

**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

**CARBC No. 58 of 2026 with
CARBC No. 59 of 2026**

**Reserved on: 17.08.2026
Date of decision: 30.09.2026
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30.09.2026**

1. CARBC No. 58 of 2026:

Bengal Chemicals & Pharmaceutical Ltd. & another

.....Petitioners/Objectors.

Versus

Biogenetic Drugs Pvt. Ltd.

.....Respondent.

2. CARBC No. 59 of 2026:

Biogenetic Drugs Pvt. Ltd.

.....Petitioner/Objector.

Versus

Bengal Chemicals & Pharmaceutical Ltd. & another

.....Respondents.

Coram

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

¹ *Whether approved for reporting?* Yes.

CARBC No. 58 of 2026:

For the petitioners:

Mr. Desh Raj Thakur, Senior Advocate, with Mr. Anmol Sharma and Mr. Kartik Singh Thakur, Advocates.

For the respondent:

Mr. Ashok Sharma, Senior Advocate, with Ms. Anubhutti Sharma, Advocate.

CARBC No. 59 of 2026:

For the petitioner:

Mr. Ashok Sharma, Senior Advocate, with Ms. Anubhutti Sharma, Advocate.

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

For the respondents: Mr. Desh Raj Thakur, Senior Advocate, with Mr. Anmol Sharma and Mr. Kartik Singh Thakur, Advocates.

Sushil Kukreja, Judge.

Since the instant petitions are the offshoots of award, dated 01.09.2014, passed by learned Arbitrator, who was appointed as Arbitrator in exercise of powers under Section 11 of the Arbitration and Conciliation Act, 1996 (for short “the Act”), vide order dated 13.12.2011, passed by this Court in Arbitration Case No. 42 of 2011, they are taken up together for consideration and disposal.

2. Petitioners/Objectors, i.e., Bengal Chemicals & Pharmaceutical Ltd. & another (respondents in CARBC No. 59 of 2026) preferred CARBC No. 58 of 2026, under Section 34 of the Act with a prayer to set-aside the impugned award, dated 01.09.2014, passed by the Sole Arbitrator, whereas petitioner/objector, i.e., Biogenetic Drugs Pvt. Ltd. (sole respondent in CARB No. 58 of 2026) preferred CARBC No. 59 of 2026, under Section 34 of the Act against the aforesaid award, with a prayer to modify the impugned award to the extent claimed in the petition.

3. The facts of the instant cases are intertwined,

therefore, in order avoid repetition; the same are summarized as under:

3(a). The claimant/petitioner-Biogenetic Drugs Pvt. Ltd. (hereinafter referred to as “the claimant”) pleaded that it had established a factory for production of various kinds of drugs at Baddi, H.P. and non-claimants/respondents-Bengal Chemicals and Pharmaceuticals Ltd. & another (hereinafter referred to as “the respondents”) were allegedly working in the field of Pharmaceuticals. On 09.08.2006 a loan license agreement was entered into between the claimant and the respondents, whereby the respondents were to provide raw material for manufacture of various products mentioned in Annexure-A thereto and the payments were to be made as per agreed set of formula, as envisaged in the said license agreement. The said agreement was valid upto 08.08.2007, i.e., for one year. Due to dispute between the parties, the claimant approached this Court for appointment of Arbitrator. The claimant, alongwith the application for appointment of Arbitrator, also filed application under Section 9 of the Act for interim relief to direct the respondents to release the amount of Rs.151.11 lacs to the claimant, which according to the claimant was admitted liability of the respondents towards

the claimant.

3(b). Vide order dated 13.12.2011, passed in Arbitration Case No. 42 of 2011, in exercise of power under Section 11(6) of the Act, Shri Shrawan Dogra, Senior Advocate, was appointed as the Sole Arbitrator in the matter. However, no separate order was passed on the application under Section 9 of the Act.

3(c). Both the parties filed written submissions before the learned Arbitrator and after hearing both the parties, he passed the award on 01.09.2014, whereby the learned Arbitrator partly allowed the claim of the claimant (Biogenetic Drugs Pvt Ltd.) and dismissed its claim qua the principal amount, which was due and payable from the respondents (Bengal Chemicals & Pharmaceuticals Ltd. & another) and also qua the payment of interest under Micro Medium and Small Scale Industries Development Act, 2006, whereby, as per the claimant, it was entitled for interest @ three times of the prevailing Bank rate from the date when the amount became due, as per the provisions of the Act.

4. In the above backdrop, the respondents (petitioners in CARBC No. 58 of 2026) prayed to allow their petition and to set-aside/quash the impugned award, dated

01.09.2014, passed by the Sole Arbitrator. On the other hand, claimant (petitioner in CARBC No. 59 of 2026) prayed for modifying the award to the extent whereby it disentitles it from the principal amount of Rs.1,70,58,722/-, as on 02.04.2007, with further prayer that it (claimant) be also held entitled for interest on principal amount, i.e., Rs.1,70,58,722/- as per the provisions of the Micro, Medium and Small Industries Development Act, 2006, as per the prevailing Bank rate from time to time, w.e.f. 02.04.2007, till the date of payment of the same.

5. The respondents admitted the execution of the agreement. As per the respondents supply orders were not made by its Works Manager at Kanpur, as per the set formula and there was no indication of supply of particular drug or medicine for a particular price. It was averred that at the most such letters could only be taken as letters of intent to procure drugs or medicines from the claimant under the agreed terms and conditions and could not bind the respondents. It was further averred that figure of Rs.2,23,67,796/-, as claimed by the claimant was arbitrary, hypothetical, as pricing was done without consulting respondents and also the same was not done in accordance

with Drug Pricing Control Order, as updated on 21.12.2006.

