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

\+ ARB.P. 1261/2025

RUDRABHISHEK ENTERPRISES LIMITED

.....Petitioner

Through: Mr. Joydip Bhattacharya, Mr. Surendera Kumar, Ms. Ipsita Biswas, Advs.

versus

VARANASI SMART CITY LIMITED

.....Respondent

Through: Ms. Sthavi Asthana, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

<u>O R D E R</u>

% 29.10.2025

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator to adjudicate the disputes between the parties.

2. The brief facts of the case are that the respondent, floated a tender for providing Project Management Consultancy (***"PMC"***) services for developing, managing, and implementing smart city projects under the Smart City Mission in Varanasi, Uttar Pradesh. The petitioner, formed a consortium with M/s Grant Thornton India LLP (***"GT")*** as the lead member and M/s ANB Consultants as the third member to bid for the said tender. The consortium was declared successful, and a PMC Contract dated 22.05.2017 was executed between respondent as

the "Client" and the consortium as "Consultants" for providing project management, design, development, and supervision services. The contract was valid for a period of three years up to 21.05.2020, unless extended by mutual agreement.

3. Before the expiry, the respondent unilaterally extended the contract till 31.08.2020 by invoking the force majeure clause due to the COVID-19 pandemic, without the consent of the consortium or adherence to the prescribed procedure. The respondent also directed the consortium to extend the performance bank guarantee; however, GT and other members refused to continue beyond the original term, and the Contract consequently stood concluded on 21.05.2020, with all dues settled. Thereafter, at the respondent's request, the petitioner independently continued providing PMC services from June 2020 to December 2020 on existing rates, based on the respondent's assurance that a separate agreement would be executed for this interim period.

4. A Supplementary Agreement dated 24.12.2020 was executed to cover September - November 2020, and GT issued an NOC on 28.12.2020 allowing direct invoicing by the petitioner.

5. The original Agreement contained an arbitration clause being Clause No. 8.2, which reads as under:

> *"8.2 Arbitration: In the case of dispute arising upon or in relation to or in connection with the contract between the Employer and the Consultant, which has not been settled amicably, any party can refer the dispute for Arbitration under (Indian) Arbitration and Conciliation Act, 1996. Such disputes shall be referred to an Arbitral Tribunal consisting*

of 3 (three) arbitrators, one each to be appointed by the Employer and the Consultant. the third arbitrator shall be chosen by the two arbitrators so appointed by the parties and shall act as Presiding Arbitrator. In case of failure of the two arbitrators, appointed by the parties to reach a consensus regarding the appointment of the third arbitrator within a period of 30 days from the date of appointment of the two arbitrators, the Presiding arbitrator shall be appointed by the Secretary of the Ministry I Department. The Arbitration and Conciliation Act. 1996 and any statutory modification or re-enactment thereof, shall apply to these arbitration proceedings."

6. Since disputes arose between the parties, the petitioner invoked arbitration *vide* legal notice dated 18.11.2022.

7. In terms of paragraph 4 of the Supplementary Agreement, all terms and conditions of the original Contract were to apply to the Supplementary Agreement, meaning thereby that the arbitration Agreement was also a part of this Supplementary Agreement.

8. Since the petitioner is an MSME, it invoked the jurisdiction of MSME Facilitation Counsel on 01.06.2023 and moved an application under Section 18 of the MSME Act, 2006 before the Facilitation Counsel.

9. The Facilitation Counsel did not appoint any Arbitrator till date and hence, the present petition.

10. Ms. Asthana, learned counsel for the respondent has raised 2 objections.

11. She states that in view of the judgment of ***Silpi Industries v. Kerala State Road Transport Corporation, (2021) 18 SCC 790***, the petitioner could not have invoked the provisions of MSME Act as the Contract was of 22.05.2017 and the petitioner was registered as an MSME on 24.10.2019.

12. The second objection is with regard to filing of petition under Section 11(6) of the Act. She states that it is not the procedure for appointment of an Arbitrator even though the MSME Facilitation Counsel does not appoint an Arbitrator.

