$~J

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 09.10.2025
Judgment pronounced on: 24.02.2026

\+ **O.M.P. (MISC.)(COMM.)150/2025 & I.A. 4459/2025**

GENIEMODE GLOBAL PVT LTD. ..…Petitioner

Through:Mr Vivek Pathak, Mr Tanuj Dogra, Mr Rakesh Pandey, Advs.

versus

PRIYANKA IMPEX PRIVATE LIMITED & ANR. ..…Respondents

Through:Mr. Rakesh Gaur, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. This is a petition filed under Section 39(2) of the Arbitration and Conciliation Act, 1996 ("***1996 Act***") impugning the Order dated 18.01.2025 ("***impugned Order***") passed by empaneled Expert to facilitate arbitration proceedings in Case Ref. No. 5710/2024, wherein the petitioner was directed to pay the entire fee of the learned Expert to the tune of Rs. Rs. 18,04,057/- to adjudicate the counter claim of the petitioner.

FACTUAL BACKGROUND

2. The petitioner i.e., Geniemode Global Private Limited, a company

incorporated under the Companies Act, 2013, is a 'Micro' industry duly registered under Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 ("***MSMED Act***").

3. The respondent No. 1 is Priyanka Impex Private Limited and respondent No. 2 is Chairman, HMSEFC-cum-Director General of MSME, Haryana.

4. The petitioner and respondent No. 1 entered into a Service Agreement dated 09.02.2022 ("***Service Agreement***"), whereby the petitioner placed orders with respondent No.1 for supply of apparels as per the purchase orders issued by the buyers and also provided advance payments towards for raw materials in relation to such orders.

5. The said Service Agreement contains the arbitration clauses being Clause No. 7 read with Clause No. 11 of the Second Party Terms, which read as under:-

> *"**7. DISPUTE RESOLUTION:** Any dispute arising from this agreement shall be first through settled arbitration to be held in accordance with the Arbitration and Conciliation Act, 1996 by a sole arbitrator mutually appointed by both FIRST PARTY and SECOND PARTY. Any arbitration award by the arbitrator shall be final and binding upon both FIRST PARTY and SECOND PARTY. If the parties fail to reach an agreement after negotiation, either party may bring a law suit in accordance with the laws of India as applicable in Delhi. The Courts at Delhi shall have exclusive jurisdiction.*

xxxxxxxx

11. DISPUTE RESOLUTION AND GOVERNING LAWS

11.1 These terms and the Agreement shall be construed and governed according to the laws of India as applicable in Delhi and subject to Clause 11.2, the courts at Delhi shall have exclusive Jurisdiction.

11.2 Any dispute arising out of or in connection with these terms and/or the Agreement ("Dispute"), which remains to be resolved after the FIRST PARTY and SECOND PARTY have attempted to resolve the same amicably for 30 (thirty) days from the raising of the Dispute by any one of them, shall be referred to and settled by arbitration to be held in accordance with the Arbitration and Conciliation Act, 1996 by a sole arbitrator mutually appointed by both FIRST PARTY and SECOND PARTY. The language of the arbitration shall be English, and the seat and venue shall be Delhi. Any arbitration award by the arbitrator shall be final and binding upon both FIRST PARTY and SECOND PARTY."

6. The petitioner and respondent No. 1 also agreed that the advance payment made to respondent No.1 will be adjusted against the payment for supply of goods to buyers. Further, the parties also mutually decided that the advances given to respondent No. 1 will be returned, upon delivery of goods by respondent No. 1 to petitioner or the buyers, as appropriate.

7. It is stated that from April 2022 till December 2023 the petitioner advanced approximately Rs. 2.37 crores to respondent No.1. Additionally, the petitioner also raised various invoices on respondent No. 1 with respect to raw material supplied to respondent No.1, which amount to Rs. 1.88 crores approximately.

8. Subsequently, on account of outstanding dues of respondent No. 1 towards the petitioner, both the parties entered into an Affiliate Agreement dated 30.06.2023 ("***Affiliate Agreement***"), wherein the respondent No. 1 acknowledged liability of Rs. 3,12,80,821/- towards the petitioner as on 30.06.2023.

