

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE MANINDER S. BHATTI

ARBITRATION APPEAL NO.18 OF 2021

Between:-

**M/S UJAS ASSOCIATES THROUGH GURJEET SINGH SETHI
S/O LATE AVTAR SINGH SETHI AGED ABOUT 55 YEARS
R/O HOUSE NO.166, NEAR POWER HOUSE, PREMNAGAR,
DISTRICT: SATNA, M.P. (485001).
UDYOG AADHAR NO.MP40D0005844**

APPELLANT

(BY SHRI ABHIJEET AWASTHI, ADVOCATE)

AND

**M/S KJS CEMENT (INDIA) LTD. THROUGH ITS
MANAGING DIRECTOR HAVING REGISTERED OFFICE AT
B-57, PASCHIM MARG, VASANT VIHAR, DISTRICT: NEW DELHI
SOUTH DELHI D.L. 110057 AND WORK PLACE AT NH-7,
VILLAGE AMILIA, POLICE STATION: MAIHAR, DISTRICT SATNA-485771**

RESPONDENTS

(BY SHRI ARPAN PAWAR FOR RESPONDENT NO.1)

*This appeal coming on for final disposal this day, **Hon'ble Shri Justice Maninder S. Bhatti** passed the following:*

ORDER

(/06/2022)

In the instant appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “Act of 1996” for the sake of brevity), the appellant challenges the order dated 08/04/2021 (Annexure P/1) passed by the IXth Additional District Judge, Rewa in MJC/AV 31/2021 wherein the application moved by the present appellant under Section 9 of the Act of 1996 has been rejected.

2. The factual matrix of the case set forth the relationship between the appellant and respondent in respect of contract pertaining to construction of Cement Mill/Grinding Unit. The appellant having its registration with Ministry of Micro, Small and Medium Enterprises, Government of India vide Udyo Adhar No.MP 40 D 0005844 carrying the business in the name of Ujas Associates. The respondent is a company duly registered under the provisions of Companies Act, 1956, and its factory is located at village Amiliya, District Satna.

2.1 The petitioner and respondent were in transaction with regard to construction of Cement Mill Unit/Grinding Unit on the oral instructions of Vice Chairman cum Managing Director of the respondent’s company. The petitioner by claiming itself to be a supplier within the meaning of Micro, Small and Medium Enterprises Development Act, 2006 since there was non payment of dues, approached the Council constituted under the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as “MS & ME Act for the sake of brevity). The petitioner submits that he was issued a purchase order on 29/02/2020, but no agreement was executed containing terms and conditions for carrying out the construction work of Cement Mill Unit/Grinding Unit. However the petitioner submits that there are ample documents on the record to show the performance of work by the petitioner and the measurement by the respondents of the work carried out by the petitioner and also the documents pertaining to the non payment of the

running bill. Thus, petitioner submits that without there being any written agreement, there was a contract for construction of Cement Mill Unit/Grinding Unit which the petitioner carried out and the petitioner claimed payment arising out of the said work which was executed by the present petitioner. However, certain disputes crept in between the appellant and respondent and resultantly, initially the appellant approached Facilitation Council constituted under the MS & ME Act, 2006 by initiating the proceedings of conciliation.

2.2 During the pendency of conciliation proceedings, the present appellant filed an application under Section 9 of the Act of 1996 before the Court below, with a prayer that during the course of execution of work, his machineries and other equipments which were detailed in document No.10 appended to the aforesaid application, lying in the premises of the respondent be handed over to the present appellant. Alternatively, it was prayed that the said articles be delivered to the appellant after appointment of a Commissioner.

3. Respondent opposed the application which was moved by the present petitioner while submitting *inter alia* that there was a purchase order dated 29/02/2020, which lost its efficacy inasmuch as the same was not accepted by the present petitioner. It is further stated in the reply of the respondent that the respondent did not restrain the petitioner from taking back any of the machinery or equipments which were brought within the premises of the respondents. The respondent further submit in the reply that since there is no agreement between the petitioner and respondent, the application under Section 9 of the Act of 1996 being misconceived was not maintainable.

