GAHC010225652025

2025:GAU-AS:15803

THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WRIT PETITION [CIVIL] NO. 5962/2025

Lokopriya Gopinath Bordoloi Regional Institute of Mental Health, Tezpur, an Autonomous Society under the Ministry of Health and Family Welfare, Govt. of India, Represented by its Director, Tezpur, Assam, Pin - 784001.

.....Petitioner

-**VERSUS**-

1. M/s Green Alliance Engineering Services Pvt. Ltd. [Through its Managing Director / Authorized Representative], Office Add - C-326, 2nd Floor, Vikas Puri, New Delhi - 110018. Corporate Office at G2-4, Vardhman Chambers, Vikas Puri, New Delhi - 110018.

2. The Delhi International Arbitration Centre [DIAC], Represented by its Director / Secretary, Delhi International Arbitration Centre, Delhi High Court Campus, Shershah Road, New Delhi - 110503.
3. Puneet Taneja, Sr. Advocate, Chamber - 21, Lawyers Chamber, Delhi High Court, New Delhi - 110003.
4. Micro and Small Enterprises Facilitation Council, Represented by the Hon'ble Chairperson, MSEF Council District [West] Plot No. 3, Shivaji Place, Raja Garden, New Delhi – 11002.

……**Respondents**

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

Advocates :

Advocate for the Petitioner : Mr. A.K. Dutta, Advocate.

Date of pronouncement of judgment : 18.11.2025

Whether the pronouncement is of the Operative part of the judgment ? : No

Whether the full judgment has been Pronounced ? : Yes

JUDGMENT

1. The petitioner, Lokopriya Gopinath Bardoloi Regional Institute of Mental Health [hereinafter referred to as 'the petitioner Institute' or 'the Institute', in short, for easy reference] is a tertiary mental health care institute, which is fully funded by the Ministry of Health & Family Welfare, Government of India. It is stated that the petitioner Institute, established in Tezpur, Assam, is dedicated to providing specialized mental health care, research and training to advance mental health services in the region.

2. For the purpose of outsourcing manpower services, the petitioner Institute entered into a Government e-Marketplace [GeM] Contract vide Contract no. GEMC-511687733020098 dated 05.11.2021 with the respondent no. 1, M/s Green Alliance Engineering Services Pvt. Ltd. The GeM Contract was awarded to the respondent no. 1 after a tender process wherein the respondent no. 1 submitted Bid no. GEM/2021/B/1503975 dated 08.09.2021. The GeM Contract was effective from 08.11.2021 to 07.11.2022 and the Contract value was Rs. 1,30,87,348.56/-.

3. As per the terms and conditions of the GeM Contract, the respondent no. 1 was mandatorily required to comply with the provisions of the relevant labour laws including the Minimum Wages Act, 1948 [Section 12], the Payment of Wages Act, 1936 [Section 5(1)(a)] and the Contract Labour [Regulation and Abolition] Act, 1970 [Section 21(4)]. Clauses 4.1, 5 and 8 of the GeM Contract mandated timely wage payments and EPF/ESI deposits. Clause 8 of the GeM Contract prescribed penalties for delays, and Clause 11 allowed termination of the GeM Contract for breaches of its terms and conditions.

4. It is the case of the petitioner Institute that during the GeM Contract period, the respondent no. 1 committed multiple breaches of the terms and conditions of the GeM Contract as it made delayed wage payments during the period from November, 2021 to August, 2022, which were found to be in violation of Clauses 4.1, 5 and 8 of the GeM Contract and Section 5(1)(a) of the Payment of Wages Act, 1936. The respondent no. 1 also failed to deposit EPF/ESI dues in time during July, 2022 and August, 2022, which were in violation of Clause 4.1 of the GeM Contract. Further, the respondent no. 1 was found to be collecting an amount of Rs. 5,16,000/- in an unauthorized manner from its workers in breach of Clause 4.1 of the GeM Contract. The violations committed by the respondent no. 1 were brought to the notice of the respondent no. 1 by the petitioner Institute vide its notices, dated 13.01.2022, dated 18.01.2022, dated 20.01.2022, etc.

5. It is the further case of the petitioner Institute that it had to withhold payments pending corrected invoices and EPF/ESI deposit proofs, as required by Clauses 9.2 and 9.3 of the GeM Contract. The payments were, however, made subsequently and promptly upon compliance by the respondent no. 1 with imposition of penalties due to delay on the part of the respondent no. 1 in making payments to the labours in compliance with the GeM Contract. It is claimed by the petitioner Institute that as there were persistent breaches on the part of the respondent no. 1, the petitioner Institute was compelled to terminate the GeM Contract with effect from 31.08.2022. The fact of termination of GeM Contract was duly communicated to the respondent no. 1 on 26.08.2022. The petitioner Institute subsequently forfeited the Performance Bank Guarantee [PBG], deposited by the respondent no. 1 for an amount of Rs. 4,75,477/- on 06.02.2022, and imposed a cancellation charge of Rs. 13,08,735/- as per Clause 8 of the GeM Contract. The petitioner Institute has stated that it had to pay the wages amounting to Rs. 4,39,016/- for the months of July,

2022 and August, 2022 directly to the workers for the purpose of complying the statutory provisions contained in Section 21[4] of the Contract Labour [Regulation and Abolition] Act, 1970.

