



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

% Date of Decision: 25.04.2025

+ **W.P.(C) 10850/2019, CM APPL. 44897/2019 and
CM APPL. 45233/2019**

MDD MEDICAL SYSTEMS (INDIA) PVT. LTD.Petitioner
Through: Mr.Animesh Kumar, Mr.Nishant Kumar,
Mr.Krishna Sharoff, Dr.Sumit Kumar, Ms.Aprajita
and Mr.Shikhar Khanna, Advocates

versus

DELHI INTERNATIONAL ARBITRATION CENTRE AND ORS.
.....Respondents
Through: Dr.Amit George, Ms.Ibansara S.,
Ms.Suparna Jain, Mr.Adhishwar Suri, Ms.Rupam
and Ms.Medhavi, Advocates for DIAC
Mr.Shreesh Chadha, Mr.Aman Singh and
Mr.Divjot Singh, Advocates for respondent No.3

+ **W.P.(C) 10859/2019 and CM APPL. 44913/2019**

LSR MEDICAL PVT LTDPetitioner
Through: Mr.Animesh Kumar, Mr.Nishant Kumar,
Mr.Krishna Sharoff, Dr.Sumit Kumar, Ms.Aprajita
and Mr.Shikhar Khanna, Advocates

versus

DELHI INTERNATIONAL ARBITARTION CENTRE THROUGH
ITS COORDINATOR & ORSRespondents
Through: Dr.Amit George, Ms.Ibansara S.,
Ms.Suparna Jain, Mr.Adhishwar Suri, Ms.Rupam
and Ms.Medhavi, Advocates for DIAC.
Mr.Shreesh Chadha, Mr.Aman Singh and
Mr.Divjot Singh, Advocates for respondent No.3



CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present proceedings have been instituted by the petitioners, MDD Medical Systems (India) Pvt. Ltd., and LSR Medical Pvt. Ltd., being aggrieved with the letters dated 30.07.2019 and 03.08.2019 (hereafter, *the impugned letters*) respectively, vide which the Respondent No. 1 has revived the arbitration proceedings between the Petitioners (Non-Claimants) and the Respondent No. 3 (Claimant) and had directed the Petitioners to file Reply/Counter Claim to the Statement of Claim (hereinafter '*SOC*') filed by the Respondent No. 3.

2. To appreciate the contentions, facts in brief are that the Petitioners and Respondent No. 3 were in a business relationship. The Respondent No. 3 is an MSME unit working in the privacy and sun protection industry manufacturing rails, curtain rods, roller binds etc. and used to supply them to the Petitioners. When some dispute arose with regards to alleged failure of Petitioners in clearing outstanding dues, Respondent No. 3 approached the Respondent No. 2/*Micro and Small Enterprises Facilitation Council*. The Conciliation could not progress due to non-cooperation of the parties and respondent No. 2 vide reference letters dated 13.06.2018 and 21.06.2018 referred the dispute to Respondent No. 1/ Delhi International Arbitration Centre for adjudication in accordance with Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter, '*MSMED Act, 2006*'). The Respondent No. 1 issued letters dated 10.09.2018 and 03.10.2018 in the case of petitioner/MDD Medical Systems and letters dated 28.07.2018 and 19.09.2018 in the case of petitioner/LSR Medical Pvt



Ltd to respondent No.3 with a direction to file the SOC, which the Respondent No. 3 failed to do. Consequently, the Respondent No. 1 closed both the arbitration proceedings vide letters dated 22.10.2018 and 27.10.2018 in the matter due to non-filing of the SOC despite reminders relying on Rule 3(6) of the Delhi International Arbitration Centre (Arbitration Proceedings) Rules, 2012 (hereinafter, '2012 Rules'). Thereafter, on 30.07.2018 and 03.08.2018, the Petitioners/ MDD Medical Systems and LSR Medical Pvt Ltd were intimated that the Respondent No. 3 has filed its SOC and directed them to file the Counter Claim, respectively.

