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Navigating MSME Law in 2024: Key Judicial Pronouncements

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Micro, small, and medium enterprises (MSMEs) form the backbone of the Indian economy, contributing significantly to its industrial output, employment generation, and export earnings. According to government data, the MSME sector accounts for nearly 30% of the country's gross domestic product (GDP) and is a key driver of socio-economic development. Recognising their importance, the Indian Government has championed their cause with targeted policies, incentives, and initiatives, seeking to empower them in an increasingly competitive global economy.

At the heart of this ecosystem lies the Micro, Small and Medium Enterprises Development Act, 2006¹ (MSMED Act) — a legislation designed to address the unique challenges faced by MSMEs, from delayed payments to limited access to finance. Despite being a relatively recent legislative measure, the MSMED Act has become a cornerstone for addressing key issues in the sector, particularly in facilitating the resolution of disputes and the interpretation of the MSMED Act and the Arbitration and Conciliation Act, 1996². Over the years, courts have played a pivotal role in interpreting the interplay of the two Acts, leading to significant judicial

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developments. The MSMED Act being a special statute has been given an overriding effect over the Arbitration and Conciliation Act, 1996.³

The year 2024 has witnessed a series of landmark judgments under the MSMED Act, reflecting the judiciary's continued efforts to clarify ambiguities and strengthen the statutory regime. While these decisions have contributed to shaping the jurisprudence surrounding the Act, the field remains ripe for further exploration and refinement. This article delves into the most important judgments of 2024 that have had a profound impact on MSME law, analysing their implications for stakeholders and identifying areas where the jurisprudence is yet to mature.

This question fell for consideration before the High Court of Bombay in *Bafna Udyog v. Micro & Small Enterprises*⁵ wherein the Court held that in absence of an arbitration agreement, the Court would not appoint an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 merely because of the failure of the MSEF Council to initiate arbitration under Section 18(3) of the MSMED Act, 2006. It held that the recourse to the aggrieved party would only be to file a writ petition for direction upon the MSEF Council. A similar view of taken by the High Court of Delhi in *Shobhana Gupta v. Atlas Cycles Haryana Ltd.*⁶.

However, another Coordinate Bench of the High Court of Bombay in *Microvision Technologies (P) Ltd. v. Union of India*⁷ had taken a divergent view by holding that the power under Section 11 of the Arbitration and Conciliation Act, 1996 can also be exercised upon the failure of the MSEF Council to act in accordance with Section 18(3) of the MSMED Act, 2006.

The issue fell for consideration before the High Court of Calcutta in *Gita Refractories v. Tuaman Engg.*⁸ wherein the Court held that an MSME unit can choose to invoke arbitration under the contract rather than going for the statutory arbitration under Section 18⁹ of the MSMED Act, 2006. It held that there is nothing under the MSMED Act that prevents the unit from taking recourse to the contractual remedy. It held that Section 18 uses the word “may” which makes it abundantly clear that the remedy is discretionary and not mandatory.

This issue fell for consideration before the Supreme Court in *Pro Knits v. Canara Bank*¹⁰ wherein the Court held that the procedure laid down under the framework is mandatory and an account of the MSME cannot be declared NPA without following the procedure laid down therein.

It held that before classifying the account as NPA, the banks have to necessarily identify the incipient stress in the account by categorising the account into a “special mention account” (SMA) which has three sub-categories based on the overdue period of principal or interest payments:

- (a) SMA — 0: 1-30 days overdue.
- (b) SMA — 1: 31-60 days overdue.
- (c) SMA — 2: 61-90 days overdue.

It also held that it would be incumbent upon the MSME to appraise the bank about its status as an MSME and provide sufficient material to the bank for verification and its failure to satisfy the bank would result in giving legitimacy to the action of the bank.

This issue fell for consideration before the High Court of Kerala in *Shreyas Mktg. v. MSEFC, Bangalore*¹¹ jurisdiction over proceedings under the MSMED Act would lie with the Court where the MSEF Council is located, rather than the Court at the place where the cause of action arose. The Court observed that Section 18 of the MSMED Act, 2006 confers jurisdiction on the MSEF Council of the location where the supplier is situated. Consequently, it was clarified that the Court exercising jurisdiction over matters arising out of proceedings before the MSEF Council would also be the one where the said Council is based.

A similar view has been adopted by the High Court of Delhi in *Delhi Tourism and Transportation Development Corpn. v. Satinder Mahajan*¹² wherein the Court clarified that in the absence of a clause conferring jurisdiction over a different court, the jurisdiction would remain with the court that exercises jurisdiction over the MSEF Council. It held that the place at which the cause of action arose is immaterial in arbitral proceedings.