9. The said Affiliate Agreement also contains an arbitration clause and jurisdiction clause being Clause No. 12 and Clause No. 13, respectively, which read as under:-

> "***12. DISPUTE RESOLUTION:*** *Any dispute arising from this agreement shall be first settled through mutual agreement. If no resolution is achieved the dispute the Courts at Delhi shall have exclusive jurisdiction for any suits or dispute resolutions by legal recourse.*
>
> ***13. GOVERNING LAW AND JURISDICTION****: This Agreement shall be construed in accordance with the laws of India and subject to the arbitration clause above, competent courts in Delhi, Haryana shall have exclusive jurisdiction in respect of any matter."*

10. The petitioner continued to advance money to respondent No. 1 to purchase raw materials and also supplied raw material for

manufacturing goods. It is stated that respondent No. 1 failed to make any repayments to petitioner and that respondent No.1 is in default of payment of Rs. 4,25,97,247/-, which comprises of Rs. 1,88,41,092/- for the invoices raised for supply of apparel and a sum of Rs. 2,37,56,155/- paid by the petitioner as advances to respondent No.1.

11. Consequently, in view of respondent No. 1's default in repayment of outstanding amounts, the petitioner issued a Demand Notice dated 15.04.2024 under Section 8 of the Insolvency and Bankruptcy Code, 2016 read with Rule 5(1)(b) of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, demanding payment of the outstanding dues of Rs. 4,25,97,247/- as on 13.04.2024. The respondent No. 1 replied to the same on 24.04.2024.

12. Later, the petitioner also filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of insolvency proceedings against respondent No.1 before the National Company Law Tribunal ("***NCLT***"), Chandigarh and a Notice was issued by NCLT, Chandigarh.

13. On 29.05.2024, respondent No. 1 filed a reference under Section 18 of the MSMED Act before the MSME Facilitation Council at Panchkula claiming recovery of Rs. 2,93,72,124/-, pursuant to which a Notice dated 02.08.2024 was issued to the petitioner.

14. Subsequently, the MSME Facilitation Council conducted two virtual meeting and *vide* Order dated 05.11.2024 terminated the conciliation proceedings and converted itself into a Multi Member Arbitration Tribunal. Later, *vide* Order dated 19.12.2024, the Multi Member

Arbitration Tribunal appointed a Former Judge Punjab and Haryana High Court, as an 'Expert' to facilitate arbitration proceedings.

15. The petitioner filed its counter claim before the learned Expert and the learned Expert *vide* the impugned Order dated 18.01.2025 directed the petitioner to pay the learned Expert's fee to the tune of Rs. 18,04,057/- to adjudicate the counter claim.

16. Being aggrieved by the impugned Order, the petitioner has filed the present petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER

17. Mr. Pathak, learned counsel for the petitioner, submits that this Court has the jurisdiction to entertain the present petition. The dispute arose from the Service Agreement and Clause No. 7 of read with Clause No. 11 of the Second Party Terms of the said Agreement (as reproduced above), vests exclusive jurisdiction on the Courts of Delhi.

18. On merits, it is submitted that under Section 31(8) read with Section 31A and Section 38(1) of the 1996 Act the power of the Arbitral Tribunal to fix costs needs to be apportioned between the parties in equal share, as per Section 38(2) of the 1996 Act. Although the learned Expert has divided the cost of adjudicating claims equally between the parties, however, the petitioner has been directed to pay the entire cost for adjudicating its counter claim, which is in violation of Section 38(2) of the 1996 Act and also Section 18 of the 1996 Act, which advances for equal treatment of the parties.

19. Further, it is submitted that Rule 4 of the Delhi International Arbitration Centre (DIAC) (Administrative Cost & Arbitrators Fee)

Rules 2018 also provides that the Administrative Cost and Fees shall be equally shared between the parties, which remain subject to cost of the arbitration as may decided as per Section 31A of the 1996 Act. It is further submitted that the Arbitrator's discretion to award cost in favour of either party arises at the award stage.

