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

Judgment reserved on: 13.10.2026
Judgment pronounced on: 27.11.2026

\# **CNR No. DLHC011250152016**

\+ O.M.P.(I) (COMM.) 207/2026
MS INTERARCH BUILDING SOLUTIONS LIMITED
(FORMERLY MS INTERARCH BUILDING PRODUCTS LTD .....Petitioner

Through: Ms. Charu Sangwan, Mr. Shubham Dayma and Mr. Vijayant Dalal, Advocates.

versus

AGRIMA ROOD AND FACADE SYSTEMS .....Respondent

Through: Mr. Sidhant Kapoor, Ms. Palak Rawat and Mr. Kopal Chaturvedi, Advocates.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% 27.11.2026

1. The present petition has been filed by the Petitioner, M/s Interarch Building Solutions Limited under Section 9 of the Arbitration and Conciliation Act, 1996[1] seeking interim measures against the Respondent, M/s Agrima Roof & Facade Systems, in contemplation of initiating arbitration under clause 19 of a Works Contract dated 12.01.2022[2].

[1] "the 1996 Act"
[2] the "Contract"

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2. The Petitioner has prayed for the following reliefs:

> *"A. Direct the Respondent to not dispose of, transport or withdraw any tools, tackles, equipment and material provided by him for under the Contract from the job site.*
>
> *AND/OR*
>
> *B. Direct the Respondent to return all material supplied by the Petitioner at the job site.*
>
> *AND/OR*
>
> *C. Direct the Respondent to deposit Rs. 62,94,074/- (Rupees Sixty-Two Lakhs Ninety-Four Thousand Seventy-Four) before this Hon'ble Court for the money paid by the Petitioner on behalf of the Respondent to the sub-vendors of the Respondent.*
>
> *AND/OR*
>
> *D. Direct the Respondent to deposit Rs. 2,00,00,000/- (Rupees Two Crores only) before this Hon'ble Court as provision for penalty and for excess payment received for works not completed.*
>
> *AND/OR*
>
> *E. Pass such other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."*

3. The petition was filed on 15.04.2026. The primary objection of the Respondent to oppose the present petition is on the ground that the Work Order of 03.09.2025, on which it is based, contains no arbitration agreement. It also submits that, before the Petitioner invoked arbitration, the Respondent had approached the Micro and Small Enterprises Facilitation Council[3] under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006[4], and the said Council has referred the dispute to arbitration, by a tribunal being constituted in the State of Karnataka.

4. Thus, the Respondent contends that, in view of Section 9(3) of the Act, this Court cannot entertain the present petition. However, the Petitioner calls the reference of the dispute to MSME *non-est* and says

[3] the "Council"
[4] "MSMED Act"

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Section 9(3) of the 1996 Act is not attracted to the facts of the present case.

5. The controversy before this Court, therefore, is the effect of the Respondent's reference under Section 18 of the MSMED Act on this petition, the applicability of Section 9(3) of the 1996 Act, and, if the petition survives, whether any of the reliefs sought can be granted.

FACTS

6. The Petitioner is a company engaged in pre-engineered building and allied works. The Respondent is a Bengaluru-based company that states itself to be a registered small-scale enterprise under the MSMED Act.

7. On 12.01.2022 the parties entered into the Contract.

8. Clause 3.2 of the Contract, on which the Petitioner relies in support of its first relief, provides as under:

> *"3.2. The Contractor shall not dispose of, transport or withdraw any tools, tackles, equipment and material provided by him for the Contract without taking prior written approval from the Principle / Construction Manager or Interarch Building Products Pvt Ltd's Construction Manager at all times shall have the right to refuse permission for disposal, transport or withdrawal of tools, tackles, equipment and material if in its opinion, the same will adversely affect the efficient and expeditious completion of works."*

9. Further, Clauses 16.7 and 16.8 permits the Petitioner to terminate the Contract, or to withdraw any part of the work and re-allot it, in

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which event the Respondent is liable to refund advances received in excess of the work done.

10. Between 26.02.2022 and 02.09.2025, the Petitioner issued to the Respondent a series of Letters of Intent and Work Orders. Clause 6 of each Work Order records that the terms of the Contract stand accepted and incorporated therein. By an e-mail dated 29.11.2024, the Respondent acknowledged a liability of Rs.40,85,171/-, which the Petitioner characterises as an admission of liability for breach of the Contract.

11. The present dispute arises from the Work Order dated 03.09.2025 issued pursuant to a Letter of Intent dated 02.09.2025, for works worth Rs.10,50,00,000/-, to be completed by 31.01.2026 with a further 10 to 15 days for virtual handover. The Work Order contains no arbitration clause of its own. Clause 6 thereof incorporates the terms of the Contract.

12. According to the Petitioner, the Respondent had delayed the mobilization of the men and machinery, resulting into unusual delay in execution of the work, which also resulted in failure to achieve the milestones stipulated in the Work Order. The Petitioner quantifies the delays ranging from 110 to 262 days.

13. The Petitioner also states that it wrote to the Respondent on these issues on several dates between April and November 2025. On 10.10.2025, its own client imposed liquidated damages on it, which the Petitioner directly attributes to the Respondent's workmanship.

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14. By its letter dated 29.10.2025 ,the Petitioner put the Respondent to notice of the delay and of its default in paying sub-vendors, and warned that other agencies might be engaged to execute the works.

