and Conciliation Act, 1996, as amended from time to time. In the event the Parties fail to mutually consent to the appointment of a sole arbitrator within a period of thirty (30) days, the said sole arbitrator shall be appointed in accordance with the Arbitration and Conciliation Act, 1996 and the rules thereunder. The Place of arbitration shall be New Delhi, India."

3. Learned counsel appearing for the Respondent, at the outset, objects to the maintainability of the present Petition on the ground that the Respondent is a registered enterprise under the **Micro, Small and Medium Enterprises Development Act, 2006**[3], and therefore is fully entitled to all the statutory protections and benefits available thereunder *inter alia*, proceedings before the **Micro, Small and Medium Enterprises Facilitation Council**[4].

4. Learned counsel for the Respondent further submits that the Respondent has already invoked the jurisdiction of Jharkhand Micro and Small Enterprises Facilitation Council at Ranchi on 22.01.2026 under Section 18 of MSMED Act, *vide* an Application bearing E-Filing No. ED-2026-0003544.

5. In this backdrop, learned counsel for the Respondent submits that the present Petition, filed on 12.12.2025, is therefore statutorily

[3] MSMED Act
[4] MSME Facilitation Council

barred by express provision of Section 24 of the MSMED Act, and in this regard places reliance on the Judgements of Hon'ble Supreme Court, *inter alia*, in **Shilpi Industries and Ors. Vs. Kerela State Road Transport Corporation and Anr.**[5], and **Gujarat State Civil Supplies Corporation Ltd. Vs. Mahakali Foods (P) Ltd. Unit and Anr.**[6], to submit that the provisions of the Special Act, *namely*, the MSMED Act herein contains non-obstante clauses, and therefore would prevail over the general provisions of the Arbitration and Conciliation Act,1996.

6. Learned counsel further places reliance upon the Judgement of the Coordinate Bench of this Court in **Idemia Syscom India Private Limited vs. M/s Conjoinix Total Solutions Private Limited**[7], to contend that the disputes raised herein, *inter alia*, the issue of jurisdiction with respect to the MSMED Act and the nature of the contract would be subject to adjudication under the MSMED Act and the MSME Facilitation Council constituted thereunder, since the jurisdiction of this Court is very circumscribed under Section 11 of the Act. In this regard, reliance is specifically placed on Paragraph Nos. 15 and 16 of the aforesaid Judgement, which read as follow:

> "15. The petitioner has not denied the factum of the respondent being registered as an MSME at the time of entering into the contract. It has also not denied that the respondent has approached the MSME facilitation council under Section 18 of the Act. It is the petitioner's case that the subject contract is a works contract and hence not covered under the MSMED Act. He has relied on a number of decisions to that effect. However, the respondent has denied that the contract is a works contract. Since the parties are at odds about the nature of the contract, this becomes a triable issue

[5] 2021 SCC OnLine SC 439
[6] (2023) 6 SCC 401
[7] 2025:DHC:1205

requiring adjudication and the same would involve detailed appreciation of evidence. The scope of enquiry vested with the Court under Section 11 of the Arbitration and Conciliation Act is no longer *Res integra*. The same is limited to forming a prime facie opinion as to the existence of an agreement between the parties. (Ref: SBI General Insurance Co. Ltd. vs. Krish Spinning.[8]) Since the dispute in question would require detailed appreciation of evidence and interpretation of the terms of the contract, it would not be appropriate for this Court at the stage of a petition under Section 11 of the A&C Act to undertake the same. It may very well happen that the parties resolve their issues in the conciliation and the question becomes merely an academic one. Even if the conciliation fails, the parties would still have recourse to arbitration under the MSMED Act and the AT so constituted would be the most suited forum for the parties to put forth their respective contentions.

16. Looking from another angle, even if the petitioner's contention regarding works contracts can be said to have some merit, the same essentially becomes a question regarding the jurisdiction of the AT constituted under Section 18 of the MSMED Act. It is no longer *Res integra* that the AT would be competent to rule on its own jurisdiction. The same has been reiterated by the Supreme Court in Mahakali Foods (Supra) in the context of an AT constituted under MSMED Act:-

> *"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.""*

7. ***Per contra***, learned counsel appearing on behalf of the Petitioner submits that the Agreement, as between the parties is in fact a 'Works Contract' and therefore falls outside the ambit of the MSMED Act and the protections available thereunder. Learned counsel, in order to substantiate the said contention, places reliance on Paragraph No. 4 of the reply filed by the Respondent to the present

Petition, to submit that a perusal of the same makes it apparent that the Respondent admits to the fact that the present Agreement is a 'Works Contract' and therefore would fall outside the purview of the MSME Act.

8. Learned counsel for the Petitioner further submits that the various tax invoices, as annexed by the Respondent, with their reply to the present Petition, clearly show the nature of the work and clearly evidences that the present Agreement is indeed nothing, but a 'Works Contract'.