4. The Court below after hearing the rival parties, vide order impugned dated 08/04/2021 has dismissed the application.

5. The order dated 08/04/2021 is being assailed in the instant appeal which has been moved under Section 37 of the Act of 1996. Learned counsel

for the appellant submits that the commercial Court in paragraph 21 of the order, incorrectly recorded assertion of the respondent in their reply to the application filed under Section 9 of the Act of 1996.

5.1 Learned counsel for the appellant submits that upon obtaining gate pass, the present appellant can move all its belonging from premises whereas, the respondent in paragraph 17 of their reply stated that the appellant can only be permitted to move the articles and machineries from the factory premises once he produces no dues certificate. Learned counsel submits that it escaped the attention of the Court below that there was no dues certificate which was mentioned in paragraph 17 of the reply of the respondents and not the gate pass.

5.2 Learned counsel also submits that the Court below further erred that in absence of an agreement between the parties, an application under Section 9 of the Act of 1996 is not maintainable, thus, rejected the application.

5.3 Learned counsel further submits that the trial Court fell in error by not appreciating the provisions of Section 18 of the MS & ME Act. Learned counsel submits that there need not to be an agreement if the dispute falls within the ambit of MS & ME Act and since Section 18 of MS & ME Act contains deeming provision. The dispute is automatically referred first for conciliation and then for arbitration. Thus, as per the learned counsel, there is no requirement of an agreement being in existence and has urged that the findings arrived at by the Court below are misconceived.

5.4 Learned counsel has placed reliance upon the decision of Apex Court in **Secur Industries Ltd. Vs. Godrej & Boyce MFG. Co. Ltd. And Anr.** reported in (2004) 3 SCC 447 and also in the case of **M/s Steel Authority of India Ltd. And Anr. Vs. Micro, Small Enterprise Facilitation Council, through Joint Director of Industries, Nagpur Region, Nagpur** reported in 2010 SCC online Bom 2208.

6. Per contra, learned counsel for respondents submits that the order of the trial Court is reasonable as the trial Court upon dealing with the contentions so advanced at the instance of the appellant, rightly considered the matter in its true perspective and has passed an order which is not only just and transparent, but also proper, as the same has been passed in due appreciation of the statutory provisions contained in the Act of 1996 as well as MS & ME Act of 2006. Thus, learned counsel for the respondent while supporting the order submits that the appeal preferred under Section 37 of the Act of 1996 is rightly dismissed. In support of his contention, learned counsel for respondent placed reliance on paragraphs 2 & 8 of the judgment of Apex Court in the case of **Karnataka Power Transmission Corporation Limited and Anr. Vs. Deepak Cables (India) Limited** reported in (2014) 11 SCC 148, paragraphs 14 & 18 in the case of **Vimal Kishore Shah and Ors. Vs. Jayesh Dinesh Shah and Ors.** reported in (2016) 8 SCC 788, paragraphs 12, 14 & 20 in the case of **Indowind Energy Limited Vs. Wescare (India) Limited and Anr.** Reported in (2010) 5 SCC 306 and paragraphs 17 & 18 in the case of **Vijay Kumar Sharma @ Manju Vs. Raghunandan Sharma @ Baburam and Ors.** reported in (2010) 2 SCC 486 and submits that there has to be an arbitration agreement reflecting the intention of the party to refer the dispute to the arbitrator and in absence of such an agreement, the arbitration proceedings are not maintainable. He further submits that in the present case there was no agreement containing arbitration clause thus, application under Section 9 of the Act of 1996 could not have been entertained.

7. We have heard learned counsel for the rival parties and perused the record.

8. Before dealing with the order impugned, we deem it proper to discuss few statutory provisions. The Act of 1996 was enacted with an object to consolidate and amend the law relating to domestic/international arbitration,

and the same took into consideration, UNCITRAL MODEL LAW on International Commercial Arbitration. Part 1 of the Act of 1996 consists from Section 2 to 43. The Section 2(e) of the Act provides for the definition of the Court which is quoted as under:

“2-E” “Court” means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;”

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(ii) In the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decisions of courts subordinate to that High Court;

8.1 Section 5 of the Act, 1996 provides as under:

“Extent of judicial intervention:- Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this part”.

8.2 Section 9 of the Act, 1996 is also reproduced as the same has direct nexus with the issue involved in the present appeal.

