

**IN THE HON'BLE HIGH COURT OF J&K AND DAKH
AT SRINAGAR**

WP(C) 1040 /2024

Reserved on: 05.06.2025

Pronounced on: 18.07.2025

- 1) UT of Jammu & Kashmir through,
Vice Chairman Jammu and Kashmir
Lake Conservation and Management Authority Srinagar.
- 2) Executive Engineer, Lake Division NO.1st and 2nd Miskeen
Bagh Srinagar.

...Appellant(s)/Petitioner(s)

Through: Mr. Ilyas Nazir Laway, GA

Vs.

1. The Micro & Small Enterprises Facilitation
Council, Kashmir Division, Srinagar.
2. M/S JK Technos Industrial Complex Khunmoh,
Through its Representative Mr. Shabir Ahmad
Bhat S/O Mohammad Abdullah Bhat R/O B.K
Pora Nowgam, Srinagar.

...Respondent(s)

Through: Mr. Arif Sikander Mir, Advocate
Mr. Mehraj-ud-Din Bhat, Advocate

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.

JUDGMENT

- 1) This Writ Petition under Article 226 of the Constitution of India has been filed by the Petitioners, the Union Territory of Jammu & Kashmir and the Executive Engineer, Lake Division, challenging the arbitral award dated 16.01.2023 passed by the Micro and Small Enterprises Facilitation Council (MSEFC), Kashmir Division, under Section 18(3) of the Micro, Small and Medium Enterprises

Development Act, 2006 (MSMED Act). The award was passed in favor of Respondent No. 2, M/s JK Technos, directing the Petitioners to pay Rs.58,56,823/- along with compound interest at 19.50% per annum from 18.06.2019 until payment. The Petitioners seek to set aside the said award, while Respondent No. 2 has raised preliminary objections regarding the maintainability of the Writ Petition.

2) **Recital of Facts:**

On 30.03.2018 and 05.10.2018, the Executive Engineer, Lake Division, J&K Lakes and Waterways Development Authority (LAWDA), issued work orders to the Divisional Manager, SICOP, for the supply of 5,000 and 650 RCC spun pipes, respectively. These orders were subsequently assigned to Respondent No. 2, M/s JK Technos, vide supply orders dated 03.05.2018 and 09.10.2018.

- 3) Respondent No. 2 supplied the RCC spun pipes as per the work orders and raised bills for payment. However, the Petitioners failed to make the payments.
- 4) On 04.12.2019, the Deputy General Manager, SICOP, requested the Executive Engineer to transfer Rs.61,37,430/- to J&K Small Scale Industries Development Corporation Limited for onward release to Respondent No. 2, but the payment remained outstanding.
- 5) Respondent No. 2 approached the MSEFC under Section 18(1) of the MSMED Act, seeking redressal for delayed payments. The MSEFC issued a notice to the Petitioners on 05.06.2021, advising them to clear the dues within 15 days, failing which the matter would proceed to conciliation and arbitration.

- 6) The Petitioners did not participate in the conciliation proceedings under Section 18(2), leading the MSEFC to initiate arbitration proceedings under Section 18(3). On 16.01.2023, the MSEFC passed an arbitral award in favor of Respondent No. 2.
- 7) The Petitioners did not challenge the award within the statutory period under Section 34 of the Arbitration and Conciliation Act, 1996. Instead, Respondent No. 2 filed an execution petition before the Additional District Judge (Bank Cases), Srinagar, a designated commercial court. The Petitioners deposited Rs.1,09,34,514.96/- before the executing court, of which Rs.76,17,037.79/- was released to Respondent No. 2.
- 8) On 03.06.2024, approximately 18 months after the award, the Petitioners filed the present Writ Petition, relying on a judgment of this Court in U.T. of J&K & Ors. v. Alihak Electric Industries (14.12.2023), which set aside an award under Section 18(3) of the MSMED Act. This Court stayed the impugned award vide order dated 20.05.2024.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

- 9) Mr. Ilyas Nazir Laway, Learned GA appearing for the petitioners submitted that the Secretary, Micro and Small Enterprises Facilitation Council (MSEFC), while passing the impugned Award, has acted wholly without jurisdiction, inasmuch as the mandatory provisions of Section 18 of the MSMED Act were not complied with. In particular, no effective conciliation under Section 18 (2) of the said Act, was conducted prior to adjudication.