13. As regards the first objection is concerned, the Hon'ble Supreme Court in ***NBCC (India) Ltd. v. State of W.B., (2025) 3 SCC 440*** framed the following question:

> *"**13.** The question of law for our consideration is whether an MSME cannot make a reference to the Facilitation Council for dispute resolution under Section 18 of the Act if it is not registered under Section 8 of the Act before the execution of the contract with the buyer."*

14. The said issue was answered in paragraph 29 which reads as under:

> *"**29.** The text of Section 18 is clear and categoric. The words employed herein are "any party to a dispute". The text, "any party to a dispute", cannot be read as a "supplier" by adopting a process of interpretation, by first referring to Section 17, then to Sections 15 and 16 and thereafter, in search of the definition of supplier, to Section 2(n) and finally stopping at Section 8 to hold that "any party to a dispute" will only be an Enterprise which is*

registered under Section 8 of the Act. This meaning-making process to metamorphosise the clear text "any party" to "a supplier" is not the legal method to understand the true meaning of words employed by the legislature. The age-old principle, referred to as the Golden Rule of Interpretation, is that "words of a statute have to be read and understood in their natural, ordinary and popular sense". [State of A.P. v. Linde (India) Ltd., (2020) 16 SCC 335 : (2020) 78 GSTR 381; Grid Corpn. of Orissa Ltd. v. Eastern Metals & Ferro Alloys, (2011) 11 SCC 334.] The choice of the words "any party to a dispute" in Section 18 of the Act is deliberate. The legislative device of employing different expressions in successive provisions of the same statute is well known and intended to effectuate the desired purpose of the Act. If Parliament had intended that "any party" must be confined only to a "supplier", or even a buyer, which expression is also defined, it would as well have used that or those very expressions. The Court cannot substitute the expression "any party" with "supplier" and change the text and, consequently, the scope and ambit of Section 18 altogether.

…

56. *On the interpretation of the provisions of the Act we have arrived at a clear opinion and have expressed the same. Though it is possible for us to follow the precedents referred to in para 27 to arrive at the conclusion that the* *judgments in the case of Silpi Industries (supra) and Mahakali Foods (supra) coupled with the subsequent orders in Vaishno Enterprises (supra) and M/s Nitesh Estates (supra) cannot be considered to be binding precedents on the issue that has arisen for our consideration, taking into account the compelling need to ensure clarity and certainty about the applicable precedents on the subject, we deem it appropriate to refer this appeal to a three Judge Bench."*

15. A perusal of the above shows that the Hon'ble Supreme Court while referring the matter to the larger Bench directed that the judgment of ***Silpi Industries (supra)*** will not be a binding precedent.

16. Be that as it may, in the present case, the said discussion will not apply as on the date the Supplementary Agreement was executed, i.e. 24.12.2020, the petitioner was also registered as an MSME. The petitioner is only seeking adjudication of its disputes arising out of the said Supplementary Agreement and not the Agreement dated 22.05.2017.

17. As regards the second objection is concerned, the same has been answered by this Court in the judgment of ***M/s Vallabh Corporation v. SMS India Pvt Ltd.*** in ***ARB.P. 1119/2024*** relying on ***Microvision Technologies (P) Ltd. v. Union of India, 2023 SCC OnLine Bom 1848*** held as under:

"16. On perusal, the Hon'ble Supreme Court has observed that the MSME Act will prevail over the 1996 Act as the object of MSME Act is to ensure timely and smooth payment to the suppliers who are the micro and small enterprises,

and to provide a legal framework for resolving the dispute with regard to the recovery of dues between the parties under the MSME Act.

17. Section 2(4) of 1996 Act reads as under:-

> *"(4) This Part except sub-section (1) of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder."*

18. The provisions of 1996 Act are not inconsistent with MSME Act as there is no other mechanism for appointment of an Arbitrator except under Section 18 of MSME Act. Relying on section 11(6) of 1996 Act, it says that if any institution fails to appoint any arbitrator, as the case may be, the Supreme Court or High Court will appoint the same.

19. Accordingly, the petitioner, in the present case, wrote to MSME Council on 16.05.2024 seeking reference to mediation under the MSME Act as per the provisions of Section 18 of 1996 Act. The petitioner moved this Court on 16.07.2024, till that period, there was no response by the MSME Facilitation Council. Even more, till today, there has been no response by the Facilitation Council.

20. In addition, the parties have undertaken the exercise of mediation vide Order dated 27.01.2025 before the Delhi High Court Mediation and Conciliation Centre and the same has failed.

21. I am of the view that the MSME Facilitation Council did not initiate the process of mediation under section 18 of MSME Act and hence, the present petition filed under section 11(6) of 1996 Act needs to be allowed."

18. For the said reasons, the second objection also does not sustain.

19. The observations in the judgment of ***Bafna Udyog v. Micro & Small Enterprises, 2024 SCC OnLine Bom 110*** is not binding on this Court as the same pertains to High Court of Bombay. Even otherwise, the same can be differentiated on facts as there was no Arbitration Agreement between the parties due to which Section 11 of the Act could not be invoked.

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

i) Mr. Sangram Patnaik (Advocate) (Mob. No. 9810164452) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

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

iii) 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.

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

JASMEET SINGH, J

OCTOBER 29, 2025/sp