

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/276/2025
WSE POLYZAP PRIVATE LIMITED
VS
VATSAL PACKKAGING PRIVATE LIMITED

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 8th April, 2025.

Appearance:

Mr. Suddhasatva Banerjee, Adv.

Mr. Debraj Sahu, Adv.

Ms. Labanyasree. Sinha, Adv.

Ms. Antara Biswas, Adv.

...for petitioner.

The Court:- This is an application under Section 9 of the Arbitration and Conciliation Act, 1996. This Court is of the view that the application is not maintainable, as the petitioner had filed an application under Section 18 of the MSME Act. At this stage, Mr. Banerjee submits that the application be withdrawn with liberty to file afresh. This Court is of the view that upon failure of conciliation, the Arbitration and Conciliation Act, 1996 applies to a proceeding under the MSME Act, under Section 18 (3) of the said Act. The Council or such other institute appointed by the Council is to initiate an arbitral proceeding, upon failure of conciliation. Section 18 (unamended) of the MSME Act is quoted below:-

“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.”

The remedy of the petitioner for interim protection would be under Section 17 of the Arbitration and Conciliation Act, 1996. However, Mr. Banerjee submits that the said procedure may not be efficacious. At this stage, it is not proper to adjudicate on this issue as there is nothing before the Court which would indicate that the remedy available in the arbitration proceeding has been proved to be ineffective.

The application is dismissed as withdrawn.

If at all situation so arises, which could render the remedy under Section 17 of Arbitration and Conciliation Act, 1996 as inefficacious, the petitioner may

approach this Court strictly in accordance with law, in the event there is a subsisting arbitration agreement.

(SHAMPA SARKAR, J.)

S. Kumar / R.D. Barua