

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE**

**RESERVED ON: 09.07.2026
DELIVERED ON: 30.07.2026**

PRESENT:

THE HON'BLE MR. JUSTICE GAURANG KANTH

**EC-COM 72 OF 2025
IA No. GA-COM 1 OF 2025**

**CE TESTING COMPANY PRIVATE LIMITED
VS
MADHUCON PROJECTS LIMITED AND ANR.**

Appearance: -

**Mr. Shiv Shankar Banerjee, Adv.
Ms. Arijita Ghosh, Adv.
Mr. Siddhartha Chamria, Adv.
Mr. Adhip Narayan Banerjee, Adv.**

..... for the award holder

**Mr. Anubhav Sinha, Adv.
Mr. Shirsho Banerjee, Adv.**

..... for the award-debtor

JUDGMENT

Gaurang Kanth, J. :-

- 1.** The Award Holder has filed the present execution petition seeking enforcement of the Arbitral Award dated 10.11.2020 passed by the West Bengal Micro and Small Scale Enterprises Facilitation Council (Herein after referred as "WBMSE Facilitation Council").
- 2.** The Award Holder is a company engaged in the business of supplying shell and auger equipment and rendering allied services, including geological mapping, seismic refraction survey and drilling of boreholes. The Judgment Debtor No.1, awarded five separate contracts to the Award Holder between the years 2011 and 2012 by issuing Letters of Acceptance/work orders. Two of the said contracts pertained to road

projects and the remaining three related to tunnel works in connection with various railway and highway projects, including the Jiribam–Tipul (Imphal) New Railway Line Project of the N.F. Railway, the four-laning of NH-34 between Barasat and Krishnagar and the four-laning of NH-31 between Rajauli and Bakhtiyarpur in the State of Bihar.

- 3.** It is the case of the Award Holder that the works entrusted under the aforesaid contracts were duly executed and completed to the satisfaction of the Judgment Debtor. Running account bills were raised from time to time in respect of the works executed. According to the Award Holder, although the Judgment Debtor released certain part payments, substantial amounts remained unpaid under the respective contracts, leaving an aggregate outstanding principal sum of Rs.1,11,39,966/-.
- 4.** In view of the failure of the Judgment Debtor to liquidate the outstanding dues, the Award Holder invoked the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 by approaching the WBMSE Facilitation Council. The dispute was first taken up for conciliation and, upon failure thereof, proceeded to arbitration. According to the Award Holder, the Judgment Debtor appeared at the initial sitting before the Council but failed to participate in the subsequent proceedings despite due notice. Consequently, the Council passed an Award dated 10.11.2020 in favour of the Award Holder.
- 5.** It is the further case of the Award Holder that no application for setting aside the Award was filed within the period prescribed under law and, as such, the Award has attained finality and has become enforceable as a decree of the Court.

- 6.** The Award Holder states that on 16.12.2021 it forwarded to the Judgment Debtor a certificate issued by its Chartered Accountant indicating that the total amount payable under the arbitral Award dated 10.11.2020, as on that date, was Rs.4,63,61,459/-, comprising the principal amount of Rs.1,11,39,966/- together with interest amounting to Rs.3,52,21,493/- in terms of the Award. According to the Award Holder, despite receipt of the said communication, the Judgment Debtor neither satisfied the Award nor took any steps towards payment of the decretal dues.
- 7.** In view thereof, the Award Holder preferred the present execution Petition seeking enforcement of the Arbitral Award dated 10.11.2020.
- 8.** Service of the execution petition having been completed, the Award Debtor entered appearance and filed an application being GA No. 1 of 2025 seeking dismissal of the execution petition.
- 9.** The Award Debtor principally contended that the execution petition was not maintainable on the grounds that: (i) this Court lacked territorial jurisdiction, as the Award Debtor had no registered office, assets or business within the territorial jurisdiction of this Court and the works in question were executed outside its jurisdiction; (ii) the purported arbitral award dated 10.11.2020 was not a valid or enforceable award since only an unsigned copy had been communicated to it and no signed copy, as contemplated under Sections 31(1) and 31(5) of the Arbitration and Conciliation Act, 1996, had ever been delivered; (iii) in the absence of delivery of a signed copy of the award, the period of limitation for filing an application under Section 34 of the Act had not commenced and, consequently, the present execution petition under Section 36 of the Act

was premature. On the aforesaid grounds, the Award Debtor prayed for dismissal of the execution petition.