15. The Respondent raised running bills dated 06.10.2025 and 25.11.2025, which, according to it, the Petitioner withheld. By an e-mail dated 23.12.2025 and letters dated 26.12.2025 and 14.01.2026, the Respondent asked the Petitioner to pay its vendors. The Petitioner states that it made these payments, though was under no liability to pay the same to the vendors and was primarily directed towards the interest of timely completion of the works. The sum so paid, as per the Petitioner, is Rs.62,94,074/-, which is the amount in relief (C).

16. On 24.12.2025, relying on clauses 16.7 and 16.8 of the Contract, the Petitioner issued a revised Work Order, reducing the scope and value of the works from Rs.10,50,00,000/- to Rs.2,32,00,802/- due to delay in execution of the works by the Respondent. However, by its letter dated 25.12.2025, the Respondent refused to accept the revised Work Order, and instead sent invoices for Rs.3,31,25,000/- and Rs.1,41,07,000/-. On 01.01.2026 it sent a Statement of Claims, a Provisional Statement of Bill and Invoice No. ARF/25-26/19, which, according to the Petitioner, relate to demobilisation, overheads, idle charges and loss of profit. The Petitioner rejected these claims by its letter dated 09.01.2026. By its letter dated 22.01.2026, the Respondent proposed a commercial exit.

17. The Petitioner states that on 25.01.2026 the Respondent

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abandoned the job site. Admittedly, the Respondent states that its cranes and equipment have been immobilised at the site since 04.02.2026 and that it will claim standby charges. It is common ground that tools and equipment continue to lie at the site. The parties differ on their ownership and condition.

18. Another dispute between the parties is with regard to encashment of cheque. Clause 3.1 of the payment terms of the Work Order dated 03.09.2025 provided for release of an advance of 10% of the order value, being Rs.1,05,00,000/-, "against undated cheque & mobilization of erection crew". Against the first running bill raised for the said advance, the Petitioner released a sum of Rs.1,01,00,000/-. The Respondent had furnished an undated cheque bearing No. 023928 for Rs.1,05,00,000/-, drawn on IDBI Bank, Bengaluru. The Petitioner presented the cheque for encashment, and it was dishonoured.

19. According to the Petitioner, the cheque was issued to settle the amounts due and payable by the Respondent, and the Petitioner proposes to pursue its remedies under the Negotiable Instruments Act, 1881. According to the Respondent, the cheque was furnished only as security for the mobilisation advance, its presentation during the pendency of conciliation was coercive, and it was dishonoured after the Respondent informed the bank that the underlying liability was disputed.

20. In the aforesaid background, by its notice dated 17.02.2026,the Petitioner invoked arbitration under clause 19 of the Contract. By its letter dated 25.02.2026, the Respondent declined to participate, stating

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that it had approached the Council under Section 18 of the MSMED Act.

21. The Respondent's application before the Micro and Small Enterprises Facilitation Council, Bengaluru Urban (Case No. CP/00655(KA)/2026), claimed Rs.9,55,00,550/-, comprising Rs.8,46,15,550/- as principal and Rs.1,08,85,000/- as interest. Conciliation was listed on 02.04.2026, 16.04.2026, 21.05.2026 and 25.06.2026. By its order dated 23.07.2026, the Council recorded that conciliation had failed, terminated it, and referred the dispute to the Arbitration and Conciliation Centre, Bengaluru, under Section 18(3) of the MSMED Act. It directed the parties to appear before the Centre and the Respondent to file its claim there before the centre at Bengaluru (Karnataka).

PROCEEDINGS BEFORE THIS COURT

22. Ms. Charu Sangwan, learned counsel appearing for the Petitioner, opened her submissions by contending that the reference made by the Respondent to the Council under Section 18 of the MSMED Act is *non-est*, since the Contract of 12.01.2022 is a works contract, and the Work Orders issued thereafter were issued under the said works contract.

23. According to her, it is well settled that disputes arising out of a works contract are not amenable to the MSMED Act, and reliance was

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placed upon ***Rahul Singh v. Union of India***[5], ***P.L. Adke v. Wardha Municipal Corporation***[6], ***Sterling and Wilson Pvt. Ltd. v. Union of India***[7], and ***Tata Power Company Limited v. Genesis Engineering Company***[8].The reference, it was urged, having been made in respect of a works contract, cannot be sustained in law.

24. It was next contended that the reference is premature. Ms. Sangwan submitted that under Section 18 of the MSMED Act, a supplier can refer to the Council only for amounts payable under Section 17 read with Section 15, and that the liability of the buyer under those provisions arises only from the "appointed day" defined in Section 2(b). Where the buyer has objected in writing to the delivery of services, the "day of acceptance" is the day the objection is removed by the supplier. The Petitioner, points out that they had raised written objections to the services at the job site between 17.04.2025 and 13.10.2025 and had given the Respondent time to rectify, and had eventually, on 24.12.2025, revised the Work Order on account of non-rectification . As the Respondent had not removed those objections till date, the appointed day had not arisen, and the reference was, therefore, premature and *non-est*. Learned Counsel further adds that the claims raised by the Respondent in 2026 pertain to amounts that had allegedly become due in 2022, and are thus grossly barred by limitation.