9. Learned counsel, in this light, in order to substantiate his contention that a 'Works Contracts' falls outside the ambit of the MSMED Act and therefore parties to a Works Contract are not amenable to the protection envisaged thereunder, places reliance upon a catena of Judgements, *inter alia*, on **TATA Power Co. Ltd. vs. Genesis Engineering Co.**[8], **M/s Shree Gee Enterprises vs. Union of India & Anr.**[9], **Sterling and Wilson Private Limited and Anr. vs. Union of India**[10].

10. Learned counsel for the Petitioner therefore submits that, in the backdrop of the judicial precedents, the present Petition is clearly maintainable and the Respondent are not amenable to the protective statutory provisions of the MSMED Act.

11. Learned counsel for the Petitioner further submits that the Respondent had approached the Jharkhand Micro and Small Enterprises Facilitation Council at Ranchi, under the MSMED Act, as

[8] 2023 SCC OnLine Del 2366
[9] 2015 SCC OnLine Del13169
[10] 2017 SCC OnLine Bom 6829

early as in the month of January, 2026, however no intimation has been received by the Petitioner in respect of the same and therefore, dismissal of the present Petition would leave Petitioner remediless.

12. This Court has heard the learned counsel for the appearing on behalf of the parties and with their able assistance, perused the material available on record and the various Judgements handed across the bar.

13. This Court finds merit in the assertions made by the learned counsel for the Respondent, particularly in view of the limited scope of jurisdiction exercisable by this Court under Section 11 of the Act and as highlighted in similar facts in a decision of the Coordinate Bench of this Court in **Idemia Syscom India** *(supra)*.

14. At this juncture, it is apposite to note that the legal position governing the scope and standard of judicial scrutiny under Section 11(6) of the Act is no longer *res integra*. A three-Judge Bench of the Hon'ble Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning***[11], after taking into consideration the authoritative pronouncement of the seven-Judge Bench in ***Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re***[12], comprehensively delineated the contours of judicial intervention at the stage of Section 11 of the Act. The excerpt of ***Krish Spg*** *(supra*) reads as under:-

> "***(c) Judicial interference under the 1996 Act***
> **110**. The parties have been conferred with the power to decide and agree on the procedure to be adopted for appointing arbitrators. In cases where the agreed upon procedure fails, the courts have been vested with the power to appoint arbitrators upon the request of a

[11] (2024) 12 SCC 1
[12] (2024) 6 SCC 1

party, to resolve the deadlock between the parties in appointing the arbitrators.

111. Section 11 of the 1996 Act is provided to give effect to the mutual intention of the parties to settle their disputes by arbitration in situations where the parties fail to appoint an arbitrator(s). The parameters of judicial review laid down for Section 8 differ from those prescribed for Section 11. The view taken in **SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618** and affirmed in **Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1** that Sections 8 and 11, respectively, of the 1996 Act are complementary in nature was legislatively overruled by the introduction of Section 11(6-A) in 2015. Thus, although both these provisions intend to compel parties to abide by their mutual intention to arbitrate, yet the scope of powers conferred upon the courts under both the sections are different.

112. The difference between Sections 8 and 11, respectively, of the 1996 Act is also evident from the scope of these provisions. Some of these differences are:

112.1. While Section 8 empowers any "judicial authority" to refer the parties to arbitration, under Section 11, the power to refer has been exclusively conferred upon the High Court and the Supreme Court.

112.2. Under Section 37, an appeal lies against the refusal of the judicial authority to refer the parties to arbitration, whereas no such provision for appeal exists for a refusal under Section 11.

112.3. The standard of scrutiny provided under Section 8 is that of prima facie examination of the validity and existence of an arbitration agreement. Whereas, the standard of scrutiny under Section 11 is confined to the examination of the existence of the arbitration agreement.

112.4. During the pendency of an application under Section 8, arbitration may commence or continue and an award can be passed. On the other hand, under Section 11, once there is failure on the part of the parties in appointing the arbitrator as per the agreed procedure and an application is preferred, no arbitration proceedings can commence or continue.

113. The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.

114. The use of the term "examination" under Section 11(6-A) as distinguished from the use of the term "rule" under Section 16 implies that the scope of enquiry under Section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry,

which is left for the Arbitral Tribunal to "rule" under Section 16. The prima facie view on existence of the arbitration agreement taken by the Referral Court does not bind either the Arbitral Tribunal or the Court enforcing the arbitral award.

115. The aforesaid approach serves a twofold purpose — firstly, it allows the Referral Court to weed out non-existent arbitration agreements, and secondly, it protects the jurisdictional competence of the Arbitral Tribunal to rule on the issue of existence of the arbitration agreement in depth.

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117. In view of the observations made by this Court in ***Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re*, (2024) 6 SCC 1**, it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in***Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1*** and adopted in***NTPC Ltd. v. SPML Infra Ltd.*, (2023) 9 SCC 385** that the jurisdiction of the Referral Court when dealing with the issue of "accord and satisfaction" under Section 11 extends to weeding out ex facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in***Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re*, (2024) 6 SCC 1.**

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119. The question of "accord and satisfaction", being a mixed question of law and fact, comes within the exclusive jurisdiction of the Arbitral Tribunal, if not otherwise agreed upon between the parties. Thus, the negative effect of competence-competence would require that the matter falling within the exclusive domain of the Arbitral Tribunal, should not be looked into by the Referral Court, even for a prima facie determination, before the Arbitral Tribunal first has had the opportunity of looking into it.

