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

Judgment reserved on: 03.11.2025

Judgment pronounced on: 07.02.2026

+ ARB.P. 1723/2024

DALMIA CEMENT (BHARAT) LIMITED

...Petitioner

Through: Mr. Anirudh Bakhru, Ms. Niyati Kohli,
Mr. PrathaVir Agarwal & Ms. Shubhi
Agarwal, Advs.

versus

M/S ESS ESS TECHNOFABS PRIVATE LIMITED

...Respondent

Through: Mr. Varun Bedi & Ms. Swati Ahalwat,
Advs.

+ ARB.P. 1725/2024

DALMIA CEMENT (BHARAT) LIMITED

...Petitioner

Through: Mr. Anirudh Bakhru, Ms. Niyati
Kohli, Mr. PrathaVir Agarwal & Ms.
Shubhi Agarwal, Advs.

versus

M/S ESS ESS TECHNOFABS PRIVATE LIMITED

...Respondent

Through: Mr. Varun Bedi & Ms. Swati Ahalwat,
Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. These are petitions filed under Section 11 of the Arbitration and Conciliation Act, 1996, (*"the Act"*) arising out of the work



order/purchase order dated 11.10.2020 and 04.11.2020, respectively, seeking appointment of a Sole Arbitrator to adjudicate disputes between the parties.

FACTUAL MATRIX AS PER THE PETITIONER

2. The petitioner, namely Dalmia Cements (Bharat) Limited is a public company engaged in the business of manufacturing and selling of cement and other allied products.
3. The respondent, namely M/S Ess Ess Technofabs Private Limited is engaged in the business of Manufacturing and installation of fabricated metal products.
4. In the year 2020, the petitioner engaged the respondent for providing material and services for mechanical fabrication and erection job of two projects, namely AFR feeding system and clinker silo at its DDSPL unit based in Rohtas, Bihar (*“Project 1”*) and the installation of cooler at Rajgangpur unit, Odisha (*“Project 2”*) respectively.
5. As regards with the project 1, the letter of indent was issued on 15.09.2020 and subsequently the petitioner issued a work order/purchase order dated 11.10.2020.
6. As regards with the project 2, the Letter of Indent was issued on 30.10.2020 and subsequently the petitioner issued a work order/purchase order dated 04.11.2020.
7. The aforesaid said work order/purchase order contained an arbitration clause being Clause No. 28 of the general terms and conditions of the work order/purchase order.
8. The nature of purported disputes in both these petitions are similar, hence are being dealt, together. It is the case of the petitioner that the



respondent failed to execute the work within the time schedule and the petitioner had to engage the third party contractors for completion of the projects.

9. Subsequently, the respondent sent two demand notices dated 06.01.2023 and 10.01.2023, making demands of Rs. 61,65,000/- and Rs. 87,00,000/- along with interest, respectively.
10. In view of the disputes between the parties, on 04.08.2023 the respondent filed reference under Section 17 and 18 of the Micro, Small and Medium Enterprise Development Act, 2006 (*“the MSMED Act”*) relating to the both the claims before the District Micro & Small Enterprises Facilitation Council, Mohali, Punjab (*“the Facilitation Council”*) for an amount of Rs. 1,01,65,000/- along with interest with respect to the project 1 and Rs.87,00,000/- along with interest, with respect to the project 2.
11. The petitioner disputed the jurisdiction of the Facilitation Council by raising a preliminary objection and also filing an application under section 16 of the Act on 14.12.2023.
12. The petitioner then proceeded to file its Statement of Defence (*“SOD”*) on merits, it was filed without prejudice to the objections raised under Section 16 application.
13. In view of the disputes between the parties, the petitioner invoked the dispute resolution clause i.e. Clause No. 28 of the general terms and conditions of the work/purchase order by sending a notice invoking arbitration under Section 21 of the Act dated 12.01.2024.
14. On 30.04.2024, the petitioner also filed its evidence before the Facilitation Council. However, on 08.07.2024 the petitioner filed writ petitions being CWP no. 15704/2024 and 15708/2024 before the



Hon'ble High Court of Punjab and Haryana seeking directions against the Facilitation Council to first decide the Section 16 application dated 14.12.2025 and also to quash the claim petition filed by the respondent before the Facilitation Council.