Submissions on behalf of the Award Holder

- 10.** Mr. Shiv Shankar Banerjee, learned Counsel for the Award Holder submits that the Award dated 10.11.2020 was passed by the Arbitral Tribunal constituted by the WBMSE Facilitation Council under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006, and that the general practice followed by the said Council is to retain the original signed award with itself and to furnish only a duly certified copy thereof to the parties. It is submitted that in the instant case as well, the copy of the award supplied to the parties under cover of letter dated 26.11.2021 is a certified copy, each page whereof has been authenticated by Mr. A.K. Ghosh, Deputy Director (SSE), MSME Directorate, Government of West Bengal, and that page 10 of the said award itself reflects that the original award was signed by all the members of the Council. Learned Counsel further submits that mere absence of original signatures on the copy served upon the parties does not render the award invalid or non-est, and that in case of any doubt in this regard, this Court may call for a report from the MSME Facilitation Council to verify the factum of signing of the original award.
- 11.** In support of the above submission, learned Counsel for the Award Holder places reliance upon the judgment of a coordinate Bench of this Court in ***JD Electrical Products Pvt Ltd Vs. Purbachal Udyog***, reported as ***AIR Online 2025 Cal 936***, as also the Division Bench judgment of this Court in ***National Agricultural Cooperative Marketing Federation of India Ltd. Vs. M/s. R. Piyaarelall Import & Export Ltd.***, reported as ***AIR 2016***

Calcutta 160, wherein it has been authoritatively held that a certified photocopy of the original award, bearing the photocopied signatures of the arbitrators and duly authenticated by the institution administering the arbitration, satisfies the requirement of a "signed copy" of the award as contemplated under Section 31(5) of the Arbitration and Conciliation Act, 1996, and that the law does not mandate that every copy furnished to the parties in an institutional arbitration must bear the original signatures of the arbitrators. It is accordingly submitted that the certified copy of the award served upon the Judgment Debtor herein is a valid and binding award, duly delivered in compliance with Section 31(5) of the said Act, and is capable of being executed as a decree of the Court.

12. On the question of territorial jurisdiction, learned Counsel for the Award Holder submits that the place of arbitration was Calcutta, the proceedings having been conducted by the WBMSE Facilitation Council from its office at New Secretariat Building, Kolkata, and that consequently this Hon'ble Court, being the Court within whose jurisdiction the seat/place of arbitration is situated, has jurisdiction to entertain the instant execution application. Reliance in this regard is placed upon the judgment of the Hon'ble Supreme Court in **Sundaram Finance Ltd. Vs. Abdul Samad**, reported as **AIR 2018 SC 965**, as also upon the celebrated judgment of the Constitution Bench in **Bharat Aluminium Co. Vs. Kaiser Aluminium Technical Services Inc.**, reported as **AIR 2012 SC (Supp) 444**, wherein it has been held that the courts having supervisory jurisdiction over the arbitration, being the courts of the seat/place of arbitration, are the appropriate forum for all proceedings arising out of the arbitration agreement, including proceedings for enforcement of the award.

- 13.** In view of the aforesaid, learned Counsel for the Award Holder submits that the objections raised by the Judgment Debtor as to the validity of the award and the jurisdiction of this Court are devoid of merit, that the award dated 10.11.2020 is a valid, binding and executable award, and that this Court has the necessary territorial jurisdiction to entertain and adjudicate the instant execution proceedings.

Submission on behalf of the Award Debtor

- 14.** Learned Counsel, Mr. Anubhav Sinha, appearing for the Judgment Debtor submits that the document supplied to the parties as the purported award dated 10.11.2020 is admittedly an unsigned copy, forwarded under cover of letter dated 26.11.2021. It is submitted that under Section 31(1)(a) read with Section 31(5) of the Arbitration and Conciliation Act, 1996, an arbitral award is required to be made in writing, signed by the arbitrators or the majority thereof, and that a signed copy thereof must be delivered to each party. It is contended that mere certification by an officer of the MSME Directorate cannot be treated as a substitute for the signatures of the Learned Arbitrators themselves. It is submitted that the certification appended by the Directorate, at best, authenticates that a copy corresponds to some original document, but does not and cannot cure the fundamental defect arising from the absence of the arbitrators' signatures on the copy actually served upon the parties. According to the judgment debtor such a certified but unsigned copy does not satisfy the mandatory requirement of Section 31(5) of the said Act. In support of this submission, Learned Counsel for the Judgment Debtor relies upon the judgment of the ***Himachal Pradesh High Court in M/s Sterkam Pharma Pvt. Ltd. Vs. Symbiosis Pharmaceuticals Pvt. Ltd. (CMP No. 274 of 2023)***, as also

upon the judgment of a coordinate Bench of this Court in **Odisha Power Generation Corporation Ltd. Vs. Techniche Consulting Service & Ors.**, reported as **2024 SCC OnLine Cal 10386**.

