



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO. 8157 OF 2025
IN
ARBITRATION PETITION (L) NO. 7358 OF 2025

GEA Westfalia Separator India Private Limited

...Applicant/
Petitioner

Versus

SVS Aqua Technologies LLP

...Respondent

WITH
INTERIM APPLICATION (L) NO. 8161 OF 2025
IN
ARBITRATION PETITION (L) NO. 7677 OF 2025
WITH
INTERIM APPLICATION (L) NO. 8426 OF 2025
IN
COMM. ARBITRATION PETITION (L) NO. 7654 OF 2025
WITH
INTERIM APPLICATION (L) NO. 10843 OF 2025
IN
ARBITRATION PETITION (L) NO. 10275 OF 2025

Mr. Karl Tamboly a/w Mr. Bhavin Shah, Ms. Amrita Dubey, Mr. Yash Pitroda, Ms. Amrita Nataranjan, Mr. Sandeep Rebari, Mr. Samiron Borkataky and Mr. Ikshvaaku Marwah i/b Kochhar & Co. for the Applicant/Petitioner.

Mr. Yuvraj P. Narvankar (through VC), a/w Raufa Shaikh for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

RESERVED ON: APRIL 21, 2025

PRONOUNCED ON: SEPTEMBER 10, 2025

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JUDGEMENT:**Context and Factual Background:**

1. These petitions have been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) impugning arbitral awards dated November 18, 2024 (collectively, “**Impugned Award**”) passed by the Micro and Small Enterprises Facilitation Council, Pune (“**Facilitation Council**”). For purposes of base reference to dates and events, Arbitration Petition (L) 7677 of 2025 is adopted by consent of the parties.

2. The Petitioner, GEA Westfalia Separator India Private Limited (“**GEA**”) has been directed to pay the Respondent, SVS Aqua Technologies LLP (“**SVS Aqua**”) a awarded sums along with interest in connection with resolution of disputes and differences emanating from a Manufacturing and Supply Agreement dated November 13, 2019 (“**Agreement**”).

3. At the threshold, SVS Aqua has objected to the territorial jurisdiction of this Court. SVS Aqua’s contention is that the Facilitation Council conducted the arbitration in Pune and therefore, as a matter of territorial jurisdiction, a challenge under Section 34 of the Arbitration

Act ought to be before the Civil Courts in Pune. GEA's contention is that this Court has jurisdiction in view of Clause 23 in the Agreement, which is an explicit arbitration clause. The Agreement does not have any clause recording confirmation of the parties about exclusive or non-exclusive jurisdiction of any Court.

4. This is the specific issue that lies at the threshold of these Petitions. Only if this issue is answered in favour of this Court having jurisdiction, can these Petitions be considered under Section 34 of the Arbitration Act. Therefore, this was framed as a preliminary issue.

5. Since the relevance of Clause 23 lies at the heart of the jurisdictional analysis, it has been extracted below:

23. Governing Law and Jurisdiction

This agreement and any Purchase order shall be governed exclusively by the laws of India.

Any dispute arising out of or in connection with this Contract, including any question regarding its "existence, validity or termination, shall exclusively be referred to and finally resolved by arbitration in Mumbai in accordance with the International Center for Alternative Dispute Resolution (ICADR) Arbitration Rules, 1996 for the time being in force, which rules are deemed to be incorporated by reference in this Article. The Tribunal shall consist of three (3) arbitrators wherein each party shall appoint one arbitrator and the two appointed arbitrators, shall appoint the third arbitrator. The language of the

arbitration shall be in English.”

[Emphasis Supplied]

6. A plain reading of this provision would indicate that the parties envisaged resolving their disputes by “arbitration in Mumbai”.