This issue fell for consideration before the High Court of Madras in *Sivadarshini Papers*¹³ wherein the Court held that once an arbitrator held that the claimant was not an MSME at the time of contract or when the supplies were made, it cannot then, proceed to

decide the claims on their merits. It held that once the question of maintainability is decided against the claimant, there cannot be any adjudication on the merits of the matter.

This issue fell for consideration before the High Court of Bombay in *Rohit Sood v. Gammon Engineers*¹⁴ wherein the Court held that the jurisdiction to decide an application under Section 34¹⁵ of the Arbitration and Conciliation Act, 1996 against an MSME award would lie with the Court which has been conferred the jurisdiction under the agreement between the parties and not the Court which has jurisdiction over the MSEF Council. It held that Section 18 of the MSMED Act, 2006 overrides the contract only to the extent of the appointment of arbitrator and does not override other contractual clauses.

A similar view was taken by the High Court of Calcutta in *Odisha Power Generation Corpn. Ltd. v. Techniche Consulting Service*¹⁶ wherein the Court held that the location of the MSEF Council where the proceedings were held would not confer jurisdiction on the Court at that place when the agreement confers exclusive jurisdiction on a court in a different place.

The issue fell for consideration before the High Court of Allahabad in *Docket Care Systems v. Hariwill Electronics India*¹⁷ wherein the Court held that though the requirement to pre-deposit 75% awarded amount is mandatory, however, the courts have been granted discretion in deciding the manner in which the amount is to be deposited. It held that such discretion also includes permitting the payment in instalments.

This issue fell for consideration before the High Court of Delhi in *Advance Stimul v. GAIL*¹⁹ wherein the Court held that the notice of dispute under the MSMED Act would be tantamount to the notice of arbitration under Section 21 of the Arbitration and Conciliation Act, 1996 in a situation where the reference before the MSMED Act is withdrawn and the contractual arbitration is invoked.



This issue fell for consideration before the High Court of Orissa in *National Small Scale Industries Corpn. v. State of Odisha*²⁰ wherein the Court held that it is impermissible for the MSEF Council

to decide on an application questioning the maintainability of the reference by the supplier. It held that the limited jurisdiction available with the MSEF Council under Section 18(2) is to initiate conciliation and the question of maintainability of the reference can only be decided in the arbitration which would be initiated under Section 18(3) of the MSMED Act, 2006.

However, the High Court of Bombay in *Bharat Kolkata Container Terminals (P) Ltd. v. Goa Micro and Small Enterprise*²¹ held that MSEF Council has the jurisdiction to decide on maintainability objections at the very threshold. It held that once an objection regarding the maintainability of the reference is raised before the initiation of the conciliation proceedings, the MSEF Council must on a prima facie basis decide such objection.

This issue fell for consideration before the High Court of Delhi in *Central University of Jharkhand v. King Furnishing and Safe Co.*²³ wherein an application was filed under Section 34(3) of the Arbitration and Conciliation Act, 1996 seeking dismissal of the petition under Section 34 on the ground that it was filed without the mandatory deposit 75% awarded amount, thus, non est.

The Court held that though the requirement to deposit 75% awarded amount is mandatory, however, a petition would not become non est merely because the amount was not deposited at the time of filing the petition. It held that Section 19 of the MSMED Act, 2006 which provides for such requirement uses the word “entertain” and there is a difference between filing the petition and entertaining the petition. It held that both are different stages in a proceeding, thus, the petition can be filed without the mandatory pre-deposit of 75%, however, it would not be entertained/decided by the Court unless such deposit has been made.

This issue fell for consideration before the High Court of Bombay in *Kisan Moulding Ltd. v. MSEFC*²⁵, wherein the Court held that in view of Section 14 of the Limitation Act, 1963, the time spent before the MSEF Council, in wrongly pursuing an application for recall of the award based upon the advice of the advocate, would stand excluded from the period of limitation and the time period of 90-days plus 30-days grace period under Section 34 of the Arbitration and Conciliation Act, 1996 would commence upon the withdrawal of such application.

This issue fell for consideration before the High Court of Calcutta in *Porel Dass Water & Effluent Control (P) Ltd. v. W.B. Power Development Corpn. Ltd.*²⁶ wherein the Court held that the 90-days' time-limit provided under Section 18(5) of the MSMED Act, 2006 is not mandatory but directory. It held that though Section 18(5) uses the words "shall", however, unlike Section 29-A²⁷ of the Arbitration and Conciliation Act, 1996, it does not provide for the consequences of non-compliance which indicates towards the directory nature of the requirement.

The High Court of Delhi in *Corrtech International (P) Ltd. v. Delhi International Arbitration Center*²⁸ has held that the period of 90-days provided under Section 18(5) of the MSMED Act, 2006 does not contemplate arbitral proceedings but applies only to making of reference to arbitration by the MSEF Council. It held that once the reference is made, the arbitral proceedings would be governed by Section 29-A of the Arbitration and Conciliation Act, 1996.

