

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
COMMERCIAL APPELLATE DIVISION
ORIGINAL SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

A.P.O.T No. 195 of 2025

AP-COM 296 of 2024

**THE BOARD OF MAJOR PORT AUTHORITY FOR THE SYAMA PRASAD
MOOKERJEE PORT, KOLKATA**

VS

MARINECRAFT ENGINEERS PRIVATE LIMITED

For the Appellant	: Mr. Kishore Dutta, Adv. General Mr. Krishnaraj Thaker, Sr. Adv. Mr. Ashok Kumar Jena, Adv.
For the Respondent	: Mr. Sabyasachi Chowdhury, Sr. Adv. Mr. S.E. Huda, Adv. Mr. Shounak Mukhopadhyay, Adv. Mr. Shreyaan Bhattacharya, Adv. Mr. Abhijit Guha Roy, Adv. Ms. Anwesha Guha Roy, Adv.
Hearing Concluded on	: December 15, 2025
Judgement on	: January 20, 2026

DEBANGSU BASAK, J.:-

- 1.** Appellant has assailed the judgment and order dated June 13, 2025 passed in A.P. COM No. 296 of 2024 Old No. A.P. 179 of 2023.
- 2.** By the impugned judgment and order, learned Single Judge has dismissed a challenge under Section 34 of the Arbitration and Conciliation Act, 1996 directed against an award passed in a

reference under Section 18 of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006.

3. Learned Advocate General appearing for the appellant has contended that, Micro, Small and Medium Enterprises Council has passed the award dated April 28, 2022 after expiry of the period prescribed under Section 29A of the Act of 1996. According to him, the reference before the Council had commenced on September 21, 2015 with pleadings being completed on June 6, 2018. He has contended that, award being passed on April 28, 2022, the same obviously violates the provisions of Section 29A of the Act of 1996.

4. Learned Advocate General appearing for the appellant has contended that, the parties did not agree to extend the mandate nor was there any extension granted by the Court. In such circumstances the mandate of the Council had expired on July 9, 2018.

5. Learned Advocate General appearing for the appellant has contended that, by reason of Section 18(3) of the Act of 2006, the Act of 1996 is incorporated by reference to the Act of 2006. He has contended that, the arbitral proceedings are governed by the Act of 1996. In support of such contention, he has relied upon **2003 Volume 4 Supreme Court Cases 200 (Maharashtra State Road Transport Corporation Vs. State of Maharashtra And Others)**

and **1995 Volume 6 Supreme Court Cases 642 (Govt. of T.N. And Others Vs. S. Balasubramanian and Others).**

6. Learned Advocate General appearing for the appellant has contended that, Section 29A of the Act of 1996 forms part of Section 18 of the Act of 2006. He has pointed out that Section 29A got incorporated in the Act of 2006 on the introduction of the Act of 1996. Therefore, according to him, Section 29A of the Act of 1996 does not fall within mischief of Section 24 of the Act of 2006. Accordingly, there is no inconsistency between Section 29A of the Act of 1996 and Section 18(5) of the Act of 2006.

7. Learned Advocate General appearing for the appellant has contended that, Section 24 of the Act of 2006 cannot be interpreted to exclude the applicability of the Act of 1996. He has relied upon **1992 Volume 1 Supreme Courts Cases 335 (R. S. Raghunath Vs. State of Karnataka and Another), 2016 Volume 3 Supreme Court Cases 762 (Vishal N. Kalsaria Vs. Bank of India and Others), 2012 Volume 13 Supreme Court Cases 1 (Indra Kumar Patodia and Another Vs. Reliance Industries Limited and Others)** in support of such contention. He has contended that, the Gujarat High Court and the Bombay High Court have held that, Section 29A of the Act of 1996 applies to arbitral reference instituted under the Act of 2006. In this regard he has relied upon

Manu/GJ/1555/2022 (Amar Jewellers Ltd. Vs. The Assistant Commissioner of Income Tax) and 2022 SCC OnLine Bom 2861 (Magnum Opus IT Consulting Private Limited Vs. Artcad Systems).

8. Learned Advocate General appearing for the appellant has contended that, the award was passed in breach of principles of natural justice. He has contended that, the appellant was not allowed to make submissions on the merits of the matter. He has referred to the dates on which the hearing took place before the Arbitral Tribunal in support of such contention.

9. Referring to the award of the Council, Learned Advocate General appearing for the appellant has contended that, the Arbitral Tribunal delegated the decision making authority on the computation of interest to the Charter Accountant which is not permissible.