20. It is submitted that while the learned Expert has included the interest in the 'sum in dispute' for Fees calculation payable in terms of the Schedule IV of the 1996 Act, however, there is no provision in the 1996 Act which provides for inclusion of interest within the term 'sum in dispute' in order to calculate the fees of the Arbitrator.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1

21. At the outset, Mr. Gaur, learned counsel for the respondent No. 1, has challenged the jurisdiction of this Court to entertain the present petition.

22. It is submitted that the present petition is not maintainable before this Court since the arbitration proceedings, arising from reference before the MSME Facilitation Council, were conducted in Faridabad, Haryana and all hearings, proceedings, and orders emanated therefrom. Hence, the seat of arbitration is Faridabad and as per the settled law, the seat of arbitration determines the exclusive supervisory jurisdiction over the arbitral process. Reliance is placed on ***BGS SGS Soma JV v. NHPC Ltd.***[1], ***Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd.***[2] and ***Bharat Aluminium***

[1](2020) 4 SCC 234.
[2](2017) 7 SCC 678.

Co. v. Kaiser Aluminium Technical Services Inc.[3]. Therefore, it is argued that only the courts at Faridabad, Haryana, are competent to entertain proceedings under Section 39(2) of the 1996 Act.

23. On merits, it is submitted that as per Section 31A (a) of the 1996 Act the Arbitrator have the discretion to determine "Whether costs are payable by one party to another".

24. Further, it is submitted that the petitioner has approached multiple forums for the same dispute, namely, NCLT Chandigarh for proceedings under the IBC; the Council at Panchkula, Haryana for MSME reference; Arbitration proceedings at Faridabad, Haryana and then the present petition before this Court. Such conduct of the petitioner constitutes forum shopping and the same is condemned by the Hon'ble Supreme Court. Reliance is placed on ***Union of India v. Cipla Ltd.***[4]**.**

25. Lastly, it is submitted that Section 39(2) of the 1996 Act provides a specific appellate remedy against an order of the Arbitral Tribunal, only before the Court having jurisdiction over the seat. Therefore, filing of any petition in any other court is barred. Hence, in view of the lack of territorial jurisdiction, and abuse of process as demonstrated above, the stay is liable to be vacated.

ANALYSIS AND FINDINGS

26. The matter was heard and reserved on 09.10.2025. However, since neither party referred the judgement of ***Harcharan Dass Gupta v.***

[3](2012) 9 SCC 552.
[4] (2017) 5 SCC 262.

Union of India*[5]*, the mater was listed for clarification and submissions on the judgement of ***Harcharan Dass Gupta (supra)*** on 09.01.2026, 14.01.2026, 30.01.2026 and 17.02.2026.

27. I have heard learned counsels for the parties.

28. At the outset, the learned counsel for the respondent No. 1 has challenged the jurisdiction of this Court to entertain the present petition on the ground that that the seat of arbitration is Faridabad since the arbitration proceedings arises from reference before the MSME Facilitation Council, which were conducted in Faridabad, Haryana.

29. The primary issue of territorial jurisdiction in the present case is squarely covered by the judgment of ***Harcharan Dass Gupta (supra).*** In the said case, the appellant being a registered supplier under the MSMED Act was declared as a successful bidder of a tender bid invited by the respondent therein, pursuant to which an agreement was executed between the parties and the specific clauses of the said agreement i.e., Clauses No. 25 and 25A, provided seat of arbitration at Bengaluru. Since there were disputes between the parties, the appellant invoked the jurisdiction of the Facilitation Council at Delhi under Section 18 of the MSMED Act and the Facilitation Council referred the disputes to arbitration. The respondent filed a writ petition before the High Court of Karnataka challenging the jurisdiction of the Delhi Arbitration Centre and conduct of arbitration proceedings in Delhi, which was allowed by the High Court of Karnataka. The same

[5] 2025 SCC OnLine SC 1111.

was challenged before the Hon'ble Supreme Court, wherein the Hon'ble Supreme Court answered the jurisdictional dispute regarding the arbitration proceedings under MSMED Act i.e., whether the Delhi Arbitration Centre could conduct arbitration despite the agreement specifying Bengaluru as the arbitration seat, in affirmative. The Hon'ble Supreme Court while reaffirming its decision in ***Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd.***[6] held as under:-

