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## Judicial Developments under the MSMED Act: A Quarterly Digest (January-March 2025)

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The first quarter of 2025 witnessed key judicial developments pertaining to interpretation and application of the Micro, Small and Medium Enterprises Development Act, 2006<sup>1</sup> (MSMED Act). With the growing role of micro, small and medium enterprises (MSMEs) in public procurement and contractual engagements, courts across the country increasingly faced contentious interpretational issues vis-à-vis the MSMED Act especially in relation to the interplay between its dispute resolution mechanism under Section 18 and the Arbitration and Conciliation Act, 1996<sup>2</sup>.

The Supreme Court and various High Courts have rendered decisions clarifying, questioning and even referring certain long-standing issues for authoritative pronouncement by larger Benches. These judicial developments mark a crucial phase in the growth of  EN t and the legal jurisprudence surrounding it.

This digest attempts to provide a comprehensive and structured summary of these developments.

## Maintainability of writ petitions against awards passed by MSEF Councils

In *T.N. Cements Corpn. Ltd. v. MSEFC*<sup>3</sup>, a three-Judge Bench of the Supreme Court revisited the question that whether an arbitral award passed by the Micro and Small Enterprises Facilitation Council (MSEF Council) can be challenged in a writ petition, or the only remedy available to an aggrieved party is to challenge the award under Section 34<sup>4</sup> of the Arbitration and Conciliation Act, 1996 by complying with the requirement to deposit 75% of the awarded amount as required under Section 19<sup>5</sup> of the MSMED Act.

The Court expressed reservation with the correctness of the view taken in *India Glycols Ltd. v. MSEFC*<sup>6</sup>, wherein a Coordinate Bench had ruled that the availability of an efficacious alternative remedy under Section 34 of the Arbitration and Conciliation Act, 1996 completely bars a writ petition. The Court held that the doctrine of alternative remedy is one of discretion and not of exclusion and may not apply in cases requiring onerous predeposit especially in cases questioning the very jurisdiction of the MSEF Council. Acknowledging the significant implications of this issue, the Court has now referred it to a Constitution Bench for authoritative adjudication.

## Whether MSEF Council can act as both conciliator and arbitrator in the same reference?

This issue fell for consideration before the Supreme Court in *T.N. Cements case*<sup>7</sup>, wherein the Court examined the validity of the same MSEF Council acting first as a conciliator under Section 18(2) and then as an arbitrator under Section 18(4)<sup>8</sup> of the MSMED Act.

The Court acknowledged the divergence of opinion on the issue. While a Division Bench in *Jharkhand Urja Vikas Nigam Ltd. v. State of Rajasthan*<sup>9</sup>, had held that the Council which acts as conciliator under Section 18(2) cannot act as the arbitrator under Section 18(4) of the MSMED Act, a contrary view was taken in *Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd.*<sup>10</sup>, which was subsequently affirmed by a three-Judge Bench in *India Glycols Ltd. case*<sup>11</sup>. In light of these conflicting precedents, the Court has referred the issue to a Constitution Bench.

## Whether registration under the MSMED Act is a precondition to avail remedy under Section 18 of the MSMED Act?

In *NBCC (India) Ltd. v. State of W.B.*<sup>12</sup>, the Supreme Court examined the contentious issue of whether only the registered MSMEs can invoke the dispute resolution mechanism under Section 18 of the MSMED Act.



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Disagreeing with judgments of two Coordinate Benches in *Silpi Industries v. Kerala SRTC*<sup>13</sup>, and *Mahakali Foods case*<sup>14</sup>, the Court held that Section 18 does not restrict its operation to

registered “suppliers” alone, and that the expression “any party to a dispute” indicates a broader application of the section. The Court further observed that the eligibility criteria for classification as an MSME are based on investment and turnover thresholds, not registration. The Court has now referred the matter to a larger Bench for consideration.

## **Whether the Procurement Policy of 2012 issued under Section 11 of the MSMED Act has the force of law?**

In *Lifecare Innovations (P) Ltd. v. Union of India*<sup>15</sup>, the Supreme Court examined whether the Public Procurement Policy for Micro and Small Enterprises, 2012 (Procurement Policy) issued under Section 11<sup>16</sup> of the MSMED Act has the force of law.

The Court held that, Procurement Policy, issued to comply with the mandate of the statute has the force of law, is binding and enforceable and thus, must be mandatorily complied with by procuring government departments. However, the Court clarified that any violation of the Procurement Policy should be remedied by the redressal and grievance Committees constituted under the Procurement Policy rather than by the courts directly. The ruling reinforces the protective framework intended for MSMEs under the MSMED Act.

