HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE GADI PRAVEEN KUMAR

WRIT PETITION NO.18773 OF 2024

DATE: 05.05.2026

BETWEEN:

M/s. SRP Minerals Pvt. Ltd.

... Petitioner

AND

Union of India and Two Others

... Respondents

Mr. Surender Rao, learned Senior Counsel representing Mr. Srikanth Kaveti, learned counsel appearing for the petitioner.

Mr. Srinivasa Iyengar, learned Senior Counsel representing Mr. A. Raja Shekar Reddy, learned counsel appearing for the respondent No.3.

ORDER: (Per Hon'ble Justice Moushumi Bhattacharya)

1. The Petitioner seeks a Writ of Mandamus against the respondent No.2/The Medium and Small Enterprises Facilitation Council ('Facilitation Council'), in admitting the claim raised by the respondent No.3 against the Writ Petitioner and initiating Arbitral Proceedings in Samadhan Case No.TS/02/S/YBR/00034.

2. The petitioner also assails the order passed by the Facilitation Council on 29.05.2024 rejecting the application of the petitioner under section 16 of The Arbitration and Conciliation Act, 1996 ('A&C Act')

with regard to the maintainability of the claim filed by the respondent No.3. The petitioner further prays for a stay of all further proceedings in Arbitration in the Samadhan case.

3. In essence, the Writ Petitioner (Buyer before the Facilitation Council) has filed the present Writ Petition against an order dated 29.05.2024, by which the petitioner's right to file a counter-claim was forfeited. By another order passed on the same date, i.e., 29.05.2024, the petitioner's Application under section 16 of the A&C Act questioning 'the jurisdiction of the Arbitral Tribunal' to decide on the claim was rejected.

4. Learned Senior Counsel appearing for the Writ Petitioner submits that the impugned order forfeiting the petitioner's right to file a counter-claim is erroneous since The Micro, Small and Medium Enterprises Development Act, 2006 ('MSMED Act') does not contain any such bar with regard to filing of a counter-claim on the part of the respondent or any power of the Facilitation Council to forfeit the right to file a counter-claim. Senior Counsel submits that the right to file a counter-claim is inbuilt in the MSMED Act and also under the A&C Act and that the Facilitation Council could not have proceeded to pass any Award without taking the petitioner's counter-claim on record.

5. Learned Senior Counsel appearing for the respondent No.3/Seller submits that the Counter and Statement of Defence filed

by the petitioner do not satisfy the requirements of a counter-claim or set-off as provided under Order VIII Rules 6 and 6A of The Code of Civil Procedure, 1908 or the Rules relating to a Written Statement of a defendant. Senior Counsel submits that the impugned order passed by the Facilitation Council is in accordance with the provisions of the A&C Act, particularly section 25(b) thereof. It is also submitted that the petitioner has a statutory recourse available against the order of rejection under section 16 of the A&C Act, which the petitioner has chosen to ignore and instead sought to invoke the Writ Jurisdiction of the High Court under Article 226 of the Constitution.

6. We have heard learned Senior Counsel appearing for the Writ Petitioner (Buyer) and the respondent No.3 (Seller and Claimant before the Facilitation Council). The respondent No.2/Facilitation Council is also represented.

7. The dispute between the parties arises out of a Works Contract Agreement dated 27.01.2021. The Contract was terminated on 14.12.2022 and the respondent No.3 sent communications to the petitioner claiming Rs.44,56,000/- for services rendered.

8. The respondent No.3 thereafter referred the dispute before the Council on 16.03.2023. The Summary of Proceedings, which forms part of the record, shows that the principal amount claimed by the

respondent No.3 in the Samadhan case was Rs.52,58,080/-. The Council decided to initiate Arbitration on 16.09.2023.

9. On 07.10.2023, the petitioner informed the Council that it would submit the Statement of Defence within one week. The petitioner submitted the Statement of Defence on 17.11.2023. On that date, the Writ Petitioner also raised a counter-claim of Rs.79,95,003/- and was given an opportunity to file the counter-claim. On 30.12.2023, the Writ Petitioner was given another opportunity to file the counter-claim.

10. On 17.02.2024, the respondent No.3 filed its rejoinder to the Statement of Defence. On 15.03.2024, the petitioner was given time up to 28.03.2024 to file the counter-claim and the Council posted the Arbitration on 28.03.2024. On 30.04.2024, both parties were represented.

