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

% ***Date of decision: 16th April 2026***

\+ **LPA 254/2026, CM APPL. 23741/2026 & CM APPL. 23742/2026**

NEWTON ENGINEERING AND CHEMICALS LIMITED

.....Appellant

Through: Mr. Akash Nagar and Mr. S. Chauhan, Ms. Rushiba, Advocates.

versus

INDIAN OIL CORPORATION LTD. .....Respondent

Through: Mr. Amit Meharia, Mr. Abinash Agarwal, Mr. S. Roy, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J (ORAL)

1. This Letters Patent Appeal has been filed for setting aside the impugned order dated 7th January 2026, passed by the Single Judge in ***W.P. (C)17520/2025***. By the said order, the Single Judge found that the writ petition was not maintainable and disposed of the petition, granting liberty to the appellant to take appropriate recourse in accordance with law.

2. Dispute arises out of the Contract dated 5th October 2011 executed between the appellant-Company and the respondent-Corporation for execution of Mechanical and Piping Works for FCCU and PRU Revamp at Mathura Refinery. Disputes arose upon completion of the contractual work, leading the appellant to invoke Arbitration under *Clause 9.0.1.0* of the

General Conditions of Contract (‘***GCC***’), which applies to the contract.

3. The arbitration clause contained in *Clause 9.0.1.0* requires that only ‘*notified claims*’ can be referred to arbitration. *Clause 9.0.2.0* provides that whether the issue or a claim sought to be referred to arbitration by the contractor is a ‘*notified claim*’ has to be decided by the General Manager of the respondent-Corporation, prior to the arbitrator proceeding with or proceeding further with the reference.

4. *Clause 9.0.2.0* is extracted as under:

> “*9.0.2.0. <u>Any dispute(s) or difference(s) with respect to or concerning or relating to any of the following matters are hereby specifically excluded from the scope, purview and ambit of this Arbitration Agreement with the intention that any dispute or difference with respect to any of the said following matters and/or relating to the Arbitrator's or Arbitral Tribunal's jurisdiction with respect thereto shall not and cannot form the subject- matter of any reference or submission to arbitration, and the Arbitrator or the Arbitral Tribunal shall have no jurisdiction to entertain the same or to render any decision with respect thereto, and such matter shall be decided by the General Manager prior to the Arbitrator proceeding with or proceeding further with the reference</u>. The said excluded matters are:*
> *(i) With respect to or concerning the scope or existence or otherwise of the Arbitration Agreement;*
> *(ii) Whether or not a Claim sought to be referred to arbitration by the CONTRACTOR is a Notified Claim;*
> *(iii) Whether or not a Notified Claim is included in the CONTRACTOR's Final Bill in accordance with the provisions of Clause 6.6.3.0 hereof.*
> *(iv) Whether or not the CONTRACTOR has opted for the Alternative Dispute Resolution Machinery with respect to any Notified Claim included in the CONTRACTOR's Final Bill.*”
>
> (emphasis added)

5. Post invocation of arbitration on 25th June 2019, a communication was received from the respondent-Corporation dated 19th July 2019, clarifying that the remedy of arbitration was limited to a contractor's '*notified claim*', and whether the claim was notified or not had to be decided by the General Manager under this provision.

6. On 5th August 2019, another communication was addressed by the respondent-Corporation to the appellant by the Chief General Manager, who was seized of the reference, providing 3 weeks' time to the appellant to file a reply statement regarding the determination under *Clause 9.0.2.0*.

7. On 8th December 2019, a response was sent by appellant to the Chief General Manager stating that documents in reply had been submitted on 3rd October 2019 and requesting speedy adjudication of the reference. Thereafter, on 3rd July 2020, the General Manager (Project, Mathura Refinery) wrote a communication to *Mr. Ashok Taru Mandal*, the new General Manager, who had taken over the additional charge from previous Chief General Manager, *Mr. Arvind Kumar,* who had been further promoted, to take up the issue under *Clause 9.0.2.0* and recommence the proceedings.

8. Pursuant to the same, on 9th July 2020, *Mr. Mandal* wrote to the appellant stating that he would hear the parties in support of their contentions on 7th September 2020 at 02.30 p.m. onwards. In light of the COVID-19 pandemic, the hearing on 7th September 2020 was to be conducted *via* video conference.

