

Home › Experts Corner › Msme Arbitrations And The Seat Of Arbitration: A Contest Between Party Autonomy And Legislative Prescription

MSME Arbitrations and the Seat of Arbitration: A Contest between Party Autonomy and Legislative Prescription

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The Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act)¹ was passed with the main objective of easing the promotion and development of micro, small and medium enterprises (MSMEs) and resolving the disputes pertaining to delayed payments to such entities. Section 18² of the MSMED Act provides for the mechanism for resolution of dispute through conciliation and arbitration by Micro and Small Enterprises Facilitation Councils (MSEF Councils).

An important issue that has emerged in arbitrations under the MSMED Act is regarding the determination of the seat of arbitration, especially when the contract between the parties provides for a different seat or confers exclusive jurisdiction on courts at a  **EN** where the MSEF Council is located. This confusion has caused divergent judicial views on whether Section 18(4) of the MSMED Act, which provides that the Council in the place where


the supplier is located shall have the jurisdiction over the arbitral proceedings would override any contractual designation of seat or exclusive jurisdiction.

This article delves into the judicial divergence on this issue and the recent pronouncement of the Supreme Court which has settled the legal position on the matter.

Judicial divergence: Contractual designation of seat versus statutory jurisdiction under Section 18(4)

View I: Contractual seat prevails — Section 18(4) is limited to venue

Several High Courts have held that Section 18(4) of the MSMED Act merely provides for the venue of arbitration where the MSEF Council may conduct the arbitral proceedings and does not provide for the seat of arbitration, particularly when the contract between the parties specifies otherwise.

- (i) In *Indian Oil Corpn. Ltd. v. Fepl Engg. (P) Ltd.*³, the Delhi High Court held that the contractual seat of arbitration would prevail over the location of the MSEF Council. It held that the location of the MSEF Council can only be the venue of arbitration. It held that the supervisory jurisdiction of the Court over the arbitral proceedings would be determined in accordance with the contractual seat of arbitration.
- (ii) A similar view was taken in *Ircon International Ltd. v. Pioneer Fabricators (P) Ltd.*⁴, wherein the Court held that Section 18(4) of the MSMED Act does not override the contractual seat of arbitration.
- (iii) The Bombay High Court in *Gammon Engineers and Contractors (P) Ltd. v. Sahay Industries*⁵, held that Section 18 of the MSMED Act would override any agreement to the contrary vis-à-vis the process of appointment of the arbitrator but does not override the contractual designation on jurisdiction or seat of arbitration.
- (iv) In *Odisha Power Generation Corpn. Ltd. v. Techniche Consulting Service*⁶, the Calcutta High Court held that where the contract provided for a different seat of arbitration, the courts at the place where the MSEF Council is located would not have jurisdiction, and petition challenging the arbitral award has to be filed in the Court where the contractual seat of arbitration is located.
- (v) The Division Bench of the Gujarat High Court in *Uttar Gujarat Vij Co. Ltd. v. Gupta Power Infrastructure Ltd.*⁷, held that Section 18 of the MSMED Act overrides the contract only in relation to the appointment process and not to matters regarding the seat of arbitration.
- (vi) The Karnataka High Court in *Union of India v. Harcharan Dass Gupta*⁸ annulled the reference made to Delhi International Arbitration Centre (DIAC) on the  **EN** contract between the parties designated Bengaluru as the seat of arbitration. The Court rejected the supplier's reliance on Section 18(4) of the MSMED Act, holding that a specific contractual clause would prevail over the designation of venue under Section 18(4).

View II: Statutory supremacy — Section 18(4) determines the seat

Contrary to the view taken in abovementioned judgments, several High Courts have held that Section 18(4) of the MSMED Act provides for statutory seat of arbitration, and any contrary contractual clause must yield to the statutory mandate.

- (i) In *Ahluwalia Contracts (India) Ltd. v. Ozone Research & Applications (India) (P) Ltd.*⁹, the Delhi High Court held that the seat of arbitration would be determined in accordance with Section 18(4) of the MSMED Act and the exclusive jurisdiction clause in the agreement would not override Section 18(4) of the MSMED Act.
- (ii) In *Delhi Tourism and Transportation Development Corpn. v. Satinder Mahajan*¹⁰, the Delhi High Court held that any agreement between the parties regarding exclusive jurisdiction would not override the mandate of Section 18(4) of the MSMED Act which will continue to determine the Court in which the award is to be challenged.
- (iii) The Kerala High Court in *Shreyas Mktg. v. MSEFC, Bangalore*¹¹ similarly held that notwithstanding that the cause of action for arbitration arose in some place, the seat of arbitration would be where the MSEF Council is located.

Supreme Court clarification in *Union of India v. Harcharan Dass Gupta*

The issue travelled to the Supreme Court in *Harcharan Dass Gupta v. Union of India*¹², wherein the Supreme Court, reversed the decision of the Karnataka High Court and held that the seat of arbitration in an arbitration under Section 18 of the MSMED Act shall be determined in accordance with Section 18(4) — i.e. it shall be the place where the supplier (MSME entity) is located.

The Supreme Court held that statutory mandate prevails over party autonomy. Relying upon its earlier judgment in *Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd.*¹³, the Court reiterated that provisions of the MSMED Act, being special legislation enacted for the benefit of MSMEs, would override anything contrary contained in the contract, including arbitration clauses.

It was held that Section 18(4) of the MSMED Act determines the seat of arbitration, thereby attracting the jurisdiction of courts at that place for all matters arising out of the arbitral proceedings.

Implications of the Supreme Court's judgment

The judgment in *Harcharan Dass Gupta case*¹⁴ brings much-needed clarity to arbitrations and settled a controversy had led to inconsistent judgments by different High Courts. The following implications flow from this decision:



- (i) *Primacy of statutory seat*: The seat of arbitration under the MSMED Act will be location of the MSEF Council, as mandated under Section 18(4), irrespective of any agreement to the contrary.
- (ii) *Supervisory jurisdiction of courts*: The courts having jurisdiction over the area where the MSEF Council is located shall have supervisory jurisdiction over the arbitral proceedings, including under Sections 9, 11, 34 and 37 of the Arbitration and Conciliation Act, 1996¹⁵.
- (iii) *Harmonisation of judicial approach*: With this decision, the previously split judicial landscape stands resolved which would reduce forum shopping and jurisdictional conflicts in future MSME disputes.
- (iv) *Ease of access for MSMEs*: By fixing the arbitral proceedings to the place where the supplier is located, the decision improves ease of access to justice for MSMEs. This would also ensure that the MSME disputes are resolved in a more expeditious manner, thus furthering the objectives of the MSMED Act.

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1. Micro, Small and Medium Enterprises Development Act, 2006.
2. Micro, Small and Medium Enterprises Development Act, 2006, S. 18.
3. 2019 SCC OnLine Del 10265.
4. (2023) 2 HCC (Del) 359 : 2023 SCC OnLine Del 1811.
5. 2023 SCC OnLine Bom 750.
6. 2024 SCC OnLine Cal 10386.
7. 2024 SCC OnLine Guj 4280.
8. Writ Petition No. 27269 of 2023.
9. 2023 SCC OnLine Del 518.
10. 2024 SCC OnLine Del 3206.
11. (2023) 1 HCC (Ker) 94 : 2023 SCC OnLine Ker 4206.
12. 2025 SCC OnLine SC 1111.
13. (2023) 6 SCC 401.
14. 2025 SCC OnLine SC 1111.
15. Arbitration and Conciliation Act, 1996, Ss. 9, 11, 34 and 37.

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