> *"**8.** We have given our anxious consideration to the submissions of both the parties. In our view, the issue is no more res integra and is covered by the decision of this Court in Mahakali. As we need to do nothing more than refer to the relevant portions of the binding precedent, the reasoning, as well as the conclusion in this decision are extracted herein for ready reference. At the outset, the following two paragraphs clearly explain the principle on the basis of which the court holds that the MSMED Act overrides the Arbitration Act:*
>
> > *"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*

[6](2023) 6 SCC 401.

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 : 2005 SCC (Cri) 451], 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."

9. *Further, the Court proceeds to hold that even the agreement between the parties stands overridden by the statutory provisions under the MSMED Act:*

"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.

45. ...

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. .... 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."

10. *The issue relating to 'seat of arbitration' in all cases covered under the MSMED Act is settled in view of the pronouncement of this Court in Mahakali. This position is also true by virtue of the specific provision of the MSMED Act, that is, sub-Section (4) of Section 18, which vests jurisdiction for arbitration in the Facilitation Council where the supplier is located:*

"(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."

***11.** There is no dispute about the fact that the appellant-MSME is located in Delhi and as such the Facilitation Council, (South-West), GNCTD, Old Terminal Tax Building, Kapashera, New Delhi-110037. In exercise of its power, the said Council entrusted the conduct of arbitration through the institutional aegis of the Delhi Arbitration Centre. The conclusions drawn by us are the logical consequence of the statutory regime as also declared by this Court in Mahakali."*

(Emphasis added)

30. A perusal of the aforesaid judgment clearly shows that the Hon'ble Supreme Court, by relying on ***Mahakali Foods (supra),*** held that MSMED Act is a special legislation to protect MSMEs and would override the provisions of the 1996 Act, being a general and a prior enactment. Additionally, in terms of Section 18(4) of the MSMED Act, the jurisdiction vests in the Facilitation Council where the supplier is located.

31. In the present case, undisputedly the arbitration clauses in the Service Agreement i.e., Clause No. 7 and Clause No. 11 of Second Party Terms, provide the Courts of Delhi with exclusive jurisdiction and in clear words states "*the seat and venue shall be Delhi"*.

32. However, the respondent No. 1, also being the supplier in the present case, approached the Facilitation Council at Panchkula, Haryana. The

Facilitation Council, MSME issued notice to the petitioner and after failure of conciliation proceedings appointed the Arbitrator.

33. Since it is the Facilitation Council at Panchkula, Haryana which has dealt with the issue in controversy, appointed the Arbitrator, conducted the arbitration proceedings, applying the principles of ***Harcharan Dass Gupta (supra)*** and ***Mahakali Foods (supra)*** as discussed above, is the Courts at the location of Facilitation Council where the supplier is located which will have jurisdiction. This Court lacks the jurisdiction to entertain and try the present petition.

34. When the matter was put for clarification, the learned counsel for the petitioner primarily relied upon judgment of ***Gammon Engineers & Contractors (P) Ltd. v. Rohit Sood***[7]. However, the judgement of ***Gammon Engineers (supra)*** is prior to ***Harcharan Dass Gupta (supra)*** and I am bound by the view of Hon'ble Supreme Court in ***Harcharan Dass Gupta (supra).***

CONCLUSION

35. In view of the aforesaid discussion, the present petition is dismissed for want of territorial jurisdiction. Consequently, all pending application(s), if any, are also disposed of.

36. The petitioner is at liberty to approach the competent Court in accordance with law and this Court while dismissing the present petition has not adjudicated upon the merits of the controversy.

37. The Interim Stay granted by this Court *vide* order dated 01.05.2025 shall continue for a period of 4 weeks from today, to enable the

[7]2024 SCC OnLine Bom 3304.

petitioner to approach the Court having territorial jurisdiction in the matter.

JASMEET SINGH, J

FEBRUARY 24, 2026 / (HG)