- 10) It is further contended that the award has been rendered in breach of the principles of *audi alteram partem*, as no proper notice of proceedings was served upon the petitioner No.2, who was neither impleaded as a party in the original application nor afforded any meaningful opportunity to contest the claim.
- 11) It has been urged that no direct buyer-supplier relationship existed inter-se between the petitioners and respondent No.2, the supplies in question having been arranged through SICOP, a Government agency. Consequently, it is argued that the provisions of the MSMED Act of 2006, were not attracted to the transactions in question which are inter-se between govt. Departments /organizations.
- 12) Learned counsel for the petitioners further submits that the Council failed to frame any issues for adjudication and did not permit the parties to lead evidence in support of their respective pleas, rendering the Award perverse and unsustainable in law.
- 13) The petitioners further assert that the availability of an alternative statutory remedy does not constitute an absolute bar to the exercise of writ jurisdiction by this Court, particularly in cases, where the action impugned is shown to be in excess of jurisdiction or vitiated by patent illegality.
- 14) It is lastly contended that the impugned Award has been passed with malice and with a view to confer undue advantage upon respondent No.2, thereby warranting intervention by this Court to prevent manifest failure of justice.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

- 15) Per contra, learned counsel Mr. Arif Sikander Mir, appearing for the respondents submitted that the petitioners have consciously bypassed the statutory remedy available under Section 34 of the Arbitration and Conciliation Act, 1996, read with Section 19 of the MSMED Act of 2006, which requires an aggrieved party to deposit 75% of the award amount as a condition precedent for maintainability of such proceedings. It is urged that the petitioners have approached this Court solely to evade such statutory compliance.
- 16) Further it is contended that the Micro and Small Enterprises Facilitation Council (MSEFC) scrupulously followed the procedure prescribed under Section 18 of the Micro Small Medium Enterprises Development (MSMED) Act. The record reveals that notices for conciliation were issued to the petitioners on 05.06.2021, with further directions for amicable resolution of the dispute. Multiple meetings were convened, including on 24.01.2022 and 20.12.2022. Despite being granted repeated opportunities, the petitioners failed to appear and contest the proceedings.
- 17) Mr. Arif Sikander Mir, Learned counsel for the respondents submit that petitioner No.2 was at all material times aware of the pendency of proceedings before the Council and was duly served with notices and communications. The plea of lack of notice, it is argued, is wholly untenable and is advanced as a turnabout.
- 18) It is further contended that the documents placed on record, including supply orders and invoices, establish beyond doubt that the supplies were affected by respondent No.2 to the petitioners, thereby

constituting a buyer-supplier relationship within the meaning of the MSMED Act.

- 19) Learned counsel submits that the Award is supported by sufficient documentary material, including invoices, delivery challans and correspondence, which were duly considered by the MSEFC while adjudicating the claim. It is further submitted that mere absence of oral evidence does not itself vitiate the award, particularly when the documents placed on record clearly support the respondents claim.
- 20) The learned counsel for the respondents vehemently denies any suggestion of malice or bias. It is urged that the Award has been passed in a fair and transparent manner, after affording adequate opportunity to the parties to resolve the dispute.
- 21) With a view to advance his arguments Mr. Arif Sikander Mir, learned counsel appearing on behalf of the respondents submits that the conduct of the petitioners disentitles them to any discretionary relief from this Hon'ble Court. The petitioners voluntarily appeared before the executing court and, after due calculation of interest in terms of the award, deposited a sum of Rs.1,09,34,514.96/- before the executing court. It is a matter of record that the petitioners, without any reservation, stated before the executing court that they had no objection to the release of Rs.73,16,146/- from their account in favour of the respondents. Pursuant to directions of the executing court, an additional amount of Rs.33,17,476.21/- was deposited in the account of the court, and further, an amount of Rs.76,17,037.79/- stood released in favour of Respondent No.2.

- 22) Learned Counsel for respondents further submits that soon thereafter, this Court, vide judgment dated 14.12.2023 passed in case **titled Union Territory of J&K & Ors. vs. Aibak Electric Industries**, set aside an award rendered under Section 18(3) of the MSMED Act. The petitioners, having become aware of the said decision, developed an afterthought and, nearly eighteen months after the passing of the impugned award dated 16.01.2023, have chosen to institute the present writ petition. The said writ petition was filed on 03.06.2024, evidently as an attempt to reopen the proceedings and avoid the consequences of their prior conduct before the executing court.
- 23) It is further submitted that the petitioners cannot be permitted to approbate and reprobate at their convenience, having already participated in the execution proceedings and facilitated partial satisfaction of the award. Such conduct clearly demonstrates acquiescence to the award and renders the present challenge wholly unsustainable in law as well as in equity.
- 24) Lastly, it is submitted that the writ petition is not maintainable in law, the petitioners having failed to exhaust the efficacious statutory remedies available to them. Reliance is placed upon the clear cut stipulations contained in Section 19 of the MSMED Act, mandating pre-deposit of 75% of the awarded amount, and it is settled law that writ jurisdiction is not intended to supplant the mechanism expressly provided by statute.

LEGAL ANALYSIS.