15. Meanwhile, the Facilitation Council had already reserved the case for award *vide* Order dated 11.07.2024.
16. The High Court of Punjab and Haryana in the aforesaid writ petitions passed an Order dated 18.07.2024 directing that no final Order shall be passed by the Facilitation Council. Further, the writ petitions, were disposed of *vide* judgment dated 09.09.2025 with direction that the Facilitation Council to firstly decide the Section 16 application and conclude the proceedings within 6 months.

SUBMISSIONS ON BEHALF OF THE PETITIONER

17. Mr. Bakhru, learned counsel for the petitioner, contends that the MSMED Act, 2006 does not confer jurisdiction over the Facilitation Council to adjudicate claims arising out of the contracts in the nature of works contracts i.e. composite contracts for supply of goods, materials and services. Reliance is placed on *National Textile Corp. Ltd. v. Elixir Eng. Pvt. Ltd.*¹, *P.L. Adke v. Wardha Municipal Corporation*², *Kone Elevators India Private Limited v. State of Tamil Nadu*³, and *Indian Oil Corporation Ltd. and Another v. Adarsh Nobel Corporation Ltd.*⁴.
18. Further, the learned counsel also relies on a judgment of a Coordinate Bench of this Court rendered in *Tata Power Company Ltd. v. Genesis*

¹SCC OnLine Bom 653.

²2021 SCC OnLine Bom 13986.

³(2014) 7 SCC 1.

⁴2025 SCC OnLine Ori 2737.



*Engineering Company*⁵, and submits that in this case also the nature of the works contract was similar, and it was held that the respondent will not be entitled to the benefit of the MSMED Act.

19. It is further submitted that the Facilitation Council is not having jurisdiction to adjudicate the present disputes between the parties and the disputes need to be adjudicated as per the agreed procedure as enumerated under Clause No. 28 of the general terms and conditions of the work order /purchase order.
20. The statutory arbitration under the MSMED Act was wrongly invoked by the respondent, and this court is having the jurisdiction to decide this Section 11 petition by *prima facie* satisfying itself regarding the nature of contract between the parties, which is that of a composite contract i.e. works contract and then the Facilitation Council would be divested of the jurisdiction.
21. Further the learned counsel also raises a contention that there was no reference to arbitration by the Facilitation Council and the Facilitation Council proceeded to decide the issue in preliminary and fast track manner without consent of the parties, being in non-compliance with Section 21 of the Act and that of the party autonomy.
22. It is further submitted by the learned counsel that even otherwise, the benefits of the MSMED Act cannot be availed by the respondent as on the date of execution of the works contract i.e. in 2020, the respondent was not an MSME and the subsequent registration as MSME was never communicated to the petitioner. In this regard, reliance is placed on *Gujarat State Civil Supplies Corp. Ltd. v. Mahakali Foods pvt. Ltd*⁶.

⁵2023 SCC OnLine Del 2366.

⁶(2023) 6 SCC 401.



SUBMISSIONS ON BEHALF OF THE RESPONDENT

23. Mr. Bedi, learned counsel for the respondent, submits that the respondent is a duly registered MSME since 2009, which was subsequently renewed in 2016 and then revalidated as UDYAM registration on 14.01.2021, in accordance with the Government of India notification dated 26.06.2020 and 06.08.2020. In the aforesaid notification dated 26.06.2020, the new process of registration as UDYAM registration was introduced and later *vide* clarification dated 06.08.2020, it was clarified that the existing enterprises registered prior to 30.06.2020 shall continue to have the same validity till 31.03.2021, thereby making the status of respondent as an MSME continuous and valid even prior to the Letter of Indent and work order/purchase order issued by the petitioner.
24. He states that the respondent on non-payment of invoices invoked the statutory remedy under Section 18 of the MSMED Act by filing a claim before the Facilitation Council. The arbitration was initiated by the Facilitation Council accordingly *vide* Order dated 25.09.2023, upon failure of conciliation between parties. Further, the petitioner is also actively contesting the matter before the Facilitation Council and in light of this fact the petitioner is estopped from invoking arbitration as even a buyer can file a counterclaim before the Facilitation Council.
25. The respondent places reliance on *Silpi Industries v. Kerala State Road Transport Corp.*⁷, to contend that the MSMED Act is statutory and mandatory and that any party to a dispute can make a reference under the said act. Further the respondent contends that the instant Section 11 petition is barred by Section 24 of the MSMED Act, which confers overriding effect on Section 15 to 23 of the MSMED Act.

⁷(2021) 18 SCC 783.