25. On the aspect of reliefs, Ms. Sangwan submitted that the amount

[5] **2017 SCC OnLine All 3579**
[6] **2021 SCC OnLine Bom 13986**
[7] **2017 SCC OnLine Bom 6829**
[8] **2023 SCC OnLine Del 2366**

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in dispute in arbitration needs to be secured. According to Ms. Sangwan ,the Respondent had committed breaches of the Contract which caused grave loss to the Petitioner, by failing to deliver the works within the stipulated time, failing to rectify the objections raised by the Petitioner on workmanship, causing, by poor workmanship, the imposition of liquidated damages by the Petitioner's client and failing to deposit the GST collected from the Petitioner. When the Petitioner attempted to encash the cheque issued by the Respondent in settlement of the amounts due, the cheque was dishonoured. This, in her submission, showed the Respondent's intent to frustrate the dispute resolution mechanism "by hook or crook" and to leave the Petitioner remediless by ensuring that the sum involved in the arbitration remains unsecured.

26. It was further contended by Ms. Sangwan that, at the time of entering into the Contract and of issuance of the Work Orders, the Respondent had represented to the Petitioner that it was not an enterprise registered under the MSMED Act. A contract so entered into, she submitted, is not one entered into with free consent and is voidable at the instance of the party misled, which also renders the dispute resolution clause vulnerable to challenge. On this ground alone, according to her, the proceedings before the Council are *non-est*.

27. She further submitted that, after the Petitioner had issued its notice dated 17.02.2026 invoking arbitration under Section 21 of the 1996 Act, the Respondent invoked the jurisdiction of the Council purely in a bid to oust the jurisdiction of this Court, to which the parties had voluntarily submitted for all disputes arising out of the Contract.

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28. *Per contra*, Mr. Sidhant Kapoor, learned Counsel appearing for the Respondent, submitted that the petition is not maintainable for three-fold of arguments.

29. According to him, there is no arbitration agreement between the parties; secondly, an arbitral tribunal has already been constituted in Karnataka under the MSMED Act; and lastly, the reliefs claimed are barred by the settled principles governing Section 9.

30. On the first ground, Mr. Kapoor contended that the prayers in the petition are premised on the Work Order dated 03.09.2025, which, according to him, contains no arbitration agreement. That the petition pertains to the said Work Order alone is evident, he submitted, from three circumstances: firstly, the Petitioner sought to encash the cheque of Rs 1,05,00,000/- furnished by the Respondent under that Work Order; secondly, the petition itself pleads the Petitioner's letter dated 29.10.2025, which relates specifically to that Work Order, as the cause of action; and thirdly, the payments said to have been made by the Petitioner to the Respondent's vendors arose, on the Respondent's case, because the Petitioner had wrongfully withheld the Respondent's running bills under that Work Order.

31. Mr. Kapoor further contended that the Work Order refers to certain standard terms of an earlier contract merely for the purpose of execution and does not incorporate the arbitration clause of that contract by necessary implications.

32. He went on to submit that the contract referred to in the Work

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Order "does not pertain to the parties at all". Placing reliance on Section 7(5) of the 1996 Act, he submitted that the arbitration clause of one document is to be read into another only when the parties have consciously accepted it, so that a general reference to an earlier contract is insufficient, and in support he relied upon ***M.R. Engineers & Contractors (P) Ltd. v. Som Datt Builders Ltd.***[9]

33. According to the him, since the Respondent is not a party to any arbitration agreement within the meaning of Section 2(1)(h) of the 1996 Act, which is a pre-condition for invoking Section 9, he prayed for dismissal on this ground alone. He added that the Petitioner had failed to show that this Court has territorial jurisdiction in light of Section 2(1)(e) of the 1996 Act read along with Section 24 of the MSMED Act.

34. Without prejudice to the above grounds for maintainability, Mr. Kapoor submitted that the criteria to be satisfied for interim protection under Section 9 are well settled: a manifest intention to invoke arbitration, an emergent necessity, a *prima facie* case with balance of convenience and irreparable loss, and a showing that circumstances exist which may not render the remedy under Section 17 efficacious in light of Section 9(3), which, he stressed, is directly applicable here.

35. The petition, he submitted, falls well short of these requirements. The Petitioner had approached this Court on 15.04.2026 for a cause of action said to have arisen on 29.10.2025, and the petition was cured for listing and heard for the first time only on 15.05.2026, eight months after that date.

[9] **(2009) 7 SCC 696**

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36. Mr. Kapoor then took the Court through the proceedings before the Council. According to him, the Respondent, a registered MSME had applied to the Council, Government of Karnataka, on 01.02.2026 under Section 18 claiming Rs. 9,55,00,550/-. Despite receipt of notice, he submitted, the Petitioner had not participated in the conciliation, which was held on 02.04.2026, 16.04.2026, 21.05.2026 and 25.06.2026, and the matter was referred to arbitration on 23.07.2026. Since the arbitral tribunal stands constituted, he contended, Section 9(3) proscribes interim measures, and the Respondent also relied upon Section 24 of the MSMED Act.

37. It was further urged that the Petitioner had not acted with reasonable expedition, which had sought to render the arbitral proceedings inefficacious by refusing to engage with the Council, and had not demonstrated a manifest intention to initiate arbitration.

38. Learned Counsel has also contended that on a holistic reading, it is apparent from the petition itself, that the same has been filed only to interdict the proceedings initiated by the Respondent under the MSMED Act.

39. According to him, the reference before the Council, is maintainable in terms of the MSMED Act and the decision of the Supreme Court in ***Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods (P) Ltd***.[10], as also ***SRP Minerals Pvt. Ltd. v. Union of***

[10] **(2023) 6 SCC 401**

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India[11], and ***Dalmia Cement (Bharat) Ltd. v. ESS ESS Technofabs (P) Ltd.***[12]

40. As regards to the reliefs, Mr. Kapoor submitted that the Petitioner has neither pleaded nor made out a *prima facie* case, balance of convenience or irreparable injury.

