



2025:DHC:4891



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 29.05.2025+ W.P.(C) 7836/2025 and CM APPL.34512/2025 (Stay)

DJT RETAILERS PRIVATE LIMITEDPetitioner

Through: Mr. Manish Gupta, Ms. Deepti Verma
and Mr. Shaurya Aditya Singh, Advs.

versus

PACIFIC DEVELOPMENT CORPORATION LIMITED & ANR.

.....Respondents

Through: Mr. Manish Vashisht, Sr. Advocate
along with Ms. Prachi Vashisht,
Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL)CM APPLs.34513/2025 (Exemption from filing original/dim/legible copies of annexures) and 34514/2025 (for permission form filing lengthy synopsis and list of dates)

1. Allowed, subject to all just exceptions.
2. Applications stands disposed of.

W.P.(C) 7836/2025 and CM APPL.34512/2025 (Stay)

3. The present petition has been filed by the petitioner assailing the order dated 14.04.2025 passed by the learned sole arbitrator, whereby the objections raised by the petitioner under Section 16(2) of the Arbitration and Conciliation Act, 1996 (hereinafter "*the A&C Act*") were dismissed.
4. According to the petitioner, the said order results in the arbitrator improperly assuming the exclusive jurisdiction which is vested in the



Facilitation Council constituted under the Micro, Small and Medium Enterprise Development Act, 2006 (hereinafter referred as “MSMED Act”).

5. The present petition also alleges that the disclosure/declaration made by the arbitrator under Section 12 of the A&C Act, is deficient.

6. The impugned order dated 14.04.2025, *inter alia*, holds as under:-

“32. The Tribunal has carefully deliberated upon the submissions made and the judgments cited by the Ld. Counsels appearing for both the Parties.

33. While the Hon’ble High Court of Delhi, New Delhi, vide its Order dated 29.11.2024 had granted liberty to the Respondent to raise its objections qua the jurisdiction/arbitrability of the present dispute it cannot be appreciated that it chose to file its Application under Section 16 of the Arbitration and Conciliation Act, 1996 and raise its objections only after four months [more precisely on 26.02.2025] of the arbitration proceedings. The Respondent ought to have filed its Application under Section 16 of the Arbitration and Conciliation Act, 1996, immediately after this Tribunal entered reference. It is equally inconceivable as to why the Respondent had tactfully concealed its MSME status from this Tribunal in its Reply dated 13.01.2025 which was filed in response to the Claimant’s Section 17 Application filed under the Arbitration and Conciliation Act, 1996.

34. It is trite law that a litigant wanting to raise objections qua the jurisdiction of a Court or adjudicating body must file or communicate its objections at the earliest. The provisions of the MSME Act cannot be used as a strategic trump-card to upset the arbitration proceedings at the whims and fancies of a party, specially when the said party [i.e., Respondent] had ample opportunity and time to raise their objections during the past four months of the present arbitration proceeding.

35. The Tribunal’s finding after perusing the various judgements on this issue is set out below.

36. The Ld. Counsel for the Respondent has cited the judgment of Mahakali Foods Private Limited (Supra.). However, this judgment is not applicable to the present dispute. In Mahakali, the Supreme Court had held that only when the provisions of the MSME Act are triggered by a Party, Chapter V of the MSME Act 2006 will take precedence over the Arbitration and Conciliation Act of 1996. In the said case, the Mahakali Foods corp. had promptly approached the Bhopal Facilitation Centre.



However, in the present case, the Respondent has not approached the Facilitation Centre till date.

37. The Ld. Counsel for the Respondent had also placed reliance on NBCC judgment (Supra.). It is germane that the said matter, as on date, has been referred to a larger bench of the Supreme Court for due consideration. But in any case, this judgment does not help the Respondent herein as it was concerned with the question of whether a MSME entity which is not registered under Section 8 of the MSME Act can avail the benefits of Section 18 of the said Act. The judgment, as it stands, does not make it mandatory for a non-MSME entity to first approach the Facilitation Centre in the event of a dispute with another MSME entity.

38. Next, the Ld. Counsel for the Respondent has placed reliance on Asma Lateef judgment (Supra.). This judgment is not apposite to the present proceedings. The cited judgment was in the context where a Civil Court may be without jurisdiction. An arbitral tribunal derives its jurisdiction and powers from the arbitration agreement between the Parties. This Tribunal derives its powers from Clause 21 of the License Agreement dated 14.03.2023, registered on 15.03.2023 which contains the Arbitration Clause governing all disputes which may arise during the contractual relationship between the Parties. It must also be noted that this Clause has been acknowledged and endorsed by the Hon'ble High Court of Delhi, New Delhi, vide its Order dated 29.11.2024 by way of which this Tribunal was constituted.

39. The judgment of the Hon'ble High Court of Bombay in *Porwal Sales v. Flame Control Industries* (Supra.) may be more relevant for the purposes of deciding the present application. The judgment clearly states that the provisions of the MSME Act would benefit a party to a dispute only when the said party triggers Section 18 of the MSME Act, 2006.

40. The MSME Act does not envision a blanket stay or automatic bar to arbitration proceedings. Indeed, such a narrow interpretation would lead to a strange anomaly and leave a non-MSME entity remediless until the other MSME entity in the dispute chooses to refer the issue to the concerned Facilitation Centre.

41. It is also pertinent to take note of the judgment in *M/s Biotech International Limited v. Municipal Corporation of Delhi & Anr.* [Arb. P. 754/2023] wherein the Hon'ble High Court of Delhi, New Delhi, has categorically held that Section 18 of the MSME Act would be applicable only when a party, regardless of the arbitration clause, approaches the



Micro and Small Enterprises Facilitation Council.