6. When after termination of the GeM Contract, the respondent no. 1 requested the petitioner Institute to release the withheld penalty amount on multiple occasions, the petitioner Institute had to decline their requests as, according to it, it was a penalty amount which was imposed as per the terms and conditions of the GeM Contract. The respondent no. 1 requested for amicable settlement of the issues as per Clause 16 of the GeM Contract. On receipt of such a request, the petitioner Institute constituted and notified a Dispute Resolution Committee by an Order dated 01.11.2023. A meeting of the Dispute Resolution Committee was convened on 06.11.2023. However, the disputes between raised by the respondent no. 1 could not be resolved amicably. According to the petitioner Institute, the respondent no. 1 could not substantiate its claim with the necessary relevant records.

7. In view of failure in the amicable settlement process, the respondent no. 1 requested the petitioner Institute vide its Letter dated 16.12.2023 to proceed for resolution through Arbitration as per the mechanism set in Clause 16 of the GeM Contract. The petitioner Institute, in response, appointed an Arbitrator from its end and communicated the matter of appointment of Arbitrator to the respondent no. 1 on 03.01.2024. As per the terms and conditions of the GeM contract, the respondent no. 1 was also required to appoint an Arbitrator from its end. Both the Arbitrators, appointed by the two parties, were required to appoint a Presiding Arbitrator. But, the respondent no. 1 did not appoint an Arbitrator from its end and it had proceeded to approach a Micro and Small Enterprises Facilitation Council constituted under the Micro, Small and Medium Enterprises Development Act, 2006 [‘the MSMED Act’ for short].

8. During the intervening period, the respondent no. 1 had approached the respondent no. 4, that is, Micro and Small Enterprises Facilitation Council, MSEF Council District [West], New Delhi [hereinafter referred to as 'the Facilitation Council' for brevity] on 27.03.2024 laying a claim. The application had been registered as Application no. : UDYAM-DL-11-0012137/M/00001, wherein the petitioner Institute had been impleaded as the sole opposite party.

9. After registration of Application no. : UDYAM-DL-11-0012137/M/00001, the Facilitation Council issued an Intimation to the petitioner Institute on 27.03.2024 stating inter-alia that the respondent no. 1 as the supplier had submitted an application under the provisions of Section 18 [1] of the MSMED Act contending delayed payment of its dues by the petitioner Institute. It was intimated that the respondent no. 1, an MSE unit, had mentioned that it as a supplier supplied goods / provided services to the petitioner Institute as per the GeM Contract no. GEMC-511687733020098 dated 05.11.2021 and generated an Invoice no. GAESPL/22-23/147 dated 27.07.2022 and made the same available to the buyer, that is, the petitioner Institute. The Intimation further stated that the respondent no. 1 as the supplier had claimed an amount of Rs. 40,68,348/- against the Invoice dated 27.07.2022 from the opposite party-buyer, that is, the petitioner Institute. The Intimation further mentioned that the opposite party-buyer had failed to make payment to the supplier within a period of forty-five days from the date of acceptance or the date of deemed acceptance as per the provisions of the Section 15 of the MSMED Act. By the Intimation, the Facilitation Council had advised the petitioner Institute as the opposite party-buyer to make payment of the due amount to the supplier [the respondent no. 1] immediately within a period of fifteen days from the date of receipt of the notice or else, a case would be registered by the Facilitation Council.

10. On receipt of the Intimation dated 27.03.2024, the petitioner Institute stated to have submitted an objection in writing on 03.04.2024 before the Facilitation Council raising objection on the point that the Facilitation Council lacked the jurisdiction to entertain the application. The stand of the petitioner Institute was reiterated during a hearing held before the Facilitation Council on 22.08.2024.

11. It was inter-alia highlighted on behalf of the petitioner Institute that the dispute was one of contractual breach and not of delayed payment. The provision for Arbitration in the GeM Contract was referred to. It was contended that the provisions of the MSMED Act would not be applicable in respect of the claim raised by the respondent no. 1 before the Facilitation Council as the Institute as the buyer did not have any pending dues towards the respondent no. 1-supplier. The further case of the petitioner Institute is that despite raising such valid objections, the Facilitation Council closed the matter on 30.08.2024 and referred the matter to the Delhi International Arbitration Centre [DIAC], New Delhi [the respondent no. 2].