6. The respondents averred that there was no authorization qua purchases on its behalf. The respondents admitted Rs.151.11 lac as against the claim of Rs.210.43 lac, which had been communicated vide communication dated 18.04.2009. The claimant did not come forward to take this amount of Rs.151.11 lac, rather insisted for settlement of dispute qua rates and pricing. The rates and pricing could be strictly in accordance with Drug Pricing Control Order (DPCO). The respondents also averred that certain sub-standard items were supplied by the claimants. Receipt of communication dated 11.07.2009, which was claimed to be written by claimant to Ministry of Chemicals and fertilizers, Government of India and Depot Manager of claimant at Jaipur was denied for want of knowledge. The respondents admitted that communication dated 19.10.2009 was sent for settlement of the dispute. The respondents referred to communications dated 05.07.2010, 08.11.2010 and 03.01.2012 whereby its (respondents') willingness to settle the dispute was reflected. As per the respondents, the claimant itself did not come forward for further negotiations. The respondents also averred that there was not even a

single communication from it indicating that raw material could not be supplied by it, thus, the claimant was permitted to procure raw material from outside. The claimant made purchases from their chosen parties and respondents was not taken in confidence before selecting them. Being Government of India Undertaking, the respondents could have made procurements only through tendering process, but despite this the matter was intended to be settled. No costing calculations ever took place between the representatives of the claimant and respondents. As per the respondents the claim is exorbitant and based on false and frivolous documents and even pricing of sub-standard drugs, as per the Drugs and Cosmetics Act, 1945, included for the calculation to arrive at illogical figure of Rs.2,23,67,796.00. The respondents further averred that Works Manager Kanpur included illegal and fraudulent activities and for the same he had been terminated and criminal case was also initiated against him. Lastly, the respondents averred that the interest, as claimed, is not payable in view of the above averments.

7. I have heard the learned Senior Counsel for the petitioners, learned Senior Counsel for the respondents and

carefully examined the entire records.

8. Learned Senior Counsel for the claimant contended that once the claimant is found to be an MSME supplier and the payments are delayed beyond the statutory period, the entitlement to interest under Sections 15 and 16 of the MSMED Act flows as a matter of law and the learned Arbitrator was bound to apply the statutory mandate. He further submitted that the award of interest, is compensatory in nature and intended to neutralize the economic prejudice suffered by small enterprises and the grant of post award interest by the arbitrator in terms of Section 16 of the MSMED Act is neither arbitrary nor illegal and the same has been awarded as a deterrent against continued default and prolonged withholding of legitimate dues. He also contended that the respondents cannot take shelter behind technical pleas of pleading when the statutory entitlement is clear and the delay in payment is undisputed.

9. Conversely, learned Senior Counsel for the respondents contended that the learned Arbitrator has erroneously invoked the principles of the MSMED Act for awarding future interest without any foundational pleadings or proof. He further submitted that the claimant neither

pleaded nor established that it fulfilled the requirement of being a “supplier” under the MSMED Act, nor was any determination made with respect to the “appointed date” under Sections 15 and 16 of the MSMED Act. He further urged that the mere assertion of MSME registration, without pleading and proof of statutory compliance, cannot, ipso facto, entitle a party to the penal rate of interest contemplated under the MSMED Act.

10. It is a settled law that the court, while hearing a petition under Section 34 of the Arbitration Act, is not an appellate court and cannot reappraise the evidence or reasons behind the Arbitral Award. The jurisdiction of the Court under Section 34 is limited and it is not open for the court to attempt to probe the process by which Arbitral Tribunal reached its conclusion.

11. Before adjudicating upon the merits of the case, it is essential to recapitulate the idea, purpose, goal and objective of the Arbitration Act as well as Section 34 of the Act to understand the implications, the provisions therein have on the powers and jurisdiction of this Court.

12. The scope for interference to an Arbitration award is very limited. Unless and until the applicant satisfies

the requirements of Section 34 of the Act, the Arbitration Award cannot be set aside by this Court. In ***Oil & Natural Gas Corporation Ltd. vs. Saw Pipes Limited*** reported in (2003) 5 SCC 705, it has been held by the Hon'ble Apex Court that the Court can set aside an award, if -

"74. In the result, it is held that:

(A) (1) xxx xxx xxx

(2) xxx xxx xxx

(3) The award could be set aside if it is against the public policy of India, that is to say, if it is contrary to:

(a) fundamental policy of Indian law; or

(b) the interest of India; or

(c) justice or morality; or

(d) if it is patently illegal."

13. In ***McDermott International Tnc. vs. Burn Standard Co., Ltd & others reported in (2006) 11 SCC 181***, which followed the decision in *Oil & Natural Gas Corporation Ltd., vs Saw Pipes Limited* referred to supra, the Hon'ble Supreme Court explained the term patent illegality and observed that patent illegality must go to the root of the matter. Public policy violation should be so unfair and unreasonable as to shock the conscience of the Court. The supervisory role of the Court under section 34 is to be kept at a minimum level and interference is envisaged only in case of fraud or bias, violation of natural justice, etc. If the Arbitrator has gone contrary to or beyond the express law of the contract or granted relief in the matter not in dispute, that would come

within the purview of Section 34 of the Arbitration and Conciliation Act 1996.