GEA’s Contentions:

7. GEA would contend that the arbitration clause extracted above has reduced to writing the intention of the parties to conduct arbitration in Mumbai and therefore, the “seat” of arbitration even for purposes of the Impugned Award is Mumbai. GEA would contend that the parties executed an addendum on January 20, 2020, which also replicates this clause. Since the seat is claimed to be Mumbai, GEA could contend, this Court has jurisdiction for purposes of Section 34 of the Arbitration Act. According to GEA, since the seat is Mumbai, the arbitration conducted by the Facilitation Council in Pune only means that the convenient venue was Pune. On the premise that the seat is in Mumbai, GEA would next contend, the parties must be held to have necessarily agreed that the courts in Mumbai would have exclusive jurisdiction. Therefore, according to GEA, this Court has jurisdiction under Section 34 of the Act.

SVS Aqua's Contentions:

8. SVS Aqua would contend that the arbitration has been conducted pursuant to the special provisions of Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 ("**MSMED Act**"). SVS Aqua would contend that Section 24 of the MSMED Act explicitly provides that Sections 15 to 23 of the MSMED Act would have an overriding effect notwithstanding anything inconsistent with any other law in force. Section 18 of the MSMED Act, therefore SVS Aqua would contend, overrides the Arbitration Act and therefore the arbitration agreement executed between the parties is irrelevant for all purposes. The Facilitation Council conducted the proceedings in Pune as a matter of statutory territorial jurisdiction, SVS Aqua would contend, resulting in courts in Pune having jurisdiction under Section 34 in the matter.

Analysis and Findings:

9. I have heard at length, Mr. Karl Tamboly, Learned Counsel on behalf of GEA and Mr. Yuvraj Narvankar, Learned Counsel on behalf of SVS Aqua. I have examined the record with their assistance and with the benefit of their submissions, both verbal and written in the matter.

10. At the outset, it is a matter of record that the parties indeed had executed an arbitration agreement – the clause extracted above. That provision does not use the term “seat” or “venue”. It provides that disputes shall be referred to and be resolved by “*arbitration in Mumbai*”. However, most pertinently, the arbitration proceedings actually held between the parties did not take place pursuant to invocation of this arbitration agreement. The arbitral proceedings that led to the Impugned Award took place under Section 18 of the MSMED Act, which provides for a statutory arbitration agreement coming into existence in the eyes of law.

11. Under Section 18 of the MSMED Act, a statutorily created arbitration agreement comes into existence once conciliation fails. The provisions of the Arbitration Act then apply “*as if*” the arbitration proceedings are to be conducted pursuant to an agreement under Section 7 of the Arbitration Act. That statutory arbitration under the statutorily-created arbitration agreement was conducted entirely at the Facilitation Council in Pune since that is the Facilitation Council in whose jurisdiction, SVS Aqua is located. The Impugned Award is a product of the arbitration conducted pursuant to the arbitration agreement statutorily created under Section 18 of the Act.

12. For perspective, the provisions of Section 18 of the MSMED Act are extracted below:-

(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 it to 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.

[Emphasis Supplied]

13. Having examined the record closely, it is apparent that GEA's entire reliance is on the arbitration clause contractually executed by it, but then no arbitration proceedings were conducted pursuant to such arbitration clause. The Impugned Award has nothing to do with the conduct of arbitration under that provision.

14. There are also material differences between such arbitration clause and the arbitration actually conducted. Under the contracted provision, arbitration was to be conducted by a three-member arbitral tribunal in Mumbai and in accordance with the rules of the International Center for Alternative Dispute Resolution ("**ICADR**"). Each party was to nominate one arbitrator and the two arbitrators would appoint the third. Nothing in this arbitration agreement was acted upon.

15. It is evident that the entire reference to the arbitration clause is a red herring inasmuch as the proceedings have been conducted squarely

in terms of the MSMED Act (not ICADR Rules), in Pune (not in Mumbai), and by the Facilitation Council (not by a tribunal appointed in the manner provided in the clause). The Facilitation Council exercised its statutory arbitral jurisdiction. The arbitral jurisdiction envisaged by contract was not at all put into play.