41. The reliefs, he contended, are in the nature of attachment before judgment, which cannot be granted without even a *prima facie* pleading that the Respondent is removing or disposing of assets to defeat an award and has relied on the judgments of ***Raman Tech & Process Engineering Co. v. Solanki Traders***[13], and ***BMW (India) (P) Ltd. v. Libra Automotives (P) Ltd.***[14]**,** in that regard.

42. He submitted that grave factual disputes arise as to timely performance of the works, the imposition of liquidated damages, and the retention of tools and equipment, which are interlinked with questions of site access, performance of reciprocal obligations and timely payments, and which can be adjudicated only on evidence. The Petitioner, he said, was seeking to convert an unsecured and uncrystallised debt into a secured one, and a Court exercising power under Section 9 does not enter into such questions, relying on the ***BMW India (supra)***.

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[11] **2026 SCC OnLine TS 5158**
[12] **2026 SCC OnLine Del 503**
[13] **(2008) 2 SCC 302**
[14] **2019 SCC OnLine Del 9079**

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43. Lastly, Mr. Kapoor submitted that the prayer for deposit falls outside the scope of Section 9, the Petitioner's claim being speculative and not crystallised, and that the prayer concerning tools and equipment is barred by Sections 41(e) and 14(d) of the Specific Relief Act, 1963, again relying on ***BMW India(supra)***. He therefore prayed that the petition be dismissed as not maintainable.

ANALYSIS AND CONCLUSION

44. Having considered the rival submissions, the pleadings and the documents placed on record, the following questions arise for determination:

(i) What is the effect of the proceedings initiated by the Respondent under Section 18 of the MSMED Act on the present petition?

(ii) Whether the objections raised by the Petitioner, concerning the nature of the underlying contract, the "appointed day" under Section 2(b) read with Sections 15 and 17 of the MSMED Act, limitation, the nature of the claims and the Respondent's status, can be adjudicated by this Court at this stage, or are matters for the statutory arbitral tribunal?

(iii) Whether, upon constitution of the arbitral tribunal, the bar contained in Section 9(3) of the 1996 Act operates against the continuation of the present proceedings; and?

(iv) Whether the petitioner has established circumstances

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warranting interim protection?

45. Before adverting to the rival contentions, it would be apposite to notice the relevant provisions of Chapter V of the MSMED Act. Sections 16, 17 and 18 read as under:

> "***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 time 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.*
>
> ***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.*
>
> ***18. Reference to Micro and Small Enterprises Facilitation Council***.—
>
> *(1)Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.*
>
> *(2)On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.*
>
> *(3)Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.*

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> *(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."*

46. The expression "appointed day" is defined in Section 2(b) of the MSMED Act, which reads as follows:

> *"(b) "appointed day" means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier."*

47. Further, Section 24 read as under:

> *"**24. Overriding effect**.—The provisions of Sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."*

48. A plain reading of the aforesaid provisions makes it evident that the Legislature has created a self-contained mechanism for the recovery of dues of micro and small enterprises. Section 18(1) of the MSMED Act opens with a non-obstante clause and confers the right to approach the Council on "any party to a dispute". Section 18(3) then creates a legal fiction, by which the arbitration that follows a failed conciliation is treated as one in pursuance of an arbitration agreement under Section 7(1) of the 1996 Act, whether or not such an agreement exists between the parties. Section 24 gives the entire scheme an overriding effect.

49. The interplay between the MSMED Act and the Act of 1996 is no longer *res integra*. In ***Mahakali Foods (P) Ltd(supra)***., the Supreme

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Court, after an exhaustive consideration of both enactments has held that, where the statutory conditions for invocation of the MSMED Act are satisfied, the mechanism under Section 18 would prevail over an independent arbitration agreement between the parties. The statutory reference cannot be defeated merely because the parties have separately agreed to arbitration under their contract. The Court has also recognised that the Council, or the institution or centre to which the dispute is referred under Section 18(3), functions as an arbitral tribunal and is competent to rule on its own jurisdiction under Section 16 of the 1996 Act.

50. Applying the aforesaid law to the facts at hand, the records invariably reveals that the Respondent approached the Council under Section 18 of the MSMED Act. The order of the Council records the application as one dated 01.02.2026, and the Respondent's letters dated 14.01.2026 and 22.01.2026, which have been placed on record by the Petitioner itself, already advert to proceedings pending before the Council. The conciliation was taken up on four dates and did not succeed. By order dated 23.07.2026, the Council terminated the conciliation and referred the dispute to the Arbitration and Conciliation Centre, Bengaluru under Section 18(3).

51. On 31.08.2026, this Court was informed that the arbitral tribunal stands constituted. Meaning thereby, *prima facie* it appears that the dispute arising out of the Work Order is today the subject matter of a statutory arbitration, to which, by virtue of Section 18(3), the provisions of the Act apply in their entirety.

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52. In view of the above, two of the contentions raised before this Court need not be decided. The first being the question as to which party approached its forum first. Record reveals that the Respondent had approached the Council before the Petitioner issued its notice dated 17.02.2026 invoking arbitration. Even if the Petitioner would had acted first, the legal status and the position would be the same, because the Supreme Court has held in ***Mahakali Foods (P) Ltd(supra)*** that a party may approach the Council even where there is an independent arbitration agreement between the parties.

