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W.P.No.33528 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.11.2025

PRONOUNCED ON : 02.12.2025

CORAM:

THE HONOURABLE MR. JUSTICE **V. LAKSHMINARAYANAN**

W.P.No.33528 of 2025 &
WMP.Nos.37673 & 37676 of 2025

Sree Infratech India Private Limited,
(Formerly known as M/s.Sree Infratech),
Represented by its Director,
Having its registered office at,
No.352, Rajaram Salai, Opposite to KK Nagar Bus stop,
K.K.Nagar, Trichy 620021, Tamil Nadu. ... Petitioner

Vs.

1.The Chairman (MSEFC) & Director (Ind. & Com),
Micro and Small Enterprises Facilitation Council (MSEFC),
Directorate of Industries and Commerce,
Government of Puducherry.

2.KS Mani Electricals,
HO 50, III rd Cross Street,
Velmurugan Nagar, Kuyavarpalayam,
Pondicherry – 605 013. ... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records in Order dated 30.06.2025 in No.2458/Ind.&Com./MSEFC/T11/2025/579 passed by the 1st respondent quash the same and consequently, direct the 1st respondent to refrain from proceeding in No.2458/Ind.&Com./MSEFC/T11/2025/579 on the file of the 1st respondent.

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For Petitioner

:Mr.V.Ravi, Senior Counsel,
for Mr.Pramodh Kumar

WEB COPY For Respondent 1

:Mr.A.Tamilvannan,
Additional Government Pleader (P)

For Respondent 2

:Mr.M.Nandakumar

ORDER

The petitioner claims to be a reputed infrastructure company. It engages in road construction and infrastructure development. It was awarded a contract by M/s.DRAI Private Limited. A sub-contract for electrical utility shifting under NH-844 project was awarded to the petitioner. The petitioner, in turn, appointed the second respondent for execution of the electrical utility shifting works. The sub contract was preceded by a Letter of Intent (hereinafter referred to as 'LOI') dated 01.10.2021. A Memorandum of Understanding (hereinafter referred to as 'MOU') dated 23.02.2022 was entered into by both the parties. The petitioner alleges that the sub contract had to be executed on a back-to-back basis. In terms of the LOI and MOU, the second respondent was responsible for execution, coordination, certification and obtaining approvals.

2. The petitioner states that the payment to be made was subject to certification by TANGEDCO and NHAI and consequential release of funds by the Principal Contractor/NHAI, to the petitioner. The



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petitioner alleges that midway through the work, the second respondent abandoned the same, which resulted in cost escalation, contractual breaches and safety incidents. Though the second respondent is the defaulter, it filed a claim petition invoking Section 18 of the Micro, Small, and Medium Industries Development Act, 2006 (hereinafter referred to as MSME Act). The claim petition was initially for a sum of Rs.3.34 crores and later, escalated to Rs.12,46,53,375.69/-. Along with the claim, interest under Section 16 of the MSME Act was also sought for. The claim of the second respondent was not supported by any tax invoices, completion certificate or other tangible evidences to justify the claim.

3. Summons was served on the petitioner by the first respondent. Between 28.12.2023 and 13.05.2025, the petitioner participated in the same. On coming to know about a clarification issued by the Union of India through its MSME Ministry, that 'works contract' is not covered under the National Industrial Classification (hereinafter referred to as 'NIC') codes for Udyam Registration, the petitioner raised an objection before the first respondent on 23.05.2025. It called upon the Council to examine and determine its jurisdiction before proceeding further in the matter.



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4. The MSEF Council, by its impugned order dated 30.06.2025, held that there is no explicit exclusion of 'work contract' under the ambit of MSEF Council, and the clarification also does not assist the petitioner. The Council overruled the preliminary objection and adjourned the matter to 09.07.2025. Challenging the same, the present writ petition.

5. The contesting second respondent entered appearance and filed a counter. According to it, it is engaged in electrical contracts and other related works for over three decades. It is registered with the Government of Puducherry from 28.03.1999 onwards. It obtained 'Udyam Registration' on 21.09.2020 as required under MSME Act. It is a 'small enterprise' as defined under Section 2(m) of the said Act.