16. Far more pertinently, the Agreement does not at all contain any provision recording the agreement of the parties conferring exclusive (or even non-exclusive) jurisdiction designating any particular Court having potential jurisdiction in the matter. The jurisdiction of this Court under Section 34 of the Arbitration Act is a statutory jurisdiction. Section 34 of the Arbitration Act provides for applications to challenge arbitral awards to be filed in the “Court”, which is a term defined in Section 2(1)(e) of the Arbitration Act, which reads thus:

(e) “Court” means –

(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 decrees of courts subordinate to that High Court;

[Emphasis Supplied]

17. Even a plain reading of the foregoing would show that the test to determine which court is the “Court” for purposes of Section 34 read with Section 2(1)(e) of the Arbitration Act would entail examining if the Court had jurisdiction, should the dispute been subject matter of a suit.

18. GEA is based in Vadodara in Gujarat. SVS Aqua is in Pune and has manufactured and supplied under its agreement with GEA, from Pune. Since SVS Aqua is located in Pune, it was the Facilitation Council in Pune that statutorily had territorial jurisdiction for the arbitration that was actually conducted between the parties. The Impugned Award is a product of such arbitration. The principal court with original jurisdiction would be such court in Pune. Other than the reliance on Clause 23 of the Agreement, there is nothing to show in GEA’s submissions, that this Court could be the forum in which a suit could have been filed in relation to the disputes under the Agreement. The

sole reliance by GEA to approach this Court is on Clause 23, which is an arbitration agreement executed by the parties provided for “*arbitration in Mumbai*”. But the reality is that this provision was never acted upon and has been irrelevant to the arbitration proceedings that led to the Impugned Award.

19. GEA would make a leap using Clause 23 of the Agreement as the springboard, to treat Mumbai as the “seat”; and from such premise of Mumbai being the seat, GEA would make a further leap to read the arbitration clause as a clause providing for exclusive jurisdiction on courts in Mumbai. In my opinion, such a line of reasoning is totally untenable. The Impugned Award is not at all connected to the arbitration agreement executed between the parties. For all purposes, substantive and practical, the arbitration clause has had no relevance and has played no role in the run up to the Impugned Award.

20. The arbitration proceedings in question were conducted as if there was another arbitration agreement in terms of Section 18, which entailed the arbitral tribunal i.e. the Facilitation Council in Pune having territorial jurisdiction. Such statutory territorial jurisdiction is a strong indication of the seat for purposes of this case being Pune. There is no indicia in the Agreement about consent of the parties to designate a

Court having competing jurisdiction with other Courts, as a court with exclusive or even non-exclusive jurisdiction. Therefore, in the absence of any connecting factor that would otherwise confer jurisdiction on this Court (other than Clause 23 of the Agreement, which was not acted upon), a challenge to the Impugned Award must necessarily lie in the principal civil court with original jurisdiction in Pune, where the arbitration proceedings were conducted.

21. Indeed, the MSMED Act would have an overriding effect over other laws, but that would be another distraction from what is a rather simple and straightforward question – namely, whether this Court in Mumbai would have jurisdiction under Section 34 of the Act to consider a challenge to the Impugned Award, which has nothing to do with the arbitration clause that GEA seeks to rely upon, and instead has everything to do with the statutory arbitration agreement under Section 18 of the MSMED Act. The answer has to be in the negative.

22. The arbitration proceedings were conducted as a matter of statutory requirement in Pune. The statutory seat of arbitration is therefore Pune. In the facts of this case, it is fallacious and disingenuous to contend that Pune was merely a convenient venue without the chosen seat being disturbed from Mumbai. This is not a

case of the ICADR arbitration being conducted in Pune for convenience despite the parties having agreed to a seat in Mumbai that is discernible not only from the place at which the arbitration was to be conducted but also from an exclusive jurisdiction clause in the Agreement. To begin with, in the facts of this case, the parties – one from Vadodara and another from Pune – participated and conducted their dispute resolution by arbitration under the MSMED Act, before the Facilitation Council in Pune. These proceedings were totally divorced from the arbitration clause and there is no exclusive jurisdiction clause to bind the parties back to Mumbai. One would need to assume that somehow the arbitration clause that was not even acted upon, would transform into and double up as an exclusive jurisdiction clause, which clause admittedly does not exist.

