Once arbitral proceedings commenced under Section 18(3) of the MSME Act, the process could not be reversed to reinitiate pre-arbitral conciliation

The Calcutta High Court in the case of **The Board of Major Port Authority for the Syama Prasad Mukherjee Port, Kolkata Vs. Marinecraft Engineers Private Limited [A.P.-COM No.296 of 2024 (Old No. A.P. 179 of 2023)] dated June 13, 2025**, has held that once arbitral proceedings commenced under Section 18(3) under the MSME Act, the process could not be reversed to reinitiate pre-arbitral conciliation. It was only at the petitioner's request that additional avenues for mutual settlement were explored alongside the arbitration, and upon the failure of these efforts, the Council proceeded to decide the matter on the merits.

Briefly put, the application under Section 34 of the Arbitration and Conciliation Act, 1996 ("the 1996 Act") has been preferred against an award passed in respect of a claim filed by the respondent in a reference under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 ("the 2006 Act"). The Petitioner submitted that the impugned award is a nullity, since the mandate of the Council as the arbitral tribunal had already terminated when the award was passed, by operation of Section 29-A of the 1996 Act, the provisions of which statute were applicable in terms of Section 18(3) of the 2006 Act. It was further submitted that the Council initiated conciliation amid the arbitration proceedings and, as such, committed a patent illegality in deciding the matter on merits during such conciliation attempts, by construing the said proceedings to be an arbitral proceeding under Section 18(3) of the 2006 Act.

The High Court noted that the timeline stipulated under Section 29A of the Arbitration Act does not apply to an arbitral proceeding under the MSME Act. Rather, the period stipulated under Section 18(5) of the MSME Act is the relevant guiding factor. However, the latter period is directory and not mandatory. Further, unlike Section 29A(1) of the 1996 Act, Section 18(5) of the 2006 Act prescribes a 90-day timeline for arbitral proceedings without imposing a penalty for delay or terminating the Council's mandate, indicating the provision is directory, not mandatory.

The High Court held that a contrary interpretation treating the 90-day period in Section 18(5) of the 2006 Act as mandatory would defeat the very purpose of the Act by allowing substitution of the Facilitation Council or initiation of fresh arbitration under the 1996 Act, undermining the special mechanism designed for MSMEs. Further, not only was ample opportunity given to the petitioner to argue the matter on merits, but the petitioner had availed of such opportunity by arguing the matter on merits as well as on jurisdiction on several dates, covering the salient features of the dispute.

The High Court further observed that the GC-3 Form, being a "No Dues Certificate" under the contract, could only be submitted if the respondent had no outstanding claims. Since the dispute concerns non-payment of legitimate dues, insisting on the GC-3 Form is illogical, as its submission would imply full satisfaction of claims, defeating the respondent's case entirely. Further, once arbitral proceedings commenced under Section 18(3) of the MSME Act, the process could not revert to pre-arbitral conciliation. The Council only explored settlement avenues at the petitioner's request, without halting arbitration.

The High Court further opined that there is nothing in the 2006 Act itself to debar works contracts from being covered by the 2006 Act, including Section 18 therein, provided the dispute relates to an MSME unit and is covered by Section 17 of the said Act. The Court further said that in this case, the arbitral tribunal's refusal to accept a jurisdictional objection under Section 16(2) or (3) of the Arbitration and Conciliation Act, 1996, is not appealable under Section 37(2)(a), as only acceptance of such an objection qualifies for appeal. Unlike Section 105 of the CPC, which applies to civil appeals and allows objections to interlocutory orders in a final appeal, the 1996 Act operates in a separate legal framework and does not permit importing such provisions indirectly to challenge arbitral orders through Section 34.