“Interim measures, etc. by Court.—A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

[(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under Sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.]

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the

Court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious.]”

8.3 Perusal of the aforesaid provisions of the Act of 1996, makes it abundantly clear that it is a special Act where the judicial intervention is specifically excluded by virtue of Section 5 and no judicial authority can intervene in the manner except so provided in part 1. Thus, if the entire part of the Act of 1996 is taken into consideration, the same reveals that the ‘Court’ which is defined under Section 2(E) of the Act of 1996, means principal Civil Court of the original jurisdiction. The Court thus can act under Section 9 for the purposes of grant of interim measure. Section 11 relates to appointment of arbitrator, Section 14/15 deals with prayer to terminate the mandate of the arbitrator, whereas Section 34 encapsulates Courts power to set aside the award passed by the Arbitrator/Arbitration Tribunal whereafter Section 36 relates to execution of award passed under the scheme of the Act. Finally Section 37 enables appeals against the certain orders passed by the Court.

8.4 Thus, a perusal and close scrutiny of part 1 reveals that there are few Sections under which the judicial intervention is permitted and apart from these sections, the Court cannot intervene with the dispute pertaining to arbitration. Needless to emphasize, that the powers of arbitrator as well as Courts are elaborated under the scheme of the Act of 1996 in distinct manner and thus the interference of the Court only comes into the picture as permitted by Section 5 of the Act of 1996.

9. A perusal of Section 9 of the Act of 1996 further makes it clear that a party can approach the Court for grant of interim protection before/during or at any time after passing of the award. Meaning thereby, the powers under Section 9 of the Act of 1996 can be invoked prior to initiation of arbitration proceedings or during pendency and even after passing of an award. Thus, there need not to be pendency of arbitration proceeding as the same is not a

condition precedent. Thus, even in absence of arbitration proceedings, the competent Court can be approached under Section 9 of the Act of 1996 prior to the stage of arbitration for the purposes of the interim measures and also to the reliefs pertaining to the preservation of the subject matter of the arbitration etc.

10. The parliament has also enacted MS & ME Act for facilitating promotion, development and enhancing the competitiveness of micro, small and medium enterprises through a mechanism and thus, the same Act is a self contained Code inasmuch as the same inter alia provides for mechanism for readdressal of dispute.

11. Section 15, 16, 17, 18 & 24 are being reproduced as under:

*“15. **Liability of buyer to make payment.**—Where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day: Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.*

*The Micro, Small and Medium Enterprises Development Act,
2006*

*16. **Date from which and rate at which interest is payable.**—Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.*

The Micro, Small and Medium Enterprises Development Act, 2006

17. Recovery of amount due.—For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.

The Micro, Small and Medium Enterprises Development Act, 2006

18. Reference to Micro and Small Enterprises Facilitation Council.—

(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

*(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall **then** apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.*

(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.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.

The Micro, Small and Medium Enterprises Development Act, 2006

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*24: **Overriding effect-** The provisions of Sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force”.*

12. Before dealing with the other provisions referred hereinabove, it is important to refer to Section 24 of MS & ME Act, 2006 which provides in unequivocal terms that Section 15 to 23 of MS & ME Act, 2006 shall have overriding effect notwithstanding anything inconsistent there with contained in any other law for the time being in force. Apparently, MS & ME Act, 2006 has been enacted with an object for facilitating the promotion and development and enhancing the competitiveness of Micro, Small and Medium Enterprises and thus the Act infact is in the form of welfare legislation and aims to protect the interest of suppliers i.e. Micro and Small Enterprises as defined in Section 2(n) of MS & ME Act, 2006.

13. Section 15 further gives a protection to a supplier when there is a delay in payment by the buyer towards any goods supplied by the supplier and therefore, for redressal of grievances of supplier, a mechanism has been provided under Section 18 of MS & ME Act, 2006. Thus, with the overriding effect over the other enactment, MS & ME Act, 2006 is undoubtedly a special Act. The Apex Court, in the case of **Kaushalya Rani Vs Gopal Singh** reported in **AIR 1964 SCC 260** has discussed the question as to what

is special law? Apex Court, while answering the said question, laid down that a special law is a law which is enacted to deal with a particular subject and held as follows:

7. *****

“A “Special Law”, therefore, means a law enacted for special cases, in special circumstances, in contradistinction to the general rules of the law laid down, as applicable generally to all cases with which the general law deals”.