23. GEA has placed copious reliance on case law to buttress different facets of its contentions to make Clause 23 of the Agreement, its sheet anchor for claiming jurisdiction in this Court. In view of the arbitration clause not being the arbitration agreement underlying the Impugned Award and in the absence of an exclusive or non-exclusive jurisdiction clause, it is not felt necessary to deal with the standard case law about how courts having jurisdiction over the seat would have jurisdiction for purposes of Section 34 of the Arbitration Act. Suffice it to say that the

principle sought to be emphasised by GEA from such case law is that *in the absence of any contrary indicia, or alternative designation of a seat or any supra-national body of rules governing the arbitration*, the choice of seat expressed by the parties would lead to the principal civil court having original territorial jurisdiction over the seat, having jurisdiction.

24. One cannot quarrel with the aforesaid proposition of law, but it is evident that this principle would simply not apply to this case. There is loud and clear contrary indicia in the matter at hand – a legislative one at that – to indicate that the arbitration was conducted in the territorial jurisdiction of the Facilitation Council in Pune under the MSMED Act, since SVS Aqua is located in Pune. This is a matter of the sheer operation of a national legislation and a special one at that, namely, the MSMED Act, to bring into existence an arbitration agreement that entails arbitration to be conducted in jurisdiction of the Facilitation Council where the supplier i.e. SVS Aqua, is located.

25. The arbitration proceedings that led to the Impugned Award is governed by such statutory arbitration agreement. Therefore, clearly, in the facts of this case, there are contrary indicia writ large on the face of the record, which statutorily seats the arbitration in Pune, and

therefore, renders irrelevant the contractual arbitration agreement executed between the parties.

26. GEA relies upon a judgement by a Division Bench of this Court in ***Gammon Engineers***¹ and that too answering a reference on the subject of conflict between location of arbitration under the MSMED Act and the contractual provisions, to indicate that the MSMED Act has no relevance whatsoever to determining the Court for purposes of Section 34 of the Act. Such a presentation of ***Gammon Engineers***, I am afraid is not consistent with what that judgement has actually considered and ruled on. At the threshold, it should be noted that in that case, the provisions examined in ***Gammon Engineers*** would show that the parties had explicitly contracted that the Courts in Mumbai would have *exclusive* jurisdiction over all matters. Such a clause coupled with an arbitration clause indicating location of the arbitration, came up for consideration in the backdrop of an MSMED arbitration. In that matrix of facts and contractual provisions, the Division Bench held that the term “jurisdiction” used in Section 18 of the MSMED Act would not obliterate the binding contractual provision by which the parties had agreed to that the Courts in Mumbai would have exclusive jurisdiction.

1 Gammon Engineers and Contractors Pvt. Ltd. Vs. Rohit Sood - (2024) SCC OnLine Bom 3304

27. It is trite law that a judgement has to be construed in the backdrop of the facts and circumstances in which the judgement has been rendered. At this juncture, the following extracts from **Ravi Ranjan**² would be appropriate to cite:

41. It is well settled that a judgment is a precedent for the issue of law that is raised and decided. The judgment has to be construed in the backdrop of the facts and circumstances in which the judgment has been rendered. Words, phrases and sentences in a judgment, cannot be read out of context. Nor is a judgment to be read and interpreted in the manner of a statute. It is only the law as interpreted by in an earlier judgment, which constitutes a binding precedent, and not everything that the Judges say.

