2026:DHC:9325

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

\# **CNR No. DLHC010494732026**

\+ ARB. A. (COMM.) 74/2026, I.A. 28406/2026, I.A. 28407/2026, I.A. 28408/2026 & I.A. 28409/2026

GENERAL MANAGER TELECOM DISTRICT BHARAT SANCHAR NIGAM LTD .....Petitioner

Through: Mr. M C Kochhar, Mr. Mohit Kochhar and Ms. Nikaasha Dogra, Advs.

versus

VICHITRA CONSTRUCTIONS PVT LTD .....Respondent

Through: Adv. (appearance not given).

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% 13.10.2026

1. The present appeal has been preferred by the Appellant under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996[1] assailing the order dated 01.09.2025 passed by the learned Sole Arbitrator.

2. By the impugned order, the learned Sole Arbitrator rejected the Appellant's preliminary objection challenging the jurisdiction of the Arbitral Tribunal to adjudicate the disputes under the Micro, Small and Medium Enterprises Development Act, 2006[2].

3. The controversy arises out of an Agreement dated 24.01.2015

[1] "Act" hereinafter
[2] "MSMED Act" hereinafter

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executed between the parties for execution of works relating to optical fibre cable network in Bunerheri Block, District Patiala. The scope of work included trenching and pipe laying, optical fibre pulling, splicing and termination, preparation of joint chambers, installation of cabinets/ pillars, other allied activities necessary for establishing the telecom infrastructure.

4. Disputes subsequently arose between the parties concerning payments allegedly due under the contract.

5. The Respondent, who is registered under the MSMED Act, approached the Micro, Small and Medium Enterprises Facilitation Council alleging delayed payment of its dues. Upon failure of conciliation, the dispute was referred to arbitration through the Delhi International Arbitration Centre[3], culminating in the appointment of the learned Sole Arbitrator.

6. As recorded in the impugned order, the Respondent's claim included a sum of Rs.1,29,29,663.03/- towards interest on delayed payments, quantified up to 31.07.2024, besides *pendente lite* interest and costs.

7. Before the learned Sole Arbitrator, the Appellant raised a preliminary objection to the maintainability of the proceedings under the MSMED Act.

8. Appellants' principal contention before the Tribunal was that

the agreement constituted a composite works contract involving civil constructions, installation and the creation of permanent telecom infrastructure, rather than a contract simpliciter for the supply of goods or rendering of service within the meaning and scope of MSMED Act.

9. Reliance was placed, *inter alia*, on ***M/s P.L. Adke v. Wardha Municipal Corporation/ Council (Bombay)***[4]**.**

10. By the impugned order, the learned Sole Arbitrator rejected the preliminary objection.

11. The learned Sole Arbitrator distinguished ***M/s P.L. Adke (supra)*** and took note of the provisions in the tendered documents concerning concessions to MSME and the arbitration clause contained therein and observed that the claim pertained to interest on delayed payments under the MSMED Act.

12. The learned Arbitrator concluded that the nature of the underlying contract, by itself, did not warrant a determination that the MSMED Act was inapplicable. Consequently, the objection to jurisdiction was rejected and the arbitral proceedings were permitted to continue.

13. Aggrieved thereby, the Appellant has approached this Court contending that the learned Arbitrator failed to appreciate the

[3] "DIAC" hereinafter
[4] **2021 SCC OnLine Bom 13986**

distinction between the works contract and contract for the supply of goods for rendering of services and did not properly consider the judicial authorities relied upon by the Appellant, and erroneously assumed jurisdiction to adjudicate the Respondent's claim under the MSMED Act.

14. Accordingly, the Appellant seeks setting aside of the impugned order and declaration that the learned Arbitral Tribunal lacked jurisdiction to adjudicate the claim under the said Act.

15. Having considered the submissions advanced and examined the material on record, this Court is of the view that the issue requiring determination at the threshold is whether an order rejecting a jurisdictional objection raised before an Arbitral Tribunal is appealable under Section 37 of the Act.