12. In a Referral Letter dated 31.08.2024 to the DIAC issued by the Sub-Divisional Magistrate [HQ], District – South West, New Delhi, it was mentioned that the respondent no. 1 as the supplier submitted an application before the Facilitation Council, established under Section 20 of the MSMED Act, under Section 18 of the MSMED Act for adjudication of disputed / delayed payment by the petitioner Institute as the buyer. It was further mentioned that though proceedings for settlement was initiated, no settlement could be reached at and therefore, the Facilitation Council on 22.08.2024 reached at a conclusion that a Conciliation was not possible. It was decided to terminate the Conciliation proceedings and to refer the case under Section 18 [3] of the MSMED Act to the Delhi

International Arbitration Centre [DIAC] [the respondent no. 2] for initiation Arbitration proceedings as per the Arbitration and Conciliation Act, 1996. The copy of the Referral Letter was also forwarded to the respondent no. 1 and the petitioner Institute. On being so referred, the Delhi International Arbitration Centre [DIAC] registered the same as Case no. DIAC/9258/09-24.

13. It is stated that the petitioner Institute was telephonically informed on 06.06.2024 by the respondent no. 2, DIAC to attend a hearing on 06.06.2024 stating that it had appointed an Arbitrator [the respondent no. 3] for the Arbitration proceeding. On 10.12.2024, the respondent no. 2, DIAC issued a Letter both to the petitioner Institute and the respondent no. 1 in continuation of an earlier Letter dated 15.10.2024 reminding the parties to file request for Arbitration / Statement of Claim and to deposit the Arbitrator's fees and misc. expenses within a period of fifteen days from the date of receipt of the Letter as a last and final opportunity. On 03.02.2025, the respondent no. 2 issued another Letter to the petitioner Institute directing it to deposit its share towards Arbitrator's fees amounting to Rs. 85,943.55/- and towards miscellaneous expenses amounting to Rs. 20,000/-. On receipt of the instruction, the petitioner Institute deposited an amount of Rs. 1,05,944/- in the account of the respondent no. 2 through RTGS on 27.02.2025.

14. The hearing before the Arbitrator was initially scheduled on 13.08.2025 and subsequently, on 29.08.2025. Attending the hearing on 29.08.2025, the petitioner Institute sought to raise the issue of maintainability of the claim. But, the same was disregarded by the Arbitrator [the respondent no. 3]. The petitioner Institute was only directed to submit an admission denial claim to the rejoinder filed by the respondent no. 1 while scheduling the hearing on 10.10.2025. In the meantime, the petitioner Institute submitted an objection before the Arbitrator raising an issue of

inapplicability of the MSMED Act to the contractual dispute raised in connection with the GeM Contract under reference. A request was made either to drop the said proceeding pending before the respondent no. 2 or to refer the matter for Arbitration under the contractually agreed upon framework.

15. It is at such stage, the present writ petition is preferred seeking the following relief :-

> In view of above premises, it is, therefore prayed that your lordship may be pleased to admit this petition call for the records, issue a Rule, calling upon the Respondents to show cause as to why an appropriate writ in the nature of certiorari and/or any other appropriate writ and/or order or direction shall not be issued setting aside and quashing
>
> [i] the impugned process taken by the Respondents declaring that the petition of Respondent No. 1 against the termination order dated 26.08.2022 [Annexure VIII] issued by the Petitioner under Micro, Small and Medium Enterprises Development Act, 2006 is not maintainable as per Clause 16,17 of the GeM Terms and Conditions;
> [ii] The impugned Arbitration Proceeding vide case no. DIAC/9258/9-24 at the Delhi International Arbitration Centre or any other order/award therefrom for having no jurisdiction which violates the Clause 16.2 of the GeM terms and conditions ignoring the Petitioner's initiation of Arbitration on 03.01.2024 as per clause 16 of GeM terms and conditions and objection to the MSME Facilitation Council on 03.04.2024;

> [iii] Issue an appropriate writ and /or direction / order restraining the Respondent nos. 2 and 3 from proceeding further with the Arbitration until the jurisdictional issue is finally adjudicated;
>
> [iv] Further, a direction to the Respondent No. 1 to resolve the dispute as mandated by GeM contract under Clause 16, 17 and by following the terms and conditions of the GeM contract, terms and conditions which is binding for both buyer and seller.
>
> And after hearing the party/parties and after perusal of Records, Your Lordship may be pleased to make the Rule absolute and would pass such further order/orders as Your Lordship deem fit and proper in the facts and circumstances of the case

16. It is in such fact situation obtaining, a question has arisen regarding maintainability of the present writ petition under Article 226 of the Constitution of India.

