IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 26463 of 2025

The Board of Major Port Authority for the Syama Prasad Mookerjee Port, Kolkata & Anr.

Vs.

Haryana Micro and Small Enterprises Facilitation Council (HMSEFC), Panchkula & Ors.

Mr. Kishore Datta, Sr. Adv.
Mr. Ashok Kumar Jena

....For the petitioners.

Hearing Concluded On : 22.09.2026

Judgment Delivered On : 05.10.2026

Judgment Uploaded On : 05.10.2026

Krishna Rao, J.:

1. The petitioners have filed the present writ petition challenging the jurisdiction of the Haryana Micro and Small Enterprises Facilitation

Council (hereinafter referred to as "HMSEFC") to make the reference and in issuing the letter dated 3rd July, 2025 by the respondent no.3 on behalf of the respondent no.2 by invoking Section 18(1) of the MSMED Act, 2006.

2. The petitioners floated an E-tender notice on 18th August, 2021 for engagement of architect for comprehensive architectural services towards interior and exterior modification of Jawahar Tower Complex and its allied areas at Haldia Township, HDC, Haldia and comprehensive architectural services towards beautification of the road from helipad crossing to Port House via Jawahar Tower at Haldia Township and beautification of lock area along with erection of electronic display board, HDC, Haldia.

3. The respondent no.4 submitted his bid on 8th September, 2021. After submission of E-Tender, the respondent no. 4 by a letter dated 4th October, 2021 and 24th November, 2021, submitted additional required information regarding technical bid. By a letter dated 6th April, 2022, the respondent no. 4 extended the validity of his offer for the subject work up to 30th April, 2022, retaining the terms and conditions of the offer without any change.

4. The petitioners have issued work order to the respondent no. 4 on 21st April, 2022 for carrying out subject work at Rs. 12,50,000/- plus applicable GST put to tender and without any variation in contract price. The respondent no.4 by his letter dated 2nd May, 2022, informed

the petitioners that the advisor of the respondent no. 4 visited the site on 28th April, 2022 and 29th April, 2022 and requested for drawing and document which are required for preparation of concept drawing. On receipt of the documents, the respondent no. 4 submitted revised concept of drawing including PPT presentation on 18th June, 2022. The respondent no. 4 submitted only two options of floor plan layout of Jawahar Tower floor and other items of scope of work were not submitted as per Appendix 1 of the tender document.

5. Series of correspondences were made between the petitioners and the respondent no. 4 from 20th June, 2022 to 17th November, 2022 as to the discussion of various issues to revise design of the main gate, certain modification of drawing were suggested by the respondent no. 4 including internal sitting arrangements, internal detailing and layout of individual floors of Jawahar Towers.

6. Mr. Kishore Datta, Learned Senior Advocate, representing the petitioners submits that without resolving the issues as per suggestion of the respondent no.4, the respondent no.4 submitted its first R.A Bill for Rs. 2,95,000/- i.e. 20% of total contractual value of Rs. 12,50,000/- plus applicable GST on 10th February, 2023. The petitioners have paid the sum of Rs. 2,95,000/- as per the first R.A bill raised by the respondent no.4 in terms of Clause 6.7.2 of the tender document.

7. Mr. Datta submits that the designs and drawings submitted by the respondent no. 4 were reviewed and commented from the end of the

petitioners and modifications and corrections were carried out. The respondent no. 4 has not submitted many deliverables as per requirement of the tender but requested for release of payment. The respondent no. 4 was again requested to comply with the provisions of tender documents but the respondent no. 4 has not submitted many deliverables as per requirement of tender but demanding payment.

8. Mr. Datta submits that the respondent no. 4 by an email dated 16th October, 2024, agreed to revise the deliverables and submit the estimate within 45 to 60 days. Immediately after acceptance of the scheme by the competent authority, the respondent no. 4 was informed about the same. The respondent no. 4 was again requested to submit detailed estimate and other deliverables as per the tender document within four (4) months from the date of acceptance of the scheme. The respondent no. 4 submitted only estimate of Lock Area that too defective. The respondent no. 4 was requested to revise the estimate to match with actual site otherwise it will not be possible to execute the construction work by Haldia Dock Complex.

9. Mr. Datta submits that the respondent no. 4 denied to revise the estimate and outrightly rejected to address the issues raised by the petitioners. The petitioner no. 2 was compelled to issue show cause notice to the respondent no. 4 dated 17th February, 2025. He submits that till the receipt of the show cause notice, no further or final R.A bill was submitted by the respondent no. 4 after receipt of the payment of the first R.A bill. The respondent no. 4 submitted the reply to the show

cause notice by denying the allegations. On receipt of the show cause reply, the petitioners do not find any justification to the demands claimed by the respondent no. 4 and there is no reason to pay any balance amount to the respondent no. 4.

