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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ARB.P. 1164/2025**

SARVESH SECURITY SERVICES PVT. LTD .....Petitioner

Through: Ms. Rajeshwari Mitra, Adv.

versus

MINISTRY OF LAW AND JUSTICE THROUGH SECRETARY & ANR. .....Respondent

Through: Mr. Abhishek Gupta, CGSC Shaswat Kumar Pandey, Adv

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

O R D E R

% **29.08.2025**

1. This is a petition filed under section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudication of disputes between the parties.

2. The facts are that the respondent floated a tender for providing security services at its premises with effect from 16.12.2021.The petitioner was awarded the Contract and provided 14 unarmed security guards at the respondent’s premises on 10.12.2021.

3. Since there were disputes regarding the number of guardswhich were provided and their payments, the petitioner invoked arbitration through clause 16 of the GCC and issued notice invoking arbitration on 25.04.2025 and thereafter filed the present petition.

4. The arbitration clause being clause 16 of the GCC reads as under:-

> *"16. Dispute Resolution Between Buyer and Seller:*
> ***AMICABLE SETILEMENT:***
> *In the event of any question, dispute or difference arising connection with the Contract, the Parties shall use their respective reasonable endeavour to settle any dispute amicably. If a Dispute is not resolved within 30 days after written notice of any dispute by one Party to the other, the same shall be resolved through the mechanism of a co-ordination committee to be formed by the Buyer and Seller/Service Provider and to be chaired by the Primary User of Buyer Organization/Department along with representatives from Buyer Department and Seller.*
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> ***ARBITRATION:***
> *In the event of any question, dispute or difference arising under the terms and conditions of the contract placed through GeM, the same shall be referred to the sole arbitration by an officer nominated as Arbitrator by the Primary Buyer of the concerned Buyer Organization. It will be no objection that the arbitrator is a Government Servant and that he had to deal with the matters to which the contract relates or that in the course of his duties as a Government servant he has expressed views on all or any of the matters in dispute or difference. The award of the arbitrator shall be final and binding on the parties to the contract. The arbitration shall be governed as per Indian Arbitration and Conciliation Act 1996 as amended up to date. The place for arbitration shall be at the place from where contract has been placed by the Buyer or at the place of Primary Buyer as decided by the Primary Buyer.*
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> *In the event of the Arbitrator dying, neglecting or refusing to*

act or resigning or being unable to act for any reason, or his award being set aside by the court for any reason, it shall be lawful for the Primary Buyer to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

In respect of all contract placed through GeM, the dispute would not be referred or entertained by Micro and Small Enterprise Facilitation Council, Consumer Forum or any other adjudication forum.

All disputes in connection with the Contract, shall be subject to the exclusive jurisdiction of the Court within the local limits of whose jurisdiction, the place from where Contract was issued is situated
GeM SPV would not be a party to any such dispute/matter.

In case any Seller / Service provider makes GeM a party / respondent in any case involving any dispute between Buyer and Seller arising out of a concluded contract or arising out of bidding process initiated / concluded by the Buyer on GeM, it would be obligatory on the part of the Buyer to represent GeM also through their Counsel / Lawyer in the proceedings before the legal authority and ensure timely filing of replies / affidavits etc provided by GeM also through their Counsel / Lawyer before the concerned legal authority during the course oflitigation. A standard reply on behalf of GeM, covering following aspects shall be incorporated in all replies / affidavits filed by the Buyer in such cases:

"Government e-Marketplace is a National Public Procurement Portal; an end-to-end online Marketplace for Central and State Government Ministries / Departments, Central & State Public Sector Undertakings (CPSUs

&SPSUs), Autonomous institutions and Local bodies, for procurement of common use goods & services. Prima facie, the dispute in the present case appears to be between the Buyer and Seller arising out a contract placed / bid created by the Buyer on Government e-Marketplace. As per Clause 16, Clause 17 and Clause 22 of the General Terms and Conditions of Government e-Marketplace (duly accepted by the Buyer and Seller), GeM is not to be made a party to any dispute between the Buyer and the Seller. As such Government e-Marketplace is liable to be deleted from the array of parties.

In light of the above, we request your goodself to kindly delete Government e-Marketplace from the array of parties."”

5. Mr.Gupta, learned CGSC for the respondent states that the petitioner is a Micro, Small and Medium Enterpriseand hence, the petitioner must approach the Facilitation Councilof the Micro, Small and Medium Enterprises DevelopmentAct, 2006 (“***MSME Act***”) for appointment of an Arbitrator and the present petition will not lie.