9. However, the appellant alleges that they never received any link or call from the respondent for the said date of hearing. Thereafter, the matter went into limbo, and no communication was received, as per the appellant.

10. Accordingly, appellant-Company sought to invoke the jurisdiction of

the State Level Micro Small Medium Facilitation Council ('***MSMFC***') under *Section 18(1)* of the Micro, Small & Medium Enterprises Development Act, 2006 ('***MSME Act***').

11. The reference was adjudicated. Finally, on 4th April 2025, the MSMFC held that the appellant does not fall into the category of a supplier under *Section 2(n)* of the MSME Act and the reference under Section 18 was not maintainable. No adjudication was carried out on the merits of the appellant's claims.

12. Thereafter, left remediless, appellant addressed a communication on 3rd August 2025 to the respondent-Corporation. However, received no response. Subsequently, a Legal Notice was sent on 7th October 2025, which was received by respondent-Corporation. Yet again, having received no response, the Writ Petition was filed.

13. The argument advanced by the counsel of the respondent-Corporation was that once appellant had elected to go before the MSME under the MSME Act for a reference under *Section 18* of the MSME Act, the remedy of arbitration with the Corporation under the GCC stood abandoned and, therefore, the process under *Clause 9.0.2.0* stood extinguished. Therefore, the respondent-Corporation had no obligation to proceed with the same.

14. In the Court's opinion, this argument has to be rejected since it is based on a few fundamental fallacies.

15. ***Firstly***, electing to seek a remedy under the MSME Act, on the assumption that the appellant would be eligible for a reference, does not non-suit or preclude the appellant from availing the remedy of arbitration under the original contract and the arbitral process under the GCC. Counsel for the respondent could not point out, when asked, whether any provision in the

MSME Act does provide for such exclusion. In the opinion of this Court, no provision entails that once having applied under the MSME Act and receiving a rejection, a party would be left completely remediless.

16. ***Secondly***, the theory of abandonment propounded by the respondent's counsel is completely antithetical to an arbitration process to which the respondent itself consented under its own GCC. Having **agreed to the arbitration clause** under Section 9 [*Clauses 9.0.1.0-9.0.3.0*] of GCC, and having initiated the process for determination of whether claims are notified or not under *Clause 9.0.2.0*, there was no reason why the said process ought to be aborted or considered as abandoned.

17. It was the duty of the respondent-Corporation to have sustained communication with the appellant and **conduct a hearing** before the General Manager. If, at that stage, appellant had chosen, with prejudice, to refer the matter to the MSME and abandon the arbitration, they would have explicitly stated so. However, that is not the case here. There is no communication in this regard presented on the record, nor produced by the respondent-Corporation. It would not lie in the mouth of the respondent-Corporation to rely on its own omission to complete the *Clause 9.0.2.0* process and render the appellant remediless.

18. The original invocation continues to be valid, and the determination under *Clause 9.0.2.0* must, therefore, be completed. Depending on the result of such an assessment under *Clause 9.0.2.0*, further steps will be available to the appellant in accordance with law, as per the terms of the contract. The issue of concern for the appellant would be whether the time spent in pursuing the MSME proceedings and filing the writ petition before this Court would be excluded for the purposes of limitation. Considering that the plea

to MSME has been legitimately exercised by appellant, in the opinion of this Court, they shall get the benefit of this period for the purposes of limitation.

19. The appeal is, therefore, disposed of with the direction that the General Manager of respondent-Corporation shall decide the determination under *Clause 9.0.2.0* within a period of 8 weeks. Thereafter, depending on the result of such determination, further remedies will be available to the parties in accordance with law. The period spent thus far from the invocation till date shall not be counted for the purposes of limitation.

20. The issues taken up by the Single Judge regarding maintainability and whether contractual rights can be agitated in a writ petition is not being addressed, considering the nature of arguments advanced before this Court.

21. The MSME order does not go into the merits of the matter and should accordingly have no effect on further proceedings.

22. Accordingly, the impugned order is set aside and the appeal is disposed of.

23. Pending applications, if any, are rendered infructuous.

24. Judgment be uploaded on the website of this Court.

ANISH DAYAL, J

DEVENDRA KUMAR UPADHYAYA, CJ

APRIL 16, 2026/*ak/bp*