14. The Hon'ble Supreme Court in ***Union of India vs. Varindera Constructions Ltd., (2018) 7 SCC 794***, while discussing the object of arbitration held as under:

"12. The primary object of the arbitration is to reach a final disposition in a speedy, effective, inexpensive and expeditious manner. In order to regulate the law regarding arbitration, legislature came up with legislation which is known as Arbitration and Conciliation Act, 1996. In order to make arbitration process more effective, the legislature restricted the role of courts in case where matter is subject to the arbitration. Section 5 of the Act specifically restricted the interference of the courts to some extent. In other words, it is only in exceptional circumstances, as provided by this Act, the court is entitled to intervene in the dispute which is the subject-matter of arbitration. Such intervention may be before, at or after the arbitration proceeding, as the case may be. In short, court shall not intervene with the subject- matter of arbitration unless injustice is caused to either of the parties."

15. In ***Delhi Airport Metro Express Pvt Ltd vs. Delhi Metro Rail Corporation, (2022) 1 SCC 131***, the Hon'ble Supreme Court to this aspect held as under:

"28. The limited grounds available to Courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well established principles for interference to the facts of each case that come up before the courts. There is a disturbing tendency of Courts of setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award."... ...

16. In ***UHL Power Co. Ltd. vs. State of Himachal Pradesh, (2022) 4 SCC 116***, the Hon'ble Supreme Court reiterated the

narrow scope under Section 34 of the Arbitration Act and held as under:

“16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In MMTC Ltd. v. Vedanta Ltd. 5, the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words: (SCC pp. 166-67, para 11) —11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury⁶ reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.

17. A similar view, as stated above, has been taken by this Court in K. Sugumar v. Hindustan Petroleum Corpn. Ltd. 7, wherein it has been observed as follows:

“2. The contours of the power of the Court under Section 34 of the Act are too well established to require any reiteration. Even a bare reading of Section 34 of the Act indicates the highly constricted power of the civil court to interfere with an arbitral award. The reason for this is obvious. When parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum. Interference will be justified only in cases of commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator.”

17. The limited scope of challenge under Section 34 of

the Act was once again highlighted by the Supreme Court in ***PSA Sical Terminals (P) Ltd. vs. V.O. Chidambranar Port Trust*** (2023) 15 SCC 781 and the Supreme Court particularly explained the relevant tests as under:

"40. It will thus appear to be a more than settled legal position, that in an application under Section 34, the Court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of "public policy of India", which has been held to mean "the fundamental policy of Indian law". A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Sections 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". It is only such arbitral awards that shock the conscience of the Court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.

41. A decision which is perverse, though would not be a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. However, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.

42. To understand the test of perversity, it will also be appropriate to refer to paras 31 and 32 from the judgment of this Court in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , which read thus : (SCC pp. 75-76)

'31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

(i) a finding is based on no evidence, or

- (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or*
- (iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.”*

18. Thus, the law which has been settled by the Hon'ble Supreme Court is that the scope of interference with an Arbitral Award under Section 34 of the Arbitration Act is fairly limited and narrow. The Courts shall not sit in an appeal while adjudicating a challenge to an Award which is passed by an Arbitrator after due consideration of the material before him.

19. This was the legal position in vogue until the Supreme Court's reinterpretation of Section 34, by its judgment in ***Gayatri Balasamy vs. ISG Novasoft Technologies Ltd. (Balasamy) (2025)7 SCC 1*** wherein Section 34 has been reinterpreted to include a limited power to modify awards.

20. Keeping in view the aforementioned principles enunciated by the Supreme Court with regard to the limited scope of interference in an arbitral award by a Court in the exercise of its jurisdiction under Section 34 of the Act, this Court may examine the rival submissions of the parties in relation to the matters dealt with by the High Court.

21. The perusal of the award reveals that the learned

Arbitrator proceeded to grant interest in the following manner, which is reproduced as under:

"Keeping in view the fact that the transaction being commercial, the respondents is a government company and public money is involved, the claimant has taken risk of making purchases of raw material of its own without there being such provision in the agreement and at the same time the respondents having accepted the supplies manufactures from such purchases without a demur, I hold that the respondents should pay simple interest at the rate of 18% per annum on Rs.13557266 from 2.4.2007 till the date of award.

For future interest, as held herein above, in case the full awarded amount inclusive of up to date interest as per this award is not paid within 45 days from the date of award, the respondents would be liable to pay interest at the rate provided under "The Micro Small and Medium enterprises Development Act, 2006" on the entire amount awarded as per present award by taking the awarded amount alongwith interest due and payable as on the date of award."

22. Thus, the Arbitrator has awarded simple interest @ 18% per annum from 02.04.2007 till the date of the award and awarded future/post award interest @ provided under the MSMED Act, 2006, on the entire amount awarded as per present award by taking the awarded amount alongwith interest due and payable as on the date of award.

23. Mr. Desh Raj Thakur, learned Senior Counsel for the respondents, while referring to the averments made in the Memo of Petition and the documentary evidence produced along with petition, has first contended that to claim any relief under the MSMED Act, one must be registered prior to any business transaction entered into

between the parties. He further submitted that in the present case, the incident of supply between the claimant and respondents was from 16.12.2006 to 2.3.2007 but at that stage, the claimant was not registered under the MSMED Act, therefore, the learned Arbitrator has erroneously invoked the principles of the MSMED Act for awarding future interest without any foundational pleadings or proof. He further submitted that the claimant neither pleaded nor established that it fulfilled the requirement of being a “supplier” under the MSMED Act, nor was any determination made with respect to the “appointed date” under Sections 15 and 16 of the MSMED Act. He also urged that mere assertion of MSME registration, without pleading and proof of statutory compliance, cannot, ipso facto, entitle a party to the penal rate of interest contemplated under the MSMED Act. The learned Senior Counsel for the respondents submitted that the direction which applies the MSMED rate after expiry of 45 days from the award be suitably modified and such lawful post-award interest be substituted as may be determined under Section 31(7)(b) without reopening the principal determination.

