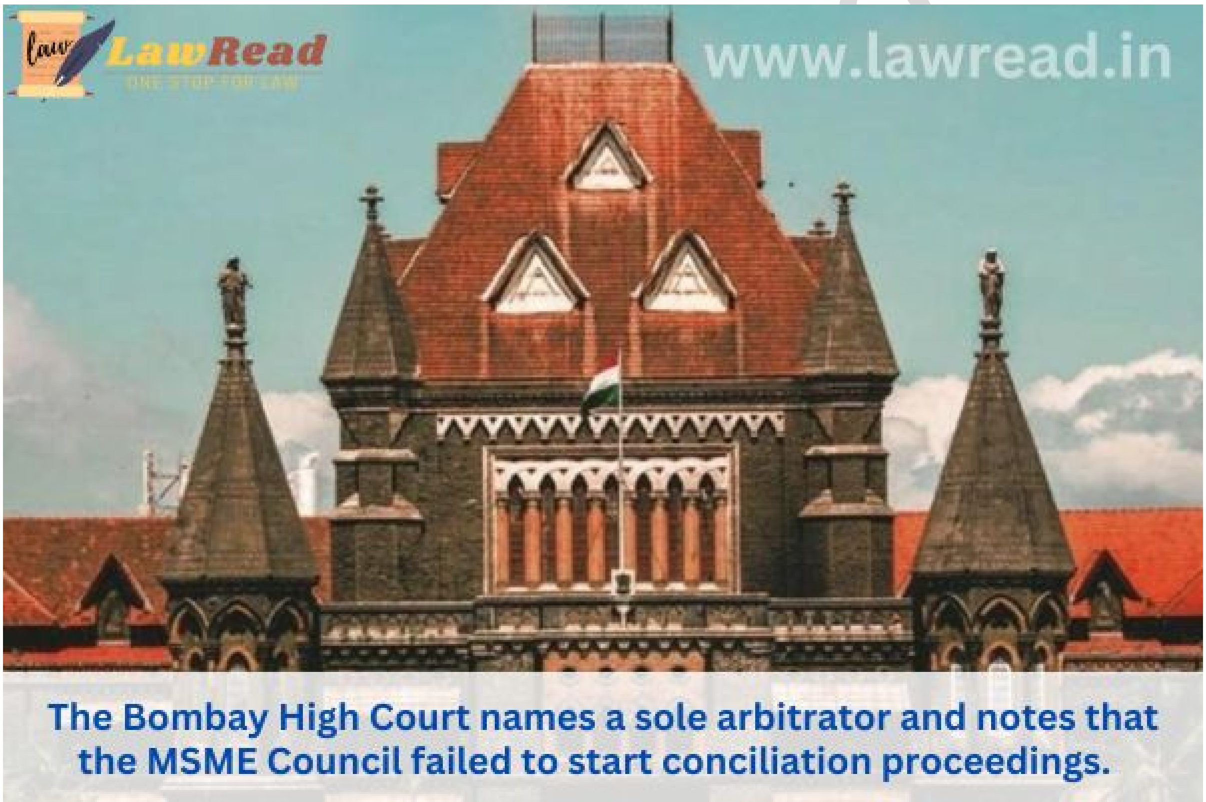
News

The Bombay High Court names a sole arbitrator and notes that the MSME Council failed to start conciliation proceedings.



Because the Respondent, the Micro Small Enterprises Facilitation Council, Nashik, has not started conciliation proceedings, the Petition was brought before the Bombay High Court under Section 11 of the Arbitration and Conciliation Act, 1996 (Arbitration Act).

In a case where the Micro Small Enterprises Facilitation Council, Nashik (MSEFC) had neglected to start conciliation procedures as a prelude to arbitration in accordance with Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006, the Bombay High Court appointed a single arbitrator.

Section 11 of the Arbitration and Conciliation Act, 1996 (Arbitration Act) was used to file the petition before the High Court because the Respondent, the Micro Small Enterprises

Facilitation Council, Nashik, had not started the conciliation process.

"A plain reading of these three provisions, namely, Section 18 of the MSME Act, coupled with Sections 7 and 11 of the Arbitration Act, would make it clear that this Court would have jurisdiction to appoint an arbitrator in the event of a failure by the MSEFC, Nashik," stated the Single Bench of Justice Somasekhar Sundaresan.

The petitioner was represented by advocate Sagar Kasar.

Background Information

The second Respondent had placed a purchase order, which the Petitioner had fulfilled. Invoices were raised and various supplies were made. The Petitioner asserts that the sums due under the invoices have not been paid. As a result, the MSEFC in Nashik was mentioned. According to the petitioner, the MSEFC in Nashik has taken no action. This application was submitted under Section 11 of the Arbitration Act on the grounds that the arbitrator had not been appointed by the arbitral institution.

Reasoning

The Bench held that in the event that the MSEFC, Nashik, failed to select an arbitrator, the High Court would have the authority to do so, citing Section 18 of the MSME Act in conjunction with Sections 7 and 11 of the Arbitration Act. An arbitration agreement is established under Section 7 of the Arbitration Act. An arbitrator must be appointed by an institution (the MSEFC, Nashik) in accordance with Section 18. It stated that "if this is not done, the matter falls under the purview of Section 11 of the Arbitration Act."

Additionally, it was observed that the case had been pending for two years following its filing in this court. "I am confident that this Court's approach was taken only after the MSEFC, Nashik, failed to choose an arbitrator. The Bench stated, "I am satisfied that a case has been made out to directly appoint an arbitrator, particularly since the MSEFC, Nashik has not acted on its statutory mandate of initiating a process for the appointment of an arbitrator," adding that it had not even started statutory mediation prior to arbitration.

Decisions in Microvision Technologies Pvt. Ltd. vs. Union of India (2023) and Vallabh

Corporation vs. SMS India Pvt. Ltd. (2025), where the Section 11 Court appointed an arbitrator under the same circumstances, strengthened the High Court's position.

In order to resolve the disagreements and conflicts between the parties resulting from and related to the disputed agreement, the Bench decided to choose a Sole Arbitrator.

Title of Cause: Micro Small Enterprises Facilitation Council & Anr. v. M B Sugars & Pharmaceuticals Private Limited (Neutral Citation: 2025:BHC-AS:24871)

Advocates Sagar Kasar, Vivekanand Krishnan, Chaitali Bhogle, and Rishabh Tiwari are the petitioners' appearance