17. I have heard Mr. A.K. Dutta, learned counsel for the petitioner.

18. Mr. Dutta, learned counsel for the petitioner has submitted that the provisions of the MSMED Act would not be applicable in the case in hand. He has submitted that the MSMED Act can be made applicable to a dispute for accepted services, not contractual breaches. It is contended that disputes involving non-performance or breaches committed by the contractor of the terms and conditions of the GeM Contract and/or defaults in complying with the statutory obligations would fall outside the scope and ambit of the MSMED Act. It has been contended that the Facilitation Council as well as the DIAC arbitrarily rejected the objection raised by the petitioner Institute regarding its point of lack of jurisdiction

to entertain the dispute, which was one of contractual breaches by the respondent no. 1 and not of delayed payment by the petitioner Institute. It is further contended that the Facilitation Council's reference was in complete ignorance of the Arbitration clause contained in Clause 16.2 of the GeM Contract. It is contended that as per Clause 16.2[vi], the Seat of Arbitration shall be at the place where the principal place of business of the buyer is located and therefore, the Seat of Arbitration has to be at Tezpur, Assam.

19. Giving due consideration to the submissions advanced by the learned counsel for the petitioner, I have gone through the terms and conditions of the GeM Contract.

20. Clause 16 of the GeM Contract has provided for a mechanism for dispute resolution between the buyer and the seller / service provider. Clause 16.1 : 'Amicable Settlement' has provided that in the event of any conflict or dispute arising out of or in connection with the Contract placed through GeM, the parties shall endeavour to resolve such disputes amicably. In Clause 16.2 of the GeM Contract, there has been provision for 'Arbitration'. It has been provided in Clause 16.2 that in the event of any conflict / dispute arising out of or in connection with the Contract placed through GeM, which has not been resolved in accordance with Clause 16.1, the aggrieved party may invoke Arbitration by sending a written notice to the other party. The procedure for appointment of the Arbitral Tribunal has also been provided for. If the total value of the GeM Contract exceeds Rupees One Crore, the Arbitration shall be conducted by a forum of three Arbitrators. Each party shall be entitled to appoint an Arbitrator and the two party-appointed Arbitrators shall appoint a third Arbitrator as the Presiding Arbitrator.

21. In the present case, after failure of the dispute resolution process as per Clause 16.1 of the GeM Contract and on the request of the respondent no. 1 to initiate Arbitration process, the petitioner Institute invoked Clause 16.2 of the GeM Contract by appointing an Arbitrator on 03.01.2024. But, at that stage, the respondent no. 1 choose not to appoint an Arbitrator as per Clause 16.2 of the GeM Contract and instead, it decided to approach the Facilitation Council under the provisions of Section 18[1] of the MSMED Act to claim an amount of Rs. 40,68,348/- as an amount due from the supplier, that is, the petitioner Institute.

22. At this juncture, it appears appropriate to refer the relevant provisions of the MSMED Act. The definitions of 'buyer' and 'supplier' are provided in Section 2[d] and Section 2[n] respectively. Chapter V titled 'Delayed Payments to Micro and Small Enterprises' contains Section 15 to Section 25. For ready reference, Section 15, Section 16, Section 17 and Section 18 are quoted hereinbelow :-

> **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.
>
> **16. Date from which and rate at which interest is payable.—**
> Where any buyer fails to make payment of the amount to the supplier, as required under Section 15, the buyer shall,

notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

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.

18. Reference to Micro and Small Enterprises Facilitation Council.—

[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.

[2] On receipt of a reference under sub-section [1], the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 [26 of 1996] shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

[3] Where the conciliation initiated under sub-section [2] is not successful and stands terminated without any settlement

between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 [26 of 1996] shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section [1] of Section 7 of that Act.

[4] Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

[5] Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.

23. As per Section 15, an obligation is cast on the buyer to make payment to the supplier within a stipulated time period where the supplier supplies any goods or renders any services to such buyer. Section 16 has fixed liability on the buyer to pay compound interest if any buyer fails to make payment to the supplier as required under Section 15. Thus, an obligation to make payment of the amount with interest thereon as per Section 16 has been cast upon the buyer and correspondingly, a right to receive such payment is conferred on the supplier under Section 17. Section 17 is the starting point of any dispute and Section 18 has provided for the mechanism to enable the party to the dispute with regard to any amount due under Section 17 to make a reference to the Micro and Small

Enterprises Facilitation Council, which is to be constituted by the State Government, by notification, under Section 20 as such places for exercising jurisdiction over areas as specified in the notification.

