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Bombay High Court appoints an arbitrator after the Micro and Small Enterprises Facilitation Council fails to initiate conciliation

The Hon'ble Bombay High Court ("**Bombay HC**"), in the case of *M B Sugars and Pharmaceuticals Private Limited vs. Micro Small Enterprises Facilitation Council & Anr.*¹, held that where a Micro and Small Enterprises Facilitation Council ("**MSEFC**") under the Micro, Small and Medium Enterprises Development Act, 2006 ("**MSME Act**") fails to initiate the mandatory conciliation proceedings or appoint an arbitrator, the court is empowered to step in and appoint an arbitrator on an application made by a party under the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**").

Brief facts

M B Sugars and Pharmaceuticals Private Limited ("**Petitioner**"), an enterprise registered under the MSME Act, supplied goods to respondent no. 2, in accordance with a purchase order dated June 8, 2018, issued by the latter. Despite raising invoices, no payments were received by the Petitioner and the cheques received from respondent no. 2 were dishonoured.

On April 24, 2023, the Petitioner made a reference of the aforesaid dispute to MSEFC, Nashik, in accordance with Section 18² of the MSME Act. The MSEFC, Nashik, however, failed to initiate conciliation proceedings or appoint an arbitrator in discharge of its statutory obligations. In view thereof, the Petitioner filed an application under Section 11³ of the Arbitration Act before the Bombay HC, seeking the appointment of an arbitrator, on the ground that the designated arbitral institution had failed to act in accordance with law.

Issue

Whether a court is empowered to appoint an arbitrator under Section 11 of the Arbitration Act in the event of a failure by the MSEFC to discharge its obligations under Section 18 of the MSME Act?

¹ MANU/MH/3512/2025

² Section 18 provides for an MSME to make a reference to the MSEFC with regard to any amount due to the MSME. Upon receipt of such reference, the MSEFC is firstly required to initiate conciliation between the parties and in the event the conciliation is unsuccessful, the MSEFC is then required to initiate arbitration proceedings between the parties.

³ Section 11 contains provisions in relation to the appointment of an arbitrator. It *inter alia* provides for appointment of an arbitrator by the High Court, upon an application by a party to a dispute, in the event: (a) a party fails to act as required under the appointment procedure agreed upon between the parties, or (b) the parties or two appointed arbitrators fail to reach an agreement expected of them under the said appointment procedure and (c) a person or an institution fails to perform any function entrusted to him under the said appointment procedure.

Findings and analysis

The Bombay HC answered the above question in the affirmative and *inter alia* held as follows:

1. Section 18 of the MSME Act statutorily creates an arbitration agreement between an enterprise covered by the MSME Act, i.e., a Micro, Small or Medium Enterprise (“**MSME**”), and its contractual counterparty. It further provides that all provisions of the Arbitration Act will apply to such an arbitration agreement, as if they were entered into in accordance with Section 7 of the Arbitration Act. Accordingly, in the present case, an arbitration agreement statutorily exists between the Petitioner and respondent no. 2, and all provisions of the Arbitration Act are applicable thereto.
2. Section 7 of the Arbitration Act provides for the creation of an arbitration agreement. Section 18 of the MSME Act requires an institution, i.e., MSEFC, to appoint an arbitrator to adjudicate the disputes referred to it. In the event of the MSEFC’s failure to discharge this statutory function, the matter falls within the scope of Section 11 of the Arbitration Act. A combined reading of these provisions makes it evident that the court is vested with the jurisdiction to appoint an arbitrator when the MSEFC fails to act in accordance with its statutory mandate.
3. In the present case, MSEFC, Nashik has failed to act in accordance with its statutory obligations by neither initiating the mandatory conciliation proceedings nor appointing an arbitrator for a period of over 2 (two) years. This inaction amounts to a failure to perform its statutory duty under Section 18 of the MSME Act. Consequently, the Petitioner is entitled to invoke the jurisdiction of the Bombay HC under Section 11(6) of the Arbitration Act. In view of the MSEFC’s continued inaction, a clear case has been made out for the Bombay HC to directly appoint an arbitrator to adjudicate the disputes between the parties.
4. The above position is bolstered by the decisions in *Microvision Technologies Private Limited vs. Union of India*⁴ and *Vallabh Corporation vs. SMS India Private Limited*⁵, wherein it was held that where the MSEFC fails to initiate conciliation or refer a dispute to arbitration under the MSME Act, the Court is empowered under Section 11(6)(c) of the Arbitration Act to appoint an arbitrator.

Conclusion

The Bombay HC has examined the interplay between Section 7 and Section 11 of the Arbitration Act and Section 18 of the MSME Act to provide clear guidance on the procedural framework to be followed when a MSEFC fails to discharge its statutory obligations, namely, initiating conciliation and taking steps for appointment of an arbitrator. The Court has expressly clarified that such failure empowers a party to invoke the jurisdiction of a court under Section 11 of the Arbitration Act for appointment of an arbitrator. This judgment is a welcome development for MSMEs. It reinforces the principle that statutory dispute resolution mechanisms must function with efficacy and accountability, ensuring MSMEs are not left without recourse due to procedural defaults if any, by statutory authorities.

⁴ 2023 SCC OnLine Bom 1848

⁵ 2025 SCC OnLine Del 1795

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