53. The second is the issue relating to the Respondent's contention that the Work Order dated 03.09.2025 does not contain any arbitration clause, and does not incorporate clause 19 of the Contract by necessary implication. For this, the Respondent relied on Section 7(5) of the 1996 Act and also on the judgment of ***M.R. Engineers and Contractors Pvt. Ltd.(supra)***

54. This Court does not find it necessary to decide this contention, as the outcome would remain unchanged in either eventuality. If Clause 19 applies to the Work Order, the arbitration mechanism contemplated therein would stand superseded, to the extent of any inconsistency, by the statutory arbitration initiated under the MSMED Act. If Clause 19 does not apply, the arbitration between the parties in respect of the disputes forming subject matter of the present proceedings is the one initiated under the MSMED Act. In either case, the arbitral tribunal constituted pursuant to the statutory reference is competent to consider the Petitioner's request for interim measures under Section 17 of the 1996 Act.

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55. As we move to the next issue, relating to whether this Court can examine the validity of the reference.

56. This Court finds that the entire edifice of the Petitioner's case is that the reference is *non-est* before the arbitral tribunal referred by the MSME Council.

57. Learned Counsel for the Petitioner has urged that the Contract is a works contract which lies outside the MSMED Act and that the "appointed day" has not arrived, that the claims are barred by limitation, and that the Respondent misrepresented its status as the claims do not pertain to goods supplied or services rendered. Each of these contentions, in substance, assails the jurisdiction of the arbitral tribunal on the ground that no amount is due under Section 17 of the MSMED Act. The question which arises is not whether these contentions are correct, but which forum is to adjudicate upon them.

58. According to this Court, the answer lies in Section 16 of the Act, which embodies the principle of *kompetenz-kompetenz*. Sub-section (1) thereof reads:

> "***16. Competence of arbitral tribunal to rule on its jurisdiction***.— *(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—*
>
> *(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and*
>
> *(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause."*

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59. That the aforesaid provision applies with full force to an arbitration under the MSMED Act is beyond the pale of doubt. In ***Mahakali Foods (P) Ltd(supra***),the Supreme Court held as under:

> ***"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."*

60. The said principle has been applied by a co-ordinate bench of this Court to the very objection which is pressed by the Petitioner, in the present case. In ***Dalmia Cement (Bharat) Ltd(supra)***., the Petitioner had contended that the contracts in question were works contracts and not covered by the MSMED Act and that the Facilitation Council, therefore, lacked jurisdiction. This Court declined to adjudicate the contention, holding that "it is no longer *res integra* that the arbitral tribunal i.e. the Facilitation Council is empowered to rule on its own jurisdiction".

61. To the same effect is the decision of the Division Bench of this Court in ***Corrtech International (P) Ltd. v. Delhi International Arbitration Center***[15]**,** wherein it was held that objections regarding the applicability of the MSMED Act are to be decided by the arbitral tribunal under Section 16 of the 1996 Act and the remedy under Section

[15] **2024 SCC OnLine Del 7029**

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34 being available thereafter.

62. There is yet another aspect of the matter. Section 18(1) of the MSMED Act contemplates and mentions the phraseology "dispute" with regard to an amount due under Section 17. A disagreement between the supplier and the buyer as to whether any amount is due is itself such a dispute. If the contention of the Petitioner were to be accepted, a buyer could defeat the reference merely by denying its liability, and the Council would be left with jurisdiction only over admitted claims. Such a construction would render the provision otiose, and cannot be countenanced. The objections of the buyer are, therefore, the very matters which the statutory arbitration is meant to adjudicate.

63. In the backdrop of the aforesaid position of law, the specific objections of the Petitioner may now be examined, only to the limited extent of seeing whether any of them is of such a nature as would warrant this Court treating the reference as *non-est*.

64. Learned counsel for the Petitioner has relied upon ***Rahul Singh(supra)***, ***P.L. Adke(supra)***, ***Sterling and Wilson Pvt. Ltd (supra)***, and ***Tata Power Company Ltd (supra)***, to contend that a works contract falls outside the MSMED Act. Learned counsel for the Respondent has, on the other hand, relied upon the decision of the Division Bench of the Telangana High Court in ***SRP Minerals Pvt. Ltd. (supra)*** wherein it has been held that Section 18 does not make any differentiation between works contracts and other contracts and more important, does not state, either expressly or by implication, that works contracts would be excluded from the purview of Section 18 reference of the dispute to the

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Council for conciliation/mediation and thereafter arbitration.

65. The issue is, thus, one on which there is a divergence of judicial opinion, and it is presently pending consideration before the Supreme Court. The decision of the Bombay High Court in ***P.L. Adke*** (supra), on which the Petitioner relies, is itself the subject matter of an appeal before the Supreme Court.

66. The issue whether a works contract, or a particular claim arising therefrom, falls within the scope of Sections 17 and 18 of the MSMED Act must be examined in the context of the statutory language and the nature of the transaction. The Supreme Court, in ***NBCC (India) Ltd. v. State of West Bengal***[16], concerned the requirement of registration under Section 8 before the contract and did not decide whether works contracts are excluded from Section 18. The registration issue was referred to a larger Bench.