24. On the other hand, learned Senior Counsel for

the claimant contended that once the claimant is found to be an MSME supplier and the payments are delayed beyond the statutory period, the entitlement to interest under Sections 15 and 16 of the MSMED Act flows as a matter of law and the learned Arbitrator was bound to apply the statutory mandate. He further submitted that the award of interest, is compensatory in nature and intended to neutralize the economic prejudice suffered by small enterprises and the grant of post award interest by the arbitrator in terms of Section 16 of the MSMED Act is neither arbitrary nor illegal and the same has been awarded as a deterrent against continued default and prolonged withholding of legitimate dues. He also contended that the respondents cannot take shelter behind technical pleas of pleading when the statutory entitlement is clear and the delay in payment is undisputed.

25. Hence, upon perusal of the pleadings and hearing the parties at length, this Court opines that the controversy between the parties qua the impugned Award may be narrowed down to adjudicate the following issues:

- i) *Whether the claimant was not registered under the MSMED Act during the relevant period and due to its non-registration, the learned Arbitrator has erroneously invoked the principles of the MSMED Act for awarding future interest from the date of the award i.e. 01.09.2014 till the date the*

respondent pays the entire award amount to the Claimant.

ii) Whether the Claimant is entitled to recover compound interest in accordance with the prevailing RBI interest rate on the principal amount of Rs.1,35,57,266/- as per the provision of section 16 & 17 of the MSMED Act 2006 from 02.04.2007 till the date of the award i.e 01.09.2014.

iii) Whether the Claimant is also entitled to recover compound interest in accordance with the prevailing RBI interest rate on amount refer to in clause (ii) above as per the provision of section 16 and 17 of the MSMED Act, 2006 from the date of the award i.e. 01.09.2014 till the date the respondent pays the entire award amount to the Claimant.

26. The perusal of the record reveals that claimant has specifically averred in the claim filed before the learned Arbitrator that it is a small scale industry. The documents also prove that the investment towards plant and machinery is Rs.466.63 lac. As per Section 7(1)(a)(ii) of MSMED Act, a small enterprise is one in which an investment towards plant and machinery is more than Rs. 25 lacs and does not exceed 5 crore rupees. These documents and averments have not been disputed by the respondent in the reply to the claim.

27. Apart from this, the claimant industry already stood established and registered prior to coming into force the MSMED Act which came into force on 2.10.2006 and is

covered by proviso to Section 8(1) of the MSMED Act 2006 which makes it discretionary for the small scale industry to get fresh registration under the MSMED Act. Since the claimant industry was established and registered as small enterprise, before coming into force of the MSMED Act, 2006 and clause (a) of the proviso to Section 8(1) would operate in favour of the claimant thereby granting discretion to it to file a memorandum under Section 8, this court is of the view that the embargo under Section 8 will apply only to those units seeking to establish themselves after coming into force of the MSMED Act, 2006 and those who fall within clause (b) of the proviso to Section 8(1).

28. Even if it is assumed that fresh registration under the Act was required, the same will not be applicable as the incident of supply is between 16.12.2006 to 2.3.2007 whereas the period for fresh registration is 180 days, which would have come to an end on 2nd April, 2007. In **NBCC (India) Ltd. vs. State of W.B., (2025) 3 SCC 440**, it has been held as under:

“35. Section 8(1)(a) provides that, “a micro or a small enterprise may, at his discretion” and even a medium enterprise engaged in providing or rendering services, also “may at his discretion” file a memorandum with the authority as maybe specified by the Government. This important feature of the statute recognizing and vesting of the discretion has not been noticed. There is also a logical follow-up to this choice or discretion

vested in the micro or small enterprise and the medium enterprise engaged in rendering services for filing a memorandum in sub-section (4) of Section 8 and also proviso (a) to Section 8(1). As the said sub-section (4) of Section 8 relates to micro or small enterprises, the State Government shall by notification, specify the authority with which such micro or small enterprise may file a memorandum. Considering the choice and discretion specially provided to these enterprises, it becomes very clear that there is no mandatory prescription of filing a memorandum. Conversely it appears that medium enterprises engaged in manufacture or production of goods, "shall file a memorandum" with such authority as may be specified, and this is reflected in proviso (b) to Section 8(1). At this stage, it is relevant to note that the definition of supplier under Section 2(n) is confined only to micro or small enterprise and does not encompass a medium enterprise."

29. However, as discussed earlier, the claimant has got itself registered under MSMED Act and the relevant documents, which have not been disputed by the respondent, are already on record of the claim petition. Hence, it cannot be said that due to alleged non-registration of the claimant under the MSMED Act, learned Arbitrator has erroneously invoked the provision of the MSMED Act for awarding future interest without any foundational pleadings or proof as contended by the learned Senior Counsel for the respondent.

