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**HIGH COURT OF CHHATTISGARH, BILASPUR****Judgment Reserved on: 15/09/2017****Judgment Delivered on : 27/09/2017****Review Petition No. 77 of 2017**

M/s JMS Mining Services Private Limited (Formerly Known As Joy Mining Services India Pvt. Ltd.) (A Company Incorporated Under The Provisions Of Companies Act 1956) Having Registered Office At 27 Shakespeare Sarani, Kolkata 700017 (W.B.) Through Its Authorized Signatory Ganesh Gupta S/o Late Sidh Nath Gupta

**---- Petitioner****Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Commerce And Industries, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh
2. Directorate Of Industries, Chhattisgarh Udyog Bhawan, Ring Road No.1, Telebandha, Naya Raipur, District Raipur, Chhattisgarh, Through Its Director
3. Micro And Small Enterprises Facilitation Council, Chhattisgarh, Directorate Of Industries, Chhattisgarh Having Office At Udyog Bhawan, Ring Road No.1, Telebandha, District Raipur, Chhattisgarh, Through Its Director
4. M/s Arora Fabricators, Industrial Estate, Manendragarh, District Korea, Chhattisgarh

**---- Respondent****And****Review Petition No. 78 of 2017**

M/s JMS Mining Services Private Limited (Formerly Known As Joy Mining Services India Pvt. Ltd.) (A Company Incorporated Under The Provisions Of Companies Act 1956) Having Registered Office At 27 Shakespeare Sarani, Kolkata 700017 (W.B.) Through Its Authorized Signatory Ganesh Gupta S/o Late Sidh Nath Gupta

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1. State Of Chhattisgarh Through The Secretary, Department Of Commerce And Industries, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh

2. Directorate Of Industries, Chhattisgarh Udyog Bhawan, Ring Road No.1, Telebandha, Naya Raipur, District Raipur, Chhattisgarh, Through Its Director
3. Micro And Small Enterprises Facilitation Council, Chhattisgarh, Directorate Of Industries, Chhattisgarh Having Office At Udyog Bhawan, Ring Road No.1, Telebandha, District Raipur, Chhattisgarh, Through Its Director
4. M/s Steel Experts, 10, Industrial Area, Village Chainpur, Manendragarh, District Korea, Chhattisgarh

**---- Respondent**

**And**

**Review Petition No. 79 of 2017**

M/s JMS Mining Services Private Limited (Formerly Known As Joy Mining Services India Pvt. Ltd.) (A Company Incorporated Under The Provisions Of Companies Act 1956) Having Registered Office At 27 Shakespeare Sarani, Kolkata 700017 (W.B.) Through Its Authorized Signatory Ganesh Gupta S/o Late Sidh Nath Gupta

**---- Petitioner**

**Versus**

1. State of Chhattisgarh Through The Secretary, Department Of Commerce And Industries, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh
2. Directorate Of Industries, Chhattisgarh Udyog Bhawan, Ring Road No.1, Telebandha, Naya Raipur, District Raipur, Chhattisgarh, Through Its Director
3. Micro And Small Enterprises Facilitation Council, Chhattisgarh, Directorate Of Industries, Chhattisgarh Having Office At Udyog Bhawan, Ring Road No.1, Telebandha, District Raipur, Chhattisgarh, Through Its Director
4. M/s D.D.Enterprises, Industrial Area, Plot No. 109 D, Sector B, Sirgitti Industrial Estate, Bilaspur, Chhattisgarh

**---- Respondent**

**And**

**Review Petition No. 80 of 2017**

M/s JMS Mining Services Private Limited (Formerly Known As Joy Mining Services India Pvt. Ltd.) (A Company Incorporated Under The Provisions Of Companies Act 1956) Having Registered Office At 27 Shakespeare Sarani, Kolkata 700017 (W.B.) Through Its Authorized Signatory Ganesh Gupta S/o Late Sidh Nath Gupta

