



2026:DHC:9282



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: October 13th, 2026*

CNR No. DLHC010582992024

+ W.P.(C) 12456/2024 & CM APPL. 51857/2024

MS TPL- KIPL JOINT VENTURES

.....Petitioner

Through: Ms. Renu Gupta &
Ms. Pratiksha Jalan, Advs.

versus

MICRO AND SMALL ENTERPRISE FACILITATION
COUNCIL, DISTRICT MAGISTRATE WEST, GOVT. OF
NCT OF DELHI AND ANR Respondents

Through: Mr. Rakesh Gupta, Adv.

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present petition has been filed challenging the orders dated 10.07.2024 and 29.07.2024 passed by the learned Micro and Small Enterprises Facilitation Council, District Magistrate (West), Delhi, in the case titled *M/s. KRA Infrastructure Developers Pvt. Ltd. v. M/s. TPL-KIPL Joint Venture* – Case No. DL/04/DWC/00710, whereby the learned Council terminated conciliation proceedings and referred the dispute between the parties to the Delhi International Arbitration Centre (“**DIAC**”) under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006 (“**MSME Act**”).

2. Succinctly stated, it is the case of the Petitioner, that

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Respondent No. 2 – M/s. KRA Infrastructure Pvt. Ltd. was engaged by the Petitioner as a sub-contractor pursuant to a Letter of Intent dated 27.11.2017, for the Construction of the Sewage System including ancillary works, IPS along with O&M of the entire system for a period of 6 years in Karnal Town and a Work Order dated 19.01.2018 was executed in favour of Respondent No. 2.

3. On 07.09.2021, the Petitioner issued a notice to the Respondent No. 2 invoking the CPBGs amounting to ₹3,34,18,428/- against the mobilization advance. However, the Respondent No. 2 *vide* email dated 04.10.2021, requested the Petitioner to not invoke the CPBGs and offered to transfer the same amount to the Petitioner. After the said transfer, the CPBGs were returned to the office of the Respondent No. 2.

4. Thereafter, on 27.11.2021 the Respondent No. 2 sought payment of alleged outstanding dues amounting to ₹3.30 Crores from the Petitioner and on 13.05.2022, the Respondent No. 2 approached the learned Facilitation Council under Section 18 of the MSME Act, claiming approximately ₹3.60 crores.

5. The Petitioner filed an application challenging the maintainability of the claim filed by the Respondent No. 2 before the learned Facilitation Council raising concerns regarding the eligibility of the Respondent No. 2 availing benefits under the MSME Act, as according to it the Respondent No. 2 was not registered as an MSME at the time of executing the LoI and Work Order, and such benefits could not have been availed.

6. The learned Facilitation Council, after conducting the



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conciliation proceedings, vide the impugned orders dated 10.07.2024 and 29.07.2024, terminated the conciliation proceedings and referred the dispute to the DIAC for arbitration. The order is re-produced herein below: -

*“To The Co-Ordinator,
Delhi International Arbitration Centre (DIAC),
Delhi High Court Complex, Sher Shah Road,
New Delhi-110003.*

Sub: Forwarding reference filed under Section 18 of the Micro, Small & Medium Enterprises Development (MSMED) Act, 2006, by M/s Kra Infrastructure Developers Pvt. Ltd. against M/s. TPL-KIPL Joint Venture Case No. DL/04/S/DWC/00710 relating to delayed payments.

Sir,

This is to inform you that a Micro and Small Enterprises Facilitation Council {MSEFC} had been established u/s 20 of the Micro, Small & Medium Enterprises Development (MSMED) Act, 2006 vide Notification No. I(MSME)/01/2019/Pt.File/3120 dated 30.09.2020 issued by the Hon'ble Lt. Governor, Delhi in exercise of the power conferred u/s 2 (P) of the Micro, Small and Medium Enterprises Development Act, 2006.