25) Heard learned counsel for the parties at length and perused the material on record, the following issues arise for determination:

- i) *Whether the present writ petition under Article 226 of the Constitution of India is maintainable in view of the availability of an alternative statutory remedy under Section 34 of the Arbitration and Conciliation Act, 1996 read with Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006, and in the absence of any exceptional circumstances warranting exercise of writ jurisdiction?*
- ii) *Whether the writ petition is liable to be dismissed on the ground that it has been filed beyond the limitation prescribed for challenging an arbitral award under Section 34(3) of the Arbitration and Conciliation Act, 1996?*
- iii) *Whether the petitioners have consciously sought to bypass the mandatory requirements of Section 19 of the MSMED Act, including the statutory pre-deposit of 75% of the awarded amount, by invoking the writ jurisdiction of this Court in lieu of availing the remedy under Section 34 of the Arbitration and Conciliation Act, 1996?*
- iv) *Whether the impugned Award passed by the Micro and Small Enterprises Facilitation Council is vitiated for want of jurisdiction on the ground that effective conciliation under sub-section (2) of Section 18 of the MSMED Act was not conducted prior to adjudication?*
- v) *Whether, notwithstanding the pendency of a reference before a larger Bench of the Hon'ble Supreme Court in M/s Tamil Nadu Cements Corporation Ltd. v. Micro and Small Enterprises Facilitation Council, the present writ petition filed under Article 226 of the Constitution of India challenging an award passed by the Facilitation Council under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006 is maintainable in view of the law laid down by the Hon'ble Supreme Court in Indian Glycols Ltd. v. Micro and Small Enterprises Facilitation Council and the consistent view taken by coordinate Benches of this Court?*
- vi) *Whether, after having admitted the liability before the executing court in terms of the award and having deposited the award amount in execution proceedings, whether the petitioners are justified in invoking writ jurisdiction under 226 of the constitution to challenge the award that too after an unexplained delay of 18 months;?*

26) This Court now proceeds to examine the issues framed above. Each issue is considered separately, keeping in view the submissions made

by the parties, the documents placed on record, and the settled position of law.

Issue no.(i)

Whether the present writ petition under Article 226 of the Constitution of India is maintainable in view of the availability of an alternative statutory remedy under Section 34 of the Arbitration and Conciliation Act, 1996 read with Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006, and in the absence of any exceptional circumstances warranting exercise of writ jurisdiction?

- 27) At the outset, it is necessary to observe that the MSMED Act, 2006, in conjunction with the Arbitration and Conciliation Act, 1996, establishes a comprehensive mechanism for resolution of disputes arising between a supplier and buyer. Under Section 18(3) of the MSMED Act, the Facilitation Council is vested with powers to act as an arbitral tribunal, and any award rendered there under is deemed to be an award under the Arbitration and Conciliation Act.
- 28) Section 34 of the Arbitration and Conciliation Act 1996, provides an express statutory remedy of filing an application for setting aside the arbitral award within the prescribed limitation period. Additionally, Section 19 of the MSMED Act mandates a pre-deposit of 75% of the awarded amount as a precondition to the maintainability of such a challenge.
- 29) It is an established principle that the existence of an efficacious alternative statutory remedy ordinarily operates as a bar to the maintainability of a writ petition under article 226 of the constitution.

The Hon'ble Supreme Court, in a catena of decisions, has consistently held that the rule of alternative remedy is a rule of discretion and not one of compulsion. However, the exercise of writ jurisdiction in contractual or arbitral matters is to be sparingly invoked and only in exceptional circumstances demonstrating:(i) lack of jurisdiction;(ii) violation of principles of natural justice; or(iii) manifest arbitrariness.

- 30) Keeping in view the aforesaid consideration, the Hon'ble Supreme Court in case titled **Assistant Collector of Central Excise v. Dunlop India Ltd.**, (1985) 1 SCC 260, held as follows:

“Article 226 is not meant to short circuit of circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Art. 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Art. 226 of the Constitution are filed solely for the purpose of obtaining interim orders and there after prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged”.

- 31) Similarly, in **Union of India v Satyawati Tondon**, (2010) 8 SCC 110, the Hon'ble Supreme Court observed:

“It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition

filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.”

- 32) The consistent view of the Hon’ble Supreme Court in **Union of India v. Satyawati Tondon, (2010) 8 SCC 110**, and **Assistant Collector of Central Excise v. Dunlop India Ltd., (1985) 1 SCC 260**, further reinforces the principle that where a statute provides for a complete and efficacious alternative remedy, recourse to the extraordinary jurisdiction under Article 226 of the Constitution ought not to be entertained, save in rare and exceptional circumstances such as patent lack of jurisdiction, manifest perversity, or gross violation of the principles of natural justice.
- 33) The coordinate Benches of this Court, in **Union Territory of J&K v. M/s JTL Infra Ltd, decided on 21 April, 2025** and **Union Territory of J&K v. M/s Gulati Metals and Alloys, reported as JKJ ONLINE 88727** have also adopted the same interpretation and categorically held that writ petitions challenging awards under Section 18(3) are not maintainable in law, having regard to the binding pronouncements of the Hon’ble Supreme Court.
- 34) This Court is further of the opinion that the judgment rendered in **UT of J&K v. Aibak Electric Industries reported as 2024(4)JKJHC 331** is factually distinguishable. The said decision arose in the context of a settlement order under Section 18(2) of the MSMED Act, which was challenged on the ground that the petitioners had not participated in the settlement process, and no arbitral proceedings

under Section 18(3) had been initiated therein. In the present case, however, an arbitral award has been passed after completion of proceedings under Section 18(3), and the statutory remedy under Section 34 is available to the petitioners.