24. Section 18[1] which starts with a non-obstante clause, permits any party to a dispute, with regard to any amount due under Section 17, to make a reference to the Facilitation Council. On receipt of a reference under Section 18[1], the Facilitation Council shall either itself conduct conciliation or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such in institution or centre, for conducting conciliation as per the provisions of Section 65 to Section 81 of the Arbitration and Conciliation Act, 1996 ['the Arbitration and Conciliation Act']. If the conciliation initiated under Section 18[2] is not successful and stands terminated without any settlement between the parties, it is open for the Facilitation Council under Section 18[3] to either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration. The provisions of the Arbitration and Conciliation Act shall then apply to the dispute as if the arbitration was in pursuance of an Arbitration Agreement referred to in sub-section [1] of Section 7 of the Arbitration and Conciliation Act. As per sub-section [1] of Section 7 of the Arbitration and Conciliation Act, 'Arbitration Agreement' means an agreement by the parties to submit to arbitration all or certain disputes which has arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. As per Section 7[2] of the Arbitration and Conciliation Act, an Arbitration Agreement may be in the form of an arbitration clause in a Contract or in the form of a separate agreement. Sub-section [4] of Section 18, also with a non-obstante clause, confers jurisdiction upon the Facilitation Council to act as an Arbitrator or a Conciliator in a dispute ***between the supplier located within its jurisdiction*** and a buyer located anywhere in India,

notwithstanding anything contained in any other law for the time being in force. Section 18[5] has prescribed a time limit of ninety days to decide such reference.

25. The respondent no. 1 who has claimed to be a supplier under Section 2[n] of the MSMED Act is located in Delhi and the respondent no. 4, Micro and Small Enterprises Facilitation Council is also located in Delhi. The respondent no. 2, the Delhi International Arbitration Centre [DIAC] is an institution or centre providing alternate dispute resolution services as per the provisions of the Arbitration and Conciliation Act and the respondent no. 3 is the Arbitrator appointed by the respondent no. 2 to proceed with the Arbitration proceedings with regard to the dispute raised by the respondent no. 1 regarding delayed payment of its dues by its buyer, that is, the petitioner itself and the termination of the GeM Contract. Clause 16.2 of the GeM Contract which has provided for Arbitration fulfills the requirement of Section 7 of the Arbitration and Conciliation Act.

26. At this juncture, it is appropriate to refer to the decision of the Hon'ble Supreme Court of India in **Gujarat State Civil Supplies Corporation Limited vs. Mahakali Foods Private Limited [Unit 2] and another, [2023] 6 SCC 401**, wherein the following three questions of law arose for consideration and the first two questions are of pertinence to the present case :-

> 11.1. [i] Whether the provisions of Chapter V of the MSMED Act, 2006 would have an effect overriding the provisions of the Arbitration Act, 1996?
>
> 11.2. [II] Whether any party to a dispute with regard to any amount due under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Micro and Small

> Enterprises Facilitation Council under sub-section [1] of Section 18 of the said Act, if an independent arbitration agreement existed between the parties as contemplated in Section 7 of the Arbitration Act, 1996?
>
> 11.3. [iii] Whether the Micro and Small Enterprises Facilitation Council, itself could take up the dispute for arbitration and act as an arbitrator, when the Council itself had conducted the conciliation proceedings under sub-section [2] of Section 18 of the MSMED Act, 2006 in view of the bar contained in Section 80 of the Arbitration Act, 1996?

27. While answering the questions, the Hon'ble Court in **Mahakali Foods** [supra] has reached a conclusion that the MSMED Act overrides the Arbitration and Conciliation Act. The reasons for reaching such conclusion are found mentioned in the following Paragraphs :-

> 42. Thus, the Arbitration Act, 1996 in general governs the law of Arbitration and Conciliation, whereas the MSMED Act, 2006 governs specific nature of disputes arising between specific categories of persons, to be resolved by following a specific process through a specific forum. Ergo, the MSMED Act, 2006 being a special law and the Arbitration Act, 1996 being a general law, the provisions of the MSMED Act would have precedence over or prevail over the Arbitration Act, 1996. In *Silpi Industries case* [*Silpi Industries* v. *Kerala SRTC*, (2021) 18 SCC 790] also, this Court had observed while considering the issue with regard to the maintainability and counter-claim in arbitration proceedings initiated as per Section 18[3] of the MSMED Act, 2006 that the MSMED Act, 2006 being a

special legislation to protect MSMEs by setting out a statutory mechanism for the payment of interest on delayed payments, the said Act would override the provisions of the Arbitration Act, 1996 which is a general legislation. Even if the Arbitration Act, 1996 is treated as a special law, then also the MSMED Act, 2006 having been enacted subsequently in point of time i.e. in 2006, it would have an overriding effect, more particularly in view of Section 24 of the MSMED Act, 2006 which specifically gives an effect to the provisions of Sections 15 to 23 of the Act over any other law for the time being in force, which would also include the Arbitration Act, 1996.