67. Moreover, whether the Contract and/or the Work Order constitute a works contract is a mixed question of fact and law, which would depend on their terms and on the nature of the work executed. This Court, exercising a jurisdiction which is in aid of arbitration and is confined to a *prima facie* view, would not be justified in resolving the said controversy and, on that basis, nullifying a statutory reference. A coordinate Bench of this Court, in ***Dalmia Cement (Bharat) Ltd (supra)***, while dealing with petitions under Section 11 of the 1996 Act, declined to adjudicate an objection that the contracts were works contracts outside the MSMED Act, the objection being pending before

[16] **2025 INSC 54**

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the Facilitation Council under Section 16, and observed that it is no longer *res integra* that the arbitral tribunal i.e. the Facilitation Council is empowered to rule on its own jurisdiction

68. Now moving on to the next contention as to "appointed day", it was contended that since the Petitioner had raised objections in writing between 17.04.2025 and 13.10.2025, which were never removed, the "day of acceptance" has not occurred, the "appointed day" has not arrived, and the reference is premature.

69. Under the said explanation to Section 2(b), an objection postpones the day of acceptance only where it is (a) made in writing, (b) regarding acceptance of the goods or services, and (c) within fifteen days from the delivery of the goods or the rendering of the services. Where any of these requirements is not met, clause (ii) of the Explanation applies and acceptance is deemed on the day of delivery or rendering itself.

70. This Court has perused the correspondence relied upon by the parties.

71. *Prima facie*, the same pertains to the pace of mobilisation and the deployment of manpower and machinery at the site. The first two running bills dated 06.10.2025 relate to the advances stipulated in the Work Order, and the Petitioner's own communication dated 13.10.2025 records that a sum of Rs1,01,00,000/- stood paid against the first of them. The Respondent, in turn, relies upon the Petitioner's e-mail dated 30.05.2025 calling upon it to hold its site mobilisation, which the

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Petitioner disputes.

72. Whether the said correspondence constitutes an objection "regarding acceptance" of services, whether it was raised within the stipulated fifteen days, and whether it stood removed, are all disputed questions of fact which cannot be determined without evidence.

73. The appointed day is relevant to determining when payment becomes due under Section 15 and the period from which interest may be payable under Section 16 of the MSMED Act. It may, therefore, affect the amount and date of the liability claimed by the supplier. A dispute regarding the appointed day, however, does not, by itself, render the statutory reference *non-est*. The Petitioner's objections in this regard are matters which may be urged before the arbitral tribunal while determining the Respondent's entitlement to the amounts claimed.

74. As to the contention of limitation, the Petitioners' contention that the claims pertain to amounts which fell due in the year 2022 is not borne out by the record. The principal sum of Rs8,46,15,550/- claimed before the Council corresponds to the Respondent's Statement of Claims dated 01.01.2026, raised under the Work Order dated 03.09.2025 for the period from 01.04.2025 to 31.12.2025.

75. The law governing limitation in proceedings under Section 18 of the MSMED Act stands clarified by the Supreme Court in ***Silpi Industries v. Kerala State Road Transport Corporation***[17], and ***M/s***

[17] **(2021) 18 SCC 790**

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Sonali Power Equipments Pvt. Ltd. v. Chairman, Maharashtra State Electricity Board[18]. The Limitation Act, 1963 applies to arbitration proceedings under Section 18(3) of the MSMED Act. In ***Silpi Industries*** (supra), the Supreme Court held that the applicability of the Limitation Act to such arbitration proceedings follows from Section 43 of the 1996 Act.

76. In ***Sonali Power Equipments Pvt. Ltd.*** (supra**),** the Supreme Court clarified that the Limitation Act does not apply to conciliation proceedings under Section 18(2) of the MSMED Act and, consequently, a time-barred claim may nevertheless be referred to conciliation. However, where conciliation fails and the dispute proceeds to arbitration under Section 18(3), the Limitation Act applies, and the claim would be subject to the law of limitation. The arbitral tribunal would, therefore, be required to examine any plea of limitation raised by the buyer and determine whether the claim, or any part thereof, is barred. The mere fact that a claim is time-barred does not preclude its reference to conciliation under Section 18; however, such a claim cannot be enforced through arbitration if it is found to be barred by limitation**.** Relevant paragraphs are reproduced herewith:

> *"51. On considering the statutory provisions of the MSMED Act, the ACA, and the Limitation Act, the precedents of this Court, and on the basis of the above reasoning, we have answered the issues arising in the present appeals as follows:*
> *i. The Limitation Act does not apply to conciliation proceedings under Section 18(2) of the MSMED Act. A time-barred claim can be referred to conciliation as the expiry of limitation period does not extinguish the right to recover the amount, including through a settlement agreement that can be arrived at through the conciliatory process.*
> *ii. The Limitation Act applies to arbitration proceedings under*

[18] **2025 INSC 864**

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Section 18(3) of the MSMED Act. The applicability of the provisions of ACA to such arbitrations is determined as per Section 18(3) and other provisions of the MSMED Act, as these are special laws, rather than by Section 2(4) of the ACA, which is under a general law. This is in addition to the reasoning provided in Silpi Industries (supra). Further, the extension of the limitation period on the basis of disclosure under Section 22 of the MSMED Act must be examined on a case-to-case basis."

77. The plea of limitation is, therefore, a defence which is open to the Petitioner before the tribunal. It does not render the reference invalid.

78. Now, this Court moves on to address the nature of the claims in dispute. The Petitioner contended that the Respondent's claims are not for goods supplied or services rendered, and therefore fall outside Section 17 of the MSMED Act. Section 17 makes the buyer liable to pay "for any goods supplied or services rendered by the supplier", and this Court, in ***Uniseven Engineering & Infrastructure (P) Ltd. v. Micro & Small Enterprises Facilitation***[19]**,** has held that only an amount payable by the buyer to the supplier for such goods or services can be the subject of a reference under Section 18.