- 35) This Court is of the considered view that the statutory framework under the Micro, Small and Medium Enterprises Development Act, 2006, read in conjunction with the Arbitration and Conciliation Act, 1996, constitutes a self-contained mechanism for resolution of disputes and for challenging an award rendered by the Facilitation Council. The remedy so provided is not merely adequate but efficacious in all respects, subject to the conditions prescribed therein. The attempt of the petitioner to invoke the writ jurisdiction of this Court, without exhausting the statutory remedy available under law and without demonstrating any exceptional circumstance such as inherent lack of jurisdiction, violation of the principles of natural justice, or manifest perversity, is not liable to be entertained. Entertaining such a petition would result in circumvention of the statutory scheme and render the mandatory preconditions stipulated therein otiose. This issue is decided accordingly in favour of the respondents.

- 36) **ISSUE ii)**

Whether the writ petition is liable to be dismissed on the ground that it has been filed beyond the limitation prescribed for challenging an arbitral award under Section 34(3) of the Arbitration and Conciliation Act, 1996?

Upon careful examination of the record and the submissions advanced by learned counsel for the parties, this court finds that the challenge raised by the petitioners is manifestly barred by limitation. Section 34(3) of the Arbitration and Conciliation Act, 1996 prescribes as under:

“An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award... Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months, it may entertain the application within a further period of thirty days, but not thereafter.”

37) The statutory limitation thus comprises as under:

- **Three months (90 days) from the date of receipt of the award;**
- **An additional period of 30 days, if sufficient cause for delay is established, and**
- **No extension beyond 120 days is permissible under any circumstance.**

38) Section 18 read with Section 19 of MSME Act read with Section 34 of the Arbitration and Conciliation Act, 1996, provides a six-month period in the UT of J&K to challenge an arbitral award. The impugned award was passed on 16.01.2023, and the present Writ Petition was filed on 03.06.2024, well beyond the statutory period. The Hon'ble Supreme Court in *Oil and Natural Gas Corporation Ltd. v. Gujarat Energy Transmission Corporation Limited and Assistant Commissioner (CT) LTU, Kakinada v. M/s Glaxo Smith Kline Consumer Health Care Limited* reported as 2020 9 SCC 172

has held that a Writ Petition under Article 226 cannot be entertained beyond the statutory limitation period for challenging an order, as it would defeat the legislative intent behind the prescribed remedy and would render the legislative scheme and intention behind the stated provision superfluous. Also, the Petitioners have not demonstrated any exceptional circumstances, such as a violation of fundamental rights, principles of natural justice, or lack of jurisdiction, to justify bypassing the statutory remedy. Even in such cases, the Writ Petition must be filed within the statutory limitation period. The reliance on Aibak Electric Industries does not assist the Petitioners, as it was decided on different facts and did not address the limitation issue. Accordingly, the Writ Petition is barred by limitation.

39) Here, the petitioners waited approximately eighteen months to approach this Court. No explanation for the delay has been offered. Such gross delay cannot be condoned, nor can the Court be called upon to exercise discretion in disregard of statutory timelines. Thus, the writ petition is barred by limitation and this issue is decided accordingly in favour of the respondents and against the petitioners.

40) **Issue no.(iii)**

Whether the petitioners have consciously sought to bypass the mandatory requirements of Section 19 of the MSMED Act, including the statutory pre-deposit of 75% of the awarded amount, by invoking the writ jurisdiction of this Court in lieu of availing the remedy under Section 34 of the Arbitration and Conciliation Act, 1996?

Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 reads as under:

“No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council shall be entertained by any court unless the appellant has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court.”

30. It is not disputed that the impugned award was rendered by the MSEFC under Section 18(3). The statutory framework thus provides:

- *The award is deemed to be an arbitral award under the Arbitration and Conciliation Act, 1996.*
- *Any challenge must be filed under Section 34 of the said Act.*
- *Section 19 imposes a mandatory pre-deposit of 75% before such challenge is entertained.*

41) It is not disputed that the impugned award was rendered by the MSEFC under Section 18(3). The statutory framework thus provides:

- The award is deemed to be an arbitral award under the Arbitration and Conciliation Act, 1996.
- Any challenge must be filed under Section 34 of the said Act.
- Section 19 imposes a mandatory pre-deposit of 75% before such challenge is entertained.

42) The record indicates that the petitioners have neither filed any application under Section 34 nor made any pre-deposit of the award amount. Instead, they have invoked the extraordinary writ jurisdiction under Article 226 of the Constitution of India.