120. By referring disputes to arbitration and appointing an arbitrator by exercise of the powers under Section 11, the Referral Court upholds and gives effect to the original understanding of the contracting parties that the specified disputes shall be resolved by arbitration. Mere appointment of the Arbitral Tribunal does not in any way mean that the Referral Court is diluting the sanctity of "accord and satisfaction" or is allowing the claimant to walk back on its contractual undertaking. On the contrary, it ensures that the principle of arbitral autonomy is upheld and the legislative intent of minimum judicial interference in arbitral proceedings is given full effect. Once the Arbitral Tribunal is constituted, it is always open for the defendant to raise the issue of "accord and satisfaction"

before it, and only after such an objection is rejected by the Arbitral Tribunal, that the claims raised by the claimant can be adjudicated.

121. Tests like the "eye of the needle" and "ex facie meritless", although try to minimise the extent of judicial interference, yet they require the Referral Court to examine contested facts and appreciate prima facie evidence (however limited the scope of enquiry may be) and thus are not in conformity with the principles of modern arbitration which place arbitral autonomy and judicial non-interference on the highest pedestal.

122. Appointment of an Arbitral Tribunal at the stage of Section 11 petition also does not mean that the Referral Courts forego any scope of judicial review of the adjudication done by the Arbitral Tribunal. The 1996 Act clearly vests the national courts with the power of subsequent review by which the award passed by an arbitrator may be subjected to challenge by any of the parties to the arbitration.

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126. The power available to the Referral Courts has to be construed in the light of the fact that no right to appeal is available against any order passed by the Referral Court under Section 11 for either appointing or refusing to appoint an arbitrator. Thus, by delving into the domain of the Arbitral Tribunal at the nascent stage of Section 11, the Referral Courts also run the risk of leaving the claimant in a situation wherein it does not have any forum to approach for the adjudication of its claims, if its Section 11 application is rejected.

127. Section 11 also envisages a time-bound and expeditious disposal of the application for appointment of arbitrator. One of the reasons for this is also the fact that unlike Section 8, once an application under Section 11 is filed, arbitration cannot commence until the Arbitral Tribunal is constituted by the Referral Court. This Court, on various occasions, has given directions to the High Courts for expeditious disposal of pending Section 11 applications. It has also directed the litigating parties to refrain from filing bulky pleadings in matters pertaining to Section 11. Seen thus, if the Referral Courts go into the details of issues pertaining to "accord and satisfaction" and the like, then it would become rather difficult to achieve the objective of expediency and simplification of pleadings.

128. We are also of the view that ex facie frivolity and dishonesty in litigation is an aspect which the Arbitral Tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. We say so because the Arbitral Tribunal has the benefit of going through all the relevant evidence and pleadings in much more detail than the Referral Court. If the

> Referral Court is able to see the frivolity in the litigation on the basis of bare minimum pleadings, then it would be incorrect to doubt that the Arbitral Tribunal would not be able to arrive at the same inference, most likely in the first few hearings itself, with the benefit of extensive pleadings and evidentiary material."
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> **(emphasis supplied)**

15. The decision in ***Krish Spinning*** *(supra)* thus unequivocally reiterates that the Referral Court, while exercising jurisdiction under Section 11 of the Act, is required to confine itself to a *prima facie* examination of the existence of a valid Arbitration Agreement and nothing beyond. The Court's role is facilitative and procedural, *namely*, to give effect to the parties' agreed mechanism of dispute resolution when it has failed, without embarking upon an adjudication of contentious factual or legal issues, which are reserved for the Arbitral Tribunal.

16. However, in the present case, there appears to be a clear dispute with respect to whether or not the Agreement itself is a 'Works Contract', which requires this Court to delve into the contents of the Agreement and various documentary evidence, which is outside the scope of jurisdiction of this Court under Section 11 of the Act, as succinctly laid down by the Hon'ble Supreme Court in ***Krish Spinning*** *(supra).*

17. Further, as held by the Coordinate Bench of this Court in **Idemia Syscom India** *(supra)*, when the parties are at odds about the nature of the contract, the same becomes a triable issue requiring adjudication and in turn detailed appreciation of evidence, a scope of enquiry not vested with this Court under Section 11 of the Act.

18. In view of the foregoing discussion, this Court is of the

considered view that the MSME Facilitation Council under Section 18 of the MSME Act, would be the appropriate forum for determining the aspects as raised herein.

19. Accordingly, the present Petition, along with all pending Application(s), if any, is disposed of in aforementioned terms.

HARISH VAIDYANATHAN SHANKAR, J.

APRIL 17, 2026/ ν/dj