LEGAL INSIGHT

The Paradox of Expeditious Justice: Addressing Delays by the Facilitation Council Under the MSMED Act, 2006

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1. Introduction

Micro, Small, and Medium Enterprises (MSMEs) are vital drivers of India's economic growth, yet systemic payment delays frequently threaten their working capital and operational survival. To mitigate this risk, the Micro Small and Medium Enterprises Development (MSMED) Act, 2006 establishes a protective framework. While Sections 15 to 17 enforce strict payment timelines and penal interest, Section 18 provides a statutory mechanism for conciliation and arbitration through the Micro and Small Enterprises Facilitation Council (MSEFC), mandating disposal within ninety days under Section 18(5). However, prolonged procedural inertia by the Council often defeats this legislative intent. This article examines the legal consequences of such institutional inaction and analyses whether parties can invoke Section 11(6) of the Arbitration and Conciliation Act, 1996, alongside the role that constitutional writ remedies under Articles 226 and 227 play in ensuring effective administrative oversight.

2. Analysis

Statutory Framework of Section 18

Section 18 establishes a two-stage mechanism. Under Section 18(1), any party to a dispute concerning an amount due under Section 17 may make a reference to the MSEFC, notwithstanding any other law. Under Section 18(2), the Council must conduct conciliation itself or through an institution, and Sections 65 to 81 of the 1996 Act apply. Under Section 18(3), if conciliation does not succeed and is terminated without settlement, the Council must either take up arbitration itself or refer the dispute to an institution or center providing alternate dispute resolution services. The provisions of the 1996 Act then apply as if the arbitration were in pursuance of an arbitration agreement under Section 7(1). Section 18(4) confers jurisdiction on the Council within whose area the supplier is located, over a buyer located anywhere in India. Section 18(5) requires every reference to be decided within ninety days. Section 24 gives Sections 15 to 23 overriding effect over inconsistent laws, and Section 19 conditions any application to set aside an award on deposit of seventy-five per cent of the awarded amount.

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Research Questions

- How far does the absence of a statutory remedy for Council delay defeat the aim of speedy dispute resolution under the MSMED Act?
- When can a High Court appoint an arbitrator under Section 11(6) if the Council fails to act, and why do courts differ?
- How effective are Articles 226 and 227 in forcing the Council to act, and what limits has the Supreme Court set after an award is passed?

Issues Addressed

The legislative intent of the MSMED Act, 2006, to ensure expedited dispute resolution through the Micro and Small Enterprises Facilitation Council (MSEFC) is severely undermined by institutional inaction and procedural delays. While Section 18(5) mandates a strict ninety-day disposal timeline, the statute suffers from a critical lacuna: it provides no in-built mechanism or statutory remedy against delays caused by the Council itself. Compounding this vacuum, aggrieved parties are frequently left remediless because High Courts decline to entertain applications for the appointment of arbitrators under Section 11 of the Arbitration and Conciliation Act, 1996, treating MSME arbitration as strictly statutory. This leaves litigants heavily dependent on extraordinary constitutional remedies under Article 226, defeating the very purpose of swift commercial justice.

3. When Council Inaction Defeats the Statutory Scheme

Section 18 works in stages—reference, conciliation, and then arbitration. Council inaction can occur at any stage, and the remedy depends on which stage is stalled. Where the Council takes no step at all, or terminates conciliation without taking up arbitration or referring the dispute, the High Court may directly appoint an arbitrator under Section 11(6)(c) of the Arbitration and Conciliation Act, 1996 (*M.B. Sugars & Pharmaceuticals Pvt. Ltd. v. Micro Small Enterprises Facilitation Council & Anr.*, MANU/MH/3512/2025; *M/s Vallabh Corporation v. SMS India Pvt. Ltd.*, MANU/DE/2139/2025). Conversely, where statutory conciliation under Section 18(2) is still pending and has not been terminated, a Section 11 petition is premature (*M/s Jubilant Marketing Pvt. Ltd. v. M/s Robbins Tunneling and Trenchless Technology India Pvt. Ltd.*, MANU/DE/2578/2026). Once arbitration begins, the ninety-day timeline under Section 18(5) is merely directory, meaning delay beyond ninety days does not terminate the Council's mandate; at this stage, the appropriate remedy is a writ of mandamus under Article 226 of the Constitution. Section 11 is therefore not an automatic remedy, and because the MSMED Act attaches no automatic statutory consequence to delay, suppliers must rely on discretionary judicial relief.

4. Judicial Remedies Against Council Delay by the MSEFC

Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act) establishes a statutory mechanism for resolving disputes concerning amounts due to micro and small enterprises through conciliation and arbitration. Section 18(5) further requires that every reference made under the provision be decided within ninety days from the date of the reference. However, delays or inaction on the part of the Micro and Small Enterprises Facilitation Council (MSEFC) may undermine the objective of expeditious dispute resolution. In such circumstances, judicial intervention becomes relevant in examining the availability of remedies against institutional inaction and in ensuring that statutory dispute-resolution mechanisms operate effectively.

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The significance of judicial intervention in tackling institutional apathy is best demonstrated through the chronological interpretation of the Council's statutory role.

1. *Jharkhand Urja Vikas Nigam Ltd. v. State of Rajasthan*, (2021) 19 SCC 220

Background of the case: The appellant (Jharkhand Urja Vikas Nigam Ltd.) entered into a supply contract with a registered enterprise. Following payment disputes, the supplier filed a reference under Section 18(1) of the MSMED Act before the Facilitation Council in Rajasthan. Conciliation notices were issued; however, the appellant failed to appear. Treating non-appearance as a default, the Council unilaterally terminated conciliation and immediately issued a final order directing the appellant to pay the principal amount along with compounding interest under Section 16.

