IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3508 OF 2013
WITH
CIVIL APPLICATION NO. 12294 OF 2013
IN WRIT PETITION NO. 3508 OF 2013

Ajanta Press & Mechanical Works,
Through its Proprietor
Prabhakar s/o. Vithalrao Mankar
Age : 61 years, Occu: Business,
R/o. Plot No.7, Builders Society,
Nandanwan Colony, Cantonment Area,
Aurangabad. 431 002. … Petitioner.

Versus

1. The Union of India,
Through Ministry of Small Scale Industries,
Nirman Bhavan, Maulana Azad Road,
New Delhi.

2. The State of Maharashtra,
Through its Secretary,
Department of Industry,
Mantralaya, Mumbai – 32.

3. The Secretary,
General Administration Department,
Mantralaya, Mumbai – 32.

4. Bajaj Auto Limited,
Through its Chairman
Head Office at Akurdi, Pune.

5. Managing Director,
Bajaj Auto Limited,
Akurdi, Pune.

6. Vice-President (Materials)
Bajaj Auto Limited,
Akurdi, Pune.

7. Sukarta Parishad,
Through its Chairman,
Divisional Commissioner Office,
Delhi Gate, Aurangabad. … Respondents

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Mr. R. V. Sangle, Advocate i/by Mr. S. V. Dixit and Mr. Hitesh Sangle, Advocates for the Petitioner.

Mr. S. B. Deshpande, ASG for Respondent No.1, Union Of India.

Mr. R. V. Dasalkar, AGP for Respondent Nos. 2 and 3.

Mr. S. P. Shah, Advocate for Respondent Nos. 4 and 5.

Mr. P. M. Shah, Senior Counsel i/by Mr. L. D. Vakil, Advocate for Respondent No.6.

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WITH
WRIT PETITION NO. 6928 OF 2016

Bajaj Auto Limited,
A company registered under
The companies Act, 1956,
having its Registered Office at
Akrudi, Pune.

Through its Authorised Officer
Mr. M. M. Mundada
Age : 57 years, Occu : Service,
R/o. Waluj, Aurangabad. … Petitioner

Versus

1. The State of Maharashtra
Through Directorate of Industries,
Second Floor, New Administrative Bldg.,
Madam Cama Road, Opp. Mantralaya,
Mumbai.

2. Joint Director of Industries for
Development Commissioner (Industries)
Second Floor, New Administrative Bldg.,
Madam Cama Road, Opp. Mantralaya,
Mumbai.

3. Ajanta Press Mechanical Works,
Through its proprietor
Shri P. V. Mankar,
Plot No. B-45, Waluj,
Aurangabad.

4. The Chairman,
Micro Small Enterprises Felicitation Council
(Sukarta Parishad),
Divisional Commissioner Office,
Delhi Gate,
Aurangabad. … Respondents

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Mr. P. M. Shah, Senior Advocate i/by Mr. L. D. Vakil, Advocate for the Petitioner.

Mr. R. V. Dasalkar, AGP for Respondent Nos. 1 and 2.

Mr. Ranjeet Sangle, Advocate h/f Mr. S. V. Dixit, Advocate for Respondent No.3.

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**CORAM : V. K. JADHAV, J.**

**RESERVED ON : 20/08/2019**
**PRONOUNCED ON : 05/11/2019**

**JUDGMENT** :-

1. By filing Writ Petition No. 3508 of 2013, the petitioner, a small scale industry name and styled as "Ajanta Press and Mechanical Works" at Waluj MIDC Area, seeks quashing and setting aside the order dated 17.02.2019 passed by the Sukarta Parishad and also seeks direction against respondent nos. 4 to 6 to

pay compensation in terms and conditions of the purchase orders, particularly, 45 days money rotation and 10% profit allowed on labour charges basis. The petitioner is also seeking directions against respondent no. 2 to initiate suitable action, departmental or criminal as the case may be, against respondent nos. 4 to 6 for dealing petitioner's case improperly. The petitioner is also seeking order/directions against respondent nos. 4 to 6 to pay sum of Rs.50,00,000/- as compensation, in addition to the compensation prayed above, towards mental harassment, loss of business etc.