## **Whether MSEF Council can reject a claim without initiating arbitration?**

This issue fell for consideration before the Calcutta High Court in *UMC Technologies (P) Ltd. v. Assistant Director of Postal Services*<sup>17</sup>, wherein the Court held that upon failure of conciliation, the MSEF Council has to necessarily initiate arbitration, either by assuming the jurisdiction of the Arbitral Tribunal or by referring the dispute to some institution, in accordance with Section 18(4) of the MSMED Act. The Court ruled that the Council cannot summarily reject a claim without formally initiating arbitration and following the process of arbitration as provided under the Arbitration and Conciliation Act, 1996. The Court further held that such an award would be liable to be set aside under Section 34 of the Arbitration and Conciliation Act, 1996.

A similar view was taken by the Karnataka High Court in *Enmas GB Power Systems Projects Ltd. v. MSEFC*<sup>18</sup>, where the award passed without formally initiating arbitration was set aside.

## **Whether the MSMED Act benefits apply to works contracts?**

In *Northeast Engg. and Construction v. Union of India*<sup>19</sup>, the question that fell for consideration before the Gauhati High Court was whether the benefits extended to MSMEs under the Procurement Policy of 2012 would also apply to a tender for works contracts. In the *frequently asked questions (FAQs) issued by the Ministry of MSME in 2023*, the Court held that exemptions (such as from earnest money deposits) under the Procurement Policy do not apply to works contracts.

## Whether Section 11 of the Arbitration and Conciliation Act, 1996 can be invoked if MSEF Council fails to refer dispute to arbitration?

In *Vallabh Corpn. v. SMS India (P) Ltd.*<sup>20</sup>, the Delhi High Court held that where the MSEF Council fails to refer the dispute to arbitration upon the failure of conciliation, the aggrieved party is entitled to approach the Court under Section 11<sup>21</sup> of the Arbitration and Conciliation Act, 1996. The Court held that a harmonised interpretation of Section 18(4) of the MSMED Act with Section 11 of the Arbitration and Conciliation Act, 1996 would permit the aggrieved party to ventilate its grievance under Section 11 of the Arbitration and Conciliation Act, 1996.

## Whether Section 11 of the Arbitration and Conciliation Act, 1996 can be invoked after withdrawing application under Section 18 of the MSMED Act?

In *Smartschool Education (P) Ltd. v. Bada Business (P) Ltd.*<sup>22</sup>, the Delhi High Court ruled that there is no prohibition on filing petition under Section 11 of the Arbitration and Conciliation Act, 1996 for contractual arbitration after withdrawing an application under Section 18 of the MSMED Act, even without express liberty from the MSEF Council. The Court held that invocation of contractual arbitration remains permissible notwithstanding an earlier, unpursued reference under the MSMED Act.

## Whether the 90-day limit under Section 18(5) of the MSMED Act is mandatory?

In *Maharashtra Public Service Commission v. Vast India (P) Ltd.*<sup>23</sup>, the Bombay High Court held that the 90-day timeline prescribed under Section 18(5) of the MSMED Act for issuance of an award is a directory provision. The Court held that once arbitration has been invoked under Section 18(4) of the MSMED Act, the proceedings are governed by the Arbitration and Conciliation Act, 1996, including the timeline under Section 29-A thereunder. The Court rejected the argument that the MSEF Council becomes functus officio after 90 days.

## Conclusion

The first quarter of 2025 brought the much-needed judicial scrutiny to various unsettled aspects of the MSMED Act. The decisions have contributed to a more nuanced understanding of statutory arbitration under Section 18, the intersection with the Arbitration and Conciliation Act, 1996, and the procedural rights of MSMEs and buyers alike. At the same time, the divergence of opinion on several issues — especially concerning registration of MSEF Councils, and availability of writ remedies — has created interpretational ambiguity.



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It is hoped that the issues now pending before larger Benches will soon be resolved, thereby ushering in greater certainty, uniformity, and robustness in the implementation of the MSMED

framework.

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1. Micro, Small and Medium Enterprises Development Act, 2006.
2. Arbitration and Conciliation Act, 1996.
3. 2025 SCC OnLine SC 127.
4. Arbitration and Conciliation Act, 1996, S. 34.
5. Micro, Small and Medium Enterprises Development Act, 2006, S. 19.
6. 2023 SCC OnLine SC 1852.
7. 2025 SCC OnLine SC 127.
8. Micro, Small and Medium Enterprises Development Act, 2006, S. 18(4).
9. (2021) 19 SCC 206.
10. (2023) 6 SCC 401.
11. 2023 SCC OnLine SC 1852.
12. (2025) 3 SCC 440.
13. (2021) 18 SCC 790.
14. (2023) 6 SCC 401.
15. 2025 SCC OnLine SC 436.
16. Micro, Small and Medium Enterprises Development Act, 2006, S. 11.
17. AP-COM/39/2024.
18. WP No. 29610/2017, dated 19-3-2025 (Karnataka High Court)
19. 2025 SCC OnLine Gau 51.
20. 2025 SCC OnLine Del 1795.
21. Arbitration and Conciliation Act, 1996, S. 11.
22. Arb. P. No. 1178/2024.
23. 2025 SCC OnLine Bom 450.



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