30. Learned Senior Counsel for the respondents, while referring to the averments made in the Memo of Petition and the documentary evidence produced along with petition, has next contended that after declining the MSMED regime for the pre-award interest liability, the

learned Arbitrator could not create a non-statutory post-award liability by allowing a fresh period of 45 days from the date of the award and thereafter applying the MSMED rate, though Sections 15 and 16 contain no such post-award mechanism. He further contended that the learned Arbitrator had erroneously applied the MSMED rate to the aggregate of Rs.3,16,56,128/-, which already includes Rs.1,80,98,892/- of pre-award interest. He, therefore, submitted that the post-award direction is severable and maybe corrected without disturbing the principal amount.

31. Conversely, learned Senior Counsel for the claimant contended that MSMED Act was enacted, inter alia, with the stated objective to make further improvements in the Interest on Delayed Payments to Small Scale and Ancillary Undertakings Act, 1993, which were incorporated in the MSMED Act. He submitted that therefore, the decision of the Arbitrator to grant post award interest in terms of Section 16 of the MSMED Act could not be faulted. He also contended that the provisions of MSMED Act would override the provisions of Section 31(1)(a) of the A&C Act and referred to the decisions of the Supreme Court in ***Snehadeep Structures Pvt. Ltd. vs. Maharashtra Small Scale Industries Development***

Corporation Ltd.: (2010) 3 SCC 34, Shilpi Industries vs. Kerala State Road Transport Corporation and Anr., (2021) 18 SCC 790 and Gujarat State Civil Supplies Corporation Ltd. vs. Mahakali Foods Pvt. Ltd., (2023) 6 SCC 401.

32. Therefore, the next question which arises for consideration is as to whether the claimant which is a small enterprise under MSMED Act is entitled to recover pre-award interest in accordance with the prevailing RBI interest rate on the principal amount of Rs.1,35,57,266/- as per the provision of section 16 & 17 of the MSMED Act 2006 and whether learned Arbitrator has erroneously invoked the principles of the MSMED Act for awarding future interest.

33. At this stage, it would be relevant to reproduce Sections 15, 16 and 17 of the MSMED Act which read as under:

"15. Liability of buyer to make payment. - Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty- five days from the day of acceptance or the day of deemed acceptance.

16. Date from which and rate at which interest is payable. - Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date

agreed upon, at three times of the bank rate notified by the Reserve Bank.

17. Recovery of amount due. - For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16."

34. A plain reading of Section 15 of the MSMED Act makes it mandatory for the buyer to make payment for the goods supplied to it by a Supplier within the period as agreed by the parties or, where there is no agreement in this regard, before the appointed date. The expression 'appointed day' is defined under Section 2(b) of the MSMED Act to mean the day following immediately after the expiry of the period of fifteen days from the day of acceptance of the goods. Further, the proviso to Section 15 of the MSMED Act makes it clear that under no circumstances, the period agreed between the supplier and buyer would exceed forty-five days from the day of acceptance or day of deemed acceptance of the goods. Section 16 of the MSMED Act provides for payment of interest on the amounts due to a supplier where the buyer has failed to pay the amounts as required under Section 15 of the MSMED Act. Undisputedly, the buyer's obligation to discharge its liability under Section 15 of the MSMED Act and to pay interest under Section 16 of the MSMED Act confers the right on 'the Supplier' to demand

and recover the said amount. Section 17 of the MSMED Act also provides that the buyer would be liable to pay the amount and the interest as provided under Section 16 of the MSMED Act. Section 17 of the MSMED Act also makes it amply clear that the buyers would be liable to pay the amount due, along with interest, as provided under Section 16 of the MSMED Act to 'the Supplier'. It is material to note that Sections 15 and 16 of the MSMED Act imposes the liability on the buyer to pay the due amount to the supplier within the specified period and to pay interest if it fails to do so, independent of the provisions of Section 17 of the MSMED Act.

35. It is apparent from the above that the provisions of Sections 15 and 16 of the MSMED Act confer substantive rights and impose obligations, which are not contingent upon recourse to any dispute resolution mechanism. Section 18 of the MSMED Act provides for a dispute resolution mechanism in respect of any amount due under Section 17 of the MSMED Act. It is obvious that it may not be necessary for a supplier to seek recourse to any proceedings for recovery of the amounts that may be otherwise due to it, if the buyer complies with its obligation under Sections 15 and 16 of the

MSMED Act.

36. It is also relevant to refer to the decision in the case of ***Snehdeep Structures Pvt. Ltd. vs. Maharashtra Small Scale Industries Development Corporation Ltd. (2010) 3 SCC 34.*** The said case was rendered in the context of Interest on Delayed Payments to Small Scale and Ancillary Undertakings Act, 1993. In that case, the Court held that Interest on Delayed Payments to Small Scale and Ancillary Undertakings Act, 1993 (referred to as the 'Interest Act' in short by the court) was a special legislation viz-a-viz to any other legislation including the Arbitration & Conciliation Act and the contention that the payment of interest would be governed by Section 31(7)(a) of the Arbitration & Conciliation Act, was rejected as erroneous. The relevant extract of the said decision is set out below:

"37. According to the learned counsel for the respondent Corporation, the Arbitration Act treats "appeals" and "applications" separately under two distinct chapters: Chapter VII and Chapter IX respectively. It was also strenuously contended by the learned counsel for the respondent that the Arbitration Act contains specific provisions for awarding interest and that Act being a special enactment will prevail over the Interest Act. He relied on Jay Engg. Works Ltd. v. Industry Facilitation Council to show that against the provisions of the Interest Act, the provisions of Arbitration Act will prevail, as the latter is a complete code in itself. The Interest Act will apply only when the party prefers a suit to arbitration.