**---- Petitioner**

**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Commerce And Industries, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh
2. Directorate Of Industries, Chhattisgarh Udyog Bhawan, Ring Road No.1, Telebandha, Naya Raipur, District Raipur, Chhattisgarh, Through Its Director
3. Micro And Small Enterprises Facilitation Council, Chhattisgarh, Directorate Of Industries, Chhattisgarh Having Office At Udyog Bhawan, Ring Road No.1, Telebandha, District Raipur, Chhattisgarh, Through Its Director
4. M/s Radha Vallabh Industries, Plot No. 133/ A & B, Sector B, Sirgitti Industrial Area, Bilaspur, Chhattisgarh

**---- Respondent**


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|----------------------|-------------------------------------------------------------------------------|
| For Petitioner       | : Shri Amiban Roy and Ms. Gurupreet Kaur Chawla, Advocates.                   |
| For Respondent/State | : Shri J.K.Gilda, Advocate General.                                           |
| For Respondent No. 3 | : Shri Y.S.Thakur, Advocate.                                                  |
| For Respondent No. 4 | : Ms. Ginny Rautray, Shri Saurendra Rautray and Shri Akshay Shail, Advocates. |

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**Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**  
**Hon'ble Shri P. Sam Koshy, J.**

**C.A.V. Order****Per Thottathil B. Radhakrishnan, Chief Justice**

1. These petitions are filed seeking review of common judgment delivered on 15.05.2017 dismissing Writ Appeals No. 100 of 2017 and connections, thereby confirming the common judgment delivered on 13.01.2017 in Writ Petition (C) No. 2498 of 2016 and connections.
2. The writ petitions were filed challenging the contents of a communication forwarded by the 3<sup>rd</sup> respondent to the writ petitioner. The learned Single Judge refused to entertain the writ petitions under Article 226 of the Constitution on the ground that the writ petitioner has adequate

alternate remedy under Section 34 of the Arbitration and Conciliation Act, 1996; for short 'A&C Act'. The writ appeals were considered firstly on the issue as to whether there is an exclusion of the jurisdiction of other adjudicating authorities to consider disputes in relation to transactions between the writ petitioner and the private respondents by virtue of a term of the contracts between them. At the time of hearing of the writ appeals, the aforesaid ground as to exclusion of the jurisdiction by virtue of the contract between the parties was pressed for consideration. The next plea that was mooted at the time of hearing of the writ appeals was that the Chhattisgarh Micro and Small Enterprises Facilitation Council; for short 'Chhattisgarh Council', entered on arbitration after it had acted as Conciliator and therefore, the arbitration proceedings are invalid. The contesting private respondents, in opposition to the writ appeals, pressed the objections relatable to Section 34 of the A&C Act. Dilating on the relevant provisions of the Micro, Small and Medium Enterprises Development Act, 2006; for short 'MSM Act', this Court held that the resultant award of the proceedings carried under the MSM Act could be challenged only under the provisions of the A&C Act. It was also recorded that the award stands challenged before the competent Court in terms of the provisions of the A&C Act. The plea in the appeals by the writ petitioner that the question of jurisdiction of the Chhattisgarh Council to make an award under the MSM Act is a pivotal point to be considered, was also addressed as is reflected through paragraphs 9 and 10 of the judgment rendered on the writ appeals on 15.05.2017. These are matters evident from the common judgment in the writ appeals, sought to be reviewed. It is that appellate judgment which is sought to be reviewed at the instance of the writ petitioner, who had lost the writ appeals.

