2026:DHC:7027

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

% *Date of Decision: 17.08.2026*

CNR No. DLHC010374372026

\+ **W.P.(C) 11650/2026**

GENERAL MANAGER TELECOM DISTRICT BSNL, PATHANKOT .....Petitioner

Through: Mr. Aditya Krishnan, Mr. Saket Aggarwal and Ms. Shreya Gupta, Advs.

versus

MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL & ORS. .....Respondents

Through: Nemo.

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

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

CM APPL. 53910/2026 (exemption)

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

W.P.(C) 11650/2026 & CM APPL. 53911/2026

3. The present petition has been filed under Articles 226 and 227 of the Constitution of India seeking quashing of the reference dated 16.04.2024 [hereafter '**impugned reference**'] made by respondent no. 1, i.e. the Micro and Small Enterprises Facilitation Council [hereafter '**MSEFC**'], to respondent no. 3, i.e. Delhi International Arbitration Centre [hereafter '**DIAC**'] for adjudication of the dispute

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between the petitioner and respondent no. 2, as well as for restraining DIAC from proceeding with the arbitration arising out of the said reference.

4. Briefly stated, facts of the present case are that the petitioner, a Government-owned Public Sector Undertaking, had entered into an agreement dated 26.12.2016 with respondent no. 2 for execution of telecom infrastructure works in Pathankot, Punjab. The said work had thereafter been completed, and the last invoice had been raised by respondent no. 2 on 11.06.2018. Respondent no. 2 had subsequently obtained registration as a Micro, Small and Medium Enterprise [**MSME**] on 26.03.2021 and had thereafter raised a claim before the MSMEFC on 25.07.2022, which had subsequently been referred for arbitration before the DIAC *vide* impugned letter dated 16.04.2024. The petitioner has challenged the said reference and the consequential arbitral proceedings, principally contending that respondent no. 2, having obtained MSME registration after completion of the contract, could not have retrospectively invoked the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 [hereafter '**MSMED Act**'], and that the claim raised before the MSMEFC was also barred by limitation.

5. The learned counsel appearing for the petitioner contends that respondent no. 2 could not have invoked the beneficial provisions of the MSMED Act in respect of a contract which had already been completed prior to its registration as an MSME under the said Act. It is submitted that registration obtained subsequently cannot

retrospectively confer upon respondent no. 2 the status or benefits of an enterprise under the MSMED Act in relation to a transaction which had concluded before such registration. In this regard, the learned counsel places reliance on the decision of the Hon'ble Supreme Court in ***Silpi Industries v. Kerala SRTC:*** *(2021) 18 SCC 790*

6. This Court has **heard** the learned counsel appearing for the petitioner and has gone through the material placed on record.

7. Having heard the learned counsel appearing for the petitioner and perused the record, this Court finds that the principal objections raised by the petitioner relate to the date on which respondent no. 2 obtained registration under the MSMED Act and, consequently, whether the provisions of the said Act could be invoked in respect of the transaction in question. The petitioner has also raised an objection that the claim made by respondent no. 2 before the MSEFC is barred by limitation.

8. The aforesaid objections essentially relate to the maintainability of the claim and the jurisdiction of the forum constituted under the MSMED Act. However, merely because an objection relates to the jurisdiction of the Arbitral Tribunal, the same would not, by itself, justify exercise of jurisdiction under Articles 226 and 227 of the Constitution, particularly when such objection can be raised before and considered by the learned Arbitral Tribunal under the statutory scheme governing arbitration.

9. The learned counsel appearing for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in ***Silpi Industries*** *(supra)*, to contend that respondent no. 2, having obtained MSME registration only after completion of the contract, could not invoke the provisions of the MSMED Act in respect of the transaction in question. This Court, however, finds that the subsequent judgment of the Hon'ble Supreme Court in ***Gujarat State Civil Supplies Corporation Limited v. Mahakali Foods Private Limited (Unit 2) & Anr.:*** *(2023) 6 SCC 401*, also needs to be kept in view. The Hon'ble Supreme Court, after taking note of the decision in ***Silpi Industries*** *(supra)*, has specifically held that objections relating to the status of a party seeking to invoke the provisions of the MSMED Act and its entitlement to invoke the said Act can be raised before the forum seized of the arbitral proceedings.

10. In the present case, therefore, whether respondent no. 2, having obtained MSME registration on 26.03.2021, could invoke the provisions of the MSMED Act in respect of the agreement executed in 2016 and the work completed in 2018, is an objection which can be raised before the learned Arbitral Tribunal. This Court, at this stage, does not consider it necessary to examine the said objection or express any opinion on the applicability of decision in ***Silpi Industries*** *(supra)* to the facts of the present case.

11. The objection relating to limitation can also be raised before the learned Arbitral Tribunal. The petitioner seeks to contend that the last invoice was raised on 11.06.2018, whereas the claim was made

before the MSEFC on 25.07.2022 and is, therefore, barred by limitation. The question of limitation, however, would require consideration of the nature of the claim, the contractual terms and the date on which the cause of action accrued. Such questions can appropriately be examined by the learned Arbitral Tribunal.

12. This Court does not find any circumstance in the present case which would warrant interference with the arbitral proceedings at this stage. The petitioner has an efficacious remedy of raising all its objections before the learned Arbitral Tribunal in accordance with the provisions of the A&C Act. The mere fact that the petitioner seeks to contend that the reference itself is without jurisdiction would not, in the facts of the present case, be sufficient to invoke the writ jurisdiction of this Court.

13. It is also well settled that the jurisdiction under Articles 226 and 227 of the Constitution in respect of arbitral proceedings is to be exercised sparingly. Where the objections raised by a party can be considered by the learned Arbitral Tribunal under the statutory scheme, this Court would not interfere at the threshold.

14. In view of the aforesaid, this Court is of the considered view that the present petition is not maintainable at this stage and is, accordingly, dismissed.

15. The petitioner shall, however, be at liberty to raise all its objections before the learned Arbitral Tribunal, including the objection relating to the date of registration of respondent no. 2 under

the MSMED Act, the applicability of the MSMED Act to the transaction in question, as well as the objection relating to limitation.

16. It is clarified that this Court has not expressed any opinion on the merits of the aforesaid objections. All such questions are left open for consideration by the learned Arbitral Tribunal in accordance with law.

17. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

AUGUST 17, 2026
T.S./T.D.

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