2. Brief facts giving rise to Writ Petition No. 3508 of 2013 are as under:

a. The petitioner Ajanta Press & Mechanical Works (hereinafter referred to as 'the supplier') claims to be the supplier and respondent nos. 4 to 6 to be the buyers within the meaning and in terms of the provisions of The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (for short, 'the Act of 1993) and The Micro, Small and Medium Enterprises Development Act, 2006 (for short, 'the Act of 2006'). The supplier used to supply component called 'washer' to respondent no. 4 – Bajaj Auto Limited (hereinafter referred to as 'B.A.L.') having its three wheeler plant at Bajaj Nagar, Aurangabad. B.A.L. had issued purchase orders dated 16.01.1990 and 21.08.1989 in favour of the supplier for supply of the component as aforesaid. B.A.L. had supplied raw material to prepare the component washer to the supplier and it was made clear in the purchase orders that the supplier will retain the scrap after taking out the washer. There was no clause/term relating to value of the scrap that will be realized by the supplier. In terms of the said purchase orders, there was a 45 days money rotation and 10% profit on labour charges as per the normal practice of BAL. The supplier claims that in pursuance of the said purchase orders, he had totally complied with the raw material accounting strictly i.e. 1000 washers to be supplied against 14.65 kgs. raw material. However, on 14.11.1990, respondent no. 6-Senior Manager (Purchase) directed the audit department of Bajaj Auto Limited to issue debit note to the supplier for effective recovery of Rs.35,000/-. As per the said debit note, it was issued towards the differential value of the scrap generated from 01.01.1988 to 31.03.1990. The supplier submits that in terms of the purchase orders, the supplier was entitled to retain the scrap after taking out the washers. However, by violating those terms of the purchase orders, respondent no.6 had issued the aforesaid debit note. Though the supplier had made futile attempts to resist the said debit note, however, being a newly set up small scale industry (SSI) unit and also in need of keeping the business relations with B.A.L., who is relatively a big corporate house, had no other option but to succumb to the debit note. The supplier relies upon various correspondence/communications with B.A.L. in this regard contending that respondent nos. 4 to 6 had avoided to consider his requests on flimsy grounds.

b. The supplier was left with no other option but to approach the competent Government authorities and accordingly, he had approached respondent no.1-Ministry of Small Scale Industries (SSI), Government of India. The Director (EP & M), Ministry of Small Scale Industries forwarded the representation of the supplier to B.A.L. vide communication dated 19.05.2003 and suggested to redress the grievance of the supplier urgently. However, B.A.L. did not respond positively. Respondent no.1 Ministry of SSI has sent one more letter dated 03.09.2003 justifying the grounds raised by the supplier and further requested B.A.L. to look into the matter personally and to settle the grievance of the supplier. However, respondent nos. 4 to 6 did not respond any of the communications issued by respondent no.1 - Ministry of SSI and as a result, the Ministry of SSI was required to issue three more letters dated 03.03.2004, 05.04.2004 and 20.04.2004. Those letters are self explanatory.

c. The supplier further states that after intervention of respondent no.1 – Ministry of SSI, the supplier was called for a meeting to settle the dispute by B.A.L. The B.A.L. agreed to pay Rs.35,000/- to the supplier entirely as a gesture of good will after a lapse of 14 years. The minutes of the meeting dated 30.04.2004 shows that the cheque of Rs.35,000/- was lying with B.A.L. for about four and half months. During the said period of four and half months, the supplier had refused to accept the said cheque. However, B.A.L. had insisted and pressurized the supplier to accept the cheque with the undertaking that the supplier will have no connection with any association existing/ex-vendors of Bajaj Auto Limited. The supplier however insisted B.A.L. to add last and fifth clause in the minutes of the meeting seeking written promise/commitment from B.A.L. for additional business in future in lieu of compensation. Though B.A.L. had agreed to give additional business to the supplier in lieu of compensation, they did not honour their written promise/commitment. The supplier had made several telephonic calls and also issued letters, however respondent no.6 did not honour its promise.

d. The supplier was again constrained to approach the Ministry of SSI and in consequence thereof, the Ministry of SSI entertained the representation of the supplier and strongly condemned the conduct of B.A.L. vide letter dated 27.05.2004. Even the supplier also approached the then Hon'ble Prime Minister. The Hon'ble Prime Minister had referred the representation of the supplier to the Ministry of Corporate Affairs. The Ministry of Corporate Affairs wrote a letter to the B.A.L. and called report/comments. The supplier was also called by the B.A.L. in their office at Akurdi, Pune for a meeting. In the said meeting, the Vice President (Comm.) accepted the facts of the case and wrong handling of the matter while offering cheque of Rs.35,000/-, however, the supplier was offered a meager amount without proper application of time, value of money and other commercial aspects.