10. Mr. Datta submits that as the reply submitted by the respondent no. 4 was not satisfactory and accordingly, the petitioner no. 2 has issued an order of termination dated 25th March, 2025. The respondent no. 4 has not challenged the order of termination before any forum. He submits that there is no amount is due and payable by the petitioners to the respondent no. 4 in terms of the contract or in terms of the provisions of Section 17 and 18 of the MSMED Act, 2006.

11. Mr. Datta submits that the respondent no. 4 failed to execute the order and having not challenged the order of termination dated 25th March, 2025 and has approached before the Micro and Small Enterprises Facilitation Council, Panchkula, Haryana by filing an application under sub-section (1) of Section 18 of the MSMED Act, 2006, claiming for a sum of Rs. 18,40,800/-, though no amount is due and payable and no final R.A bill was submitted prior to receiving of the show cause notices, the application filed under Section 18(1) of the MSMED Act, 2006, is not maintainable.

12. Inspite of several notices, issued by the petitioners to the respondents none appears on behalf of the respondents in the present writ petition.

13. Scope of work is defined in Clause 6.2 of Special Conditions of Contract, which reads as follows:

> ***"6.2 SCOPE OF WORK:***
>
> 1. *comprehensive architectural design which includes architectural modifications of the existing structures both internal and external including creation of modular office, air-conditioning, electrical modification and decorative lighting arrangements including firefighting system, landscaping and development works like internal roads, construction and modification of Main gate, boundary wall, car and two wheeler parking, fountain, rotary, sewage and water supply system and allied works inside Jawahar Tower premises. The Jawahar Tower Complex consist of Jawahar Tower, Connector building, Annex Building, Garage with solar roof, Canteen Building, Pond behind Annex building, Internal roads, landscape areas etc.*
>
> 2. *<u>Part-A: Beautification of the road from Helipad crossing to Port House via Jawahar Tower</u>*
>
> *The scope of work shall be preparation of comprehensive architectural design which includes architectural plan of proposed face lifting and beautification of the road from Helipad crossing to Port House via Jawahar Tower, up-gradation of the Boulevard, setting up of Planter Box on either sides of the road, other allied beautification work of the road, electrical works, facilities for CCTV surveillance and decorative lighting arrangements of entrance gate building with security room,*
>
> *<u>Part-B: Beautification of Lock area along with erection of electronic display board</u>*
>
> *The scope of work shall include preparation of comprehensive architectural design which includes architectural plan of*

> *proposed beautification of Lock area along with landscaping of the entire area both working and non-working side of Lock barrel, erection of electronic display board at Lock area, structural design and drawing, detailed estimate and specifications.*
>
> *All the items of works as detailed above shall have to be carried out as per specification and as detailed in the "Price Schedule".”*

14. The private respondent filed a claim petition before the MSMED Council under Section 18(1) of the MSMED Act, 2006. Section 18(1) of the MSMED Act, 2006, reads as follows:

> *“**18. (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.”*

15. Section 2(d) of the MSMED Act, 2006, defines buyer which reads as follows:

> *“**2(d)** means whoever buys any goods or receives any services from a supplier for consideration”.*

16. Section 2(f) of the MSMED Act, 2006, defines “goods” which means every kind of movable property other than actionable claims and money.

17. Section 2(n) of the MSMED Act, 2006, defines “supplier” which read as follows:

> ***“2(n)** “supplier” means a micro or small enterprise, which has filed a memorandum with the*

authority referred to in sub-section (1) of section 8, and includes,—

(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956);

(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises."

18. Section 15 of the MSMED Act, 2006, reads as follows:

"15. Liability of buyer to make payment.—

Where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance."

19. Section 17 of the MSMED Act, 2006, reads as follows:

"17. Recovery of amount due.—

For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16."

20. The respondent no. 4 has not completed the work as per the scope of work awarded to the respondent no. 4. The respondent no. 4 is not a buyer and has not supplied any goods to the petitioners. There is no claim raised by the respondent no. 4 against the petitioners. The respondent no. 4 has not completed the work. Accordingly, the work awarded to the respondent no. 4 was terminated. The order of termination has not challenged by the respondent no. 4. The respondent no. 4 has filed the claim before the MSMED Council claiming an amount of Rs. 18,40,800/- but there is no due payable by the petitioners as the respondent no. 4 has not raised any claim before the petitioners before filing of an application under Section 18(1) of the MSMED Act, 2006.

21. Considering the above, this Court finds that the petitioners have not challenged the order of termination before any court of law and the MSMED Council is not the authority to decide with regard to the termination of the contract. The respondent no. 4 has not raised any final R.A bill or any dues are payable against the respondent no. 4, thus, the proceeding initiated by the respondent no. 4 against the petitioners before the MSMED Council under Section 18(1) of the MSMED Act, 2006, is set aside and quashed.

22. **WPA No. 26463 of 2025** is thus **allowed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)