26. He further relies on *Gujarat State Civil Supplies Corp. Ltd. (Supra)* and contends that it is a settled position of law that the MSMED Act being a special legislation prevails over the Arbitration and Conciliation Act, 1996, and the contractual arbitration clause cannot oust the arbitration under the MSMED Act. Accordingly, after invoking the jurisdiction of council, any independent arbitration clause stood superseded.
27. The petitioner has already invoked the writ jurisdiction of the Hon'ble Punjab and Haryana High Court, wherein the petition was disposed of with direction to the Facilitation Council to decide the Section 16 application and conclude the arbitration proceedings. Thus, the present petition constitutes forum shopping and abuse of process of law.
28. It is further submitted that the petitioner is trying to circumvent the process under the MSMED Act by way of this petition.

ANALYSIS AND FINDINGS

29. I have heard the learned counsel for the parties and perused the material and documents placed on record.

STATUTORY REMEDY VIS-À-VIS ARBITRATION AGREEMENT

30. The preliminary objection raised by the respondent is that the present petition is not maintainable before this Court, inasmuch as the arbitration proceedings are already being conducted entirely before the MSME Facilitation Council, S.A.S. Nagar (Mohali). It is the respondent's specific case that it has rightly invoked the special statutory mechanism, and the proceedings have already reached an advanced stage. The petitioner's attempt to invoke the jurisdiction of this Court, despite statutory arbitration already being initiated, is an abuse of process of law.



31. It is important to have a glance at the relevant clause of the general terms and conditions of the work order/purchase order/service order annexed with the Letters of Indent dated 15.09.2020 and 30.10.2020 between the parties, which reads as under:

“Clause 28:

Dispute Resolution And Jurisdiction: It agreed and understood between the Parties that in the event of any dispute or differences arising out of or relating to or with reference to or in connection with this Order, including its termination, the same shall be referred to the jurisdiction of the courts at New Delhi only. It is further, agreed and understood between the Parties that in case of any dispute arising out of this Order, the Parties shall refer the disputes to arbitration for the adjudication by a Sole Arbitrator appointed by Employer and the seat of arbitration shall be at New Delhi only.”

32. The arbitral proceedings were commenced in Mohali pursuant to the reference filed by respondent under Section 18 of the MSMED Act before the Facilitation Council located there, for recovery of its dues, the relevant section reads as under:

“18. Reference to Micro and Small Enterprises Facilitation Council:

(1). Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.



(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section(1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided



within a period of ninety days from the date of making such a reference.”

33. Section 24 of the MSMED act confers overriding effect to the Sections 15 to 23 of the said act in case of inconsistency with any other law, which reads as under:

“24. Overriding effect.—The provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

34. The respondent has raised an objection touching upon a crucial issue of statutory arbitral mechanism. The issue is whether this Court will/should entertain the present petition when the statutory arbitration is already being conducted at the seat of the Facilitation Council, despite the parties having contractually stipulated a different seat of arbitration under the arbitration Clause No. 28 of the said agreement.

35. The Hon’ble Supreme Court has authoritatively established in ***Harcharan Dass Gupta v. Union of India***⁸, that the MSMED Act, being a special statute governing disputes of specific categories to be resolved through a specific forum and process, prevails over the Arbitration and Conciliation Act, 1996, which is a general law. The Hon’ble Supreme Court squarely relied on and approved ***Gujarat State Civil Supplies Corporation Ltd. (Supra)***, and the relevant paragraph reads as under:

“8. We have given our anxious consideration to the submissions of both the parties. In our view, the issue is no more res integra and is covered by the decision of this Court in Mahakali. As we need to do nothing more than

⁸2025 SCC OnLine SC 1111.



refer to the relevant portions of the binding precedent, the reasoning, as well as the conclusion in this decision are extracted herein for ready reference. At the outset, the following two paragraphs clearly explain the principle on the basis of which the court holds that the MSMED Act overrides the Arbitration Act:

42. Thus, The Arbitration Act, 1996 in general governs the law of Arbitration and Conciliation, whereas the MSMED Act, 2006 governs specific nature of disputes arising between specific categories of persons, to be resolved by following a specific process through a specific forum. Ergo, the MSMED Act, 2006 being a special law and the Arbitration Act, 1996 being a general law, the provisions of the MSMED Act would have precedence over or prevail over the Arbitration Act, 1996...”