43) The Hon’ble Supreme Court in ***Tirupati Steels v. Shubh Industrial Component*, (2022) 7 SCC 429** held as under:

On a plain/fair reading of Section 19 of the MSME Act, 2006, reproduced hereinabove, at the time/before entertaining the application for setting aside the award made under Section 34 of the Arbitration and Conciliation Act, the appellant-applicant has to deposit 75% of the amount in terms of the award as a pre-deposit. The requirement of deposit of 75% of the amount in terms of the award as a pre-deposit is mandatory.

- 44) Further, it was held by Delhi High Court in the case titled, **Omaxe Ltd v. Micro and Small Enterprises Facilitation Council** reported as 2024 Live Law (Del) 1297 that:

“Section 34 of the Arbitration Act, provided they fall within its permissible parameters. Invoking the writ jurisdiction of this Court to challenge an arbitral award circumvents the specific statutory mechanism provided for such disputes. Moreover, the Supreme Court and various High Courts have consistently held that when a statutory remedy is available, especially one as efficacious as that under Section 34, writ petition should not ordinarily be entertained.”

- 45) Similarly, in **M/s Merrito Polymers India Private Ltd. v. State of Telangana & Others**, decided on 14 October 2024, The Hon’ble Telangana High Court has observed as under:

“Section 19 was introduced as a measure of security for enterprises for whom a special provision is made in the MSMED Act by the Parliament. In view of the provisions of Section 18(4), the appellant had a remedy under Section 34 of the 1996 Act to challenge the Award which it failed to pursue. Apparently, the obligation of depositing seventy-five per cent of decretal amount under the statute was sought to be obviated by taking recourse to the

jurisdiction of this Court under Article 226 of the Constitution, which is impermissible. This Court therefore, is of the view that entertaining a petition under Article 226, in these circumstances, would defeat the object and purpose of the special enactment which has been legislated upon by the Parliament.”

- 46) Therefore, the petitioners have not pleaded any circumstances to establish that the award suffers from patent illegality or Jurisdictional defect or there has been manifest injustice of such degree as to warrant writ interference without pre-deposit.
- 47) Rather, than invoking the remedy available under Section 34 of arbitration act, the petitioners have attempted to achieve the same objective by filling writ petition without complying statutory obligation of depositing 75% of the award amount. This conduct amounts to a deliberate attempt to **bypass the statutory framework**.
- 48) In light of the aforesaid discussion, this Court is of the considered opinion that the writ petition is an attempt on part of the petitioners to circumvent the mandatory pre-deposit contemplated under Section 19 of the MSMED Act. Such an approach is impermissible in law and warrants dismissal of the writ petition on this ground alone. This issue is answered, accordingly.
- 49) **Issue no.(iv)**

Whether the impugned Award passed by the Micro and Small Enterprises Facilitation Council is vitiated for want of jurisdiction on the ground that effective conciliation under sub-section (2) of Section 18 of the MSMED Act was not conducted prior to adjudication?

- 50) Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 delineates the mechanism for resolution of disputes between a supplier and a buyer. Sub-section (2) mandates that the Council shall, either itself or through any institution or centre providing alternate dispute resolution services, conduct conciliation in accordance with Section 65 to 81 of the Arbitration and Conciliation Act, 1996, and if the conciliation fails, proceed to arbitrate the dispute.
- 51) The principal contention advanced on behalf of the petitioners is that no “effective” conciliation was conducted before the Council proceeded to adjudicate the claim, and hence the award is a nullity.
- 52) The record has been perused by this Court meticulously. The record reveals that notices for conciliation were admittedly issued to the petitioners on 05.06.2021. Further, the record reveals that meetings were convened on 24.01.2022 and 20.12.2022, where attempts were made to amicably resolve the dispute. The minutes of the meetings indicate that despite such opportunities, the petitioners failed to appear and did not show any willingness to participate in the process of conciliation.
- 53) In the present case, the petitioners were duly served with notices, meetings were scheduled, and they chose not to participate. A party cannot, by deliberate abstention, frustrate the process of conciliation and later claim that the award is vitiated for want of jurisdiction. The settled position is that failure to participate will not render the subsequent adjudication invalid.

54) Thus in the light of what has been discussed hereinabove, this court holds that the effective conciliation was done in tune with the spirit and mandate of the MSMED Act prior to passing of the award. Thus, the challenge thrown by the petitioners to the impugned award is ill founded. The aforesaid issue is decided accordingly.

55) **Issue No(v)**

Whether, notwithstanding the pendency of a reference before a larger Bench of the Hon'ble Supreme Court in M/s Tamil Nadu Cements Corporation Ltd. v. Micro and Small Enterprises Facilitation Council, the present writ petition filed under Article 226 of the Constitution of India challenging an award passed by the Facilitation Council under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006 is maintainable in view of the law laid down by the Hon'ble Supreme Court in Indian Glycols Ltd. v. Micro and Small Enterprises Facilitation Council and the consistent view taken by coordinate Benches of this Court?