Ruling of the case: The Supreme Court invalidated the Council's order, holding that Section 18 establishes a strict two-stage procedural sequence. Conciliation under Section 18(2) and Arbitration under Section 18(3) are legally distinct phases. The Council cannot conflate both processes into a summary proceeding or pass an award merely because a party defaulted in conciliation. Upon conciliation failure, the Council is statutorily bound to formally terminate conciliation and either initiate arbitration itself under the Arbitration and Conciliation Act, 1996 or refer it to an arbitral institution.

Demonstrates that the Facilitation Council is bound by strict procedural due process. Institutional haste or procedural shortcuts taken to bypass delays cannot substitute lawful arbitration.

2. *Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd. & Anr.*, (2023) 6 SCC 401

Background of the case: A batch of appeals was filed before the Apex Court examining whether a buyer could invoke an independent arbitration agreement executed in a private contract when the supplier is registered under the MSMED Act. The principal matter arose from a reference made by M/s Mahakali Foods Pvt. Ltd. before the MP MSEFC, where the buyer (Gujarat State Civil Supplies Corporation) argued that the independent arbitration clause in their agreement barred the Council's jurisdiction.

Ruling of the case: Writing for the Bench, Justice Bela M. Trivedi delivered a landmark ruling establishing that Chapter V of the MSMED Act is a special legislation containing non-obstante provisions (Sections 18(1) and 18(4)) that override the general provisions of the Arbitration and Conciliation Act, 1996. Once a registered supplier invokes Section 18, the Facilitation Council acquires exclusive statutory jurisdiction, rendering private arbitration clauses inoperative.

3. *M.B. Sugars & Pharmaceutical Pvt. Ltd. v. MSEFC & Anr.*, MANU/MH/3512/2025

Background of the case: The petitioner filed a statutory reference before MSEFC Nashik on 24 April 2023 to recover outstanding dues. Despite the statutory ninety-day disposal mandate under Section 18(5), the Council took no procedural steps and failed to even issue conciliation notices for over fourteen months. Frustrated by total administrative paralysis, the petitioner invoked Section 11(6) of the Arbitration Act before the Bombay High Court.

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Ruling of the case: The High Court held that Section 18 creates a statutory deeming arbitration agreement between the parties. Where the Facilitation Council exhibits total administrative breakdown and abdicates its statutory duty, an aggrieved party cannot be left remediless. The High Court held that threshold administrative paralysis justifies judicial intervention under Section 11(6) to directly appoint a sole arbitrator.

4. *M/s Jubilant Marketing Pvt. Ltd. v. M/s Robbins Tunneling and Trenchless Technology India Pvt. Ltd.*, MANU/DE/2578/2026

> **Background of the case:** The petitioner approached the Delhi High Court under Section 11(6)(c) seeking appointment of an arbitrator due to delay by the MSEFC. However, conciliation proceedings had already commenced before the Council and were actively pending without formal termination under Section 18(2).

Ruling of the case: The Delhi High Court distinguished *M.B. Sugars*, holding that because conciliation was actively underway and had not been formally terminated, the deeming fiction of an arbitration agreement under Section 18(3) had not yet arisen. Section 11 was declared premature and non-maintainable during ongoing conciliation, though the Court issued a writ-like direction ordering the Council to conclude conciliation within four weeks.

5. Conclusion

The MSMED Act, 2006 establishes an important statutory mechanism for protecting micro and small enterprises against delayed payments. However, the effectiveness of this legislative framework depends not merely upon the existence of a dispute-resolution mechanism but also upon its timely and efficient implementation. Section 18(5) prescribes a ninety-day period for deciding references, yet the absence of an express consequence or alternative procedure for institutional inaction creates a significant gap in the statutory framework. The judicial decisions discussed in this article demonstrate that the availability of remedies depends substantially upon the procedural stage of the dispute. While *M.B. Sugars & Pharmaceuticals Pvt. Ltd.* reflects the Bombay High Court's approach of permitting intervention under Section 11(6) where the Council had not initiated conciliation, *Jubilant Marketing Pvt. Ltd.* highlights the importance of the statutory sequence and the formal termination of conciliation before invoking the statutory arbitration mechanism. Consequently, Section 11 cannot be treated as an automatic remedy in every case of delay by the MSEFC. Similarly, constitutional remedies under Article 226 may provide judicial oversight where the Council fails to discharge its statutory responsibilities. Nevertheless, the distinction between challenging an existing arbitral award and seeking directions for the performance of a pending statutory duty must be maintained.

To strengthen the effectiveness of the existing framework, the following measures may be considered:

a. **Statutory Accountability Mechanism:** An express provision should be introduced to address situations where the MSEFC fails to act within the prescribed ninety-day period.

b. **Digital Monitoring and Transparency:** A centralized monitoring mechanism should be developed to track pending references, procedural stages and delays before different facilitation councils.

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c. **Time-Bound Administrative Direction:** Appropriate procedural safeguards should be introduced to ensure that pending references are taken up and progressed without unnecessary administrative delay.

d. **Institutional Strengthening:** Adequate staffing, specialized personnel and improved administrative infrastructure should be provided to Facilitation Councils to reduce pendency and improve efficiency.

The Act cannot succeed through deadlines alone. It needs accountability and clear judicial oversight, so that the mechanism built to protect small enterprises does not become another source of delay.

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