43. The Court also cannot lose sight of the specific non obstante clauses contained in sub-sections [1] and [4] of Section 18 which have an effect overriding any other law for the time being in force. When the MSMED Act, 2006 was being enacted in 2006, the legislature was aware of its previously enacted Arbitration Act of 1996, and therefore, it is presumed that the legislature had consciously made applicable the provisions of the Arbitration Act, 1996 to the disputes under the MSMED Act, 2006 at a stage when the conciliation process initiated under sub-section [2] of Section 18 of the MSMED Act, 2006 fails and when the Facilitation Council itself takes up the disputes for arbitration or refers it to any institution or centre for such arbitration. It is also significant to note that a deeming legal fiction is created in Section 18[3] by using the expression 'as if' for the purpose of treating such arbitration as if it was in pursuance of an arbitration agreement referred to in sub-section [1] of Section 7 of the Arbitration Act, 1996. As held in *K. Prabhakaran* v. *P. Jayarajan* [*K. Prabhakaran* v. *P. Jayarajan*,

> (2005) 1 SCC 754], a legal fiction presupposes the existence of the state of facts which may not exist and then works out the consequences which flow from that state of facts. Thus, considering the overall purpose, objects and scheme of the MSMED Act, 2006 and the unambiguous expressions used therein, this Court has no hesitation in holding that the provisions of Chapter V of the MSMED Act, 2006 have an effect overriding the provisions of the Arbitration Act, 1996.

28. The Hon'ble Court in **Mahakali Foods** [supra] also considered the implication of the Arbitration Agreement entered into between the parties once the proceedings as provided under Section 18 of the MSMED Act has been initiated. The Hon'ble Court has proceeded to observe as under :-

> 44. The submissions made on behalf of the counsel for the buyers that a conscious omission of the word 'agreement' in sub-section [1] of Section 18, which otherwise finds mention in Section 16 of the MSMED Act, 2006 implies that the arbitration agreement independently entered into between the parties as contemplated under Section 7 of the Arbitration Act, 1996 was not intended to be superseded by the provisions contained under Section 18 of the MSMED Act, 2006 also cannot be accepted. A private agreement between the parties cannot obliterate the statutory provisions. *Once the statutory mechanism under sub-section [1] of Section 18 is triggered by any party, it would override any other agreement independently entered into between the parties, in view of the non obstante clauses contained in sub-sections [1] and [4] of Section 18.* The provisions of Sections 15 to 23 have also overriding effect as contemplated in Section 24 of the MSMED Act, 2006 when

anything inconsistent is contained in any other law for the time being in force. It cannot be gainsaid that while interpretating a statute, if two interpretations are possible, the one which enhances the object of the Act should be preferred than the one which would frustrate the object of the Act. *If submission made by the learned counsel for the buyers that the party to a dispute covered under the MSMED Act, 2006 cannot avail the remedy available under Section 18[1] of the MSMED Act, 2006 when an independent arbitration agreement between the parties exists is accepted, the very purpose of enacting the MSMED Act, 2006 would get frustrated.*

* * * * * *

46. The submission therefore that an independent arbitration agreement entered into between the parties under the Arbitration Act, 1996 would prevail over the statutory provisions of the MSMED Act, 2006 cannot be countenanced. *As such, sub-section [1] of Section 18 of the MSMED Act, 2006 is an enabling provision which gives the party to a dispute covered under Section 17 thereof, a choice to approach the Facilitation Council, despite an arbitration agreement existing between the parties.* Absence of the word 'agreement' in the said provision could neither be construed as casus omissus in the statute nor be construed as a preclusion against the party to a dispute covered under Section 17 to approach the Facilitation Council, on the ground that there is an arbitration agreement existing between the parties. In fact, it is a substantial right created in favour of the party under the said provision. It is therefore held that no party to a dispute covered under Section 17 of

the MSMED Act, 2006 would be precluded from making a reference to the Facilitation Council under Section 18[1] thereof, merely because there is an arbitration agreement existing between the parties.

47. The aforesaid legal position also dispels the arguments advanced on behalf of the counsel for the buyers that the Facilitation Council having acted as a Conciliator under Section 18[2] of the MSMED Act, 2006 itself cannot take up the dispute for arbitration and act as an arbitrator. Though it is true that Section 80 of the Arbitration Act, 1996 contains a bar that the Conciliator shall not act as an arbitrator in any arbitral proceedings in respect of a dispute that is subject of conciliation proceedings, the said bar stands superseded by the provisions contained in Section 18 read with Section 24 of the MSMED Act, 2006. As held earlier, the provisions contained in Chapter V of the MSMED Act, 2006 have an effect overriding the provisions of the Arbitration Act, 1996. The provisions of the Arbitration Act, 1996 would apply to the proceedings conducted by the Facilitation Council only after the process of conciliation initiated by the Council under Section 18[2] fails and the Council either itself takes up the dispute for arbitration or refers to it to any institute or centre for such arbitration as contemplated under Section 18[3] of the MSMED Act, 2006.