e. The supplier, in the meantime, had also approached the Sukarta Parishad by instituting a case before the said forum which is created under the provisions of the Act of 2006. However, the said Sukarta Parishad totally failed to take into account 14 years delay in making the payment and without considering the time value, commercial aspects and the terms of purchase orders, passed the impugned order dated 17.02.2009. The impugned order dated 17.02.2009 passed by the Facilitation Council is without providing sufficient and cogent reasons. It is cryptic, without application of mind to the facts of the case. It does not refer to any documents submitted by the supplier or referred by either of the parties and only refers to acceptance of Rs.35,000/-. According to the supplier, being aggrieved and frustrated by the decision of the Sukarta Parishad, the supplier approached the Chief Secretary and Secretary of General Administration Department to set up an enquiry against the careless approach of the Chairman of Sukarta Parishad. After tremendous follow-up, finally the Secretary, General Administration Department scheduled hearing of the case on 12.5.2011 with the supplier and the Chairman of Sukarta Parishad. Even during hearing, the Chairman of Sukarta Parishad accepted that she had not given opportunity to the supplier to argue the case, she had also ignored the 14 years delay, the time value of money and given weightage to only the acceptance of the said amount of Rs.35,000/-. The supplier by letter dated 21.05.2009 raised a strong objection regrading the manner in which his complaint was handled by the Sukarta Parishad without keeping in mind the basic objective behind the formation and establishment of the Sukarta Parishad itself.

3. By filing Writ Petition No. 6928 of 2016, the B.A.L., through its authorized officer, seeks quashing and setting aside the order dated 06.06.2015 passed by respondent no.2 and also seeks direction in the nature of writ to quash and set aside the award dated 27.01.2016 passed by respondent no.4-Sukarta Parishad wherein the award dated 17.02.2009 has been reconsidered and awarded recovery of Rs.7,21,512/-. The B.A.L. is also seeking direction to quash and set aside the order dated 05.10.2016/11.11.2016 passed by respondent no.4 whereby the order dated 17.02.2009 has been set aside and awarded the amount along with interest at the rate of 13.76% from 01.12.1990.

4. Brief facts giving rise to Writ Petition No. 6928 of 2016 are as under:

a. Respondent no.3 herein i.e. Ajanta Press Mechanical Works, i.e. the supplier through its proprietor has filed Writ Petition No. 3508 of 2013 challenging the order dated 17.02.2009 passed by respondent no.4 Sukarta Parishad wherein the claim of the supplier has been rejected by respondent no.4 on the ground that the amount of Rs.35,000/- has been accepted by the supplier as full and final settlement in the year 2004 itself. The B.A.L. has strongly resisted the said Writ Petition by filing an affidavit-in-reply. It has been stated while resisting the prayer made in the aforesaid Writ Petition No. 3508 of 2013 that the amount claimed by the supplier is not justifiable and the said issue has been settled long back prior to the commencement of the Act of 2006. The said Writ Petition has been admitted by order dated 11.03.2015 without giving any liberty to the supplier to approach the respondent authorities for recall or review of its earlier order. The B.A.L. contends that the supplier, in connivance of respondent no.2, issued the order dated 06.06.2015 to respondent no.4 for rehearing the matter before its council and pass appropriate order in the light of the provisions of Sections 15 to 25 of the Act of 2006.

b. The B.A.L. claims that there is no review application filed by the supplier before the Sukarta Parishad but the said request has been made by respondent no.2. The supplier, after passing of the order dated 17.02.2009, had earlier applied for review or re-opening of the case against the B.A.L. which was rejected by the Government authorities vide letters dated 23.06.2009 and 30.11.2013. Those letters came to be issued by the Additional Development Administrator for Development Commissioner, State of Maharashtra and respondent no.2 respectively. The B.A.L. had appeared before respondent no.4 - Facilitation Council and submitted its objection that the review proceeding itself is not maintainable and already the Writ Petition is pending before the High Court and the matter is subjudiced and as such, no order can be passed on the review proceedings. However, respondent no.4 after hearing the matter, has passed the impugned order dated 27.01.2016 setting aside the order dated 17.02.2009 after a gap of more than six years and also passed an order for recovery of Rs.7,21,512/- inclusive of interest without conducting the matter as per the provisions of the Act of 2006. Respondent no.4 has again reviewed the order dated 17.02.2009 as well as the impugned order dated 27.01.2016 whereby the findings have been modified and corrected. The B.A.L. claims the said order as anti-dated order. Thus, by orders dated 27.01.2016, 05.10.2016/11.11.2016, respondent no.4 Sukarta Parishad has upheld the claim of the supplier by setting aside the order dated 17.02.2019. Hence this Writ Petition.