3. The Petitioner contends that the reference to Respondent No. 1 was made under Section 18 of the MSMED Act, 2006 and Section 18(5) stipulates for completion of every reference made under this Section within a period of 90 days of reference. Consequently, Petitioners submits that the mandate given to Respondent No. 1 by MSME Facilitation Council stood terminated vide the aforesaid letters dated 22.10.2018 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, 2006 and without any authority of law. Moreover, the Petitioner contends that though Section 29A of the Arbitration and Conciliation Act, 1996 (hereinafter, 'A&C Act'), provides for extension of time up to 18 months, there is no provision for extension of time in the MSMED Act which has an overriding effect as per Section 24.

4. Reliance is placed on Section 25 of the A&C Act to argue that the mandate of Arbitral Tribunal (hereinafter, 'AT') also stood terminated due to non-filing of SOC by the Respondent No. 3. It is contended that even if a belated SOC can be accepted as per Section 25 of the A&C Act, sufficient



cause was never shown by Respondent No. 3 for not filing the SOC. Moreover, it is argued that the Respondent No. 1 did not have the jurisdiction to revive the proceedings automatically without any fresh request and the same should have been adjudicated by the AT, however, no such request was made. To buttress his submissions, the Counsel has referred to SREI Infrastructure Finance Limited vs. Tuff Drilling Private Limited¹.

5. Lastly, the Petitioners submit that the Delhi International Arbitration Centre (Arbitration Proceedings) Rules, 2018 (hereinafter, '2018 Rules') are applicable on the arbitration proceedings. As the reference was acted upon after 01.07.2018 by the Respondent No. 1, after the 2018 Rules came into effect. He submits that there is no provision in the 2018 Rules which provides for any revival of the proceedings. The Petitioner, as an *arguendo* submits that even if it is accepted by this Court that the 2012 Rules are applicable, a fresh request is required to be filed as per Rule 3(6) of the 2012 Rules, which hasn't been filed by the Respondent No. 3.

6. *Per contra*, counsel for the Respondent No. 3 has raised a preliminary objection to the maintainability of the Writ Petition. He submits that the point in issue raised in the Writ Petition could be raised before the AT under Section 16 of the A&C Act as the proceedings have been revived. He submits that it is settled position of law that issues relating to the proceedings, reference or jurisdiction have to be decided by the AT itself. Reliance has been placed on Gujarat State Civil Supplies Corporation Ltd. vs. Mahakali Foods Pvt. Ltd.², Rohan Builders (India) Pvt. Ltd. vs. Berger

¹ (2018) 11 SCC 470.

² (2023) 6 SCC 401.



Paints India Limited³ and Corrtech International Pvt. Ltd vs. Delhi International Arbitration Center & Ors⁴. It is submitted that the 2018 Rules were effective from 01.07.2018 whereas the reference was received and registered on 21.06.2018 as noted in the communication dated 10.09.2018. In response, learned counsel for the Petitioner has submitted that the action of Respondent No. 1 was arbitrary and hence amenable to the Writ Jurisdiction.

7. Learned counsel for Respondent No. 1 submits that in the present case, the '2018 Rules' are not applicable because they don't contain provisions to revive the proceedings, more so, they don't even contain the provision for closure of the file. Hence, the '2012 Rules' will be applicable on these proceedings as also is evident from the letter dated 22.10.2018 vide which the proceedings were closed. Respondent No. 1 further denies the Petitioner's contention that the mandate of AT stood automatically terminated after expiry of 90 days as specified under MSMED Act, 2006 by submitting that the 90 days period is the time frame for deciding a reference and not for completion of the arbitration proceedings. Lastly, the counsel for Respondent No. 1 submits that Section 25 of the A&C Act will not be applicable in the present matter as the same requires constitution of AT whereas. Respondent No.1 was merely exercising its pre-arbitration administrative function. Moreover, it is submitted that Rule 3.6 of the '2012 Rules' categorically gives right to DIAC to close the file without prejudice to right of the claimant to file the SOC at a later date. Reliance placed by the petitioner on the judgment of SREI (*supra*) is contended to be misplaced as

³ 2024 SCC OnLine SC 2494.

⁴ 2024 SCC OnLine Del 7029.



in the present matter the arbitration proceedings were not terminated but only the file was closed which is purely an administrative action.

8. This Court has heard the arguments of learned counsels appearing for the parties.

9. The first contention raised is whether the timeline of 90 days prescribed in Section 18(5) MSMED Act for deciding the reference would be applicable to an arbitration proceeding instituted on the basis of such reference. Section 18, MSMED Act, 2006 has been extracted for ease and reads as follows:

“18.Reference to Micro and Small Enterprises Facilitation Council.—(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section(1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.”



It is a well-established rule of interpretation that statute has to be interpreted harmoniously so as to avoid any clash between various provisions and to ensure that the provisions are consistent with the scheme of the statute. Section 18 (5) states that every reference made under Section 18 shall be decided within a period of ninety days from the date of making such reference. If Subsection (5) is read with the title of section 18, i.e. “Reference to Micro and Small Enterprises Facilitation Council” and Subsection (1), it becomes apparent that the reference to which the three months’ time limit is ascribed is the reference to the council and not to the arbitration. Moreover, Section 18(3) states that once a reference is made to arbitration, the A&C Act would 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 A&C Act. In any case, though Section 18(5) prescribes a timeline, it fails to lay down any consequence of its breach. Nowhere is it written that a reference stands terminated upon the expiry of 90 days. Thus it is evident that the time limit ascribed in directory and not mandatory and the reliance on the said provision by the petitioners is misplaced.

A similar view has been taken by a Co-ordinate Bench of this Court in the case of Indian Highways Management Company Limited v. Mukesh & Associates⁵ wherein it was held that ‘reference’ in Section 18(5) had to be construed to mean reference to the facilitation council. It held as follows:-

“ 25. ...The rule of harmonious construction thus requires that the expression “every reference” as mentioned in the opening sentence of Sub-section (5) of Section 18 of the MSME Act must be construed to mean reference(s) to MSEFC. The heading of Section 18 is also indicative of the reference as contemplated under Section 18 - that is, a reference to MSEFC of any dispute with regard to any amount due under Section 17 of

⁵ 2021 SCC OnLine Del 2868.



the MSME Act, that is, an amount due from the buyer of goods supplied or the services rendered, by a supplier.”

10. Viewed from another angle, Section 18(5) of the MSMED Act can be contrasted with Section 29A of the A&C Act. Both Sections provide timelines for the proceedings, 90 days and 18 months respectively. However, while Section 29A(4) of the A&C Act clearly lays down the consequence of non-adherence to the prescribed time limit, i.e. termination of the mandate of the arbitrator, Section 18 or any other section of the MSMED Act fails to lay down the consequences for non-adherence to the time limit in Section 18(5). There is no provision for automatic termination of the mandate in this sub-section. In this regard, this Court in Indian Highways Management Company (Supra) made following observations about Section 18(5) :-

26. This Court also finds it difficult to accept that provisions of Subsection (5) of Section 18 of the MSME Act can be construed to mean that the mandate of MSEFC to decide the reference would stand terminated on the expiry of ninety days. Sub-section (5) merely directs that the reference must be decided within ninety days. It does not expressly provide for the consequence of failure to decide the reference within the said period. The assumption that there would be an automatic termination of MSEFC's mandate if it fails to decide within a period of ninety days is neither borne out by the language of Sub-section (5) nor can be drawn as an inference from the scheme of Section 18 of the MSME Act. The entire object of Section 18 is to provide a dispute resolution mechanism for resolution of any disputes with regard to amounts due under Section 17 of the MSME Act. To that end, consistent with the said scheme, Sub-section (5) provides that a reference must be decided within a period of ninety days. Thus, MSEFC must ensure that the conciliation proceedings, as conducted by itself, are concluded within the said period. However, if the said Conciliation is not concluded within a period of ninety days, it does not mean that its mandate stands terminated and the parties must be relegated to other remedies.”

A similar conclusion was arrived at by the Calcutta High Court in the case of Porel Dass Water & Effluent Control (P) Ltd. v. W.B. Power



Development Corpn. Ltd.,⁶ wherein the Court observed that Section 29A of the A&C Act, in sub-section (4), provides for automatic termination of the mandate of the tribunal after expiry of the stipulated period unless extended by Court. The Court rightly observed that a similar provision was lacking in Section 18 of the MSMED Act. The relevant portion is extracted below:-

“37. Conspicuously, there is no such sanction for non-completion of the arbitral proceeding within the stipulated period of 90 days in Section 18(5) of the MSME Act or elsewhere in the said Act. Hence, on a mere comparison of the two provisions, the timelines in both cases being hedged by the expression “shall”, shows that whereas Section 29-A needed a further provision to provide that in case of non-completion within the timeline the mandate shall terminate, the said additional provision is intentionally left out in Section 18 of the MSME Act. Thus, as opposed to Section 29-A(3) of the 1996 Act, Section 18(5) of the MSME Act does not carry any sanction or adverse consequence for non-adherence to such outer time-limit. This is an additional indicator that the timeline stipulated in Section 18(5) is not mandatory but directory.”

The decision in Porel Dass (*Supra*) has not been challenged and attained finality. Though, not binding on this Court, the said decision holds a persuasive value.

11. Next, Petitioner has contended that as per Section 25 of the A&C Act, upon non-receipt of the SOC, the proceedings stood terminated and neither sufficient cause was shown, nor any fresh request was made to the respondent No.1 for revival. It has further been argued that the ‘2018 Rules’ did not provide for revival. Respondents, on the other hand, have disputed the applicability of Section 25 of the A&C Act as well as the ‘2018 Rules’. Be that as it may, the fact of the matter is that the arbitration proceedings

⁶ 2024 SCC OnLine Cal 8927.



stand revived. Whether the said revival was justified or not, is essentially a question challenging the jurisdiction of the AT. It is trite law that the AT is empowered under Section 16 of the A&C Act to adjudicate and rule upon the challenges to its own jurisdiction. Reference may be made to landmark judgments of the Supreme Court in this regard, in Vidya Drolia v. Durga Trading Corporation reported as (2021) 2 SCC 1 as well as Cox & Kings Ltd. v. SAP India (P) Ltd., reported as (2024) 4 SCC 1. In the latter, it was observed, as reproduced hereunder:

“163. Section 16 of the Arbitration Act enshrines the principle of competence-competence in Indian arbitration law. The provision empowers the Arbitral Tribunal to rule on its own jurisdiction, including any ruling on any objections with respect to the existence or validity of arbitration agreement. Section 16 is an inclusive provision which comprehends all preliminary issues touching upon the jurisdiction of the Arbitral Tribunal. [Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., (2020) 2 SCC 455 : (2020) 1 SCC (Civ) 570] The doctrine of competence-competence is intended to minimise judicial intervention at the threshold stage. The issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the Arbitral Tribunal.”
xxx

Section 16 imbibes the spirit of “Kompetenz-Kompetenz” and is intended to reduce judicial intervention. An array of issues have been raised pertaining to the validity of the revived arbitral proceedings in the present case. It would not be appropriate for this Court while exercising Writ Jurisdiction to venture into a detailed fact-finding exercise. Needless to state, it would be open to the petitioners to raise all questions as to the jurisdiction of the AT or the maintainability of the proceedings before the AT, which could adjudicate upon the same as a preliminary issue. The AT is expected to decide upon the issues raised freely and uninfluenced by any



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observations made herein.

12. With the above directions, the present petition, along with application(s), if any, is disposed of.

MANOJ KUMAR OHRI
(JUDGE)

APRIL 25, 2025/ry
(Corrected and released on 14.05.2025)