48. *When the Facilitation Council or the institution or the centre acts as an arbitrator, it shall have all powers to decide the disputes referred to it as if such arbitration was in pursuance of the arbitration agreement referred to in sub-section [1] of Section 7 of the Arbitration Act, 1996 and then all the trappings*

> *of the Arbitration Act, 1996 would apply to such arbitration.* It is needless to say that such Facilitation Council / institution / centre acting as an Arbitral Tribunal would also be competent to rule on its own jurisdiction like any other Arbitral Tribunal appointed under the Arbitration Act, 1996 would have, as contemplated in Section 16 thereof.

29. The decision in **Mahakali Foods** [supra] has been followed subsequently in **M/s Harcharan Dass Gupta vs. Union of India, 2025 INSC 689**, by terming it as a binding precedent.

30. The facts involved in **Harcharan Dass Gupta** [supra], in brief, were that the respondent – the Indian Space and Research Organisation [ISRO], based in Bengaluru, invited bids for construction of staff quarters in New Delhi by way of a Tender Notice dated 16.01.2017. The appellant, M/s Harcharan Dass Gupta, a registered supplier under the MSMED Act, was selected, leading to an agreement dated 11.09.2017 for the execution of the project. Certain disputes arose between the parties and the appellant invoked jurisdiction of the Facilitation Council at Delhi under Section 18 of the MSMED Act. In exercise of powers under Section 18, the Facilitation Council issued a notice to the respondent on 30.03.2022 for conciliation. But the respondent refused to participate in the said proceedings. The Facilitation Council thereafter, decided to refer the dispute to arbitration to an institution or centre providing alternate dispute resolution services for such arbitration under Section 18[3] of the MSMED Act. The reference was made to the Delhi Arbitration Centre which, in turn, appointed a sole Arbitrator by way of a Notice dated 28.05.2022. The Arbitrator so appointed took the claim petition on record and directed the respondent to file its statement of defence. Instead of filing its statement of defence, the respondent decided to approach the Karnataka High Court by filing a writ petition under Article 226/227 challenging the assumption of

jurisdiction by the Delhi Arbitration Centre and also the conduct of Arbitral Proceedings in Delhi.

30.1. The writ petition was allowed by the High Court by an Order dated 22.04.2022 holding that the Delhi Arbitration Centre, at the instance of the Facilitation Council, Delhi, could not have assumed jurisdiction as it is contrary to the agreement between the parties. It was observed that the Delhi Arbitration Centre lacked jurisdiction to manage the Arbitral Proceedings as the contract between the appellant and the respondent had provided that the Seat for Arbitration shall be at Bengaluru. The High Court referring to the specific terms of the agreement dated 11.09.2017 which provided for settlement of disputes with the Seat of Arbitration at Bengaluru, had held, in view of such contractual clauses, the proceedings conducted by the Delhi Arbitration Centre and the Arbitration to be without jurisdiction, illegal and contrary to law.

30.2. When an appeal was preferred against the order of the High Court, the Hon'ble Supreme Court following the binding precedent in **Mahakali Foods** [supra] as binding precedent, has held that the issue relating to 'seat of arbitration' in all cases covered under the MSMED Act is settled in view of the pronouncement in **Mahakali Food** [supra] and Section 18[4] of the MSMED Act, which vests jurisdiction for arbitration in the Facilitation Council where the supplier is located. The Hon'ble Court has taken note of the fact that the appellant and the Facilitation Council were located in Delhi and the Facilitation Council entrusted the conduct of arbitration through the institutional aegis of the Delhi Arbitration Centre. Holding so, the appeal was allowed by setting aside the Order dated 22.04.2024 passed by the High Court in the writ petition preferred by the respondent and directed for conduct and conclusion of the arbitration proceedings.

