

Misc. Arb (Com) – 14/2025

**Present: Ishani Chakravarty Banerjee (J.O Code.WB00890)
Judge, Commercial Court at Rajarhat,
North 24 Parganas**

CNR: WBNP19-000039-2025

**08
30.08.2025**

Today is fixed for further hearing of the application under Section 151 of the CPC dated 10.06.2025 filed by the respondent.

Both parties file haziras.

The learned Advocate for the respondent appears through V.C.

The learned Advocate for both sides file their written synopsis of oral arguments in respect of the question of extension of the ad-interim order injunction dated 25.04.2025 granted by my learned Predecessor-in-Chair, which is the subject matter of dispute in this application under Section 151 of the CPC.

Even though the contents of the petition under Section 151 dated 10.06.2025 as well as the notes of argument touched upon the merits of the Section 9 application and also some allegation were leveled regarding suppression, the learned Advocate for the respondent primarily argued upon and objected to the extension of the ad-interim order of injunction on the point as to whether the ad-interim order of injunction granted in this case under Section 9 of the Arbitration & Conciliation Act, 1996 could be extended where the petitioner has approached the MSME Council and conciliation are going on.

Briefly stated, it is a contention of the respondent that the ad-interim order of injunction dated 25.04.2025 passed in the Section 9 application in this case cannot be extended as the petitioner has taken recourse to MSME Council and at present the mandatory provision of conciliation as mandated under Section 18(2) of the MSME Act is going on and in terms of Section 18(2) of the MSME Act, it is only in the event of failure of conciliation under Section 18(2) of the MSME Act that the MSME Council could either take up the dispute for arbitration itself or refer the same to any other institution for alternative dispute resolution and it is from this stage i.e. Section 18(3) (upon failure of conciliation) before the MSME Council that the provision of Arbitration & Conciliation would apply.

It is the specific submission of the learned Advocate for the respondent that the MSME Act prohibits a party from resorting to arbitral or judicial proceeding during the stage of conciliation. The Judgement dated 20.05.2025 passed in **Dhananjai Lifestyle Ltd. vs. Sanvie Retail Pvt. Ltd.** of the Hon'ble High Court, Calcutta was referred to in support of his contention.

The learned Advocate for the petitioner on the other hand, submitted that MSME Council is a statutory institutional arbitration forum and there is no bar to proceed under the same even where there exist arbitration clause. The Judgement in **Silpi Industries vs. Kerala State Road Transport Corporation (2021) 9 SCC 727** was referred to in support of his submission that out of the two legislation, the provision of MSME Act, which is a special statute will have an overriding effect over the Arbitration & Conciliation Act, 1996 which is a General Act. The judgement in **Gujarat State Civil Supplies Corporation v. Mahakali Foods Pvt. Ltd. (2022) 2 SCC 516**, was referred to in support of his submission that no party to a dispute would be precluded from making reference to the MSME Conciliation Council though an independent arbitration agreement existed between the parties. **NBCC (India) Ltd. v. State of West Bengal, SCC OnLine SC (2025) and Essar House Pvt. Ltd. v. Arcelor Mittal Nippon Steel India Ltd., (2022) 8 SCC 226** were also referred to.

Considered the application under Section 151 of the Code of Civil Procedure dated 10.06.2025, filed by the respondent seeking non-extension of the *ad-interim injunction* passed under Section 9 of the Arbitration and Conciliation Act, 1996.

The primary contention of the respondent is that, since the petitioner has invoked the jurisdiction of the MSME Council and conciliation proceedings under Section 18(2) of the MSME Act, 2006 are currently ongoing, no judicial or arbitral intervention is permissible at this stage. It is submitted that only upon failure of conciliation and commencement of arbitration under Section 18(3), can any proceeding under the Arbitration and Conciliation Act be entertained.

