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

% *Date of Decision: 17.08.2026*

\+ **W.P.(C) 11419/2026, CM APPL. 52907/2026 & CM APPL. 52908/2026**

LADLI BEGUM .....Petitioner

Through: Mr. Vishwendra Verma, Ms. Shivali and Mr. Abhishek Nagar, Advocates

versus

M/S EXCELLENT TRADING COMPANY .....Respondents

Through: Nemo

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J (*Oral*)

1. By way of the present writ petition filed under Article 226/227 of the Constitution of India, the petitioner seeks setting aside of the order dated 24.11.2022 passed by the Micro and Small Enterprises Facilitation Council, Delhi (**MSMEFC**), and the arbitral award dated 12.08.2024 passed by the learned Sole Arbitrator, at Delhi International Arbitration Centre (**DIAC**) in Case Ref. No. DIAC/5749C/12-22.

2. Brief facts of the case, as set out in the petition, are that the petitioner is the proprietor of M/s Sahil Book Binder, stated to be

engaged in the business of offset printing and book binding. The respondent is a proprietorship concern of Mr. Sunil Kumar, and is registered as a "micro" enterprise under the Udyam Registration Scheme. The case of the respondent before the MSMEFC was that the petitioner had been purchasing printing raw material from the respondent against invoices raised in the ordinary course of business. According to the respondent, a running account was maintained in respect of the supplies made and payments received, and a sum of Rs. 16,36,639/- remained outstanding after the last payment made by the petitioner on 11.01.2020. A legal notice dated 28.08.2021 was thereafter issued to the petitioner demanding payment of the outstanding amount. As the amount remained unpaid, the respondent filed a reference before the MSMEFC under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 [hereafter '**MSMED Act**']. The MSMEFC initiated conciliation proceedings. As the petitioner did not appear despite notices, the MSMEFC came to the conclusion that the conciliation proceedings could not be taken forward and, by communication dated 24.11.2022, terminated the conciliation proceedings and referred the dispute to the DIAC under Section 18(3) of the MSMED Act for initiation of arbitral proceedings. The respondent thereafter filed its Statement of Claim before the DIAC. Learned Sole Arbitrator was appointed on 03.05.2024 and notices were issued to the petitioner. The petitioner did not appear before the learned Sole Arbitrator and was consequently proceeded against *ex parte*. The learned Sole Arbitrator thereafter considered the material placed on record by the respondent, including the invoices, running account and evidence led by the respondent.

3. By the impugned arbitral award dated 12.08.2024, the learned Sole Arbitrator awarded a principal sum of Rs. 16,36,639/- in favour of the respondent, together with interest in terms of Section 16 of the MSMED Act, besides arbitral costs and other costs quantified at Rs. 50,000/-. The respondent thereafter instituted execution proceedings in respect of the award before the learned Commercial Court No. 1, Gautam Buddh Nagar, Uttar Pradesh.

4. The petitioner has now approached this Court seeking setting aside of the order dated 24.11.2022 passed by the MSMEFC as well as the arbitral award dated 12.08.2024. The principal contention of the petitioner is that the transaction between the parties was in the nature of a work contract, and not a contract for supply of goods, and consequently the provisions of Sections 15 to 18 of the MSMED Act were not attracted. It is further contended that the MSMEFC referred the dispute to arbitration without determining the applicability of the MSMED Act and that the petitioner was not duly served either during the proceedings before the Council or before the learned Sole Arbitrator. It is also the case of the petitioner that she became aware of the arbitral proceedings and the impugned award only on 10.06.2026, during the course of proceedings in a connected matter, and thereafter instituted the present petition on 04.08.2026.

5. At the outset, this Court put a query to the learned counsel for the petitioner regarding the maintainability of the present writ petition for challenging the arbitral award.