38. The Preamble of the Interest Act sows that the very objective of the Act was "to provide for and regulate the payment of interest on delayed payments to small-scale and ancillary industrial undertakings and for matters

connected therewith or incidental thereto." Thus, as far as interest on delayed payment to small-scale industries as well as connected matters are concerned, the Act is a special legislation with respect to any other legislation, including the Arbitration Act. The contention of the respondent that the matter of interest payment will be governed by Section 31(7) of the Arbitration Act, hence, is erroneous. Section 4 of the Interest Act endorses the same which sets out the liability of the buyer to pay interest to the supplier "notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force". Thus, the Interest Act is a special legislation as far as the liability to pay interest, or to make a deposit thereof, while challenging an award / decree / order granting interest is concerned."

37. In *Shilpi Industries vs. Kerala State Road Transport Corporation and Anr* (2021) 18 SCC 790 the Supreme Court had observed as under:-

"38. At this stage, it is relevant to notice the judgment of this Court in the case of Edukanti Kistamma (Dead) through LRs. v. S. Venkatareddy (Dead) through LRs. & Ors. where this Court has held that a special Statute would be preferred over general one where it is beneficial one. It was explained that the purport and object of the Act must be given its full effect by applying the principles of purposive construction.

39. Thus, it is clear that out of the two legislations, the provisions of MSMED Act will prevail, especially when it has overriding provision under Section 24 thereof. Thus, we hold that MSMED Act, being a special Statute, will have an overriding effect vis-à-vis Arbitration and Conciliation Act, 1996, which is a general Act....."

38. In *Gujarat State Civil Supplies Corporation Ltd. vs. Mahakali Foods Pvt. Ltd.*, (2023) 6 SCC 401, the Hon'ble Supreme Court examined the following questions of law for consideration:

- i) *Whether the provisions of Chapter V of the MSME Act would have an effect overriding provisions of the 1996 Act?*
- ii) *Whether any party to a dispute with regard to any amount due under Section 17 of the MSME Act would be precluded from making a reference to the Facilitation Council under sub-section (1) of*

Section 18 of the MSME Act, if an independent arbitration agreement existed between the parties as contemplated in Section 7 of the 1996 Act?

iii) Whether the Facilitation Council itself could take up the dispute for arbitration and act as an arbitrator, when the Facilitation Council had conducted the conciliation proceedings under sub-section (2) of Section 18 of the MSME Act in view of the bar contained in Section 80 of the 1996 Act?

39. After a threadbare analysis of the provisions of the MSME Act as well as the Arbitration Act, 1996, Supreme Court came to the conclusion that MSME Act is a special enactment governing specific nature of disputes arising between specific categories of persons. On the other hand, the Arbitration Act, 1996 focuses and covers the law relating to arbitration and conciliation. Thus, it is a general law relating to domestic arbitration, international commercial arbitration and conciliation. Supreme Court held that MSME Act being a special legislation would override the provisions of the 1996 Act which is a general legislation. Otherwise also, the MSME Act having been enacted subsequently i.e., in the year 2006, it would have an overriding effect over the 1996 Act enacted prior in point of time, more particularly in view of Section 24 of the MSME Act which specifically gives an effect to the provisions of Sections 15 to 23 of the MSME Act over any other law for the time being in force. Thus, Supreme Court has held in no uncertain terms that Chapter

V of the MSME Act would have an effect overriding provisions of the 1996 Act. Supreme Court has held as follows:

“33. It is trite to say that the provisions of the special statute would override the provisions of the general statute. It is also well settled that while determining the effect of a statute overriding the other statute, the purpose and policy underlying (2008) 9 SCC 517 (2012) 2 SCC 489 the two statutes and the clear intendment conveyed by the language of the relevant provisions therein would be the relevant consideration. This Court in Commissioner of Income Tax, Patiala Vs. Shahzada Nand & Sons (AIR 1966 SC 1342), while stating the fundamental rule of construction, had observed that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the court as to what is just and expedient.

34. One of principles of statutory interpretation relevant for our purpose is contained in the Latin maxim “leges posteriores priores contrarias abrogant” (the later laws shall abrogate earlier contrary laws). Another relevant rule of construction is contained in the maxim “generalalia specialibus non derogant” (General laws do not prevail over Special laws). When there is apparent conflict between two statutes, the provisions of a general statute must yield to those of a special one.

35. As observed in Kaushalya Rani Vs. Gopal Singh (AIR 1964 SC 260), a “Special Law” means a law enacted for special cases, in special circumstances, in contradiction to the general rules of law laid down, as applicable generally to all cases with which the general law deals.

... ..

42. Thus, the Arbitration Act, 1996 in general governs the law of Arbitration and Conciliation, whereas the MSMED Act, 2006 governs specific nature of disputes arising between specific categories of persons, to be resolved by following a specific process through a specific forum. Ergo, the MSMED Act, 2006 being a special law and Arbitration Act, 1996 being a general law, the provisions of MSMED Act would have precedence over or prevail over the Arbitration Act, 1996. In Silpi Industries case (supra) also, this Court had observed Bharat Sewa Sansthan Vs. U.P. Electronics Corporation; AIR 2007 SC 2961. while considering the issue with regard to the maintainability and counter claim in arbitration proceedings initiated as per Section

18(3) of the MSMED Act, 2006 that the MSMED Act, 2006 being a special legislation to protect MSME's by setting out a statutory mechanism for the payment of interest on delayed payments, the said Act would override the provisions of the Arbitration Act, 1996 which is a general legislation. Even if the Arbitration Act, 1996 is treated as a special law, then also the MSMED Act, 2006 having been enacted subsequently in point of time i.e., in 2006, it would have an overriding effect, more particularly in view of Section 24 of the MSMED Act, 2006 which specifically gives an effect to the provisions of Section 15 to 23 of the Act over any other law for the time being in force, which would also include Arbitration Act, 1996.