On the other hand, the petitioner contends that the relief under Section 9 is independent and maintainable even during conciliation, especially when the purpose is to preserve the subject matter and avoid irreparable harm. It is further contended that MSME proceedings do not bar Section 9 jurisdiction, and in fact,

courts have consistently held that Section 9 reliefs are available at the pre-arbitral stage.

Upon perusal of the written arguments and citations, and on careful consideration of the rival submissions, the question which falls for consideration is whether a prior invocation of an application under Section 9 of the A & C Act, 1996 Act by a party precludes it from approaching the MSME Council subsequently for conciliation and, on failure, arbitration. This very point rose for consideration before the Hon'ble High Court, Calcutta in the matter of **Indian Oil Corporation Limited And Anr vs Union Of India And Ors. passed in W.P.O No.1624 of 2023 dated 17.11.2023** and the Hon'ble Justice Sabyasachi Bhattacharyya disposed of the same by observing as follows _

“25. Nothing in Section 18(3) of the MSME Act precludes a party to an arbitration agreement from seeking an interim order under Section 9 of the 1996 Act before the arbitration takes place before the Facilitation Council or seeking enforcement under Section 36 of the 1996 Act after an award is passed by the Council under the MSME Act or preferring challenges under Sections 34 or 37 of the 1997 Act (of course, read in conjunction with Section 19 of the MSME Act which imposes a fetter of deposit of 75 per cent of the awarded amount in case of such a challenge).

26. A prior conciliation effort does not necessarily take away the implicit arbitrability of the dispute, be it under the 1996 Act or the MSME Act. Thus, the remedy of Section 9 of the 1996 Act is available whenever there is an arbitration clause under Section 7 of the said Act, irrespective of where ultimately there is a conciliation between the parties or an arbitration, either under the 1996 Act or the MSME Act.”

It is also apposite to mention herein that the Judgement relied upon by the respondent passed in **Dhananjai Lifestyle Ltd. vs. Sanvie Retail Pvt. Ltd.** dated 20.05.2025 is distinguishable inasmuch as in **Dhananjai Lifestyle Ltd. (supra)**, there was no arbitration agreement between the parties whereas in the case at hand, there was an arbitration clause in the contract between the parties. Therefore, it can be inferred that the Hon'ble High Court in the case of **Dhananjai Lifestyle Ltd. (supra)** dealt with a scenario where the dispute resolution mechanism under the MSME Act was the only statutory recourse

available, and the question of parallel proceedings under the Arbitration and Conciliation Act, 1996 did not arise. As such, the facts being in a different scenario, the ratio of such judgement cannot be said to be applicable in the instant case. In contrast, the judgement passed by Hon'ble Justice Sabyasachi Bhattacharyya in **Indian Oil Corporation Limited And Anr vs Union Of India And Ors. in W.P.O No.1624 of 2023 dated 17.11.2023** answers the moot point of controversy which has arisen in this case at this juncture.

Thus, in the present case, the parties being governed by a valid arbitration agreement, wherein the petitioner has approached this Court under Section 9 of the A&C Act seeking interim relief, whereby the ad-interim injunction was earlier granted by this Court's learned predecessor-in-chair on 25.04.2025, and the same is continuing till date and there being no material change in circumstances, this Court does not find any reason that would justify discontinuation of such protection at this stage. Further, no case of suppression or material concealment is established on record to warrant vacation of the interim order solely on the ground of the petitioner approaching the MSME Facilitation Council and ongoing conciliation.

Hence, it is

O R D E R E D

that the petition under Section 151 of the CPC dated 10.06.2025, filed by the respondent, is hereby **rejected** on contest, without costs, and stands **disposed of** accordingly.

The ad-interim order of injunction earlier granted is hereby **extended until the next date of hearing.**

Fix **02.12.2025** for awaiting result of the conciliation pending before the MSME Council.

Dictated & Corrected by me

Sd/- Ishani Chakravarty Banerjee
Judge
Commercial Court, Rajarhat
North 24 Parganas

Sd/- Ishani Chakravarty Banerjee
Judge
Commercial Court, Rajarhat,
North 24 Parganas