6. The second respondent accepted that it was appointed as a sub contractor as part of the project of four-laning of Jitttandahalli - Dharmapuri Section of NH-844. It pleads the writ petitioner had orally informed the second respondent about the scope of work and the nature of execution. In good faith, the second respondent had commenced the work even before the execution of the LOI. It accepted that the LOI was issued on 01.10.2021 and the MOU was signed on 23.02.2022. The second respondent denied the averment that it had



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abandoned the work. On the contrary, it submitted that it successfully completed the work and raised bills on various dates for the work completed.

7. Anticipating the payments from the writ petitioner, the second respondent stated that it had raised loan from a bank in order to pay the amount due to the concerned authorities to carry out the work. It alleges that the writ petitioner deliberately failed in securing payments due to it, by trotting an excuse of prior certification and release of funds must be made by NHAI. The second respondent stated that neither the LOI nor the MOU make it a condition precedent for such certification in order to release funds. It stated that no time frame was fixed under both the LOI and MOU, since the nature of work was dependent upon the approval and estimates by TANGEDCO.

8. As the writ petitioner refused to make the payment, the second respondent pleaded that it was constrained to invoke section 18(1) of the MSME Act. It filed an application for reference on delayed payment on 04.08.2023. On the very same day, MSEF Council issued an intimation to the writ petitioner to pay the amount due within 15 days. The writ petitioner did not remit the same. Thereafter, the Council issued a conciliation notice on 14.12.2023, to which the



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petitioner responded on 28.12.2023, stating that it was exploring avenues for amicable settlement.

9. The second respondent has produced the minutes of the meeting held by the MSEF Council to show that the proceedings suffered several adjournments. The second respondent alleges that while it has been attending the meetings, the petitioner had deliberately failed to attend the Council meetings on 09.07.2024, 20.08.2024 and 10.09.2024. The second respondent states it was when the Council observed the lack of interest to settle on the end of the writ petitioner, as it is not coming forward, for settlement or filing a counter, that the writ petitioner claimed that no dues were payable and that, it had disbursed the payments to the tune of Rs.2.28 Crores. It denied the allegation that no tax invoice, or completion certificate, or any documentary evidences justifying the claim was submitted to the writ petitioner. The second respondent states several detailed invoices were forwarded to the petitioner at frequent intervals, and they were duly acknowledged by the writ petitioner.

10. The second respondent alleges that after having participated in the proceedings for nearly 2 years, it was only on 25.02.2025, that the writ petitioner raised a plea that the contract entered into between



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itself and the second respondent is a 'works contract'. It alleges that the very act of the petitioner raising a defence belatedly, is only to drag on the proceedings and inflict hardship on him. Both the writ petitioner, as well as, the second respondent relied upon several judgments to substantiate their respective contentions. However, both of them agree that the conciliation proceedings have been closed, and the matter has now been taken up for arbitration.

11. Mr.Ravi, learned Senior Counsel appearing for the petitioner pleaded that in order to fall under Chapter V of the MSME Act, the supply must be of one of goods or services. and it should not be a 'works contract'. He states that the condition precedent for invoking a reference under Section 18, is the existence of a dispute in terms of Section 17. Section 17 would apply, only if Sections 15 and 16 are satisfied. A reading all the four Sections together makes it clear that the category of 'works contract' stands excluded. He also referred to the clarification issued by the office of the Development Commissioner, (MSME), Government of India dated 04.01.2023, to urge that the 'works contract' is not covered under MSME Act. Hence, he pleads that the writ petition be allowed and the parties be directed to workout their rights in accordance with law, and not through the process of MSEF council.



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12. Per contra, Mr.B.Vijay urges that the circular issued on 04.01.2023, merely states that NIC Code of 2008 does not deal with 'works contract'. He points out that NIC is a statistical standard for developing and maintaining comparable data base and that, such code has no nexus to the contract or dispute at hand. He states that the circular cannot take away the scope of Section 17 and Section 18 of the MSME Act, which are the only provisions from which the first respondent derives its jurisdiction. He also refers to Section 2(e) of the MSME Act, which defines what an 'enterprise' is, to urge that the second respondent's registration covers manufacture of electrical equipments, electrical installations, installation of electrical wiring and hence, covered by the MSME Act. He points out that the scope of work, as per the LOI dated 01.10.2021, is shifting of electrical utilities which involve supply of goods and materials, as well as installation, erection, testing and execution, which are covered under the MSME Act. He also referred to a couple of authorities to substantiate his plea. He pleads for dismissal of the writ petition.

13. I have carefully considered the submissions of both sides and gone through the records.



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14. Though Mr.Ravi attempted to argue that the first respondent has no jurisdiction and Mr.B.Vijay attempted to urge that the first respondent does possess jurisdiction, I am not inclined to go into that issue for reasons as set forth hereunder.

15. Under Section 18 of the MSME Act, the Council, on receipt of a reference under Sub-section 1, shall conduct mediation by itself or refer the matter for mediation services by seeking assistance of any institution or centre providing such services, as provided under Sections 65 to 81 of the Arbitration and Conciliation Act, 1996. In case the mediation is not successful and stands terminated, the Council is empowered under Section 18(3) to take up the dispute for arbitration by itself or refer the same to any institution or centre providing alternate dispute redressal services. For any arbitration initiated under Section 18(3) of the MSME Act, the provisions of the Arbitration and Conciliation Act of 1996 would apply. This is because under Section 18(3), it is deemed to be a dispute raised in pursuance of an arbitration agreement under Section 7(1) of the 1996, Act.

16. The issue that the counsel want this Court to decide, is whether the first respondent has jurisdiction to deal with the dispute.

It is here that I would refer to Section 16 of the Arbitration and



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Conciliation Act of 1996. Under that Section, an Arbitral Tribunal has been empowered to rule on its own jurisdiction, including any objections, with respect to the existence or validity of an arbitration agreement. After the impugned order has been passed, the stage of conciliation has been closed and the proceedings of arbitration have commenced.

17. The petitioner has raised an issue of jurisdiction, during the course of mediation. It is clear from Section 18(2) of the MSME Act that the conduct of mediation should be in aforesaid terms.

18. Careful perusal of Section 65 to 81 shows that a conciliator is not bound by the Code of Civil Procedure or Evidence Act and is given a free hand to conduct the proceedings in an independent and impartial manner. His role is to goad parties to reach an amiable settlement of their disputes. It is pertinent to point out here the nature of the dispute covered under this chapter of the Arbitration and Conciliation Act is non-exclusionary. In other words, whether it is a contract of service or a contract for supply of goods or combination of both would be covered within the term 'dispute' found under section 67(1) of the 1996 Act. In terms of the 1996 Act, A conciliator is called upon to give due consideration to the rights and obligation of parties,



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the usages of the trade concerned and circumstances surrounding the dispute including any previous business practices adopted by the parties. Jurisdiction being a legal issue, cannot be decided during conciliation proceedings. It is when the conciliation fails and a *lis* commences, that the issue between the parties metamorphosis into an adversarial one. At that stage, a party can certainly raise an issue of jurisdiction. Till that stage is arrived, I am of the view, if an issue of jurisdiction is raised, the rationale behind incorporating section 65 to 81 of the 1996 Act into MSME Act, will be defeated.

19. The need of the hour is the speedy settlement of the dispute. Section 77 of The Arbitration and Conciliation Act, 1996 finds its reflection under Section 18 (3) of the MSME Act. This is because as long as conciliation is pending the statute directs that the party should not initiate arbitral or judicial proceedings except when, such proceedings are essential to preserve his or her rights. This shows that conciliation proceedings are not bound by any limitation as long as there is any dispute of which is capable of being resolved by mediation, parties should adapt that mode of resolution.

20. At this juncture, it must be borne in mind that the reference made under Section 18(1) of the Micro, Small and Medium Enterprises



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Development Act, 2006, first contemplates a process of conciliation/mediation before the Facilitation Council. The dispute on hand arises out of a commercial and contractual arrangement relating to execution of electrical utility works in a national highway project and partakes the character of a commercial dispute. The Supreme Court in ***Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24***, particularly at paragraphs 27 and 28, has categorically held that commercial, contractual and construction disputes are eminently amenable to alternative dispute resolution mechanisms, including mediation. It is also well settled that mediation is only a facilitative process and does not result in adjudication of rights. Therefore, the mere initiation or exhaustion of the conciliation process under Section 18(2) of the MSME Act cannot be construed as a determination of jurisdiction. In the event of failure of conciliation, the statute itself mandates reference to arbitration under Section 18(3), where after all objections, including those relating to jurisdiction, are required to be decided only by the Arbitral Tribunal in terms of the Arbitration and Conciliation Act, 1996.

21. The idea of conciliation is to settle disputes without litigation. A litigation involves heavy costs to be incurred by the parties



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involved in it. It also adds to the pressure of the court or tribunal dealing with the issue. It was with this idea in mind that the Parliament had enacted the Mediation Act of 2023. Unfortunately, the said Act has not been notified in full.

22. The reading of the arbitration and conciliation act 1996 and the MSME Act, 2006 leads this court to conclude that the dispute between the parties becomes the *lis* not at the stage of section 18 (2), but only at the stage Section 18 (3). If the first respondent is called upon to decide upon its jurisdiction, even at the stage of Section 18 (2), the purpose of incorporating conciliation proceedings would be defeated. Hence, this court of the view that the plea raised by the petitioner is premature.

23. Section 18(1) of the MSME Act requires a party to make a reference to the MSEF Council, with regards to amount due to it for any goods supplied or services rendered by it. At the stage of mediation, the MSEF Council has to keep in mind Section 65 to Section 81 of the Arbitration and Conciliation Act, 1996 alone. When the provision does not bar mediation, issue of raising maintainability does not arise. If mediation is not so barred, then, it can proceed and mediate on the dispute. In case mediation fails, then under Section



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18(4), the Council is empowered to deal with the dispute under Arbitration and Conciliation Act, 1996. It is only at that stage, that the party can raise a plea, that the issue raised falls outside the scope of MSME Act, if at all.

24. Reading Section 16 of the Arbitration and Conciliation Act, 1996 along with Section 18(3) of the MSME Act, I am able to conclude that the petition filed by the writ petitioner, even at the stage of mediation, is premature.

25. The purpose of Mediation is to resolve mainly commercial disputes and to encourage an acceptable and cost effective process. At this stage of mediation, the MSEF Council can only assist the parties to arrive at an amicable settlement. Only at the stage of Arbitration, as per Section 18(3) of the MSME Act, can the first respondent, by either donning the role of an arbitrator, or by seeking ADR services from another institution, adjudicate on the arbitrability of the dispute and the MSEF's Council jurisdiction to adjudicate on the same.

26. As the petition seeking determination of jurisdiction by the Council is premature, I do not find any necessity to interfere with the order passed by the Council, though the reasons given in the same are



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laconic. It is open to the petitioner to raise a preliminary issue regarding the jurisdiction of MSEF Council to deal with this issue that has arisen between the petitioner and the second respondent by filing a petition under Section 16 of the Arbitration and Conciliation Act.

27. As I find the application to be premature, I am not inclined to interfere with the impugned order. The first respondent, in case an application is filed before it under Section 16 of the Arbitration and Conciliation Act by the petitioner, and if it decides to arbitrate the issue by itself, shall first decide on its jurisdiction and thereafter, pass orders. If it holds that it possesses jurisdiction, then it shall enter into the merits of the claim. It is also open to the first respondent to either arbitrate the issue by itself, or refer the matter to another body in terms of Section 18(4) of the MSME Act.

28. With the above observation, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

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Internet:Yes

Index:Yes/No

Speaking/Non speaking order

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V. LAKSHMINARAYANAN. J,

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To

1.The Chairman (MSEFC) & Director (Ind. & Com.),
Micro and Small Enterprises Facilitation Council (MSEFC),
Directorate of Industries and Commerce,
Government of Puducherry.

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