16. This question is anterior to and distinct from the merits of the Appellant's contentions that the underlying contract falls outside the ambit of the MSMED Act.

17. Unless the impugned order is amenable to challenge under the statutory framework, this Court cannot proceed to examine the correctness of the findings recorded by the learned Arbitral Tribunal on the substantive jurisdictional objection.

18. Section 37 of the Act enumerates the orders against which the appeal lies. The same is reproduced hereunder:

*"**37. Appealable orders**.—(1) [60][Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—*

[61][(a) refusing to refer the parties to arbitration under Section 8;]

[62][(b) granting or refusing to grant any measure under Section 9;]

[63][(c) setting aside or refusing to set aside an arbitral award under Section 34.]

(2) Appeal shall also lie to a court from an order of the arbitral tribunal—

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of Section 16; or

(b) granting or refusing to grant an interim measure under Section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

19. Under Section 37 (2)(a), an appeal lies against an order of the Arbitral Tribunal accepting a plea referred to in Section 16(2) or Section 16(3) of the Act.

20. Section 37 (2)(b), in contrast provides for an appeal against an order of the Arbitral Tribunal granting or refusing to grant an interim measure under Section 17 of the Act[5].

[5] [17. Interim measures ordered by arbitral tribunal.—(1) A party may, during the arbitral proceedings [38][* * *], apply to the arbitral tribunal—
(*i*) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
(*ii*) for an interim measure of protection in respect of any of the following matters, namely—
(*a*) the preservation, interim custody or sale of any goods which are the subject-matter of the

21. The statutory scheme is, thus specific as to the categories of the arbitral orders that may be challenged by way of an appeal. The right of appeal is a creature of statute and cannot be enlarged merely because the party considers the interlocutory determination legally erroneous or prejudicial to its interest.

22. In the present case, the Appellant had raised a preliminary objection challenging the jurisdiction of the learned Arbitral Tribunal to entertain the Respondent's claim under the MSMED Act. The learned Arbitrator rejected the said objection and permitted the proceedings to continue.

23. The impugned order, therefore, represented a rejection of the jurisdictional plea and not its acceptance.

24. It does not bring the arbitral proceedings to an end on the ground of lack of jurisdiction. The distinction is decisive.

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arbitration agreement;
(*b*) securing the amount in dispute in the arbitration;
(*c*) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
(*d*) interim injunction or the appointment of a receiver;
(*e*) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient,
and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.
(2) Subject to any orders passed in an appeal under Section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court.]

25. Section 37(2)(a) of the Act expressly permits an appeal where the learned Arbitral Tribunal accepts a plea under Section 16(2) or Section 16(3). It does not provide for an appeal where such a plea is rejected.

26. The impugned order however rejected the Appellant's objection, does not fall within the scope of Section 37(2)(a).

27. Equally since the impugned order neither grants nor refuses an interim measure under Section 17, it does not fall within the ambit of Section 37(2)(b), the provision under which the present appeal has been instituted.

28. The consequences follow from the statutory language itself.

29. The order rejecting a plea of lack of jurisdiction cannot be rendered appealable under Section 37 merely by describing it as a jurisdictional determination or by emphasizing the significance of the issue decided.

30. What matters is the nature of the order and whether it falls within a category expressly made appealable by the legislature. In the present case it does not.

31. This interpretation is re-enforced by the scheme of Section 16 of the Act. The same is reproduced herewith:

"16. Competence of arbitral tribunal to rule on its jurisdiction.—
(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—
(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.
(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.
(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.
(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.
(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.
(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with Section 34."

32. Section 16 embodies the principle that an Arbitral Tribunal is competent to rule on its own jurisdiction. Where a plea under Section 16(2) or Section 16(3) is rejected. Section 16(5) mandates that the Arbitral Tribunal continue with the arbitral proceedings and make an arbitral award. Section 16(6), in turn, preserves the right of a party aggrieved by such an award to challenge it in accordance with Section 34 of the Act.