42. The Application filed by the Respondent under Section 16 of the Arbitration and Conciliation Act, 1996, cannot be allowed at this stage.

43. The said Application stands disposed of.

44. No orders as to costs.”

7. In these proceedings, this Court is not concerned with the merits of the adjudicatory exercise undertaken by the learned arbitrator. Suffice it to say, Section 16 of the A&C Act, *inter alia*, provides as under:-

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

8. Thus, the A&C Act itself prescribes the remedy that can be availed by a person who is aggrieved by a decision rejecting a plea of lack of jurisdiction. The remedy lies in assailing the award, as and when made, in proceedings under Section 34 of the A&C Act. It is impermissible to take recourse to proceedings under Article 226/227 of the Constitution of India to circumvent the statutorily prescribed procedures and remedies in the A&C Act.

9. The extremely limited scope of interference with arbitral proceedings under Article 226/227 has been emphasised in various judicial pronouncements.

10. The Supreme Court in ***Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Limited and Anr.***, (2022) 1 SCC 75 has



observed as under –

“12. We need to note that the Arbitration Act is a code in itself. This phrase is not merely perfunctory, but has definite legal consequences. One such consequence is spelled out under Section 5 of the Arbitration Act, which reads as under:

“5. Extent of judicial intervention.—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.”

(emphasis supplied)

The non obstante clause is provided to uphold the intention of the legislature as provided in the Preamble to adopt Uncitral Model Law and Rules, to reduce excessive judicial interference which is not contemplated under the Arbitration Act.

13. The Arbitration Act itself gives various procedures and forums to challenge the appointment of an arbitrator. The framework clearly portrays an intention to address most of the issues within the ambit of the Act itself, without there being scope for any extra statutory mechanism to provide just and fair solutions.

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18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a constitutional right. In Nivedita Sharma v. COAI [Nivedita Sharma v. COAI, (2011) 14 SCC 337: (2012) 4 SCC (Civ) 947] , this Court referred to several judgments and held : (SCC p. 343, para 11)

“11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation — L. Chandra Kumar v. Union of India [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] . However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it



is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

(emphasis supplied)

It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear “bad faith” shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient.

19. In this context we may observe Deep Industries Ltd. v. ONGC [Deep Industries Ltd. v. ONGC, (2020) 15 SCC 706] , wherein interplay of Section 5 of the Arbitration Act and Article 227 of the Constitution was analysed as under : (SCC p. 714, paras 16-17)

“16. Most significant of all is the non obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed [see Section 37(2) of the Act].

17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the



statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.”

(emphasis supplied)

20. In the instant case, Respondent 1 has not been able to show exceptional circumstance or “bad faith” on the part of the appellant, to invoke the remedy under Article 227 of the Constitution. No doubt the ambit of Article 227 is broad and pervasive, however, the High Court should not have used its inherent power to interject the arbitral process at this stage. It is brought to our notice that subsequent to the impugned order of the sole arbitrator, a final award was rendered by him on merits, which is challenged by Respondent 1 in a separate Section 34 application, which is pending.”

11. A Division Bench of this Court in ***Sadbhav Engineering Ltd. vs Micro and Small Enterprises Facilitation Council and Ors.***, 2025 SCC OnLine Del 319 has held that when an alternate efficacious remedy is available under Arbitration and Conciliation Act, 1996, courts shall not interfere and interdict such proceeding/s under Article 226 of the Constitution of India. The relevant portion of the said judgment reads as under:

“6.....It is trite that once the proceedings under the Arbitration Act have commenced and are underway, Courts would not interfere and interdict such proceedings, particularly, when appropriate and efficacious remedies are indeed available under the Arbitration Act. In this context, it would be apposite to refer to the judgment of the Supreme Court in SBP & Co. v. Patel Engineering Limited, (2005) 8 SCC 618 and the same judgment has been followed by the Supreme Court in its recent judgment - Sterling Industries v. Jayprakash Associates Ltd., (2021) 18 SCC 367. The relevant paragraphs of Sterling Industries (supra) quoting the judgment of the Supreme Court in SBP & Co. (supra) reads thus:

“3. This Court in SBP & Co. v. Patel Engg. Ltd. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] in para 45 held as follows:

45. It is seen that some High Courts have proceeded on the basis that any order passed by an Arbitral Tribunal during arbitration,



would be capable of being challenged under Article 226 or 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating its grievances against the award including any in between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act. The party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The Arbitral Tribunal is, after all, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the Arbitral Tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution. Such an intervention by the High Courts is not permissible.

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46. The object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage.”

7. That apart, as rightly and aptly observed by the learned single Judge, the Supreme Court in *Bhaven Construction v. Executive Engineer, Sardar Sarovar*, (2022) 1 SCC 75 has succinctly held that an order in exercise of powers under section 16 of the Arbitration Act can be assailed only by way of challenge to the final award under the provisions of section 34 of the said Arbitration Act. This would proscribe any other remedy to the aggrieved party.”

12. In the circumstances, no merit is found in the present petition and the same is accordingly dismissed. Pending application also stands disposed of.



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13. Needless to say, all rights of the petitioner as conferred under the A&C Act are expressly reserved. It is made clear that this order shall not be construed as an expression of opinion of this Court with regard thereto.

MAY 29, 2025/at

SACHIN DATTA, J