10. Learned Advocate General appearing for the appellant has contended that, the Council did not have jurisdiction to receive dispute arising out of the work's contract. He has contended that, the contract in question is a work's contract. In support of the contention that Council cannot decide on a work's contract, learned Advocate General has relied upon ***2022 SCC OnLine AP 970 (Rashtriya Ispat Nigam Limited Vs. Union of India),***

MANU/MH/2179/2021 (P. L. Adke vs. Wardha Municipal Corporation), MANU/GJ/0990/2018 (Samvit Buildcare Private Limited Vs. Ministry of Civil Aviation), (2017 SCC OnLine Bom 6829 (Sterling and Wilson Private Limited and Another Vs. Union of India and Others), 2022 SCC OnLine Patna 660 (Bihar offset Printers Association Vs. Union of India and Ors.), 2018 SCC OnLine Del 12718 (3R Technologies Vs. Union of India and Anr.), 2018 SCC OnLine Del 9390 (Dezhou Shengli Pipeline Crossing Engineering India Pvt. Ltd. Vs. Ministry of Petroleum and Natural Gas and Ors.), 2015 SCC OnLine Del 13169 (M/s. Shree Gee Enterprises Vs. Union of India and Anr.), 2025 SCC OnLine All 1631 (Thoughtsol Infotech Private Limited Vs. Union of India and Others), 2025 SCC OnLine Pat 589 (Jai Mata Di Construction Co. Vs. Union of India and Others), 2025 SCC OnLine AP 299 (KMV Projects Limited vs. Andhra Pradesh Micro and Small Enterprises Facilitation Council and Others).

11. Learned advocate appearing for the respondent has contended that, Section 29A of the Act of 1996 is inapplicable to arbitral proceedings under the Act of 2006. He has contended that, Section 29A of the Act of 1996 was introduced by the 2015 Amendment. The 2015 Amendment, subject to any agreement to the contrary is only prospectively applicable to arbitral proceedings

which have commenced on or after October 23, 2015 that is the date of the commencement of the 2015 Amendment. He has relied upon **2018 Volume 6 Supreme Court Cases 287 (Board of Control for Cricket in India Vs. Kochi Cricket Private Limited and Others)** in support of such contention.

12. Without prejudice to the previous contention, learned advocate appearing for the respondent has contended that the Act of 2006 is a special legislation. According to him, although the Act of 1996 is incorporated by reference under Section 18 (3) of the Act of 2006, nonetheless the Act of 2006 will prevail over any inconsistency therewith in terms of Section 24 of the Act of 2006. In support of such contention he has relied upon **2023 Volume 6 Supreme Court Cases 401 (Gujarat State Civil Supplies Corpn. Ltd. vs. Mahakali Foods (P) Ltd. and Anr.)**.

13. Learned Senior Advocate appearing for the respondent has contended that, there is nothing in the Act of 2006 which suggests that the mandate of the Council would automatically terminate after 90 days as stipulated under Section 18 (5) of the Act of 2006. He has contended that, the period prescribed under Section 29A of the Act of 1996 being mandatory in nature, the same is inconsistent with Section 18(5) of the Act of 2006 which was held to be directory in nature. In this regard he has relied upon **2021 SCC OnLine Del**

2868 (Indian Highways Management Company Limited vs. Mukesh and Associates).

14. Learned Senior Advocate appearing for the respondent has relied upon **2024 SCC OnLine Cal 8927 (Porel Dass Water & Effluent Control Private Limited vs. West Bengal Power Development Corporation Limited and Others), 2025 SCC OnLine Del 5337 (MDD Medical Systems (India) Private Limited vs. Delhi International Arbitral Centre).**

15. Learned Senior Advocate appearing for the respondent has contended that, the consequence provided under Section 29A of the Act of 1996 should not be read in isolation as it flows from the failure of the Arbitral Tribunal to pass an award within time stipulated. Since, according to him, Section 29A does not apply on account of being inconsistent with the timeline stipulated under Section 18(5) of the Act of 2006, the Section 29A (3) or (4) does not apply.

16. Learned Senior Advocate appearing for the respondent has contended that, there was no breach of principles of natural justice in the arbitral proceedings. Appellant was given ample opportunity of being heard by the Council. He has referred to the list of dates in regard to the proceedings before the Council.

17. Learned Senior Advocate appearing for the respondent has contended that, the classification of work's contract is entirely in the realm of taxation laws and that, the same principles should not be applied for the Act of 2006. He has referred to and relied upon Sections 2(d), (e) and (n) (iii) of the Act of 2006. He has contended that, the letter "or" should be construed and read as "and".

18. Learned Senior Advocate appearing for the respondent has distinguished the authorities cited on behalf of the appellant with regard to the issue as to whether or not a work's contract should be adjudicated upon by the Council under the Act of 2006.