6. In this regard, the learned counsel appearing for the petitioner submits that the present petition is not directed merely against a private arbitral award, but also challenges the reference order dated 24.11.2022 passed by the MSMEFC, which is a statutory body constituted under Section 20 of the MSMED Act and is amenable to the writ jurisdiction of this Court. It is submitted that, before referring the dispute to arbitration under Section 18(3) of the MSMED Act, the MSMEFC was required to examine whether the transaction between the parties fell within the scope of Sections 15 to 17 of the said Act. According to the learned counsel, the failure of the MSMEFC to determine this threshold issue goes to the root of its jurisdiction and, consequently, that of the learned Sole Arbitrator. Further, reliance is also placed upon ***Whirlpool Corporation v. Registrar of Trade Marks:*** *(1998) 8 SCC 1* and ***Harbanslal Sahnia v. Indian Oil Corporation Ltd.:*** *(2003) 2 SCC 107*, to contend that the existence of an alternate remedy does not operate as an absolute bar to the exercise of writ jurisdiction in cases involving, *inter alia,* a breach of natural justice or a challenge to the jurisdiction of the authority. It is further argued that the remedy under Section 34 of the Arbitration and Conciliation Act, 1996 [hereafter '**A&C Act**'] cannot be treated as an equally efficacious alternative remedy in the facts of the present case, since, according to the petitioner, she was never served with

notice of the arbitral proceedings and came to know of the impugned award only on 10.06.2026. It is therefore contended that she could not avail of the remedies available under Sections 13 and 16 of the A&C Act or challenge the award within the period prescribed under Section 34(3) thereof. The learned counsel further submits that the requirement of pre-deposit under Section 19 of the MSMED Act, as considered by the Supreme Court in ***Goodyear India Ltd. v. Norton Intech Rubbers Pvt. Ltd.****: (2012) 6 SCC 345*, would not preclude the present petition, since the petitioner challenges the very jurisdiction of the MSMEFC and the learned Sole Arbitrator.

7. This Court has **heard** the learned counsel appearing for the petitioner and has perused the material available on record.

8. The short question which arises for consideration is whether the present writ petition under Articles 226/227 of the Constitution of India is maintainable against the arbitral award dated 12.08.2024, particularly when the petitioner has an efficacious statutory remedy of challenging the said award under Section 34 of the A&C Act.

9. It is well settled that the A&C Act constitutes a complete code in relation to arbitral proceedings and that an arbitral award can be challenged only in the manner and on the grounds provided under Section 34 thereof. Insofar as an award arising from a reference under Section 18 of the MSMED Act is concerned, the position is no longer *res integra* insofar as this Court is concerned.

10. In ***State Trading Corporation of India Ltd. v. Micro and***

Small Enterprises Facilitation Council, Delhi & Anr.: *LPA 91/2024*, decided on 08.02.2024, a Division Bench of this Court held that a writ petition ought not to be entertained against an award rendered in proceedings initiated under the MSMED Act and that the aggrieved party has an efficacious remedy of challenging the award under Section 34 of the A&C Act. The Division Bench further held that the writ jurisdiction cannot be invoked merely to circumvent the requirement of pre-deposit under Section 19 of the MSMED Act. The relevant observations are extracted below:

> "9. The issue of non-maintainability of the petitions filed under Article 226/227 of Constitution with respect to proceedings arising out of proceedings under Act of 1996 is no longer res integra. Undoubtedly, the Supreme Court in ***Deep Industries Ltd. v. ONGC*** has observed that the power of the High Court under Article 226/227 has remained unaffected by the said Act of 1996; however, in the said judgment, the Supreme Court has further held that the High Court should be extremely circumspect in interfering with the arbitral proceedings in exercise of the said jurisdiction. In fact, the Constitution Bench of the Supreme Court [seven Judges Bench] in ***SBP & Co. v. Patel Engg. Ltd.,*** has expressly disapproved the practice of the High Courts in entertaining writ petitions under Articles 226/227 of the Constitution against the orders passed in the arbitral proceedings.
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> 10. Similarly, with respect to the issue of non-maintainability of writ petition challenging an award passed in pursuance to arbitral proceedings initiated under MSMED Act, the Supreme Court in its recent decision dated 6th November, 2023, passed in Civil Appeal No. 7491/2023, titled as '***M/s India Glycols limited and Anr. v. Micro and Small Enterprises Facilitation Council, Medchal - Malkajgiri and Ors.***', has unequivocally held that petitions filed under Article 226/227 of Constitution of India ought not to be entertained in view of Section 18 of the MSMED Act, which provides for a recourse to statutory remedy for challenging the Award under Section 34 of the Act of 1996. The Supreme Court has observed that entertaining of