- 36.** The Hon’ble Supreme Court in ***Gujarat State Civil Supplies Corporation Ltd.(Supra)*** held that the private arbitration agreements cannot restrict or supervene the MSME Facilitation Council mechanism and the relevant paragraph reads as under:

“44. The submissions made on behalf of the counsel for the buyers that a conscious omission of the word “agreement” in sub-section (1) of Section 18, which otherwise finds mention in Section 16 of the MSMED Act, 2006 implies that the arbitration agreement independently entered into between the parties as contemplated under



Section 7 of the Arbitration Act, 1996 was not intended to be superseded by the provisions contained under Section 18 of the MSMED Act, 2006 also cannot be accepted. A private agreement between the parties cannot obliterate the statutory provisions. Once the statutory mechanism under sub-section (1) of Section 18 is triggered by any party, it would override any other agreement independently entered into between the parties, in view of the non obstante clauses contained in sub-sections (1) and (4) of Section 18. The provisions of Sections 15 to 23 have also overriding effect as contemplated in Section 24 of the MSMED Act, 2006 when anything inconsistent is contained in any other law for the time being in force. It cannot be gainsaid that while interpreting a statute, if two interpretations are possible, the one which enhances the object of the Act should be preferred than the one which would frustrate the object of the Act. If submission made by the learned counsel for the buyers that the party to a dispute covered under the MSMED Act, 2006 cannot avail the remedy available under Section 18(1) of the MSMED Act, 2006 when an independent arbitration agreement between the parties exists is accepted, the very purpose of enacting the MSMED Act, 2006 would get frustrated.

(Emphasis added)

37. In the instant petition, the respondent, located in Mohali (Punjab), invoked the statutory mechanism under Section 18 of the MSMED Act



at Mohali, Punjab by filing a claim dated 04.08.2023 against the petitioner. Although the agreement between the parties designates Delhi as the seat of arbitration, the arbitration proceedings are being conducted in Mohali only as per the provisions of the MSMED act.

38. The Hon'ble Supreme Court in ***Harcharan Dass Gupta (Supra)*** established that the seat of arbitration in MSME cases is statutorily determined by the supplier's location, not by contractual designation. Since, the respondent *prima facie* is a MSME located at Mohali, Punjab, the jurisdiction of the facilitation Council located at Mohali was correctly invoked. The relevant paragraph reads as under:

“10. The issue relating to ‘seat of arbitration’ in all cases covered under the MSMED Act is settled in view of the pronouncement of this Court in Mahakali. This position is also true by virtue of the specific provision of the MSMED Act, that is, sub-Section (4) of Section 18, which vests jurisdiction for arbitration in the Facilitation Council where the supplier is located: ...”

39. More importantly, the ***Gujarat State Civil Supplies Corporation Ltd. (Supra)*** judgment clarifies the significance of the deeming fiction created under Section 18(3). The Hon'ble Supreme Court in this decision emphasized that the non-obstante clauses contained in sub-sections (1) and (4) of Section 18 of the MSMED Act, confer overriding effect over any other law for the time being in force, including the Arbitration and Conciliation Act, 1996, and noted that when the MSMED Act was enacted, the legislature was fully aware and conscious of the existing Arbitration Act. The relevant paragraph reads as under:

“43. The Court also cannot lose sight of the specific non



obstante clauses contained in sub-sections (1) and (4) of Section 18 which have an effect overriding any other law for the time being in force. When the MSMED Act, 2006 was being enacted in 2006, the legislature was aware of its previously enacted Arbitration Act of 1996, and therefore, it is presumed that the legislature had consciously made applicable the provisions of the Arbitration Act, 1996 to the disputes under the MSMED Act, 2006 at a stage when the conciliation process initiated under sub-section (2) of Section 18 of the MSMED Act, 2006 fails and when the Facilitation Council itself takes up the disputes for arbitration or refers it to any institution or centre for such arbitration. It is also significant to note that a deeming legal fiction is created in Section 18(3) by using the expression “as if” for the purpose of treating such arbitration as if it was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996. As held in K. Prabhakaran v. P. Jayarajan [K. Prabhakaran v. P. Jayarajan, (2005) 1 SCC 754 : 2005 SCC (Cri) 451], a legal fiction presupposes the existence of the state of facts which may not exist and then works out the consequences which flow from that state of facts. Thus, considering the overall purpose, objects and scheme of the MSMED Act, 2006 and the unambiguous expressions used therein, this Court has no hesitation in holding that the provisions of Chapter V of the MSMED Act, 2006 have an effect overriding the provisions of the Arbitration Act,



1996.”