- 15.** Learned Counsel for the Judgment Debtor further seeks to distinguish the judgments relied upon by Learned Counsel for the Award Holder in **JD Vs. Purbachal Udyog** (*supra*) and **National Agricultural Cooperative Marketing Federation of India Ltd. Vs. R. Piyarelall Import & Export Ltd.** (*supra*), submitting that in both the said cases, the copies of the awards furnished to the parties were certified photocopies bearing the photocopied signatures of the arbitrators, duly certified by the administering institution. It is submitted that it was in that specific factual context that the Courts held such certified photocopies to be "signed copies" within the meaning of Section 31(5) of the Arbitration and Conciliation Act, 1996. According to the learned counsel, in the present case, the copy of the award served upon the Judgment Debtor does not bear even the photocopied signatures of the Arbitrators, and consequently the ratio of the said judgments, being premised on the existence of photocopied signatures on the certified copy, has no application to the facts of the instant case. Learned Counsel accordingly submits that the said judgments are clearly distinguishable and cannot be pressed into service by the Award Holder to contend that a copy wholly bereft of the arbitrators' signatures, whether original or photocopied, satisfies the mandate of Section 31(5) of the said Act.
- 16.** On the question of territorial jurisdiction, Learned Counsel for the Judgment Debtor submits that the cause of action in the present matter did not arise in Calcutta, that no seat or venue of arbitration was ever

fixed by agreement between the parties, and that the mere fact that the WBMSE Facilitation Council happened to hold its sittings in Calcutta is purely fortuitous and cannot, by itself, confer jurisdiction upon this Court. It is further submitted that no assets, movable or immovable, of the Judgment Debtor are situated within the territorial jurisdiction of this Court, and that in the absence of any agreed seat of arbitration or any part of the cause of action having arisen within this jurisdiction, this Court has no territorial jurisdiction to entertain the present execution petition. According to the Award Debtor, this Court is not the 'Court' within the meaning of Section 2 (1)(e) of the Arbitration & Conciliation Act, 1996. In support of this contention, reliance is placed upon the judgment of the Hon'ble Supreme Court in **Dakshin Haryana Bijli Vitran Nigam Ltd. Vs. Navigant Technologies Pvt. Ltd.**, reported as **2021 (7) SCC 657**, as also upon the judgment of the coordinate Bench of this Court in **Odisha Power Generation Corporation Ltd. (supra)**, wherein it has been held that the mere location where the WBMSE Facilitation Council conducts its proceedings does not, by itself, confer jurisdiction upon the Court at that place, particularly where the arbitration agreement between the parties contemplates a different seat or venue, and that the statutory arbitration under the MSMED Act does not override or obliterate the independent arbitration agreement between the parties.

- 17.** Learned Counsel for the Judgment Debtor further places reliance upon the WBMSE Facilitation Council Rules, 2016, and in particular Rules 7, 8, 9 and 16 thereof, to contend that the arbitral proceedings before the Council cannot be said to have culminated in a final and binding award unless and until a duly signed copy of the award is served upon the parties in terms of

the said Rules. It is submitted that in the present case, since no such signed copy has ever been served upon the Judgment Debtor, the arbitral proceedings must be treated as not having terminated within the meaning of Section 32 of the Arbitration and Conciliation Act, 1996.

- 18.** In view of the aforesaid, it is submitted on behalf of the Judgment Debtor that since no valid signed copy of the award has been served upon the parties, the period of limitation for filing an application under Section 34 of the Arbitration and Conciliation Act, 1996 has neither commenced nor expired, and consequently the present execution petition, filed under Section 36 of the said Act, is wholly premature and not maintainable. Learned Counsel accordingly submits that the instant execution petition, being premature both on the ground of want of a valid and duly signed award and on the ground of lack of territorial jurisdiction of this Court, is liable to be dismissed.

Legal Analysis

- 19.** This Court has heard the arguments advanced by the Learned Counsel for both the parties and has examined the materials and documents placed on record.
- 20.** The moot question arising from the present matter is whether an award issued from the office of the WBMSE Facilitation Council, which does not bear the signatures of the Arbitrators constituting the said Council, is enforceable at this stage.
- 21.** Section 31(1) of the Arbitration and Conciliation Act, 1996 mandates that an arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal. Sub-section (2) thereof permits, in proceedings with more than one arbitrator, the signatures of the majority

of the members to suffice, provided the reason for any omitted signature is stated. Sub-section (5) further mandates that after the arbitral award is made, a signed copy thereof shall be delivered to each party. The Hon'ble Supreme Court, in ***Union of India Vs. Tecco Trichy Engineers & Contractors***, reported as **(2005) 4 SCC 239**, has held that the delivery of an award under Section 31(5) is not a mere formality but a matter of substance, since it is only upon such delivery that the stage of termination of arbitral proceedings under Section 32 of the said Act arises, and several periods of limitation, including that for challenging the award under Section 34(3), are set in motion by such delivery. This position was reiterated by the Hon'ble Supreme Court in State of ***Maharashtra Vs. ARK Builders***, reported as **(2011) 4 SCC 616**, and again in ***Dakshin Haryana Bijli Vitran Nigam Ltd (Supra)***, wherein it was held that the period of limitation for challenging an Award under Section 34 can only commence from the date of receipt of a signed copy of the Award, and not from the receipt of an unsigned or draft award.