3. The learned counsel for the review petitioner argued that the power of review available to the writ Court includes the power to entertain an

application for review even if a crucial issue touching points of law as emanating out of the facts of the case were not raised and argued at the time of final hearing. Misconception of fact or law by a Court or even an Advocate is pointed out as a ground sufficient enough to entertain an application for review and grant relief in exercise of the power of review. It is submitted that omission of important provisions of law during the adjudication, even if it be referable to the conduct of the Advocate, is one which would amount to error apparent on the face of the record and hence, the power of review may be exercised. To buttress this submission, the learned counsel for the review petitioner made reference to the decision of the Apex Court in **Board of Control for Cricket in India v. Netaji Cricket Club**, (2005) 4 SCC 741; and the decision of Andhra Pradesh High Court in **Y. Venkannachowdary v. The Special Deputy Collector, Land Acquisition (General)**, AIR 1981 AP 232. Dilating further on the scope of review, reference was made also to the decisions in **Shivdev Singh v. State of Punjab**; AIR 1963 SC 1909, **M.M.Thomas v. State of Kerala**, (2000) 1 SCC 666.

4. The learned counsel appearing for the private respondents did not dispute the position that by virtue of the quality of the jurisdiction under Article 226 of the Constitution, this Court has the power of review inherent in it. This is the law in the light of Article 215 of the Constitution read with Article 226 and applying the law laid by the Apex Court in **Naresh Shridhar v. State of Maharashtra**, (1966) 3 SCR 744, **M.V. Elisabeth v. Karwan Investment and Trading Pvt. Ltd.** (1992) 1 SCR 103 and **Shivdev Singh** (*supra*) rendered affirming the views of the Full Bench of the Kerala High Court in **Pankajakshy Amma v. Custodian of Vested Forest**, AIR 1995 Kerala 225. **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma**, AIR 1979 SC 1047 and **Union of India v. B. Valluvan**, (2006) 8 SCC 686, are unequivocal judicial precedents which lay down that the Court's jurisdiction to review its

own judgment is limited and the power to review is not to be exercised on the ground that the decision was erroneous on merits; which is essentially the province of the court of appeal. Thus, it is well settled that the power of review is not to be confused with the appellate power.

5. The ground on which the petitions for review are canvassed before us for acceptance is that unless the conciliation proceedings under Section 18(2) of the MSM Act is concluded, there was no authority for the official respondent to proceed with any arbitration in terms of Section 18(3) of that Act. It is argued that the jurisdiction to commence arbitration in terms of Section 18(3) of the MSM Act would commence only on the conclusion of the conciliation proceedings as enjoined by law. Reference was made to Sections 65 to 81 of the A&C Act which get incorporated by reference in terms of Section 18(2) of the MSM Act to regulate the conciliation proceedings. It is submitted on behalf of the review petitioner that the termination of the conciliation proceedings has not been recorded and is not evidenced in terms of Section 76 of the A&C Act. The embargo created by Section 77 of the A&C Act against the arbitral or judicial proceedings during the conciliation proceedings is emphasised. Section 76 of the A&C Act provides the mode of termination of the conciliation proceedings. There are four modes stated therein. The common factor which runs through all those four modes is that the declaration, be it under any of the clauses, ought to be in writing. In answer to the aforesaid submission on behalf of the review petitioner, the learned counsel for the contesting private respondents referred to item No. 13 of the enclosure to the communication dated 24.08.2016 which is Annexure P/13 in the writ petitions. We have considered the contents of the same which relates to the disputes between M/s. Arora Fabricators (Private respondent herein) and M/s. JMS, Mining Services Pvt. Ltd. (Review petitioner). The terms therein are clear to the effect that it tends to be one

which would apparently fall, for all intents and purposes within clause (b) of Section 76 of the A&C Act. We do not further proceed to adjudicate on that issue because we would then be going beyond the jurisdiction of sitting in review. We notice this to conclude that we do not see that there is any error apparent on the face of the record and the materials, particularly in view of Annexure P/13 produced in the writ petitions from the custody of the writ petitioner, which is sufficient enough to hold that no ground to review the judgment is made out. We do not see that there is any error apparent on the face of the record or the judgment.

6. For the aforesaid reasons, these applications for review of judgment fail.

7. In the result, these review petitions are dismissed.

Sd/-

(Thottathil B. Radhakrishnan)  
**CHIEF JUSTICE**

Sd/-

(P. Sam Koshy)  
**JUDGE**