Upon meticulous consideration of the pleadings, the submissions advanced by learned counsel for the parties, and the statutory framework governing the field. It is the settled position in law that a mere reference to a Larger Bench of the Hon'ble Supreme Court does not ipso facto suspend the operation of the law as it currently stands. In the present case, it was brought to the notice of this Court that in *M/s Tamil Nadu Cements Corporation Ltd. vs. M/s Small Enterprise Facilitation Council & Anr.*, the Hon'ble Supreme Court has referred the issue of maintainability of a petition under Article 226 of the Constitution of India, challenging an award

passed under Section 18 read with Section 19 of the MSMED Act, 2006, to a Larger Bench. However, the reference is still pending adjudication. The pendency of such a reference, however, does not preclude High Courts from applying the prevailing law as declared in authoritative pronouncements. Same has been reiterated in **Union Territory of Ladakh & Ors. v. Jammu and Kashmir National Conference & Anr.**, , 2023 SCC OnLine SC 1140,..., particularly in paragraphs 32 to 35, which reads as under:

“ We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the on this subject is leading judgment of this Court either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v Pranay Sethi, (2017) 16 SCC 6805. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it”

- 56) In *M/s India Glycose Ltd. v. Micro & Small Enterprises Facilitation Council* reported as 2025 5 SCC 780, The Hon’ble Supreme Court categorically holds that a writ petition under Article 226 or 227 of the Constitution of India is not maintainable against an award passed under Section 18(3) of the MSMED Act. The

appropriate remedy lies under Section 34 of the Arbitration and Conciliation Act, 1996, which itself is subject to the statutory condition imposed under Section 19 of the MSMED Act—namely, the pre-deposit of 75% of the award amount. Which clearly implies that law laid down in **India Glycose Ltd.** has to be followed by this Court, as such writ petition is not maintainable.

- 57) In *Ashok Sadarangani v Union of India*, (2012) 11 SCC 321, another, the Hon'ble Apex Court has held:

“29. As was indicated in Harbhajan Singh case [Harbhajan Singh v. State of Punjab, (2009) 13 SCC 608: (2010) 1 SCC (Cri) 1135], the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in Gian Singh case [(2010) 15 SCC 118] need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field.”

- 58) The primary guiding principle is that High Courts should adjudicate matters based on prevailing binding precedents, irrespective of pending references or dissent opinion by coordinate benches. The mere pendency of a reference to a larger Bench or the existence of a dissenting opinion by a coordinate Bench does not absolve the High Court of its duty to follow the prevailing law declared by the Supreme Court. Unless there is a specific direction from the Supreme Court to await the outcome of such reference or review, the High Court must proceed to decide the matter on the basis of settled law.

- 59) In **Indian Glycols Ltd. (supra)**, the Hon'ble Supreme Court unequivocally held that an award rendered by the Facilitation Council under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006 partakes the character of an arbitral award within the meaning of Section 2(1)(c) read with Section 34 of the Arbitration and Conciliation Act, 1996, and that the remedy of challenge is exclusively governed by the provisions of the said Act. The Court further held that compliance with the mandatory pre-deposit stipulated under Section 19 of the MSMED Act is a statutory precondition to the maintainability of any application seeking to set aside the award.
- 60) The Hon'ble Apex Court in case titled ***State of Haryana vs. G D Goenka Tourism Corporation Limited, (2018) 3 SCC 5854*** has unequivocally declared that:

“9. Taking all this into consideration, we are of the opinion that it would be appropriate if in the interim and pending a final decision on making a reference (if at all) to a larger Bench, the High Courts be requested not to deal with any cases relating to the interpretation of or concerning Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Secretary General will urgently communicate this order to the Registrar General of every High Court so that our request is complied with. 10. Insofar as the cases pending in this Court are concerned, we request the Benches concerned dealing with similar matters to defer the hearing until a decision is rendered one way or the other on the issue whether the matter should be referred to a larger Bench or not. Apart from anything else, deferring the

consideration would avoid inconvenience to the litigating parties, whether it is the State or individuals.”

The pendency of a reference before a larger Bench in Tamil Nadu Cements does not override the binding precedent laid down in ***Indian Glycols Ltd.*** Therefore, this Court is duty bound to follow the law as it stands. Accordingly, the present writ petition, challenging an award passed under section 18 (3) of MSMED Act, 2006, is not maintainable in view of remedy prescribed under section 34 of Arbitration and Conciliation Act, 1996 read with the mandatory pre-deposit under section 19 of the said Act.

This issue is answered accordingly.

61) **Issue no.vi**

Whether, after having admitted the liability before the executing court in terms of the award and having deposited the award amount in execution proceedings, whether the petitioners are justified in invoking writ jurisdiction under 226 of the constitution to challenge the award that too after an unexplained delay of 18 months;?