31. When in the light of such binding precedent and the provisions of the MSMED Act, the relief sought for in the writ petition to declare the arbitration proceedings of Case no. DIAC/9258/09-24 held under the aegis of the Delhi International Arbitration Centre [DIAC] to be without jurisdiction on the ground that it is in violation of Clause 16.2 of the GeM Contract is found not sustainable. Once the respondent no. 1, located in Delhi, claiming to be a supplier as per Section 2[n] of the MSMED Act has invoked the jurisdiction of the Facilitation Council, Delhi, the statutory provisions contained in Section 18 of the MSMED Act would override the Arbitration Clause contained in 16.2 of the GeM Contract. Though as per Clause 16.2[vi] of the GeM Contract has provided for the Seat of Arbitration at the place where the principal place of business of the buyer is located, such Seat of Arbitration would no longer held sway in view of the overriding provisions contained in Section 18[4] of the MSMED Act which provides that a Facilitation Council would have the jurisdiction to decide a dispute if the supplier is located within its jurisdiction and a buyer located anywhere in India. In view of such mandate of law, the direction sought for in the form of restraining the respondent no. 2 and the respondent no. 3 from proceeding further with the arbitration proceedings of Case no. DIAC/9258/09-24 until the jurisdictional issue is finally adjudicated is found to be of no substance.

32. The GeM Contract in question is not a statutory contract. Even assuming that the petitioner Institute is an instrumentality of the State or a public utility, thereby, coming within the ambit of Article 12 of the Constitution of India, the GeM Contract in question would not become statutory. The GeM Contract executed between the petitioner Institute and the respondent no. 1 providing for manpower services does not raise any issue of public law and the contract between the parties comes in the realm of private law. Disputes arising out of such the terms of such a contract or alleged breaches have to be settled by the ordinary principles of law of contract.

The disputes about the meaning of a term of such a contract or its enforceability has to be determined according to the usual principles of the Contract Act. The disputes relating to interpretation of the terms and conditions of such a contract are ordinarily not be agitated in a writ petition under Article 226 of the Constitution of India and such matters are to be adjudicated by a civil court having jurisdiction or in arbitration, if there is existence of an arbitration agreement as per Section 7 of the Arbitration and Conciliation Act. It is well settled that a writ in the nature of mandamus would not ordinarily be issued for enforcing terms and conditions of a Contract. In such view of the matter, the other directions sought for in the writ petition are also not found sustainable.

33. The learned counsel for the petitioner has placed reliance in the decisions in **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others vs. V.R. Rudani and others, [1989] 2 SCC 176**; and **K.K. Saksena vs. International Commission of Irrigation and Drainage and others, [2015] 4 SCC 670**. It is well settled that a writ in the nature of mandamus would issue when a question involving public law character arises for consideration. If an action which is challenged, does not have any public element, a writ of mandamus could not be issued as the action would then essentially be of a private character. It may be true that the functions discharged by the petitioner Institute in the mental healthcare segment may amount to public functions, but the GeM Contract in question entered into by the petitioner Institute with the respondent no. 1 for manpower outsourcing services, which it had voluntarily undertaken, is not a public duty cast upon the petitioner Institute by any statute to make it public function. From such standpoints, the decisions are not applicable in the facts and circumstances of the case.

34. The other decision referred to on behalf of the petitioner is **Whirpool Corporation vs. Registrar of Trade Marks, Mumbai and other, [1998] 8 SCC 1**, wherein it is held that an alternative remedy would not operate as a bar to entertain a writ petition under Article 226 of the Constitution in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. The decisions in **Whirpool Corporation** [supra] and **Mahakali Foods** [supra] have come to be considered in a three-Judge decision in **Tamil Nadu Cements Corporation Limited vs. Micro and Small Enterprises Facilitation Council and Another, [2025] 4 SCC 1**, whereafter the matter has been referred to a larger Bench of five Judges framing three questions. The questions related to when and in what situation a writ petition can be entertained against an order/award passed by a Micro and Small Enterprises Facilitation Council acting as an arbitral tribunal or conciliator. From the discussion made in **Tamil Nadu Cements Corporation Limited [**supra], it does not appear that the issue involved in the present case has been referred to the larger Bench.

35. Resultantly, this Court is of the view that the writ petition is not to be entertained in the facts and circumstances of the case, as narrated above. It is accordingly observed. Such non-entertainment does not mean that the petitioner is to be left without remedy. It needs iteration that this Court has only ruled about entertainability or otherwise of the writ petition under Article 226 of the Constitution of India before this Court. Therefore, this decision should not in any way prejudice any rights, claims and contentions that the petitioner Institute can raise and contest before the Arbitral Tribunal. It is further observed that the rejection of his objection as regards lack of jurisdiction by the Arbitral Tribunal would not preclude the petitioner Institute to question the competence of Arbitral Tribunal as

per Section 16 read with Section 34 of the Arbitration and Conciliation Act. It is further clarified that this Court has not touched upon the merits of the claims of any of the two parties in Case no. DIAC/9258/09-24. Therefore, it is expected that the Arbitrary Tribunal would permit the petitioner Institute to urge all questions of law and facts as are permissible in law and would adjudicate on the same as per its own merits and in accordance with law.

36. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant