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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-33412-2024 (O&M)
Date of Decision:10.11.2025

1.

M/s Whiteland Corporation Pvt. Ltd.

.....Petitioner

Versus

State of Karnataka and others

.....Respondents

2.

ARB-272-2023 (O&M)

M/s Whiteland Developers Pvt. Ltd.

.....Petitioner

Versus

RSP Build Project Pvt. Ltd.

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Harshit Joon, Advocate and
Mr. Shubham Dayma, Advocate
for the petitioner(2) in both the cases.

Mr. Sanjeev Kaushik, Advocate,
Ms. Manreet Kaur and
Ms. Amisha Rana, Advocate
for respondents No.1 and 2 in CWP-33412-2024.

Mr. J.S. Arora, Advocate,
Ms. Ashish Khurana, Advocate and
Ms. Diksha Mehta, Advocate for respondent No.3
in CWP-33412-2024 and for respondent in ARB-272-2023.

JASGURPREET SINGH PURI J.(Oral)

1. Both the above-mentioned cases are being taken up together

for final disposal with the consent of learned counsel for the parties as the
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I attest to the accuracy and
integrity of this document



issues involved are inter-connected and arise out of the same set of facts and are therefore being disposed of by this common order.

CWP-33412-2024

2. The present civil writ petition has been filed under Article 226 of the Constitution of India, seeking issuance of a writ in the nature of *Certiorari* to quash the order dated 27.06.2024 (Annexure P-12) passed by respondent No.2 in Case No.113 of 2023.

3. Learned counsel appearing on behalf of the petitioner submitted that there was an agreement between the petitioner and respondent No.3 with respect to a works contract, pursuant to which a dispute arose between the parties. Respondent No.3 was a supplier and the petitioner was a buyer. After a dispute arose between the parties, the respondent No.3 filed an application under Section 18 of the Micro, Small, and Medium Enterprises Development Act, 2006 (hereinafter to be called as MSMED Act) vide Case No. 113 of 2023 before the Micro and Small Enterprises Facilitation Council, Bengaluru (hereinafter to be called as 'Facilitation Council'). The aforesaid proceedings before the aforesaid council were not maintainable in view of the fact that the facilitation council under Section 18 of the MSMED Act, could not have initiated or even taken cognizance of a dispute arising out of a works contract because in the disputes which are pertaining to works contract, the MSMED Facilitation Council is not empowered to adjudicate the dispute as contained under Section 17 of the MSMED Act, it can either be of goods or services but a blend of the two is not permissible. In this regard, the

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petitioner also moved an application before the Facilitation Council, Bengaluru, seeking rejection of the said proceedings, but no order thereon has been conveyed to him. Thereafter, vide the impugned order (Annexure P-12), the Facilitation Council, Bengaluru held that the conciliation proceedings in respect of the claim raised by respondent-company had failed and, accordingly, the matter was referred for arbitration to the Arbitration & Conciliation Centre, Bengaluru. Both parties were directed to appear before the said Arbitration & Conciliation Centre. This order was passed on 27.06.2024 and the present petition has been filed under Article 226 of the Constitution of India on 28.11.2024 to challenge the aforesaid impugned order on the ground that the aforesaid Facilitation Council, Bengaluru, could not have initiated the proceedings for consideration or even now further for the arbitration process under Section 18 of the Act because of the aforesaid reason.

4. Learned counsel for the petitioner further asserted that the reason as to why the aforesaid impugned order (Annexure P-12) is bad in law, is that under the provisions of Sections 17 and 18 of the MSMED Act, a work contract cannot be the subject-matter of a dispute and no reference in this regard can be made. Despite this, the Facilitation Council, Bengaluru, proceeded with the matter, recorded that conciliation had failed and thereafter referred the case to arbitration. He submitted that after the filing of the present petition, by way of an interim order dated 22.01.2025 by this Court, the Arbitrator was requested to keep the proceedings pending and in this way the arbitration proceedings are still pending and on the

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petitioner's application for rejection of the proceedings no order has been served upon the petitioner in this regard.

5. Learned counsel also submitted that as per the agreement which is attached with the present petition as Annexure P-1, vide Clause 14.3 there is a provision for referring the matter to Arbitration under the Arbitration and Conciliation Act, 1996 and as per Clause 14.4, it is so provided that both the parties irrevocably submit to the jurisdiction of the Courts of Gurgaon in any matter relating to this Contract. He submitted that since the seat of arbitration is provided to be at Gurgaon, the present writ petition under Article 226 of the Constitution of India has been filed in this Court as the cause of action has arisen within the territorial jurisdiction of this Court. He also submitted that, apart from the above, the petitioner is a resident of Gurgaon and the seat of arbitration is also at Gurgaon and therefore a part of cause of action has also arisen in Gurgaon. Hence, the jurisdiction of this Court under Article 226 of the Constitution of India has rightly been invoked. He further relied upon the judgment of Hon'ble Supreme Court in ***Nawal Kishore Sharma v. Union of India and others, (2014) 9 SCC 329***, to contend that where a part of cause of action arises, the jurisdiction of the High Court under Article 226(2) of the Constitution of India can be invoked and therefore this Court has the territorial jurisdiction to entertain the present petition.

6. On the other hand, learned counsel appearing on behalf of respondent No.3 has strongly objected to the maintainability of the present petition on the ground of lack of territorial jurisdiction of this Court. In

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Act, at Bengaluru is also seized of the matter and that the matter is *sub-judice* before the aforesaid council. On the reference made by respondent No.3 to the aforesaid Council at Bengaluru, the same could not be successful and therefore, by way of the impugned order (Annexure P-12), the matter was thereafter posted for the arbitration process in pursuance of the provisions of Section 18 of the MSMED Act. However, because of the interim order passed by this Court on 22.01.2025, the learned Arbitrator did not proceed with the said process.

7. Learned counsel further submitted that when the supplier is registered under the MSMED Act then whenever a dispute arises between the supplier and the buyer the sole recourse is to make an appropriate reference to the Facilitation Council under Section 18 of MSMED Act. He submitted that the procedure is so prescribed under the said provision and in the present case respondent No.3 has rightly submitted such a reference to the Facilitation Council at Bengaluru. He further submitted that respondent No.3 which is registered as an MSME unit at Bengaluru and regarding which there is no dispute and since the respondent No.3 which is a supplier is registered at Bengaluru, he invoked the aforesaid provision of Section 18 of MSMED Act by filing reference before the Facilitation Council, Bengaluru, which proceeded thereon and thereafter when the conciliation before the Facilitation Council failed then it was referred to Arbitration. He also submitted that once the matter is *sub-judice* before the aforesaid Facilitation Council at Bengaluru, which falls within the State of Karnataka, the present petition which has been filed under Article 226 of

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Constitution of India, before this Court would not be maintainable for want of territorial jurisdiction.

8. He further contended that the provision of Section 18 of the MSMED Act provides for a non-obstante clause wherein the procedure has been prescribed and apart from the above, even Section 24 of the MSMED Act provides for an overriding effect by stipulating that the provisions under Sections 15 to 23 of MSME Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. He also submitted that it is a settled law that, in view of the aforesaid overriding effect and the non-obstante clause contained in the MSMED Act, the said Act has an overriding effect even over the Arbitration and Conciliation Act, 1996. He stated that respondent No. 3, being a supplier of goods, has rightly invoked the jurisdiction of the MSMED Facilitation Council, Bengaluru, where it is undisputedly registered as an MSMED unit and therefore, this Court has no territorial jurisdiction to entertain the petition under Article 226 of the Constitution of India. He further submitted that, if so advised, the petitioner may invoke the jurisdiction of the Karnataka High Court and not this Court, and therefore, the present petition may be dismissed as not maintainable.

9. While responding to the argument raised by learned counsel for the petitioner that the subject matter of the dispute being a works contract and therefore the MSMED Facilitation Council was not competent to initiate the proceedings, it is submitted that the same is only a subject matter of the MSMED Facilitation Council or while acting as an arbitrator

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cannot become a ground for conferring jurisdiction to this Court which otherwise, it is contended, does not have jurisdiction under Article 226 of the Constitution of India. He also submitted that, insofar as the argument raised by the learned counsel for the petitioner that part of the cause of action has arisen at Gurugram on account of the seat of arbitration, is concerned, the same is relevant only for the purpose of invoking the provisions of Section 11 of the Arbitration and Conciliation Act, 1996 and not for the purpose of making a reference to the MSMED Facilitation Council and therefore, the aforesaid argument is not sustainable.