- 22.** It is true that in ***National Agricultural Cooperative Marketing Federation of India Ltd. (Supra)***, a Division Bench of this Court held that a certified photocopy of the original award, bearing the photocopied signatures of the Arbitrators and duly authenticated by the administering institution, would satisfy the requirement of a "signed copy" under Section 31(5) of the said Act. The rationale of that judgment, however, rests entirely on the fact that the signatures of the arbitrators, though photocopied, were physically reproduced and visible on the face of the copy served upon the parties. Upon perusal of the award dated 10.11.2020 annexed to the instant execution petition, this Court finds that the last

page thereof merely records the names of the Chairman and four Members of the WBMSE Facilitation Council against the notation "Sd/-" which is only a typed representation denoting that a signature exists on the original, but does not reproduce the actual signatures of the Arbitrators. What has been certified by Mr. A.K. Ghosh, Deputy Director (SSE), MSME Directorate, Government of West Bengal, is therefore not a photocopy carrying the signatures themselves, but a typed/printed document bearing only the certifying officer's own attestation that the original was signed. This distinguishes the present case squarely from **National Agricultural Cooperative Marketing Federation of India Ltd.** (*Supra*), where the photocopied signatures of the arbitrators were themselves visible and certified as a true reproduction thereof. A certificate by a third party, however authorised, that an unseen original was signed cannot be equated with a copy that itself bears the signatures, since the very object of Section 31(5), as explained in **Tecco Trichy Engineers** (*supra*), is to permit each party to satisfy itself, from the document delivered to it, that the award emanates validly from the Tribunal.

- 23.** WBMSE Facilitation Council Rules, 2016, particularly Rules 7, 8, 9 and 16, which govern the conduct of conciliation and arbitration proceedings before the Council, do not dispense with the requirement of Section 31 of the Arbitration and Conciliation Act, 1996. On the contrary, arbitration under Section 18(3) of the MSMED Act, 2006 is expressly required to be conducted as if it were an arbitration in pursuance of an arbitration agreement under Section 7(1) of the said 1996 Act, and the provisions of the 1996 Act apply thereto as they would to any other arbitration. There is nothing in the said Rules of 2016 which permits substitution of the

mandatory signatures of the Arbitrators by administrative certification alone.

- 24.** Section 32(1) of the Arbitration and Conciliation Act, 1996 provides that arbitral proceedings stand terminated by the final arbitral award. Where the mandatory requirement of Section 31(5) has not been complied with by delivery of a signed copy of the award. Consequently, it cannot be said that the arbitral proceedings have terminated in the eye of law. Section 36(1) of the Arbitration and Conciliation Act, 1996 permits enforcement of an award only after the time for making an application to set aside the award under Section 34 has expired. Since that time has, on the facts before this Court, not even commenced to run, the award dated 10.11.2020 is not, at this stage, in a form capable of being enforced as a decree of the Court, and the instant execution petition is premature.
- 25.** Since the execution petition itself is found to be premature for want of a validly delivered signed copy of the award, this Court does not consider it necessary or appropriate, at the present stage, to examine or adjudicate upon the question of territorial jurisdiction of this Court raised by the Judgment Debtor. That question would arise for consideration only if and when the award, upon due compliance with Section 31(5) of the Arbitration and Conciliation Act, 1996, attains the character of a valid and enforceable award, and the same shall be kept open to be agitated by the parties at the appropriate stage.
- 26.** In view of the foregoing, this Court is not inclined, at this stage, to treat the award dated 10.11.2020 as a validly delivered award within the meaning of Section 31(5) of the Arbitration and Conciliation Act, 1996, and consequently the instant execution petition, being premature, cannot

proceed further in its present form. Liberty is granted to both the parties to approach the WBMSE Facilitation Council for obtaining a duly signed copy of the award dated 10.11.2020, or a copy bearing reproduction of the signatures of the Arbitrators duly certified as such, in compliance with Section 31(5) of the Arbitration and Conciliation Act, 1996.

- 27.** Upon such signed copy being obtained and served in accordance with law, it shall be open to both parties to avail themselves of their respective legal remedies in accordance with law.
- 28.** The question of territorial jurisdiction of this Court, raised by the Judgment Debtor, is kept open and shall be considered, if necessary, only at the stage when the award attains the character of a valid and enforceable award.
- 29.** Accordingly, the present petition is dismissed as premature at this stage, with the aforesaid liberty.
- 30.** Pending applications, if any, stand dismissed.

(GAURANG KANTH, J.)