This issue fell for consideration before the High Court of Calcutta in *Porel Dass Water & Effluent Control case*³⁰ wherein the High Court held that in terms of Section 18(3) of the MSMED Act, 2006, the power to appoint/nominate an arbitrator for an MSME dispute lies solely with the MSEF Council, therefore, the power to substitute the same cannot be exercised by the Court under Section 29-A(6) or Sections 14 and 15 of the Arbitration and Conciliation Act, 1996. It held that Section 29-A(6) r/w Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 are in conflict with Section 18(3) to the extent of power of the Court to substitute or terminate the mandate of the arbitrator. It held that the MSMED Act being a special statute would override anything contrary in the Arbitration and Conciliation Act, 1996.

This issue fell for consideration before the High Court of Bombay in *Marine Electricals India Ltd. v. Union of India*³¹ wherein the Court held that Vivad Se Vishwas scheme of the Government being a non-tax benefit would also extend to a medium enterprise for a period of up to three years from the date of its upgradation to a non-MSME enterprise. It held that the Ministry of MSME vide its Notification dated 18-10-2022 notified that a non-tax benefit available to an MSME would continue for three years despite any change in the status.

The Court held that the Ministry's notification has created a legal fiction by which an MSME that has been upgraded to a non-MSME status would continue to avail non-tax benefit for a period of three years from the date of such upgradation.



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The issue fell for consideration before the High Court of Delhi in *Corrtech International case*³³ wherein the Court held that any objection regarding non-applicability of the MSMED Act or any other maintainability issue must be raised before and decided by the Arbitral Tribunal under Section 16³⁴ of the Arbitration and Conciliation Act, 1996. It held that such issues cannot be decided by a writ court.

Conclusion

In conclusion, in 2024, the courts have addressed a diverse array of issues that have profoundly shaped the interpretation and implementation of the MSMED Act. From jurisdictional questions to the interplay between the MSMED Act and the Arbitration and Conciliation Act, 1996, the judiciary has provided much-needed clarity on critical aspects such as timelines, statutory obligations, and the rights of MSMEs within contractual frameworks. However, on several points, divergent judicial opinions have emerged — particularly on matters such as the extent of the MSEF Council's powers and the interplay of statutory and contractual arbitration. These conflicting views, while reflective of the complexities involved, have introduced an element of uncertainty that may create confusion for stakeholders. It is hoped that these divergences will be resolved in the near future, either through authoritative judicial pronouncements or legislative intervention, ensuring a more cohesive and predictable legal framework for MSMEs.

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1. Micro, Small and Medium Enterprises Development Act, 2006.
2. Arbitration and Conciliation Act, 1996.
3. *Silpi Industries v. Kerala SRTC*, (2021) 18 SCC 790. See also, *Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd.*, (2023) 6 SCC 401.
4. Arbitration and Conciliation Act, 1996, S. 11.
5. 2024 SCC OnLine Bom 110.
6. 2023 SCC OnLine Del 1473.
7. 2023 SCC OnLine Bom 1848.
8. Judgment dated 10-9-2024 in AP-COM/707/2024.
9. Micro, Small and Medium Enterprises Development Act, 2006, S. 18.

10. (2024) 10 SCC 292.
11. (2023) 1 HCC (Ker) 94 : 2023 SCC OnLine Ker 4206.
12. 2024 SCC OnLine Del 3206.
13. Judgment dated 30-10-2024 in OSA (Comm. App. Div.) No. 7 of 2023.
14. 2024 SCC OnLine Bom 3304.
15. Arbitration and Conciliation Act, 1996, S. 34.
16. 2024 SCC OnLine Cal 10386.
17. Judgment dated 19-4-2024 in Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 No. 29 of 2024.
18. Arbitration and Conciliation Act, 1996, S. 21.
19. 2024 SCC OnLine Del 2561.
20. Judgment dated 14-3-2024 in WP(C) No. 10410 of 2014.
21. 2024 SCC OnLine Bom 2162.
22. Micro, Small and Medium Enterprises Development Act, 2006, S. 19.
23. 2024 SCC OnLine Del 1472.
24. Limitation Act, 1963, S. 14.
25. Not clear.
26. 2024 SCC OnLine Cal 8927.
27. Arbitration and Conciliation Act, 1996, S. 29-A.
28. Judgment dated 29-9-2024 in WP(C) No. 13469 of 2024, 2024 SCC OnLine Del 7029.
29. Arbitration and Conciliation Act, 1996, Ss. 14 and 15.
30. 2024 SCC OnLine Cal 8927.
31. 2024 SCC OnLine Bom 2641.
32. Constitution of India, Art. 226.
33. 2024 SCC OnLine Del 7029.
34. Arbitration and Conciliation Act, 1996, S. 16.

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