It is further informed that claimant had filed a reference on 13.05.2022 u/s 18 of the Micro, Small & Medium Enterprises Development (MSMED) Act, 2006 before the above stated Council for adjudication of disputed/delayed payment amounting to Rs. 3,59 ,94, 768 / - without interest from the Respondent.

*In accordance with the provisions of the said act, the Micro, Small & Medium Enterprises Council, Delhi took up the case for conciliation proceedings in its meetings held on 11.01.2023, 03.05.2023 & 10.07.2024. **The council made all efforts to facilitate for conciliation. Accordingly, the Council has arrived at the conclusion that the Respondent is not ready for conciliation towards the disputed amount and felt that conciliation is not possible in this case and decided to terminate the conciliation proceedings and refer this case u/s 18 (3) of the Micro, Small & Medium Enterprises Development Act, 2006 to Delhi International W.P.(C)-12456/2024 36 Arbitration Center (DIAC) for initiating arbitration***

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proceedings as per the Arbitration and Conciliation Act, 1996.”

7. Aggrieved thereby, the Petitioner has preferred the present petition.

8. Learned counsel for the Petitioner has raised a limited argument that the learned Facilitation Council referred the dispute to arbitration without deciding the Petitioner's preliminary objections regarding its jurisdiction and the eligibility of Respondent No. 2 to invoke the provisions of the MSME Act. She submits that Respondent No. 2 had obtained MSME registration on 07.11.2020, subsequent to the execution of the Letter of Intent and Work Order. She contended that registration under the MSME Act operates prospectively and does not extend its benefits to contracts entered into prior to registration.

9. *Per contra*, learned counsel for Respondent No. 2 submits that the present writ petition is not maintainable, as the Petitioner had an efficacious alternative remedy under Section 16 of the Arbitration and Conciliation Act, 1996, to raise objections regarding the jurisdiction of the Arbitral Tribunal. He submits that the learned Facilitation Council had merely referred the dispute to arbitration after conciliation proceedings failed, and the question of jurisdiction could be adjudicated by the Arbitral Tribunal.

10. He submits that Respondent No. 2 had been working as an MSME since 2007, i.e. prior to execution of LoI and Work Order, and that the registration obtained on 07.11.2020 was pursuant to a change in the registration format. Even otherwise, registration under MSME Act was not a pre-requisite for invoking the jurisdiction of the Facilitation Council under Section 18 of the Act.



11. Arguments heard and the material placed on record perused.
12. At this juncture, it would be apposite to refer to the judgment of the Hon'ble Supreme Court in **NBCC (India) Ltd. v. The State of West Bengal & Ors.** 2025 INSC 54. In the said case, the National Buildings Construction Corporation had granted four work orders between July 2015 to August 2016 to M/s Saket Infra Developers for undertaking construction work at different places in West Bengal. Pursuant to the work orders, contracts were executed on 27.8.2015, 17.11.2015, 28.07.2016 and 20.08.2016. The Enterprise had then filed a memorandum under Section 8 of the Act on 19.11.2016 as a "*small enterprise*". Thereafter, on 15.09.2017, fifth contract in favour of the Enterprise was executed. Disputes arose between the parties with respect to all five contracts and thus, the enterprise made reference to Section 18 of the Act for recovery of amount and on failure of conciliation the dispute was referred to arbitration under Section 18 (3) by the council.
13. As in the instant case, in **NBCC** (supra), a writ petition was filed wherein 2 objections were raised, firstly, the Enterprise was not registered before the execution of the contracts and the Facilitation Council does not have jurisdiction under Section 18 and secondly, the subject-matter of the contract relates to the execution of the works contracts, which falls outside the scope and ambit of the Act. While dealing with the same, the learned Single Judge opined that these questions of jurisdiction can be raised before the learned Arbitral Tribunal and the view was endorsed by the learned Division Bench.
14. Thus, the NBCC had approached the Hon'ble Apex Court,



which framed the following question for determination “*whether an MSME cannot make a reference to the Facilitation Council for dispute resolution under Section 18 of the Act if it is not registered under Section 8 of the Act before the execution of the contract with the buyer.*”

15. While answering the same, the Hon’ble Apex Court discussed the entire scheme of the MSME Act, a beneficial legislation, the precedents on the issue and held that Section 18 permits “*any party to a dispute*” to make a reference and is not explicitly restricted to pre-registered suppliers, viewing the filing of a Section 8 memorandum as discretionary and further referred the matter to a larger bench for consideration.

16. The key observations and interpretation of the statutory provisions are reproduced hereinbelow: -

“ Statutory scheme of the Msmed Act, 2006

23. Sections 2(a), (c), (e), (n), 7, 8, 17, 18, 20 and 21 of the Act, to the extent that they are relevant, are reproduced hereinbelow for ready reference:

“2. **Definitions.**—In this Act, unless the context otherwise requires—

(a) “**Advisory Committee**” means the committee constituted by the Central Government under sub-section (2) of Section 7.

(b)***

(c) “**Board**” means the National Board for Micro, Small and Medium Enterprises established under Section 3;

(e) “**enterprise**” means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951) or engaged in providing or rendering of any service or services;



7. Classification of enterprises.—(1) Notwithstanding anything contained in Section 11-B of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government may, for the purposes of this Act, by notification and having regard to the provisions of sub-sections (4) and (5), classify any class or classes of enterprises, whether proprietorship, Hindu undivided family, association of persons, co-operative society, partnership firm, company or undertaking, by whatever name called—

(a) in the case of the enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), as—

(i) a micro enterprise, where the investment in plant and machinery does not exceed twenty-five lakh rupees;

(ii) a small enterprise, where the investment in plant and machinery is more than twenty-five lakh rupees but does not exceed five crore rupees; or

(iii) a medium enterprise, where the investment in plant and machinery is more than five crore rupees but does not exceed ten crore rupees;

(b) in the case of the enterprises engaged in providing or rendering of services, as—

(i) a micro enterprise, where the investment in equipment does not exceed ten lakh rupees;

(ii) a small enterprise, where the investment in equipment is more than ten lakh rupees but does not exceed two crore rupees; or

(iii) a medium enterprise, where the investment in equipment is more than two crore rupees but does not exceed five crore rupees.

(2) The Central Government shall, by notification, constitute an Advisory Committee consisting of the following members, namely—

(3)***

(4) The Central Government shall, prior to classifying any class or classes of enterprises under sub-section (1), obtain the recommendations of the Advisory Committee.

15. Liability of buyer to make payment.—Where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:



Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

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 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 disputes as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under 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.

20. Establishment of Micro and Small Enterprises Facilitation Council.—The State Government shall, by notification, establish one or more Micro and Small Enterprises Facilitation Councils, at such places, exercising such jurisdiction and for such areas, as may be specified in the notification.

21. Composition of Micro and Small Enterprises Facilitation Council.—(1) The Micro and Small Enterprise Facilitation Council shall consist of not less than three but not more than five members to be appointed from among the following categories, namely—”

(emphasis supplied)

24. First and foremost, Chapter V of the Act deals with delayed payments to micro and small enterprises and specifies the rights, liabilities, recovery, and remedies in favour of micro and small enterprises. The rights and liabilities are based on the incidence of supply made by the micro and small enterprise. To this extent, the Act continues the statutory scheme contemplated under the repealed statute and, therefore, the principle laid down in *Shanti Conductors [Shanti Conductors (P) Ltd. v. Assam SEB, (2019) 19 SCC 529 : (2020) 4 SCC (Civ) 409]* that the liability of a buyer commences from the date of supply and not from the date of execution of the agreement or contract, even though the contract was prior to coming into force of the Act, continues to apply. Up to this point, there seems to be no difficulty. The issue in the present case takes a different turn, as explained in the following part.

Whether registration is a necessary precondition to referring a dispute under Section 18 of the Act

25. The question that we are called upon to answer is whether the reference to the Facilitation Council under Section 18 of the Act is impermissible if the Enterprise is not registered by filing a memorandum under Section 8 of the Act before the contract is executed. This issue was not formulated, discussed and decided in any other judgment of this Court, including the two substantive judgments under the Act i.e. *Silpi Industries [Silpi Industries v. Kerala SRTC, (2021) 18 SCC 790]* or *Mahakali Foods [Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd., (2023) 6 SCC 401 : (2023) 3 SCC (Civ) 7]*. In these two judgments, it is worth mentioning, such an issue was neither formulated, nor discussed. We will explain this in detail while discussing the facts and the ratios of these judgments.



Simply the text

29. The text of Section 18 is clear and categorical. The words employed herein are “any party to a dispute”. The text, “any party to a dispute”, cannot be read as a “supplier” by adopting a process of interpretation, by first referring to Section 17, then to Sections 15 and 16 and thereafter, in search of the definition of supplier, to Section 2(n) and finally stopping at Section 8 to hold that “any party to a dispute” will only be an Enterprise which is registered under Section 8 of the Act. This meaning-making process to metamorphosise the clear text “any party” to “a supplier” is not the legal method to understand the true meaning of words employed by the legislature. The age-old principle, referred to as the Golden Rule of Interpretation, is that “words of a statute have to be read and understood in their natural, ordinary and popular sense”. [State of A.P. v. Linde (India) Ltd., (2020) 16 SCC 335 : (2020) 78 GSTR 381; Grid Corpn. of Orissa Ltd. v. Eastern Metals & Ferro Alloys, (2011) 11 SCC 334.] The choice of the words “any party to a dispute” in Section 18 of the Act is deliberate. The legislative device of employing different expressions in successive provisions of the same statute is well known and intended to effectuate the desired purpose of the Act. If Parliament had intended that “any party” must be confined only to a “supplier”, or even a buyer, which expression is also defined, it would as well have used that or those very expressions. The Court cannot substitute the expression “any party” with “supplier” and change the text and, consequently, the scope and ambit of Section 18 altogether.

The context

30. Mention of Section 17 in Section 18 is only to provide context for a reference of dispute. The contextual relevance of locating Section 17 in Section 18 is only to provide the purpose of reference, not to confine the remedy to a registered Enterprise. This is to clarify that the reference shall be to adjudicate the dispute arising out of a liability of the buyer which is declared under Sections 15 and 16.

The purpose and object of Section 18

31. Apart from the text and context in which Section 18 of the Act employs the expression “any party to the dispute”, it is also to be seen that the section is provisioning a remedy for resolution of disputes. This remedy is provided by the statute, not by an agreement between the parties. It is therefore, necessary to keep it unrestricted and open-ended, enabling any party to a dispute to access the remedy. When statutory provision incorporating remedies for resolution of disputes falls for consideration, the constitutional courts must interpret such remedies in a manner that would effectuate access to justice.

The definition clause



32. We will now examine the sheet anchor of Mr Gopal Sankaranarayanan's arguments that a supplier is defined under Section 2(n) can only be an Enterprise that has filed a memorandum under Section 8 of the Act. For this purpose, we will extract the entirety of the definition of "supplier" under Section 2(n) of the Act:

"2. (n) "supplier" means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of Section 8, and includes—

(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);

(ii) the Small Industries Development Corporation of a State or a Union Territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956);

(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;"

33. From a plain reading of Section 2(n), it is clear that the definition of a supplier is relatable only to a **micro or a small enterprise** and does not encompass a medium enterprise. Supplier not only means a micro or small enterprise, "which have filed a memorandum with the authority referred to under sub-section (1) of Section 8", but also includes : (i) NSIC, (ii) SIDC, and (iii) company, cooperative society, trust or a body engaged in selling of goods produced by micro or small enterprise and rendered services which are produced by such enterprise. In other words, a supplier will also be an entity engaged in selling goods or rendering services, produced or provided by a micro or small enterprise. All such entities, irrespective of filing of the memorandum will be suppliers. **Thus, the definition of a supplier encompasses not only those who have filed a memorandum, but also those who have not filed.** The reason for keeping the definition is not difficult to imagine. **This is still an unorganised industry, growing, evolving and many of them are at start-up levels.** The reason for keeping the definition wide is supported by an Expert Committee, whose opinion we will refer to in the next section.

35. Section 8(1)(a) provides that, "a micro or a small enterprise may, at his discretion" and even a medium enterprise engaged in providing or rendering services, also **"may at his discretion" file a memorandum with the authority as may be specified by the Government.** This important feature of the statute recognising and vesting of the discretion has not been noticed. There is also a logical follow-up to this choice or discretion vested in the micro or small enterprise and the medium enterprise engaged in rendering services for filing a memorandum in sub-section (4) of Section 8 and also proviso (a) to Section 8(1). As the said sub-section (4)



of Section 8 relates to micro or small enterprises, the State Government shall by notification, specify the authority with which such micro or small enterprise may file a memorandum. **Considering the choice and discretion specifically provided to these enterprises, it becomes very clear that there is no mandatory prescription of filing a memorandum.** Conversely it appears that medium enterprises engaged in manufacture or production of goods, “shall file a memorandum” with such authority as may be specified, and this is reflected in proviso (b) to Section 8(1). At this stage, it is relevant to note that the definition of supplier under Section 2(n) is confined only to micro or small enterprise and does not encompass a medium enterprise.

38. We have noted three clear features in the statutory regime. To start with, Section 18 of the Act does not use the expression “supplier”, **instead employs the phrase, “any party to a dispute, may”.** We have also noted **that the definition of the expression “supplier” is not confined to a micro or a small enterprise which has filed a memorandum under Section 8(1) but also includes companies or other entities engaged in selling goods or rendering services by an enterprise. Thirdly, Section 8 grants a discretion to a micro or a small enterprise in filing a memorandum with the authority.**

17. Keeping the above principles in mind, we may examine the case at hand.

18. It remains undisputed that the registration has already been obtained under the MSME Act in the year 2020; the certification declares the enterprise as “small”; the claims arise from the Work order itself and the final bill has also been raised subsequent to the registration i.e. in 2021. However, the sole contention of the Petitioner is that the claims raised are prior to the period of their registration and the cause of action arises out of the LOI and the Work Order executed much before the registration.

19. Hence, it emerges that the above cited judgment in *NBCC* (supra) squarely covers the case at hand, as it has been settled that *any party to the dispute* can seek recourse to the Section 18 of the MSME



Act, even if registration has been obtained subsequent to the execution of the Contract as Section 8 grants a discretion to a *micro or a small enterprise* in filing a memorandum with the authority. Thus, the Respondent No. 2 could have taken a recourse to Section 18 of the Act.

20. Even otherwise, it is relevant to note that the impugned orders have been passed upon the failure of conciliation proceedings, with the dispute thereafter being referred for arbitration. No adjudication upon the rival claims and contentions of the parties has been made. Thus, the Petitioner fails to establish that it has been prejudiced by the impugned order.

21. In view of the judgment in *NBCC* (supra), wherein a pragmatic approach has been adopted keeping in mind the object of Section 18 and the MSME Act, this Court finds no reason to interfere with the impugned orders.

22. It is noted that only the limited ground raised before this Court regarding the subsequent registration of the Respondent No. 2 has been adjudicated and no observations have been made on the merits of the claims. Needless to say, the parties are at liberty to raise their respective contentions in the Arbitral proceedings in accordance with law.

23. Accordingly, the present petition is dismissed, along with pending application(s), if any.

AMIT MAHAJAN, J

OCTOBER 13, 2026/“SS”