14. Thus, the legislature consciously conferred this privilege to the MS & ME Act, 2006 to decide the stage from which the Act of 1996 will be applicable. The said stage is clearly mentioned in Sub Section(3) of Section 18 relevant portion of this Sub Section is again reproduced as under:

*“for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall **then** apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act”.*

15. The High Court of Allahabad in Civil Misc. Writ Petition NO.24343/2014 decided on 29/04/2014 in the case of **Paper and Board Convertors Vs. U.P. State Micro and Small Enterprises** in paragraph 11 observed as under:

“The petitioner invoked the provisions of the 2006 Act by filing a reference to the Facilitation Council on 3 October 2011. There was undoubtedly a dispute between the petitioner and the respondents in regard to the claim of the petitioner arising out of non payment of its bills. The respondents appointed a sole arbitrator on 5 October 2011 after the petitioner had invoked the intervention of the Facilitation Council on 3 October 2011 under Section 18 of the 2006 Act. Once the jurisdiction of the Facilitation Council has been validly invoked, the Council has exclusive jurisdiction to enter upon conciliation in the first instance and after conciliation has ended in failure, to refer the parties to arbitration. The Facilitation Council could either have conducted the arbitration itself or could have referred the

parties to a centre or institution providing alternate dispute resolution services. The Facilitation Council was clearly in error in entertaining the objection filed by the respondents and referring the petitioner to the sole arbitrator so designated by the respondents.”

16. Simultaneously, the High Court of Bombay in the case of **Gujrat State Pertonet Ltd. Vs. Micro and Small Enterprises Facilitation Council and Ors.** in WP No.5459/2015 dealt with the overriding effect of MS & ME Act while observing as follows:

“It is to be noted that the MSMED Act is a special enactment, enacted with an object of facilitating the promotion and development and enhancing i.e. competitiveness of micro, small and medium enterprises, which do not command significant bargaining power. It is Shubhada S Kadam 11/24 wp 5459.15.doc with this object that the Act provides for institutional arbitration. Keeping in mind the object of the Act and non-obstante clause in Section 24 of the Act, we are of the view that the provisions of Sections 15 to 23 of the Act will have an overriding effect, notwithstanding anything inconsistent in any other law or the arbitration agreement as defined under Section 7 of the Arbitration Act, 1996. Thus, notwithstanding the provisions of the Arbitration Act 1996 and the existence of an arbitration agreement, any party can make a reference to MSEFC with regard to the amount due under Section 17, and such council or the institution or centre identified by it, will have jurisdiction to arbitrate such dispute”.

17. The Bombay High Court in paragraph 11 narrated hereinabove observed that notwithstanding the provisions of the Act of 1996 and even the existence of an arbitration agreement, a party can make reference to Council so constituted under the provisions of MS & ME Act, 2006.

18. Hence, as per the stand of the appellant, there was no agreement in writing, yet as per the judgment of the Apex Court in the Secur Industries

Ltd. Vs. Godrej & Boyce MFG. Co. Ltd. (Supra), the proceedings before Council are proceedings under the Act of 1996 pursuant to a deemed agreement between the parties to the dispute. Thus, submits even in absence of a written agreement, proceedings before the Council infact are in the nature of deemed agreement and therefore submits that the application moved under Section 9 of the Act of 1996 was maintainable. So far as this submission pertaining to deemed agreement is concerned, we find that it has substance, but in the present case impugned order is being tested on a different issue.

19. The applicability of the Act of 1996 is one issue, however, the stage of applicability of the Act of 1996 is another issue. The scheme under Section 18 of MS & ME Act not only expressly provides for applicability of the Act of 1996 but also the stage of applicability which is clearly reflected from the use of term “*then*” which is incorporated in Sub Section (3) of Section 18 of MS & ME Act, 2006. There are two stages of applicability of the Act of 1996. As per Section 18 (2) of the MS & ME Act, 2006 for the purposes of conducting conciliation, there is limited applicability of Section 65 to 81 of the Act of 1996, thereafter, the application of Act of 1996 comes in the picture only when the conciliation which is initiated under Sub Section (2) of Section 18 is not successful and stands terminated. Thus, the stage from which the Act of 1996 starts to apply is clearly mentioned in Section 18(3) of MS & ME Act.