79. The Respondent's Statement of Claims dated 01.01.2026 includes a bill of Rs. 3,34,82,750/- for 2,527 MT of structural steel stated to have been erected, which is, prima facie, a claim for services rendered, as well as claims towards loss of profit, demobilisation, overheads and idle charges. Whether each of these heads falls within Section 17 is a matter for the arbitral tribunal to examine, head by head. *Prima facie*, therefore, the Petitioner's objection, even if it were to

[19] **2023 SCC OnLine Del 3889**

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succeed, would affect only certain heads of claim, and would not render the reference as a whole *non-est*. The Petitioner is also not without remedy in respect of its own claims, since a counterclaim by the buyer is maintainable before the statutory tribunal in terms of ***Silpi Industries (supra).***

80. The Petitioner further contends that the Respondent represented that it was not a registered MSME, and that the Contract is therefore voidable. *Prima facie*, the Work Order does not appear to contain any representation by the Respondent. It records only that, if the vendor does not furnish an MSME registration certificate, the Petitioner will assume that the vendor is not registered. The Respondent's bills and letters, on the other hand, bear its Udyam registration number. Whether any representation was made, and whether the Petitioner acted upon it, are questions of fact. ***Mahakali Foods (P) Ltd (supra***) has held that whether a party is entitled to the benefit of the MSMED Act as a supplier is a question which the arbitral tribunal is competent to decide. This objection is, therefore, one for the arbitral tribunal.

81. The submission that the Respondent had approached the Council solely to oust the jurisdiction of this Court is also devoid of merit. The right to approach the Council is conferred by Section 18(1) on "any party to a dispute", notwithstanding any other law, and, as held in ***Mahakali Foods (P) Ltd (supra***), subsists despite an independent arbitration agreement. A Division Bench of this Court, in ***Indian Highways Management Company Ltd. v. Sowil Ltd***.[20], has described

[20] **2022:DHC:815-DB**

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Section 18 as an additional forum made available to the supplier. A party who avails of a remedy conferred upon it by statute cannot be said to have acted *mala fide* merely for that reason.

82. In view of the foregoing discussion, this Court is of the considered view that none of the objections raised by the Petitioner is such as would entitle this Court, in proceedings under Section 9, to treat the reference as *non-est*.

83. It is clarified that this Court has not expressed any final opinion on the merits of the said objections and merely tentative in nature and are basically for the purposes of the present petition. They are substantial questions, which the Petitioner shall be at liberty to raise before the arbitral tribunal under Section 16 of the Act, and which the tribunal shall decide on their own merits uninfluenced by any observation made.

84. With the above discussion, that brings this Court to the principal objection of the Respondent relating to Section 9(3) of the 1996 Act. Admittedly, Section 9(3) of the Act, inserted by the Arbitration and Conciliation (Amendment) Act, 2015, reads as under:

> *"**9. Interim measures, etc. by Court**.— [(1)] A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36, apply to a court—*
>
> *(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or*
>
> *(ii) for an interim measure of protection in respect of any of the following matters, namely:—*
>
> *(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;*

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(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter [15][or] the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the Court to be just and convenient,

and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

[16][(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.]

[17][(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious.]"

85. Section 9(3) of the 1996 Act has to be read in conjunction with Section 17, which was substituted by the Arbitration and Conciliation (Amendment) Act, 2015. Section 17(1) empowers the arbitral tribunal to grant interim measures of protection of the nature specified therein, including measures for securing the amount in dispute, preservation of property and interim injunctions. Section 17(2) provides that, subject to any order passed in appeal under Section 37, an order passed by the arbitral tribunal under Section 17 shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908, in the same manner as an order of the Court.

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86. The object of the amendment, as noticed by the Supreme Court in ***Arcelormittal Nippon Steel (India) Ltd. v. Essar Bulk Terminal Ltd.***[21]**,** was to reduce the role of the Court in granting interim measures once the arbitral tribunal has been constituted.

87. In ***Arcelormittal Nippon Steel (India) Ltd*** (supra), the applications under Section 9 had been heard by the Commercial Court and reserved for orders on 07.06.2021, and the arbitral tribunal was constituted thereafter, on 09.07.2021. The question before the Supreme Court was whether, in these circumstances, Section 9(3) precluded the Commercial Court from deciding the applications.

88. The Supreme Court held that the expression "entertain" means to take up an application for consideration and apply judicial mind to the issues raised therein. The relevant test is whether the Court had applied its mind to the application, even to some extent, before the constitution of the arbitral tribunal. Where an application has already been entertained and taken up for consideration before the constitution of the arbitral tribunal, the bar under Section 9(3) does not operate merely because the Tribunal is subsequently constituted. Applying this principle to the facts before it, the Supreme Court held that Section 9(3) did not prevent the Commercial Court from pronouncing its orders, as the applications had been fully heard and orders reserved before the Tribunal was constituted.

89. Section 9(3) also permits the Court to entertain an application after constitution of the arbitral tribunal where circumstances exist

[21] **(2022) 1 SCC 712**

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which render the remedy provided under Section 17 inefficacious. In ***Arcelormittal Nippon Steel (India) Ltd*** (supra), the Supreme Court recognised that such circumstances may arise, for instance, where an arbitrator is temporarily unavailable on account of illness or travel, or where the arbitrators are unable to assemble immediately to consider an urgent application. These are illustrative circumstances. The inquiry is whether, in the facts of the particular case, the remedy before the arbitral tribunal is capable of providing effective and timely interim protection.