6. The said issue is no longer *res integra*.

7. In ***M/S Biotech International Limited v. Municipal Corporation of Delhi &Anr.***, ***ARB.P. 754/2023***, *vide* Order dated 24.01.2024, I have already observed as under:-

“9. Para 52.2 extracted above clearly states that no party to a dispute isprecluded from making a reference to the Micro and Small EnterprisesFacilitation Council. <u>The terminology used in Section 18(1) also gives anoption to the supplier to approach the Facilitation Council.</u>

10. The gist of the above quoted judgment is that in case there is anarbitration agreement between the parties being Micro and SmallEnterprises, then notwithstanding, any of the party may under section 18 ofMSMED Act can approach the Facilitation Council and thereafter themechanism envisaged under section 18 of MSMED Act will take course.

11. In the present case, the petitioner did not choose to approach theMicro and Small Enterprises Facilitation Council under section 18(1) ofMSMED Act and hence the mechanism envisaged under section 18 has notbeen triggered. The provisions of Section 18 of MSMED Act will only betriggered if the party regardless of the arbitration clause approaches theMicro and Small Enterprises Facilitation Council under section 18 ofMSMED Act. The said view is also endorsed by the Bombay High Court inPorwal Sales v. Flame Control Industries, 2019 SCC OnLine 1628.

12. The Hon'ble Supreme Court in Gujarat State Civil SuppliesCorporation (supra) recognizes that the MSMED Act is a special statuteand overrides the Arbitration and Conciliation Act, 1996 but does not seemto suggest that in case a Micro, Small and Medium Enterprises chooses notto trigger Section 18 of MSMED Act then the party is precluded frominitiating arbitration under the Arbitration and Conciliation Act, 1996."

8. In ***Total Application Software Co. (P) Ltd. v. Ashoka Distillers***

&Chemicals (P) Ltd., 2025 SCC OnLine Del 4562, a Coordinate bench of this Court observed as under:-

> *"9. Sections 17 and 18 of MSME Act cannot be read in isolation and when read conjointly, it is clear as day that Section 18(1) enables any party to a dispute with regard to any amount due under Section 17 to invoke the jurisdiction of the Council. Provisions of Section 18 cannot be construed to mean that in the event of a dispute envisaged under Section 17, the party must mandatorily take recourse to resolution of the dispute through the Council under Section 18(1). Most certainly, once the party invokes the jurisdiction of the Council, the mechanism for dispute resolution provided in Section 18 will come into play and the party cannot abandon the procedure and seek appointment of an Arbitrator under Section 11 of 1996 Act. In other words, in a case where the party does not invoke the jurisdiction of the Council and consequently, no proceedings are pending under Section 18, it cannot be urged that the party having a dispute arising out of a contractual relationship with another party, is precluded from taking recourse directly under provisions of 1996 Act for appointment of an Arbitrator.*
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> ***xxxxxxxxxx***
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> *11. There is another facet to this. The Legislature in its wisdom has used the word 'may' in Section 18(1), which indicates that the intent of the Legislature was to leave it to the discretion of the aggrieved party to either take recourse*

to Section 18 of MSME Act and invoke the jurisdiction of the Council or to resort to procedure under 1996 Act and there is no reason why this Court should interpret the word 'may' as 'shall'. In my view, MSME Act does not mandate resorting to the procedure under Section 18, albeit it must be stated that having triggered the process under the said Act, party will be obliged to follow the mechanism prescribed therein till its logical conclusion.

12. Coming home to the facts of this case, it is an undisputed position that Petitioner has so far not invoked the jurisdiction of the Council under Section 18(1) of MSME Act and therefore, it cannot be said that any proceedings are pending before the Council. In light of the aforesaid judgment of the Bombay High Court and clear provisions of Section 18 of MSME Act, I cannot accept the objection of the Respondent that Section 18 comes as a bar and proscribes the Petitioner from approaching this Court under Section 11(6) of 1996 Act for appointment of an Arbitrator."

9. In the present case, the petitioner has chosen to invoke the arbitration clause rather than approaching the Facilitation Council under the MSME Act.

10. From the aforesaid judgments, it is clear that the provision of MSME Act will only be triggered, if one of the parties has invoked the provisions of the same. However, if none of the parties have invoked the provisions of MSME Act, the party is not prohibited to invoke the other mechanisms for resolution of its disputes.

11. Recently, the recognition of the choice of the petitioner has also been recognised by the Hon'ble Supreme Court in ***Harcharan Dass Gupta v. Union of India, 2025 SCC OnLine SC 1111***and more particularly in paragraph 9 while relying on ***Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd., (2023) 6 SCC 401.***

12. For the said reasons, the petition is allowed and the following directions are issued:-

i) Mr. Kamlesh Kumar, Retd. Addl. District Judge (Mob. No. 9971208844) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

ii) The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC').

iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.

iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

vi) The parties shall approach the learned Arbitrator within two weeks from today.

13. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

AUGUST 29, 2025 / (MS)