Upon a careful and comprehensive examination of the material placed on record, as well as the rival submissions advanced, this Court is of the considered view that the petitioners are estopped, both in law and in equity, from invoking the extraordinary writ jurisdiction under Article 226 at this belated stage after having voluntarily taken steps consistent with acceptance and partial satisfaction of the impugned award.

62) It is a well-established principle that a party cannot be permitted to blow hot and cold at the same time. The rule of estoppel by conduct

bars a litigant from taking a stand in legal proceedings that is contrary to their prior conduct, especially when such conduct was voluntary and with full knowledge of the facts.. The Hon'ble Supreme court in **Union Of India vs N Murugesan** reported as 2022(2) SCC 25 ,reiterated:

26. "These phrases are borrowed from the Scott's law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the [Contract Act](#) concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally."

- 63) In the instant case, the petitioners appeared before the executing court and deposited an amount exceeding Rs. 1,09,34,514.96/-.The petitioners have given an unequivocal statement that they had no objection to the release of a significant portion of the amount in favour of Respondent No.2. The petitioners voluntarily granted permission for disbursement under the award without raising any objection.

- 64) These acts constitute an express, conscious waiver of their right to challenge the enforceability of the award at the stage of execution. Acquiescence and acceptance of the benefit of an award operate as an absolute bar against the maintainability of a subsequent challenge.
- 65) In this context, the Hon'ble Supreme Court in case titled as *Chairman State Bank Of India and anr vs. H.J. James* reported as *2021SCC ONLINE 1061* has held that:

“40. Laches unlike limitation is flexible. However, both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based upon equitable considerations, but laches unlike acquiescence imports even simple passivity. On the other hand, acquiescence implies active assent and is based upon the rule of estoppel in pais. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay. Acquiescence virtually destroys the right of the person.²¹ Given the aforesaid legal position, inactive acquiescence on the part of the respondent can be inferred till the filing of the appeal, and not for the period post filing of the appeal. Nevertheless, this acquiescence being in the nature of estoppel bars the respondent from claiming violation of the right of fair representation.”

- 66) Further, Patna High Court in *Union of India vs Fulpati Kunwar* reported as *2024 SCC Online Pat 7476* has observed:

“Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract,

despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms.”

- 67) The settled legal position makes it clear that the doctrine of **acquiescence** is based on a party's conduct and awareness of its legal rights. In the present case, the petitioners deposited the awarded amount in execution proceedings **unconditionally**, without raising any objections or reserving their rights. Thereafter, they allowed a period of 18 months to pass without initiating any challenge. This conduct clearly indicates **tacit acceptance** of the award.
- 68) Further, the clock cannot be turned backwards merely because the petitioners have now developed an afterthought to contest the award on grounds which they had consciously waived by their statements and actions in execution proceedings.
- 69) In this regard, it is pertinent to reiterate the settled legal distinction between a decree or award passed by a forum lacking inherent jurisdiction which would indeed be a nullity and a decree passed by a competent authority suffering from procedural irregularities or illegality, which remains binding unless set aside in appropriate proceedings.

- 70) Reliance is placed on the judgment of Guahati high court in case titled *Raju Kalita and ors. versus Ananta Chandra Kalita reported as (2021) 12 GAU CK 0025* wherein it has been held as under:

“A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed in executable by the executing court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior Court failing Which he must obey the command of the decree. A decree passed by a court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings.”

- 71) If this Court were to permit such a course of action, it would be wholly contrary to, and indeed fall under the very teeth of, the law consistently laid down by the Hon'ble Supreme Court, which has repeatedly held that a decree or award rendered by a competent authority cannot be subjected to collateral challenge merely on the ground of alleged procedural irregularities, especially where the statutory remedy remains unexhausted and the party has voluntarily participated in execution proceedings.
- 72) The settled jurisprudence is that the writ jurisdiction is not an appellate forum to resurrect claims which have been waived, satisfied, or rendered infructuous by acts of their volition. The High

Court, in exercise of Article 226, cannot be called upon to undo what the petitioner has expressly consented to or facilitated.

- 73) Moreover, the invocation of writ jurisdiction, in this factual backdrop, would amount to an abuse of process and would defeat the very statutory compulsion enshrined in *Section 34 of the Arbitration and Conciliation Act, 1996 (the exclusive remedy for setting aside an award), and Section 19 of the MSMED Act (mandating pre-deposit of 75%)*.
- 74) Even if the award stands set aside at a later point, the legal consequences of the petitioner's conduct, including their unequivocal concession and the release of funds, cannot be erased retrospectively. The act of voluntarily permitting disbursement and recording no objection constitutes a waiver that cannot be undone by subsequent litigation.
- 75) The rationale articulated by the Karnataka High Court in case titled **Phoenix Plasts Company v. Commissioner of Central Excise reported as 2013 SCC ONLINE Kar 10432**, reinforces the principle that although the High Court's jurisdiction under Articles 226 and 227 of the Constitution is wide and cannot be ousted by statute, such jurisdiction is nonetheless to be exercised with circumspection and consistent with the legislative intent underpinning the statutory scheme. The Hon'ble Supreme Court has clarified that it is not a question of taking away the High Court's jurisdiction altogether. Rather, it is about respecting the discipline imposed by Parliament in prescribing a specific

mechanism and timeline within which the aggrieved party is expected to seek redress.

