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

+ **W.P.(C) 5195/2021**

NTPC LTD

.....Petitioner

Through: Mr. Adarsh Tripathi, Mr. Vikram
Singh Baid and Mr.Ajitesh Garg,
Advocates.

versus

MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL
AND ORS

.....Respondents

Through: Mr. Ganesh Chandru, Mr. Siddharth
Agrawal, Mr. Shashwat Dhyani,
Advocates for R-2.

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+ **W.P.(C) 8669/2021 and CM APPL. 26990/2021**

BHARTIYA RAIL BIJLEE COMPANY LIMITED

.....Petitioner

Through: Mr. Adarsh Tripathi, Mr. Vikram
Singh Baid and Mr.Ajitesh Garg,
Advocates.

versus

MICRO AN SMALL ENTERPRISES FACILITATION COUNCIL D
& ORS.

.....Respondents

Through: Mr Raghvendra Upadhyay,
Ms.Purnima Jain and Mr Swaraj
Maurya, Advocates for R-1.
Mr. Ganesh Chandru, Mr. Siddharth
Agrawal, Mr. Shashwat Dhyani,
Advocates for R-2.



CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER
% 22.01.2026

1. The instant petitions seek to challenge the impugned order, whereby, the Micro & Small Enterprises Facilitation Council (MSEFC) has referred the dispute to Delhi International Arbitration Centre (DIAC) under Section 18(3) of the Micro Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as “**MSMED Act**”).
2. Both the petitions, assail orders passed under Section 18 of the MSMED Act, on grounds that the reference for arbitration is bad in law as the concerned MSME was not registered, under Section 8 of the Act, on the date on which the reference was made.
3. The Division Bench of this Court in ***Mangalore Refinery & Petrochemicals Ltd. v. Micro & Small Enterprises Facilitation Council & Anr.***¹ has held as under:

“30. This apart, as correctly submitted by Mr Rai, the three (03) Supreme Court judgments relied upon by Mr Jain are distinguishable on facts. Both in Silpi and Nitesh Estates, the supply of goods/services rendered was concluded before registration under Section 8 of the 2006 Act. 30.1 In the instant matter, MRPL and Driplex entered into an agreement on 01.12.2009. Driplex submitted a memorandum to register itself as a small enterprise under the 2006 Act on 09.12.2011. Concededly, Driplex completed its work and obtained a certificate from MRPL after registration under Section 8 of the 2006 Act i.e., only on 11.03.2013. Since Driplex had been awarded a turnkey contract, the work, quite naturally, would have continued even after it filed a memorandum i.e., obtained registration under the 2006 Act.

31. In this context, it is required to be noticed that the argument advanced on behalf of MRPL that there was no material on record to conclude that execution of work continued post registration under

¹ 2024:DHC:4962–DB.



Section 8 of the 2006 Act is untenable given the following finding of fact returned in paragraph 7.11 of the arbitral award dated 27.11.2021.

“7.11 It is a matter of record that the Claimant had been registered as a small-scale industry under the earlier Act. The present Act was enacted in the year 2006. No doubt, the Claimant did not apply for registration under this Act immediately, but was registered as such in the year 2011 on the issuance of registration by the Commissioner of Industries, New Delhi on 09.12.2011. More importantly, the disputes relate to the period after the registration. The factum of registration was communicated to the Respondent. Work finished, thereafter, monies/amounts which have claimed by the Claimant became due only after the registration, i.e., in the year 2016. The tribunal, therefore, holds that it has the jurisdiction to entertain the present claims. Issue No. 1 is decided accordingly in the affirmative”

32. This finding given by the arbitral tribunal would have to be accepted by MRPL, having invited a judgment from this court on the aforesaid issue. In any event, even in the action preferred under Section 34 of the Arbitration Act, this finding, as per the established view, cannot be unsettled, unless it is found to be perverse.”

4. Further, the issue so raised by the petitioner is no more *res integra* in view of the decision passed by the Supreme Court in the case of **NBCC (India) Ltd. vs. The State of West Bengal & Ors.**,² para. 15 of which reads as under:

“15. Having considered the definition of the expression ‘supplier’, and also having considered the classification of enterprises into micro, small and medium with respect to each of which there is a separate legal regime to be suggested by the Advisory Committee and notified by the Central and State Governments, and in view of the discretion specifically vested with the micro and small enterprises for filing a memorandum under Section 8 of the Act, the submission that the Facilitation Council cannot entertain a reference under Section 18 if the enterprise is not registered under Section 8 must be rejected.”

5. The above discussed decisions would lead to the inexorable conclusion that registration under Section 8 of the MSMED Act is not a condition precedent to the making of a reference under Section 18 of the

² 2025 INSC 54



Act.

6. Since the issues raised in these writ petitions stands decided against the petitioner by the Supreme Court, therefore, no interference is called for.

7. So far as the merits of the dispute are concerned, the same will have to be adjudicated by the Arbitrator. It is clarified that except the aforesaid issue decided by this Court, all issues are left open.

8. With the aforesaid observations, the instant petition stands disposed of.

PURUSHAINDR KUMAR KAURAV, J

JANUARY 22, 2026

Nc/ksr