10. Learned counsel also referred to sub-section (4) of Section 18 of the MSMED Act to contend that it expressly provides, by way of a non-obstante clause, that the 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 a supplier located within its jurisdiction and a buyer located anywhere in India, which makes it abundantly clear that the MSME Facilitation Council of the place where the supplier is located will be relevant for determining jurisdiction, and the buyer, who is the petitioner, may be located anywhere in India. Therefore, by virtue of the aforesaid provision, the MSME Facilitation Council, Bengaluru, had the jurisdiction to proceed with the facilitation/conciliation process as well as the arbitration proceedings and hence, on this ground also, the present petition is liable to be dismissed.

11. I have heard the learned counsels for the parties.

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12. The preliminary issue involved in the present case is pertaining to the territorial jurisdiction of this Court wherein the petition has been filed under Article 226 of Constitution of India.

13. The relevant statutory provisions that are Sections 17, 18 and 24 under the MSMED Act, are reproduced as under:-

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.

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(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.

24. Overriding effect.—*The provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.*

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14. A perusal of Section 18 (1) of the MSMED Act would show that it provides for a non-obstante clause for reference to be made to the MSME Facilitation Council which states that 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.

15.. A perusal of Section 24 of the MSMED Act provides for an overriding effect, stipulating that Sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. A further perusal of sub-section (4) of Section 18 would show that it also contains a non-obstante clause, which provides that for the purpose of invocation of reference before the MSME Facilitation Council, the relevant place would be where the supplier is located. The place of jurisdiction would be the place where the supplier is located and the buyer may be located anywhere. In the present case, the supplier is admittedly located in Bengaluru and the MSME registration of respondent No. 3 is also at Bengaluru. A perusal of the memo of parties which the petitioner has so attached alongwith the present petition shows that the petitioner itself has mentioned its address as Bengaluru, though an alternate address of Gurugram has also been provided. The petitioner is stated to be situated at Gurugram. Therefore, in view of the aforesaid statutory provisions, the Facilitation Council at Bengaluru, where respondent No. 3 is located and registered as an MSME unit, would have the territorial jurisdiction to entertain the reference under Section 18 of the

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16. As to whether the aforesaid MSME Facilitation Council was within its jurisdiction to process the reference pertaining to a work contract, if any, is a matter to be examined and decided by the aforesaid Facilitation Council itself. In case the petitioner was aggrieved by the action of the Facilitation Council at Bengaluru, or by the initiation of the proceedings, or by the impugned order (Annexure P-12) passed by it, the petitioner could have challenged the same before Hon'ble High Court of Karnataka, which has the territorial jurisdiction in the matter. Therefore, it is clear that this Court does not have jurisdiction to entertain the present petition under Article 226 of the Constitution of India.

17. So far as the reliance placed by the learned counsel for the petitioner on the judgment of Hon'ble Supreme Court in **Nawal Kishore's case (supra)** is concerned, the proposition of law laid down therein is not in dispute that when an order is passed by the Government and is conveyed to a person at a particular place, then, by virtue of Article 226(2) of the Constitution of India, a writ petition can be filed where a part of the cause of action arises. However, the said principle would not apply to the present case in view of the fact that, at Bengaluru, the MSME Facilitation Council is exercising its statutory functions as a quasi-judicial body and therefore, the petition under Article 226 of the Constitution of India could not have been filed before this Court.

18. In view of the aforesaid facts and circumstances, the present petition is hereby dismissed for want of territorial jurisdiction.



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19. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), seeking appointment of an independent and impartial arbitrator in the present case.

20. Learned counsel for the petitioner submitted that in view of the aforesaid Arbitration Clause i.e. 14.3, this Court may appoint an arbitrator for adjudication of the disputes between the parties, as the seat of arbitration has been specifically stated to be at Gurugram, which falls within the territorial jurisdiction of this Court.

21. Learned counsel appearing on behalf of the respondent, however, submitted that the proceedings pertaining to the dispute, by way of a reference under Section 18 of the MSMED Act, were initiated at Bengaluru before the MSME Facilitation Council. It is further submitted that since the conciliation proceedings could not be successfully concluded, the matter was thereafter referred for arbitration, as is evident from the order dated 27.06.2024 (Annexure P-12). Once the matter is pending before the learned Arbitrator under Section 18 of the MSMED Act, the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 would not be maintainable and is liable to be dismissed.

22. The Hon'ble Delhi High Court, in ***Idemia Syscom India Private Limited v. M/s Conjoinix Total Solutions Private Limited, ARB.P. 1284 of 2024, decided on 24.02.2025***, held that when proceedings are pending under Section 18 of the MSMED Act, a petition under Section 11

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23. In view of the aforesaid facts and circumstances, the present petition is accordingly dismissed.

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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No