11. The impugned order on 'continuing Arbitration Proceedings' dated 29.05.2024 records that the Writ Petitioner failed to submit its counter-claim before 28.03.2024 and did not seek any extension of time for filing such counter-claim and also failed to give sufficient reasons for not filing the counter-claim within the date directed by the Council, i.e., by 28.03.2024. The impugned order records that the Council on these facts, considered it inappropriate to allow further time to the petitioner to file its counter-claim under the provisions of the A&C Act and the MSMED Act.

12. The Council accordingly proceeded to pass an order that the petitioner's right to file a counter-claim was forfeited and that the Council would continue with the Arbitration Proceedings and make the Arbitral Award on the other evidence before it.

13. The provisions which are relevant to the present adjudication are as follows:

14. Section 18(4) of the MSMED Act (section 18(3) pre-notification) provides that the dispute between the parties shall be taken up by the Council for Arbitration under the provisions of the A&C Act which shall apply to the dispute as if the Arbitration was in pursuance of an Arbitration Agreement referred to section 7(1) of the A&C Act. Section 7(1) of the A&C Act defines an Arbitration Agreement as arising out of an Agreement between the parties in respect of a defined legal relationship, regardless of whether the relationship is contractual or not.

15. Hence, the MSMED Act contemplates application of the provisions of the A&C Act in relation to an Arbitration initiated by the Council. Hence, the provisions of the A&C Act would be relevant for the present adjudication.

16. Section 23(1) of the A&C Act provides for Statement of Claim and Defence of the claimant and the respondent, respectively, to be filed

within the time period agreed upon by the parties or determined by the Arbitral Tribunal.

17. Section 23(2A), inserted w.r.e.f. 23.10.2015, permits the respondent to submit a counter-claim subject to the counter-claim falling within the scope of the Arbitration Agreement. Section 23(2A) further provides that the counter-claim shall be adjudicated upon by the Arbitral Tribunal.

18. Section 23(3) permits either of the parties to amend or Supplement the Claim or Defence during the course of the Arbitral Proceedings subject to the parties agreeing to the same. Section 23(3) however empowers the Arbitral Tribunal to allow or reject the amendment having regard to the delay in making it.

19. Section 23(4), inserted w.e.f. 30.08.2019, makes it mandatory for the Statement of Claim and Defence under section 23 to be completed within six months from the date the Arbitrator receives notice of their appointment, in writing.

20. Section 25 of the A&C Act gives the instances of defaults committed by a party to an Arbitration Agreement. Section 25(b) names an instance of default where the respondent fails to communicate his Statement of Defence in accordance with section 23(1). The Arbitral Tribunal, in that case, is authorized to continue the Arbitration without treating the failure on the part of the respondent as

an admission of the claimants' allegations. The last Clause of section 25(b), inserted w.r.e.f. 23.10.2015, further confers the Arbitral Tribunal with the discretion to forfeit the right of the respondent to file the Statement of Defence.

21. The impugned order reflects that the Council considered all the relevant provisions, including those mentioned above, and invoked its discretionary power to forfeit the right of the petitioner (respondent in the Arbitration before the Council) to file counter-claim. The Council also decided to continue the Arbitration Proceedings and make the Arbitral Award on the other evidence before it. It is evident that the Council proceeded to forfeit the petitioner's right to file counter-claim and took the decision to continue the Arbitration Proceedings strictly in accordance with the provisions cited above.

22. A conjoint reading of sections 23(3) and (4) read with section 25(b) of the A&C Act would make it clear that an Arbitral Tribunal is authorized to disallow any amendment or supplement to the Defence if the Arbitral Tribunal considers it inappropriate to do so having regard to the delay in making it. The urgency in proceeding with the matter would be clear from the section 23(4) which mandates that both the Statement of Claim and Defence shall be completed within six months from the date of receipt of notice of appointment by the Arbitrator.

23. In the present case, the Summary of Proceedings makes it clear that the Arbitration commenced before the Council in accordance with section 18(3/4) of the MSMED Act from 21.07.2023. Hence, six months would be completed on 20.01.2024. The impugned order forfeiting the right of the petitioner to file the counter-claim was passed on 29.05.2024. The issue of delay would also appear from section 18(5) of the MSMED Act which mandates that every reference under section 18 shall be decided within a period of 90 days from the date of making such reference. Admittedly, the Summary of Proceedings show that the period of 90 days expired long before the date of the impugned order i.e., 29.05.2024, since the date of reference was made on 16.03.2023.