33. The statutory arrangement deliberately distinguishes between

the acceptance and rejection of the jurisdiction plea. Acceptance of such a plea terminates the arbitral proceedings on the ground that the Arbitral Tribunal lacks jurisdiction and attracts the appellate remedy expressly provided under Section 37(2)(a) of the Act.

34. Rejection of the plea on the other hand, requires the Arbitral Tribunal to continue with the proceedings. The aggrieved party to may pursue the remedy contemplated by the Act at the appropriate stage.

35. An immediate appeal against an order rejecting a jurisdictional plea is, therefore, not contemplated under Section 37 of the Act.

36. The Supreme Court has authoritatively reaffirmed this proposition recently in ***MCM Worldwide (P) Ltd. v. Construction Industry Development Council***[6]***.***

37. The Court clarified that an order rejecting a plea of lack of jurisdiction under Section 16(2) or Section 16(3) is not independently amenable to challenge under Section 34 or Section 37 of the Act at the interlocutory stage.

38. The Supreme Court emphasised that Sections 16(5) and 16(6) require the Arbitral Tribunal to continue with the proceedings and make an arbitral award, while preserving the right of the aggrieved party to challenge the rejection of the jurisdictional plea in accordance with Section 34 of the Act after the final award. Section 37, on the other hand, provides an immediate appeal where the Arbitral Tribunal

accepts the jurisdictional plea under Section 16(2) or Section 16(3).

39. The Court further cautioned against adopting an interpretation that would permit piecemeal challenges to interlocutory determinations concerning jurisdiction, as such an interpretation would be contrary to the statutory scheme and render Section 37(2) otiose.

40. Thus, the law is clear that an order rejecting a jurisdictional plea under Section 16 cannot be treated as an independently appealable order or as an interim award so as to enable an immediate challenge under Section 34 or Section 37 of the Act.

41. The principle laid down in ***MCM Worldwide (P) Ltd (Supra)*** squarely governs the threshold issue arising in the present case.

42. In the present case, the learned Arbitrator rejected the Appellant's jurisdictional objection by order dated 01.09.2025, with the result that the arbitral proceedings were permitted to continue.

43. The impugned order, therefore, does not fall within the category of orders made appealable under Section 37(2)(a) of the Act. Nor does it concern the grant or refusal of an interim measure under Section 17 so as to attract Section 37(2)(b).

44. The fact that the objections raised by the Appellant concern the applicability of the MSMED Act, rather than any other aspect of the

[6] 2026 SCC OnLine SC 717

jurisdiction of the Arbitral Tribunal, does not alter the statutory character of the impugned order or create an exception to the scheme prescribed under the Act.

45. Nor can reliance on Section 151 of the Code of Civil Procedure, 1908, sustain the maintainability of the present appeal. The inherent powers of a Court cannot be exercised to create a substantive right of appeal where the governing statute does not provide for one.

46. The Act expressly prescribes the categories of orders of an Arbitral Tribunal against which an appeal may be preferred. The inherent powers of this Court cannot be invoked to circumvent the express limitations imposed by the statutory scheme.

47. It follows that the present appeal is not maintainable under Section 37 of the Act. This conclusion is confined to the availability of an immediate appellate remedy against the impugned order. It does not constitute an adjudication on the merits of the Appellant's jurisdictional objection or affirm the correctness of the findings recorded by the learned Arbitrator.

48. The Appellant has raised substantial submissions concerning the legal character of the underlying agreement and the applicability of the MSMED Act thereto. However, in view of the conclusion on maintainability, this Court refrains from examining the merits of those submissions at this stage.

49. Accordingly, all questions concerning the applicability of the





MSMED Act to the underlying contract, the legal effect of the Respondent's registration and the correctness of the findings recorded in the impugned order are left open. The Appellant shall remain at liberty to pursue such remedies as may be available in accordance with law, subject to the statutory scheme governing challenges to orders rejecting jurisdictional pleas under the Act.

50. In view of the foregoing, the present appeal is dismissed as not maintainable.

51. Pending application(s), if any, also stand disposed of. There shall be no order as to costs.

OM PRAKASH SHUKLA, J

OCTOBER 13, 2026/at/gunn