(Emphasis added)

40. From a conspectus of the above discussion, it is clear that the statutory remedy contained in the MSMED Act prevails over any other private arbitration agreement between the parties. A deeming fiction operates to treat this statutory remedy as an arbitration agreement in itself having its own force.
41. In the arbitration proceeding being conducted at Mohali, the petitioner filed an application under Section 16 before the Facilitation Council challenging its jurisdiction and since the same was not being adjudicated upon, the petitioner herein also filed writ petitions before the Hon'ble Punjab and Haryana High Court being CWP Nos. 15704/2024 and 15708/2024.
42. The Hon'ble Punjab and Haryana High Court while disposing of the writ petitions *vide* judgment dated 09.09.2025 has directed the MSME to consider Section 16 application and conclude the proceedings expeditiously.
43. Most of the submissions made on behalf of the petitioner are identical to the objections raised *vide* Section 16 application filed on 14.12.2023 challenging the jurisdiction of the Facilitation Council to adjudicate the disputes raised by the respondent/claimant. The major objections raised under the Section 16 application can be summarised as under:
- A. The nature of the contract is that of works contract and the facilitation Council has no jurisdiction to adjudicate these claims arising out a works contract.
- B. The respondent was not a registered MSME as on the date of work



order and was registered as an MSME after the work order/purchase order was issued.

- C. There were deficiencies in the execution of the work assigned by the respondent which has caused huge losses to the petitioner herein.
 - D. The claim filed before the Facilitation Council falls outside the scope of adjudication vested with the Facilitation Council as the claim do not arise under Section 15 to 18 of the MSMED Act.
 - E. The dispute resolution mechanism under Clause No. 28 of the general terms and conditions of the work order should be triggered and arbitration should be initiated accordingly at the assigned seat i.e. New Delhi. Thus, only the Courts at New Delhi would have jurisdiction.
 - F. The Facilitation Council has failed to conduct the conciliation as per the MSMED Act, 2006 read with Punjab MSEFC Rules, 2021 and thus, the Facilitation Council cannot initiate the arbitration mechanism.
- 44.** Once the Hon'ble Punjab and Haryana High Court has already adjudicated upon the writ petition filed by the petitioner and directed the Facilitation Council to decide the Section 16 application, this Court under Section 11 of the act is not required nor would it be prudent to adjudicate the same issues which are already pending.
- 45.** The issues raised by the petitioner in the present petitions are to be seen from the prism of the law contained in Arbitration and Conciliation Act, 1996, while the issues raised by the petitioner in its Section 16 application filed before the Facilitation Council are to be seen from the prism of the MSMED Act. A perusal of the judgment quoted hereinabove shows that once a party to a dispute is a duly registered



Micro, Medium or a Small scale Enterprise, the provisions of the MSMED Act, being a special and a later legislation, would prevail. Hence, the present petition cannot be entertained on this ground alone.

- 46.** The major contention raised by the petitioner in the present petition is that the contracts in question are works contract i.e. composite contract, not covered by the jurisdiction of the MSMED Act, and hence the Facilitation Council lack jurisdiction to adjudicate the disputes herein concerned. The said issue has already been raised by the petitioner in its Section 16 applications concerning both the subject contracts in paragraph No. 3 (I) to 3 (VII) of the respective applications. It is imperative to mention that as a rule of prudence, since the issue has already been directed to be adjudicated by the Facilitation Council by the Hon'ble Punjab and Haryana High Court, it will not be proper for this Court to adjudicate the same once the issue is already pending before the authority which is competent to rule on its own jurisdiction.
- 47.** Another contention of the petitioner that the respondent was not a registered MSME as on the date of execution of the contract between the parties, is unfounded, misconceived and a mere bald allegation. The petitioner has not produced any documentary evidence to substantiate this allegation. At the same time, the respondent has furnished relevant information regarding its prior registration and re-registration after change in policy. In this view, the respondent is an MSME registered on 15.12.2009. The copy of relevant acknowledgement is reproduced as under:



ACKNOWLEDGEMENT
PART-II

Form No.00475
18

1. M/S ESS ESS TECHNOFABS PVT LTD HAS FILED HAS FILED MEMORANDUM FOR A MANUFACTURING (MANUFACTURING/SERVICE) ENTERPRISE AT THE ADDRESS VILLAGE KURANWALA TEHSIL DERABASSI DISTT.SAS NAGAR PIN140507 FOR THE ITEM/ITEMS INDICATED BELOW AS PER THE FACTS STATED IN FORM NO: 00475 AND ALLOCATED ENERPRENEURS MEMORANDUM NO.AS BELOW:

2. DETAILS OF ITEM/ITEMS TO BE MANUFACTURED/SERVICE TO BE PROVIDED.

Sl. No.	Items of Manufacture/Type of service to be rendered	Capacity in case of manufacture	Initial date of production/ commencement of service
1	M.S & S.S TANKS (FABRICATION ONLY)	900 MT	30.10.2008
2	POLLUTION CONTROL EQUIPMENTS	.	
3	HEAT RECOVERY EQUIPMENTS	.	
4	VESSEL FOR PHARMA & CHEMICAL UNIT	.	
5	PRE FABRICATED STRUCTURES		
6		-	
7			

(add additional sheet if required)

3. DETAILS OF FPLANT AND MACHINERY AS PER DATE-WISE INVESTMENT:

Sl. No.	Investment in Plant and Machinery/ Equipments	Date of Investment
1	RS.22.40 LAC	08.2008
2		
3		

(add additional sheet if required)

4. NOTE: THE ISSUE OF THIS ACKNOWLEDGEMENT DOES NOT BESTOW ANY LEGAL RIGHT. "THE ENTERPRISE IS REQUIRED TO SEEK REQUISITE CLEARANCE/LICENCE /PERMIT REQUIRED UNDER STATUTORY OBLIGATION STIPULATED UNDEFR THE LAWS OF CENTRAL GOVERNMENT / STATE GOVERNMENT/ UT ADMINISTRATION/ COURT ORDER.)

5. DATE OF CHANGE OF CATEGORY FROM MICRO/SMALL TO SMALL/ MEDIUM OR VICE VERSA.

D D M M Y Y Y Y
- - - - - - -

6. DATE OF ISSUE

D D M M Y Y Y Y
1 5 1 2 2 0 0 9

7. NATURE OF ACTIVITY
(MANUFACTURING-1,SERVICE-2)

1

8. CATEGORY OF ENTERPRISES
(MICRO-1,SMALL-2,MEDIUM-3)

1

9. ENTERPRENEURS MEMORANDUM NUMBER

0 3 0 1 8 1 1 0 0 4 7 5

(First two boxes are for State/UT code ,next three boxes are for District code, sixth and seventh boxes are for category of enterprises(sixth box for indicating or service and seventh box indicating micro or small or medium) and last five boxes are for EM number

DATE : 15-12-2009
PLACE: SAS NAGAR

Signature Manager,
Dist. Industry Center
S.A.S. Nagar



48. In light of the above discussion, I am of the view that the respondent was a registered MSME on the date of execution of agreement between the parties and has rightly invoked the statutory mechanism laid down under the MSMED Act. The same prevails over any private arbitration agreement between the parties as the deeming fiction operates in favour of the statutory remedy.
49. Additionally, the same contention is pending under section 16 application before the Facilitation Council and it has already been directed to decide the issues expeditiously.
50. Further, it is no longer *res integra* that the arbitral tribunal i.e. the Facilitation Council is empowered to rule on its own jurisdiction. The Hon'ble Supreme Court has made the following observations in ***Gujarat State Civil Supplies Corp. Ltd (Supra)*** concerning the power of the Facilitation Council to rule on its own jurisdiction:

“48. When the Facilitation Council or the institution or the centre acts as an Arbitrator, it shall have all powers to decide the disputes referred to it as if such arbitration was in pursuance of the arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996 and then all the trappings of the Arbitration Act, 1996 would apply to such arbitration. It is needless to say that such Facilitation Council/institution/centre acting as an arbitral tribunal would also be competent to rule on its own jurisdiction like any other arbitral tribunal appointed under the Arbitration Act, 1996 would have, as contemplated in Section 16 thereof.”

(Emphasis added)



- 51.** Be as it may, it will not be prudent to decide the same contentions which are already pending before the Facilitation Council. The petitioner may approach this Court in accordance with law once the relevant application is decided by the Facilitation Council.

CONCLUSION

- 52.** In view of the above it is reiterated that the respondent availed its statutory remedy rightly before the Facilitation Council and jurisdiction of the same has already been challenged on the same grounds as raised in this petition. The Facilitation Council is duly empowered to rule on its own jurisdiction.
- 53.** Accordingly, the petitions are disposed of in the aforesaid terms.

JASMEET SINGH, J

FEBRUARY 07, 2026/SS