24. Moreover, section 25(b) further empowers the Arbitral Tribunal to continue the Arbitration and also confers discretion on the Tribunal to treat the right of the respondent to file the Statement of Defence as having been forfeited. Hence, there is no illegality in the Council invoking the provisions of the A&C Act read with MSMED Act to forfeit the right of the petitioner in filing the counter-claim and to proceed with the Arbitration. The impugned order, together with the Summary of Proceedings, reflects that the respondent was given sufficient time and was directed to file its counter-claim before 28.03.2024 as a last opportunity. However, the respondent failed to do so. The Council

accordingly forfeited the right of the respondent to file the counter-claim and continued the Arbitration.

25. The above reasons persuade this Court to hold that there is no infirmity in the impugned order passed by the Council on 29.05.2024 to the extent of forfeiting the petitioner's right to file counter-claim.

26. Admittedly, the petitioner filed its Statement of Defence on 17.11.2023 before the Council. The constraints in relation to the time for filing of a claim/counter-claim under the A&C Act can be traced to Order VIII Rule 6A of The Code of Civil Procedure, 1908 ('CPC'), which also permits the defendant to file counter-claim before the defendant has delivered its Defence or before expiry of the time limited for delivering its Defence. Order VIII Rule 10 authorizes the Court to pronounce judgment against a party from whom a Written Statement is required under Order VIII Rule 1/Rule 9 and who fails to present the same within the time permitted or fixed by the Court. Hence, the impugned order is fortified by all the statutory provisions as stated above.

27. The cases cited on behalf of the petitioner do not come to its assistance. *Ramesh Chand Ardawatiya v. Anil Panjwani*[1] was pronounced on totally different facts where there was no Written Statement filed in the Suit and hence there was no question of a

[1] (2003) 7 SCC 350

counter-claim being filed within the meaning of Order VIII Rule 6A of the CPC. *Ashok Kumar Kalra v. Wing Cdr. Surendra Agnihotri*[2] was also a case of Order VIII Rule 6A of the CPC where the Supreme Court held that the counter-claim should be confined within the cause of action in the Suit and there is no absolute right to file such counter-claim with substantive delay. The Supreme Court also held that the Court must take into consideration the outer limit for filing of the counter-claim which is pegged till framing of issues.

28. None of the cases cited by the petitioner were concerned with the provisions of the A&C Act or the MSMED Act or the power and discretion conferred on the Arbitral Tribunal/Facilitation Council to forfeit the right of the respondent from filing a counter-claim and continue with the Arbitration Proceedings.

29. The petitioner's second challenge in the Writ Petition is to an order passed by the Council on 29.05.2024 holding that the Council has jurisdiction to continue with the Arbitration Proceedings under the MSMED Act read with section 16 of the A&C Act.

30. The finding of the Council is clearly reflected in the impugned order. The Council relied on both *M/s. Silpi Industries v. Kerala State Road Transport Corporation* and *M/s. Shanti Conductors (P) Ltd. v. Assam State Electricity Board* and held that registration obtained

[2] (2020) 2 SCC 394

under the MSMED Act is prospective in nature and applies to the supply of goods and services rendered subsequent to such registration and that buyer liability under the Act takes effect only after supply of goods or services, all of which aligns with the facts in the present claim before the Council.

31. The impugned order is not an unreasoned order and clearly reflects the basis on which the Council decided in favour of the respondent No.3/Supplier in the matter of jurisdiction. Moreover, section 16(5) of the A&C Act empowers the Arbitral Tribunal to decide on a plea on the jurisdiction of the Arbitral Tribunal and continue with the Arbitral Proceedings where the objection to jurisdiction is rejected by the Arbitral Tribunal. The Arbitral Tribunal is also authorized to make an Arbitral Award in such cases.

32. Section 16(6) provides for a remedy to a party aggrieved by such an Arbitral Award (consequent upon section 16(5)) and apply for setting aside of the Award under section 34 of the A&C Act. Thus, the petitioner has a statutory remedy of applying for setting aside of the Award available to it as and when the Award is made by the Council. In essence, the petitioner has an alternative effective statutory remedy in the facts of the present case which amounts to a settled bar on the Writ Court from entertaining the present Writ Petition. The petitioner has not shown any of the exceptions which would persuade the Writ

Court to entertain the Writ Petition despite the petitioner having an alternative statutory remedy available to it.

33. The above reasons constrain us to hold that the Writ Petition is devoid of merit also for the reason that the Writ Petitioner has an efficacious statutory remedy available to it under the A&C Act, 1996.

34. W.P.No.18773 of 2024 is accordingly dismissed. All connected applications are dismissed.

Interim orders, if any, shall stand vacated. There shall be no order as to costs.

MOUSHUMI BHATTACHARYA, J

GADI PRAVEEN KUMAR, J

DATE:05.05.2026
NDS

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
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