> petitions under Article 226/227 of Constitution, in order to obviate compliance with the requirement of pre-deposit under Section 19, would defeat the object and purpose of special enactment which has been legislated upon by Parliament.
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> 12. With respect to the objection taken by the Appellant to the effect that the MSEFC does not have inherent jurisdiction to make a reference to arbitration under the provisions of MSMED Act and therefore a writ petition would be maintainable, is also misconceived. In similar facts, the Supreme Court in ***Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods (P) Ltd.*** has categorically held that such an issue of lack of inherent jurisdiction can be decided by the Arbitral Tribunal appointed under the said Act, which by virtue of Section 18(3) of MSMED Act is competent to rule on its own jurisdiction as also the other issues in view of Section 16 of the Act of 1996. The sequitur is that, the decision of the Arbitral Tribunal on the issue of jurisdiction would be amendable to challenge under Section 34 of the Act of 1996.
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> 13. In light of the aforesaid judgments of the Supreme Court and more specifically the judgment ***M/s India Glycols Ltd. v. MSEFC, Medchal-Malkajgiri*** (supra) we are of the considered opinion that the judgment of the learned Single Judge of this Court in ***Malani Construction Company*** (supra) holding that a writ petition under Article 227 of the Constitution can be maintained, is not the correct view."

11. This position has also been reiterated by a Division Bench of this Court in ***NBCC (India) Ltd. v. Micro and Small Enterprises Facilitation Council:*** *2024:DHC:4998-DB*, wherein it was held that objections relating to the jurisdiction of the arbitral tribunal are required to be raised and adjudicated within the framework of the A&C Act and do not, by themselves, warrant recourse to the writ jurisdiction.

12. In ***Mahanagar Telephone Nigam Ltd. v. Micro and Small***

Enterprise Facilitation Council: *2025:DHC:102*, a Coordinate Bench of this Court, relying upon the aforesaid decisions as well as the judgment of the three-Judge Bench of the Supreme Court in ***M/s India Glycols Ltd. & Anr. v. Micro and Small Enterprises Facilitation Council, Medchal-Malkajgiri & Ors.:*** *2023 SCC OnLine SC 1852*, declined to entertain a writ petition challenging an award rendered pursuant to a reference under Section 18 of the MSMED Act. It was held that the appropriate remedy against such an award is a petition under Section 34 of the A&C Act, the statutory scheme under Section 18 of the MSMED Act itself contemplating recourse to the said remedy.

13. The decisions relied upon by the learned counsel for the petitioner, i.e., ***Whirlpool Corporation*** *(supra)* and ***Harbanslal Sahnia*** *(supra)*, are distinguishable on facts as well as in law.

14. In view of the aforesaid settled position, the mere fact that the petitioner seeks to raise an objection to the jurisdiction of the MSMEFC or the learned Sole Arbitrator does not, by itself, justify invocation of the writ jurisdiction of this Court. Such objections, including the contention that the MSMED Act was not applicable to the transaction between the parties, are matters which can be raised in proceedings under Section 34 of the A&C Act. The petitioner's contention that she was not served with notice of the arbitral proceedings or that she came to know of the impugned award only subsequently can also be urged before the concerned Court in accordance with law. These contentions do not, in the facts of the

present case, confer an independent jurisdiction upon this Court under Articles 226/227 of the Constitution of India to bypass the statutory remedy provided under Section 34 of the A&C Act.

15. Accordingly, the present writ petition, insofar as it seeks to assail the order dated 24.11.2022 passed by the MSMEFC and the impugned arbitral award dated 12.08.2024, is held not maintainable. The petitioner will however be at liberty to avail of the remedy under Section 34 of the A&C Act.

16. It is also clarified that this Court has not examined the merits of the petitioner's objections to the impugned award, and all such contentions are left open to be urged before the competent forum in accordance with law.

17. The present petition alongwith pending applications are accordingly dismissed.

18. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

AUGUST 17, 2026/A
VS/TD