- 76) In the present matter, the petitioners, after consciously permitting execution and release of funds, have approached this Court only after the expiry of the maximum statutory period for challenging the award under Section 34 of the Arbitration and Conciliation Act, 1996. Entertaining such a belated writ petition would, in effect, disregard the clear legislative intent embodied in Sections 34 and 19 of the MSMED Act, 2006, that an arbitral award must be challenged within a strictly circumscribed timeframe and subject to the mandatory pre-deposit requirement.
- 77) Permitting the writ jurisdiction to be invoked in this manner would not merely be an exercise of discretion; it would effectively nullify the statutory discipline and render the scheme envisaged by Parliament otiose. As observed in **Phoenix Plasts Company** (supra), while the High Court retains the power to intervene in exceptional cases such as where there is a patent lack of jurisdiction, fraud, or a flagrant violation of principles of natural justice such intervention cannot be resorted to as a matter of course, particularly where the challenge is mounted long after the expiry of the statutory limitation period without any compelling justification. Doing so would be “in the teeth of the principle” the legislative scheme and intention must be given full effect, and not defeated through collateral or belated writ proceedings. The aforesaid issue is decided accordingly in favour of respondents.

CONCLUSION.

- 78) In view of the detailed analyses and discussion undertaken hereinabove, this Court is of the considered view that the present writ petition is devoid of any merit either in law or in fact.
- 79) The statutory framework comprising the Micro, Small and Medium Enterprises Development Act, 2006, read holistically with the Arbitration and Conciliation Act, 1996, provides complete, efficacious, and self-contained mechanism for the adjudication of disputes arising between suppliers and buyers registered under the MSMED Act. It also prescribes a clearly delineated remedy to assail any award rendered by the Facilitation Council, through an application under Section 34 of the Arbitration and Conciliation Act, subject to compliance with the mandatory pre-deposit envisaged under Section 19 of the MSMED Act.
- 80) The petitioners, despite being fully cognizant of this statutory scheme, have consciously abstained from availing themselves of the prescribed statutory remedy, and have instead chosen to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The law is well settled that the writ jurisdiction is intended to reinforce, and not override, the remedies provided by statute, and cannot be employed as a convenient recourse to circumvent conditions such as statutory limitation periods and pre-deposit requirements mandated by Parliament.
- 81) The record reveals that adequate notices was issued to the petitioners, meetings were convened to facilitate conciliation, and

adequate opportunities were afforded to the petitioners to place their version on record and to participate in the proceedings before the Council. The petitioners, for reasons best known to them, failed to appear and contest the claim at the relevant stages. This conduct precludes them from now contending that the adjudicatory process stands vitiated by non-observance of the principles of natural justice. The right to be heard is undoubtedly paramount, but it cannot be stretched to a point where a deliberate abstention is later converted into a grievance of procedural impropriety.

- 82) Allegations of lack of jurisdiction or procedural mala fides, as raised in the present petition, are vague, unsupported by credible material, and appear to be an afterthought. Dissatisfaction with the result or a general perception of unfairness cannot form the basis for invoking writ jurisdiction in derogation of the statutory mechanism enacted for precisely such disputes.
- 83) Furthermore, the present petition has been filed after an inordinate and unexplained delay of approximately eighteen months, with no satisfactory explanation forthcoming. Such delay is antithetical to the principles governing the exercise of extraordinary writ jurisdiction, which demands promptitude, bona fides, and diligence.
- 84) The statutory requirement under Section 19 of the MSMED Act to deposit seventy-five per cent of the awarded amount prior to entertain a challenge under Section 34 is not a mere technicality but a substantive safeguard designed to deter frivolous or obstructive litigation. To allow the petitioners to bypass this requirement by

directly invoking writ jurisdiction would be to undermine both the letter and spirit of the legislation.

- 85) This Court, therefore, finds no compelling or exceptional circumstances that would warrant interference in writ jurisdiction. The consistent view adopted by coordinate Benches of this Court, as well as the binding authority of the Hon’ble Supreme Court in *M/s India Glycose Ltd. v. Micro & Small Enterprises Facilitation Council* leaves no room for doubt as to the legal position.
- 86) Accordingly, the writ petition is held to be not maintainable and is dismissed, with no order as to costs.


(Wasim Sadiq Nargal)
Judge

Srinagar:
18.07.2025
G. Nabi/ Secy

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| i. | Whether the Judgment is Reportable: | Yes |
| ii. | Whether the Judgment is Speaking: | Yes |