[Emphasis Supplied]

28. A close reading of **Gammon Engineers** would show that the judgement copiously deals with the inter-play and conflict between the *situs* of the conduct of arbitration by the Facilitation Council and the contractual provision recording the parties' agreement that courts in Mumbai would have exclusive jurisdiction. In that context, it was held that the contractual commitment to approach the Courts in Mumbai with exclusive jurisdiction could not be obliterated.

² *Ravi Ranjan Developers Pvt. Ltd. Vs. Aditya Kumar Chatterjee – 2022 SCC OnLine SC 568*

29. In the facts of the instant case, there is no exclusive jurisdiction clause at all. The arbitration agreement only states that the arbitration would be conducted in Mumbai and that too under the ICADR Rules, leaving it open to interpretation as to whether Mumbai would be the venue or the seat, owing to a lack of jurisdiction chosen by party autonomy. In cases dealing with contracts that had an exclusive jurisdiction clause, Courts have held that even if the arbitration were to be conducted in a location different from the location of exclusive jurisdiction, then such other location would be the venue and not the seat. None of these parameters are even attracted in the case at hand inasmuch as there is no provision whatsoever stipulating exclusive jurisdiction.

30. Therefore, in the matter at hand, there is no question of a conflict between the *situs* of the arbitration proceedings conducted under the MSMED Act and the *situs* of a forum that otherwise has jurisdiction (among other forums), which the parties commit by contract as the forum with exclusive jurisdiction.

Summary of Conclusions:

31. Therefore, to summarise:-

- a. The parties in the instant case do not have any contractual commitment in the Agreement that the Courts in Mumbai would have exclusive (or even non-exclusive) jurisdiction in relation to their disputes;
- b. Had there been such a provision by which the parties agreed on a specific forum having jurisdiction, the principles from the case law cited by GEA could have potentially had relevance;
- c. In the absence of such a provision, this is not a case where one can wish away that every activity in the arbitration proceedings gravitated to Pune since Section 18 of the MSMED Act statutorily conferred territorial jurisdiction on the Facilitation Council in Pune for purposes of conducting arbitration. That is a strong pointer to the seat of these arbitration proceedings being Pune;
- d. In the absence of a binding and committed provision on exclusive jurisdiction in the Agreement, the conflict is between the arbitration by ICADR Rules that could have potentially been conducted in Mumbai; and the arbitration in terms of the MSMED Act that was actually conducted in Pune;

- e. In the factual matrix obtaining in the instant case, not only is the discussion in ***Gammon Engineers*** totally distinguishable owing to the absence of a clause recording consent to a forum having jurisdiction, but also as a matter of fact and law, nothing in the conduct of the arbitration proceedings that led to the Impugned Award had any connection or gravitation towards the contractual arbitration clause;
- f. Neither was the substance nor the procedure of the arbitration clause in the contract applicable and therefore, in the facts of this case, the actual arbitration agreement that ran its intended course was the statutory arbitration agreement deemed to have been executed within the meaning of Section 7 of the Arbitration Act, but in terms of Section 18 of the MSMED Act;
- g. Without any clause on jurisdiction – not even a non-exclusive jurisdiction clause – in the Agreement, there is no connecting factor at all to lead to jurisdiction in this Court being attracted for purposes of Section 34 read with Section 2(1)(e) of the Arbitration Act. Nothing has taken place in Mumbai – GEA operated in Vadodara, SVS Aqua operated

in Pune, the only activity envisaged for Mumbai (arbitration) did not take place;

- h. In this light, the supplanting of the contractual arbitration provisions by the statutory arbitration provisions flowing from Section 18 of the MSMED Act, would lead to an inexorable consequence that it would be the Court that would be responsive to Section 34 read with Section 2(1)(e) of the Arbitration Act that would have jurisdiction. Such Court would therefore, necessarily be the relevant court in Pune.

32. In these premises, it is held that this Court does not have jurisdiction in the matter and these petitions cannot be entertained. All the captioned Petitions and the attendant Interim Applications are dismissed for want of jurisdiction.

33. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]