43. **The court also cannot lose sight of the specific non obstante clauses contained in sub-section (1) and sub-section (4) of Section 18 which have an effect overriding any other law for the time being in force. When the MSMED Act, 2006 was being enacted in 2006, the Legislative was aware of its previously enacted Arbitration Act of 1996, and therefore, it is presumed that the legislature had consciously made applicable the provisions of the Arbitration Act, 1996 to the disputes under the MSMED Act, 2006 at a stage when the Conciliation process initiated under sub-section (2) of Section 18 of the MSMED Act, 2006 fails and when the Facilitation Council itself takes up the disputes for arbitration or refers it to any institution or centre for such arbitration. It is also significant to note that a deeming legal fiction is created in the Section 18(3) by using the expression 'as if' for the purpose of treating such arbitration as if it was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996. As held in *K. Prabhakaran v. P. Jayarajan*¹⁸, a legal fiction presupposes the existence of the State of facts which may not exist and then works out the consequences which flow from that state of facts. Thus, considering the overall purpose, objects and scheme of the MSMED Act, 2006 and the unambiguous expressions used therein, this court has no hesitation in holding that the provisions of Chapter-V of the MSMED Act, 2006 have an effect overriding the provisions of the Arbitration Act, 1996.**
44. **The submissions made on behalf of the counsel for the buyers that a conscious omission of the word "agreement" in sub-section (1) of Section 18, which otherwise finds mention in Section 16 of the MSMED Act, 2006 implies that the arbitration agreement independently entered into between the parties as contemplated under Section 7 of the Arbitration Act, 1996 was not intended to be superseded by the provisions contained under Section 18 of the MSMED Act, 2006 also cannot be accepted. A private agreement between the parties cannot obliterate the statutory provisions. Once the statutory mechanism under sub-section (1) of Section 18 is triggered by any party, it would override any other agreement independently entered into between the parties, in view**

of the non obstante clauses contained in sub-sections (1) and (4) of Section 18. The provisions of Sections 15 to 23 have also overriding effect as contemplated in Section 24 of the MSMED Act, 2006 when anything inconsistent is contained in any other law for the time being in force. It cannot be gainsaid that while interpreting a statute, if two interpretations are possible, the one which enhances the object of the Act should be preferred than the one which would frustrate the object of the Act. If submission made by the learned counsel for the buyers that the party to a dispute covered under the MSMED Act, 2006 cannot avail the remedy available under Section 18(1) of the MSMED Act, 2006 when an independent arbitration agreement between the parties exists is accepted, the very purpose of enacting the MSMED Act, 2006 would get frustrated.

45.

46. *The submission therefore that an independent arbitration agreement entered into between the parties under the Arbitration Act, 1996 would prevail over the statutory provisions of the MSMED Act, 2006 cannot be countenanced. As such, sub-section (1) of Section 18 of the MSMED Act, 2006 is an enabling provision which gives the party to a dispute covered under Section 17 thereof, a choice to approach the Facilitation Council, despite an arbitration agreement existing between the parties. Absence of the word “agreement” in the said provision could neither be construed as casus omissus in the statute nor be construed as a preclusion against the party to a dispute covered under Section 17 to approach the Facilitation Council, on the ground that there is an arbitration agreement existing between the parties. In fact, it is a substantial right created in favour of the party under the said provision. It is therefore held that no party to a dispute covered under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Facilitation Council under Section 18(1) thereof, merely because there is an arbitration agreement existing between the parties.”*

40. The aforesaid view has further been reaffirmed in ***Harcharan Dass Gupta vs. Union of India, 2025 SCC Online SC 1111***, wherein after relying upon ***Mahakali Foods’*** case (supra), it has been held that the MSMED Act, 2006 being a special law and the Arbitration Act, 1996 being a general law, the provisions of the MSMED Act would have precedence over or prevail over the Arbitration Act, 1996. It

has further been held that even the agreement between the parties stands overridden by the statutory provisions under the MSMED Act. The relevant paras of the aforesaid judgment, for the sake of ready reference, are extracted hereunder:

“8. We have given our anxious consideration to the submissions of both the parties. In our view, the issue is no more res integra and is covered by the decision of this Court tin Mahakali. As we need to do nothing more than refer to the relevant portions of the binding precedent, the reasoning, as well as the conclusion in this decision are extracted herein for ready reference.”.....

9. Further, the Court proceeds to hold that even the agreement between the parties stands overridden by the statutory provisions under the MSMED Act:.....”.

41. In view of the aforesaid pronouncement of law by the Hon’ble Supreme Court, it is clear that the MSMED Act is a special legislation with regard to payment of interest and the provisions of MSMED Act would override the provisions of the Arbitration & Conciliation Act to the extent of any repugnancy. When the MSMED Act, 2006 was being enacted in 2006, the Legislature was aware of its previously enacted Arbitration Act of 1996, and in view of the specific non obstante provisions of Section 24 of the MSMED Act, the provisions of sections 15 to 23 shall have overriding effect. Thus, Chapter-V of the MSMED Act, 2006 would override the

provisions of the Arbitration Act, 1996. Therefore, the petitioner is entitled to interest, as provided under MSMED Act, 2006, from the due date/appointed day even during the pendency of the proceedings before the learned Arbitrator.