20. A perusal of aforesaid provisions reveal that a supplier of any goods to buyer can raise a dispute before the Facilitation Council with regard to the payment which is due to the supplier under Section 14 of the MS & ME Act. Section 18(1) of the Act which starts with non obstante clause provides that any party to the dispute, regarding an amount due under Section 17 of the Act can make a reference to micro and small enterprises Facilitating Council

21. Section 18(2) of the Act also provides that upon receipt of reference under Sub Section (1) of Section 18, the Council itself can conduct the conciliation or seek assistance of any institution for conducting the conciliation. The provisions of Section 65 to 81 of the Act of 1996 will be applicable to such conciliation proceedings. It is germane to mention at this juncture that provisions of Section 65 to Section 81 to the exclusion of the Act of 1996, deals with the procedure of conciliation proceedings. Meaning thereby that till the stage of Section 18 (2), the applicability of Act of 1996 is restricted only to Section 65 to Section 81 to the exclusion of all other Sections. Then, Section 18(3) of the Act of 1996 provides that once the conciliation so initiated under Sub Section (2) is not successful and stands terminated without any settlement between the parties, the Council can itself take up the dispute for arbitration or refer it to any institution or center providing alternate dispute resolution services for such arbitration and the provisions of Act of 1996 shall **then** be applied to the dispute, as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of the Act, 1996.

22. Thus, in the present case, the question as to whether the application under Section 9 of the Act of 1996 was, tenable before the Court below or not infact is an issue, which has not been gone into in the order of trial Court. In the case in hand, there is no dispute that the appellant had already approached the Facilitating Council under Section 18 of the MS & ME Act, 2006 and conciliation proceedings are pending before the Council.

23. The appellant does not dispute that the conciliation proceedings have not been concluded as yet, therefore, there is no question of termination of conciliation proceedings as on date. Thus, in our considered view, the stage of applicability of Act of 1996 has not come as of now and, the Act of 1996 can play only when the conciliation proceedings drawn under Section 18(2)

of the MS & ME Act are terminated or are unsuccessful. Thus, Section 9 would also have any application thereafter.

24. We find that there is no force in the argument of the appellant to the effect that the powers under Section 9 can be invoked by the competent Court even prior to termination of conciliation. For invoking Section 9 of the Act, there has to be existence of a dispute within the scope of the arbitration agreement. Since the applicability of the Act of 1996, to the petitioner is not being claimed by virtue of any agreement but by virtue of deeming provisions, therefore, the applicability of Act of 1996 can only be ascertained as stipulated in Section 18 (3) of the MS & ME Act. No doubt, even in a dispute which falls within the Section 18 of the Act, there can be an application under Section 9 before the Civil Court, but that application would be maintainable when the conciliation proceedings are terminated finally under Sub Section (3) of Section 18. Thus, the words 'before' which finds mention in Section 9 of the Act of 1996, indicates to the period between termination of conciliation proceedings till cognizance of the dispute by the arbitral Tribunal as per Sub Section 3 of Section 18 of MS & ME Act.

25. At the cost of repetition, it is once again reiterated that Sub-Section (3) of Section 18 deals with the stage from which the Act of 1996 comes into operation and therefore, in our considered view, Section 9 of the Act of 1996 also comes into operation after termination of conciliation proceedings which are drawn under Section 18 of the MS & ME Act.

26. In this view of the matter, we find that the application filed under Section 9 of the Act of 1996 before the Court below was not maintainable inasmuch as, the stage of applicability of the Act of 1996 including Section 9 has yet not reached.

27. Thus, in our considered view, the application filed under Section 9 before the Court below itself was premature and accordingly since the Court below has dismissed the application while observing that there exists an

alternative remedy for redressal of grievance of the appellant, we refrain ourselves from interfering with the order passed by the Court below and accordingly the present appeal stands dismissed sans cost.

(SHEEL NAGU)
JUDGE

(MANINDER S. BHATTI)
JUDGE

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