19. A Court exercising powers under Section 37 of the Act of 1996 has to evaluate as to whether the Court exercising jurisdiction under Section 34 of the Act of 1996 applied the principles governing the same or not. That arbitral decisions must adhere to principles of natural justice is the public policy of India, is trite law. Any breach of the principles of natural justice or the award being contrary to the fundamental policy of Indian laws allows re-appreciation of the award under Section 34 of the Act of 1996. Failure to do so by the Court exercising jurisdiction under Section 34 of the Act of 1996 is amenable to judicial scrutiny under Section 37 of the Act of 1996.

20. In support of the contention that, the parties had been heard by the Council on merits, respondent has relied upon the minutes of

the meetings, dated April 24, 2018, June 6, 2018, August 28, 2018, September 24, 2019, December 7, 2018, January 28, 2020, May 12, 2021 and April 28, 2022. The Council has passed the award on April 28, 2022.

21. Records placed before us have established that, the conciliation meetings of the Council had been held on February 16, 2016 and November 16, 2016, while arbitration meetings had been held on February 26, 2018, April 24, 2018, June 6, 2018, August 28, 2018, December 7, 2018, September 24, 2019, January 28, 2020, May 12, 2021. Award had been passed on April 28, 2022. We have not found the minutes of the meeting held on February 16, 2016, November 16, 2016, February 26, 2016, April 24, 2018, August 28, 2018, December 7, 2018 and January 28, 2020 in the records placed before us. These dates we have collated from the pleadings of the parties. Of the other dates of hearing namely, June 6, 2018, September 24, 2019, May 12, 2021 and April 28, 2022, we have found the minutes of the meeting in the records.

22. As has been noted above, the award was made on April 28, 2022. On such date, the minutes of the meeting has disclosed that, the Arbitral Tribunal recorded that the matter was thoroughly heard on several occasions on merits and jurisdiction.

23. We have found that, the composition of the Council had changed on diverse dates. The composition of the Council on June 6, 2018, September 24, 2019, May 12, 2021 and April 28, 2022 as has been collated from the meeting, all the minutes made available in the records, are as follows:-

Sl. No.	Date of Hearing	Composition of Council
1	June 6, 2018	1. Mr. Vijay Bharti, IAS (Chairman) 2. Mr. H.K. Guha, 3. Mr. Sanjeev Kumar,
2	September 24, 2019	1. Mr. Anurag Srivastava, IAS (Chairman) 2. Mr. H.K. Guha 3. Mr. B. Bhattacharya 4. Mr. Alok Tiberwala 5. Mr. Sanjit Saha
3	May 12, 2021	1. Mr. Nikhil Nirmal, IAS (Chairman) 2. Mr. H. K. Guha 3. Mr. B. Bhattacharya 4. Mr. Alok Tiberwala
4	April 28, 2022	1. (Chairman) 2. Mr. B. Bhattacharya 3. Mr. Alok Tiberwala 4. Mr. Sanjit Saha

24. It would appear from the chart relating to the composition of the Council on the dates as noted above, that the composition of the Council was not the same on all the dates of hearing. There has been a change in the composition of the Council even between the last date of hearing being May 12, 2021 and the date of the award in April 28, 2022.

25. The date previous to the date of making and publishing the award is May 12, 2021. On such date, the Arbitral Tribunal was

composed of Mr. Nikhil Nirmal as the Chairman, Mr. H.K. Guha, Mr. B. Bhattacharya, Mr. Alok Tiberwala as the members. The award was made and published by the Council comprising of the Chairman and Mr. B Bhattacharya, Mr. Alok Tiberwala and Mr. Sanjit Saha as members of the Council.

26. Therefore, there is a change in the position of the Arbitral Tribunal between the last date of its meeting on May 12, 2021 and the date when the award was passed on April 28, 2022. At least two of the members of the Council stood changed in between the last two dates.

27. In such circumstances, we are constrained to hold that, the Council has acted in breach of the principles of natural justice in passing the award.

28. In view of such finding of ours, we refrain ourselves from dealing with all the authorities cited at the bar on the various issues. These points are kept open.

29. Since we have held that, the award stands vitiated by breach of principles of natural justice, and since, the Court exercising jurisdiction under Section 34 of the Act of 1996, upheld the award, we set aside the award dated April 28, 2022 and the impugned judgment and order dated June 13, 2025 under Section 37 of the Act of 1996. The arbitration proceedings are remanded to the

Council for fresh adjudication. Parties are at liberty to canvass their respective contentions before the Council, including the lack of jurisdiction of the Council, if any, in adjudicating the disputes.

30. A.P.O.T No. 195 of 2025 is disposed of without any order as to costs.

[DEBANGSU BASAK, J.]

31. I agree.

[MD. SHABBAR RASHIDI, J.]