42. Now the last question which arises for consideration before this court is whether this court has the power to modify pre-award as well as post award interest awarded by the arbitrator and can be corrected without disturbing the principal amount? This issue is no longer *res integra* as in ***Gayatri Balasamy vs. ISG Novasoft Technologies Ltd. (Balasamy) (2025)7 SCC 1***, Section 34 has been "reinterpreted to include a limited power to modify awards". The Supreme Court has also explained the limitations on such power, while also touching upon several allied issues, such as the severability of awards and the specific power to modify the interest awarded by a tribunal. For the sake of ready reference, the relevant portion of the aforesaid judgment is extracted hereunder:

"40. A core principium of arbitration, an Alternative Dispute Resolution³⁷ mechanism, is to provide a quicker and cost-effective alternative to courtroom litigation. While this suggests minimal judicial interference, the role of domestic courts remains crucial, as they function in a supportive capacity to facilitate and expedite the resolution of disputes. Therefore, it follows that judicial intervention is legitimate and necessary when it furthers the ends of justice, including the resolution of disputes.

41. To deny courts the authority to modify an award—

particularly when such a denial would impose significant hardships, escalate costs, and lead to unnecessary delays—would defeat the raison d'être of arbitration. This concern is particularly pronounced in India, where applications under Section 34 and appeals under Section 37 often take years to resolve.

42. *Given this background, if we were to decide that courts can only set aside and not modify awards, then the parties would be compelled to undergo an extra round of arbitration, adding to the previous four stages: the initial arbitration, Section 34 (setting aside proceedings), Section 37 (appeal proceedings), and Article 136 (SLP proceedings). In effect, this interpretation would force the parties into a new arbitration process merely to affirm a decision that could easily be arrived at by the court. This would render the arbitration process more cumbersome than even traditional litigation.*
43. *Equally, Section 34 limits recourse to courts to an application for setting aside the award. However, Section 34 does not restrict the range of reliefs that the court can grant, while remaining within the contours of the statute. A different relief can be fashioned as long as it does not violate the guardrails of the power provided under Section 34. In other words, the power cannot contradict the essence or language of Section 34. The court would not exercise appellate power, as envisaged by Order XLI of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code").*
44. *We are of the opinion that modification represents a more limited, nuanced power in comparison to the annulment of an award, as the latter entails a more severe consequence of the award being voided in toto. Read in this manner, the limited and restricted power of severing an award implies a power of the court to vary or modify the award. It will be wrong to argue that silence in the 1996 Act, as projected, should be read as a complete prohibition.*
45. *We are thus of the opinion that the Section 34 court can apply the doctrine of severability and modify a portion of the award while retaining the rest. This is subject to parts of the award being separable, legally and practically, as stipulated in Part II of our Analysis."*

43. Thus, in view of the aforesaid authoritative pronouncement of law, the Court can apply the doctrine of severability and modify a portion of the award while retaining the rest and a different relief can be fashioned as long as it does not violate the guardrails of the power provided under

Section 34 of the Act, 1996. Now reverting back to the facts of the case on hand, the impugned award mentions that the claimant had placed on record its MSME registration and that the payments due were admittedly delayed. The learned Arbitrator also in its award noted that the claimant is covered by the definition of 'small enterprise', as defined under the MSMED Act. Once these foundational facts stood established, the entitlement to interest under Sections 15 and 16 of the MSMED Act followed as a statutory sequitur. Under the MSMED framework, delayed payments attract statutory interest and therefore, the Respondent is liable to pay the said amount. The statutory regime of Sections 15, 16 and 17 will take over and the arbitrator was duty bound to grant interest as per the statutory provision as the provisions are mandatory and not directory or discretionary. The learned Arbitrator could not have declined the MSMED regime for the pre-award interest liability and arbitrarily rejected claim of the claimant for entitlement of the pre-award interest from 02.04.2007 till the date of the award as provided under the MSMED Act, 2006 on the principal amount of Rs.1,35,57,266/-.

44. The learned Senior Counsel for the respondents

lastly contended that while granting the post-award interest, the learned Arbitrator had wrongly applied the MSMED rate to the aggregate of Rs.3,16,56,128/-, which already includes Rs.1,80,98,862/- of pre-award interest. This contention of learned Senior Counsel for the respondents deserves to be accepted because while granting the post-award interest as provided under the MSMED Act, 2006, the learned Arbitrator could not have added the interest of Rs.1,80,98,862/- on the principal amount of Rs.1,35,57,266/- and could not thereafter proceeded to award future/post award interest on the entire amount awarded by taking the awarded amount alongwith interest due and payable as on the date of award. Therefore, to this extent the post-award interest granted by the learned Arbitrator is also modified. The petitioner is awarded post award interest as provided under the MSMED Act, 2006 on the principal amount of Rs.1,35,57,266/- from the date of the award till the date of the payment/deposit of entire awarded amount.

45. In view of my aforesaid discussion, both the petitions are partly allowed and the impugned award passed by the learned Arbitrator is modified to the extent that the petitioner is entitled to pre-award as well as

post-award interest, as provided under Sections 15, 16 and 17 of the MSMED Act, 2006, on the principal amount of Rs.1,35,57,266/- from 02.04.2007 till the date of the payment/deposit of entire awarded amount.

Both the petitions are disposed of in the above terms. Pending application(s), if any, shall also stand(s) disposed of.

(Sushil Kukreja)
Judge

30th September, 2026
(virender)