90. This Court, in ***Energo Engineering Projects Ltd. v. TRF Ltd***.[22], held that while the Court is not denuded of the power to grant interim relief once an arbitral tribunal is constituted, an application for interim relief should ordinarily be decided by the arbitral tribunal.

91. In ***Benara Bearings and Pistons Ltd. v. Mahle Engine Components India Pvt. Ltd***.[23], another Division Bench decision of this Court held that Section 9(3) does not operate as an ouster clause, the Court retains its power where the remedy under Section 17 is not efficacious.

92. Both decisions were noticed by the Supreme Court in *Arcelor Mittal* (supra), which also approved the view taken by this Court in ***Avantha Holdings Ltd. v. Vistra ITCL India Ltd.[24],*** and expressly approved the view taken therein, except for the observation that the Court could not exercise jurisdiction under Section 9 even at the pre-arbitration stage on the ground that it would usurp the jurisdiction of a

[22] **2016 SCC OnLine Del 6560**
[23] **2017 SCC OnLine Del 7226**
[24] **2020 SCC OnLine Del 1717**

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Tribunal yet to be constituted. The Supreme Court clarified that the restriction under Section 9(3) operates after the arbitral tribunal is constituted.

93. Tested on the aforesaid principles, the present case stands on a different footing from ***Arcelormittal Nippon Steel (India) Ltd*** (supra). The present petition was instituted on 15.04.2026, when conciliation proceedings under the MSMED Act were pending. However, the mere institution of the petition did not amount to its having been entertained within the meaning of Section 9(3). On 15.05.2026, when the matter was taken up, the Respondent was unrepresented and this Court merely issued notice. Thereafter, on 31.08.2026, when the Court was apprised of the constitution of the arbitral tribunal, the matter was adjourned at the request of the Petitioner. On none of these dates did this Court take up the Petitioner's request for interim relief for consideration or apply its mind to the merits thereof. The petition was taken up for substantive consideration only after the arbitral tribunal had been constituted. The present case, therefore, does not fall within the situation considered by the Supreme Court in ***Arcelormittal Nippon Steel (India) Ltd*** (supra), where the applications had already been heard and orders reserved before the constitution of the Tribunal.

94. The Petitioner has also not demonstrated any circumstance which would render the remedy under Section 17 inefficacious. The reliefs sought in the present petition include security for the amount claimed and preservation of materials and equipment at the project site. Such reliefs are of the nature which the arbitral tribunal is empowered to consider under Section 17(1)(ii), including under clauses (b), (c) and

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(d). Further, Section 17(2) provides for enforcement of the Tribunal's orders in the same manner as orders of the Court. No material has been placed before this Court to demonstrate that the Tribunal is unavailable, unable to consider an application for interim protection expeditiously, or otherwise incapable of providing effective and timely relief.

95. The principal circumstance urged by the Petitioner is its objection to the jurisdiction of the statutory arbitral tribunal constituted under the MSMED Act. Such an objection, by itself, does not establish that the remedy under Section 17 is inefficacious. Section 16 of the Arbitration Act empowers the arbitral tribunal to rule on its own jurisdiction, including objections concerning the existence or validity of the arbitration agreement. The Petitioner is at liberty to raise its jurisdictional objections before the Tribunal. The mere assertion that the reference is without jurisdiction cannot, by itself, constitute a circumstance warranting recourse to the Court under Section 9 after constitution of the Tribunal. This approach is consistent with ***Mahakali Foods*** (supra).

96. Accordingly, having regard to the fact that the arbitral tribunal stood constituted- a fact which is not in dispute and that the present application had not been substantively entertained before such constitution, and that no circumstance has been established to show that the remedy under Section 17 is inefficacious, this Court is precluded by Section 9(3) from taking up the present application for substantive adjudication under Section 9(1) of the Arbitration Act.

97. In view of the foregoing discussion, this Court holds as under:

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(i) The dispute between the parties stands referred to arbitration under Section 18(3) of the MSMED Act, and the provisions of the 1996 Act apply to the said arbitration.

(ii) The objections of the Petitioner to the validity of the reference are matters to be decided by the arbitral tribunal under Section 16 of the 1996 Act. The contention of the Respondent as to the incorporation of Clause 19 of the Contract in the Work Order is left open.

(iii) The petition, not having been entertained prior to the constitution of the arbitral tribunal, and no circumstance having been shown which may render the remedy under Section 17 inefficacious, is barred by Section 9(3) of the Act.

98. The petition is, accordingly, dismissed, with the following directions:

(i) The Petitioner shall be at liberty to approach the arbitral tribunal under Section 17 of the Act for the reliefs claimed in the present petition, or for any other interim measure. In the event of such an application being filed, the arbitral tribunal is to decide the same expeditiously, on its own merits and in accordance with law, uninfluenced by any observation made in this judgment.

(ii) The filing of such an application shall be without prejudice to the right of the Petitioner to raise its objections to the jurisdiction of the arbitral tribunal under Section 16 of the Act.

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(iii) All rights and contentions of both the parties, on jurisdiction as well as on merits, are left open to be urged before the Arbitral Tribunal.

99. It is clarified that the observations made in this judgment are *prima facie*, and have been made only for the purpose of deciding the present petition.

100. Pending applications, if any, also stand disposed of. There shall be no order as to costs.

OM PRAKASH SHUKLA, J

NOVEMBER 27, 2026/pa*/gunn*

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