IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO. 85 OF 2024

Ambuja Cements Ltd ...Applicant

Versus

ESS ESS Technofabs Pvt Ltd ...Respondent

Mr. Tushar Gujjar, *a/w Deepak Singh, Bhagyashree Mapuskar, Ameya Tawde, i/b SL Partners, for the Applicant.*

Mr. Vaibhav Charalwar, *i/b Tulsi Shah, for Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.
DATE : AUGUST 22, 2025

ORDER :

1. This is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 ("***the Act***") seeking appointment of an arbitrator in connection with disputes and differences between the parties under an agreement which is characterized by the Applicant as a "works contract".

2. At the threshold, this Application deserves to be rejected inasmuch as when this Application was filed, proceedings under the Micro, Small and Medium Enterprises Development Act, 2006 ("***MSMED Act***") were already underway before the MSME Facilitation

Council ("***MSME Council***"). In fact, the reference to the MSME Council had been made on October 20, 2022 in challenge of which, an Application under Section 16 of the Act had been filed by this very Applicant before the MSME Council on May 4, 2023, on the premise that the MSME Council does not have jurisdiction over works contracts.

3. Even while such proceedings were pending and the MSME Council was seized of the objections raised by the Applicant, the Applicant has chosen to invoke arbitration separately under an invocation notice dated May 3, 2023 and in went to file this Application on August 22, 2023.

4. On the face of it, the jurisdiction of this Court under Section 11 could be attracted only if either the counterparty to the arbitration agreement fails to honour the arbitration agreement by not agreeing to the appointment of an arbitrator or an institution charged with the responsibility to appoint an arbitrator fails to perform its function. In the facts of this case, the MSME Council which conducts statutory arbitration was totally seized of the matter including the objection as to the arbitrability of the dispute (solely on the premise of disputes under a works contract purportedly not being amenable to arbitration) and yet

this Application has been filed in parallel leading to multiplicity of proceedings.

5. Consequently, on the face of it, it is evident that this Application ought not to have been filed.

6. Learned Counsel for the Applicant today tenders a judgment of the Punjab and Haryana High Court dated July 18, 2025, which quashed and set aside an arbitral award dated October 18, 2023 that came to be passed in the arbitration proceedings conducted by the MSME Council. Therefore, his contention is that since the arbitral award passed by the MSME Council has been set aside, no prejudice would be caused to either party by this Court appointing an arbitral tribunal.

7. This contention too is unacceptable inasmuch as the judgement of the Punjab and Haryana High Court has explicitly remanded the matter to the MSME Council, directing that the proceedings should commence afresh from the stage of conciliation under the MSMED Act, and that the final arbitral award must be in full compliance with the MSMED Act (that Court having found non-compliance with the procedural requirements and other such issues as agitated by the Applicant in that Writ Petition).

8. The Writ Petition having remanded the matter to the MSME Council, there is no basis to let this Application remain on the docket of this Court any further. In any case, even at the threshold when this Application was filed, there was no basis to file the Application inasmuch as the MSME Council was already seized of the proceedings under the MSMED Act. That legislation makes it explicitly clear that proceedings under the MSMED Act would be governed by the Arbitration Act as and when conciliation fails. Therefore, there having been no failure on the part of the institution, to enable the filing of this Application, this Application deserves to be dismissed.

9. Equally, bearing in mind the multiplicity of proceedings at the instance of the Applicant, and taking into account the fact that the Respondent is a small enterprise governed by the MSMED Act, costs shall follow in the sum of Rs.10,000/- payable within a period of two weeks from the date of upload of this order to the Respondent.

10. Needless to say nothing contained in this order is an expression of opinion on the merits of the matter. In fact, costs are being imposed because this Court has been approached without the Court having any jurisdiction in the matter. Lacking jurisdiction, there

is no question of any comment in this order being a pronouncement on the merits.

11. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]