5. The learned counsel Mr. Sangle appearing on behalf of the supplier submits that considering the inadequate working capital in a small scale or an ancillary industrial undertaking, the Act of 1993 and further, the Act of 2006 came to be enacted to provide for and regulate the payment of interest on delayed payments to small scale and ancillary industrial undertakings and also to provide for facilitating promotion and development and enhancing the competitiveness to micro, small and medium enterprises and for matters connected therewith or incidental thereto. In order to make further improvements in the Act of 1993 and making that enactment a part of the legislation, the Act of 1993 has been repealed by enactment of the Act of 2006. The object is to deter the big companies to avoid delays in making payment to the small scale industries. Learned counsel submits that the supplier is a small scale industrial unit and the proprietor of the supplier company is a

highly qualified first generation enterpreneur possessing B.Tech. Qualification in first class first and awarded gold medal and also conferred with the Jawaharlal Nehru Award. He has completed his M.B.A. from the Indian Institute of Management (IIM), Ahmadabad. He had joined services in the TATA Group and thereafter decided to commence his own manufacturing small scale unit at Aurangabad. The supplier used to supply component, namely, washer to the B.A.L. in its three wheeler plant at Bajaj Nagar, Waluj under purchase orders dated 16.01.1989 and 21.08.1989. In terms and conditions of the said purchase orders, the raw material would be supplied by B.A.L. to prepare washer and after supply of such washer, whatever remaining scrap would be retained by the supplier. Clause (5) of the purchase order dated 16.01.1989 and Clause (3) of the purchase order dated 21.01.1989 substantiate such retain of scrap by the supplier. However, B.A.L. had intentionally raised a debit note on 14.11.1990 for an amount of Rs.35,000/- towards the differential value of the Brass scrap generated from 01.01.1988 to 31.03.1990. Such course of issuing debit note was contradictory to the purchase orders issued by the B.A.L. The supplier had therefore lodged his objection and even the supplier thereafter continuously requested the management of

B.A.L. to reconsider the issuance of debit note and disburse the amount of Rs.35,000/- which remained unpaid. However, B.A.L. did not care to disburse the said amount. Even the supplier on 15.10.1998, wrote a letter to Mr. Rahul Bajaj stating therein that due to issuance of debit note of Rs.35,000/- in violation of the purchase order, injustice has been caused to the supplier. Learned counsel submits that the supplier is a small scale industrialist and the amount of Rs.35,000/- in the year 1990 was huge amount for the small scale unit. On 06.05.1999, the supplier had received a letter from B.A.L. that the debit note was raised on the advice of the Materials Department and only on the advice of the said Department, such debit note would be reversed. It was also informed that the appropriate action at the end of B.A.L. would be taken after getting advice from the Materials Department. However, no action was communicated to the supplier thereafter. On 16.04.2002, another letter came to be issued to the supplier whereby it was informed that the scrap generated was on higher side as was observed by the Audit Department and therefore, debit note has been raised. It was also informed that the issue about debit note is treated as closed. On 21.04.2002, the supplier had given reply to the said letter dated 16.04.2002 pointing out therein that the debit amount for previous purchase order was not logical and it was a misuse of dependency and helplessness of the supplier. The supplier has pointed out that the debit note refers to 'the differential value of Brass scrap' and generation of scrap as is referred in the letter dated 16.04.2002 is not the reason stated in the debit note dated 14.11.1990.

6. Learned counsel submits that since the B.A.L. was not paying any heed to the requests and the representations of the supplier, the supplier was constrained to approach various authorities of the Central and State Government. In pursuance to the said representations, the Director (EP & M) from the office of The Development Commissioner, Small Scale Industries, Ministry of Small Scale Industries, Government of India has directed the B.A.L. to redress the grievance of the supplier urgently. Thereafter, the Deputy Director of the Branch Small Industries Service Institute, Ministry of Small Scale Industries, Government of India directed B.A.L. to review the decision of deducting Rs.35,000/-. It was observed in the said letter that the purchase order clearly indicated that the scrap was to be retained by the supplier and no term was provided in respect of the differential value of scrap. Even

then, the Deputy Director of Branch Small Industries Service Institute, on various dates communicated B.A.L. to settle the issue and intimate the further action.

7. Learned counsel submits that the supplier was dependent for the business on B.A.L. and by misusing the said advantageous position and with an intention to deprive the supplier from getting lawful compensation or any amount of interest, the B.A.L. compelled the supplier to sign the minutes of meeting on 30.04.2004 and to accept the payment of Rs.35,000/-. Though such amount was tried to be paid from December 2003, the supplier refused to accept the said amount without compensation or interest over it. The supplier was consistently demanding compensation for deprivation from utilizing such amount illegally by B.A.L. Therefore, the supplier initially did not accept the cheque dated 15.12.2003 issued in his favour. In the said minutes of meeting, it is referred that B.A.L. stopped direct procurements from the supplier. Learned counsel submits that this act on the part of B.A.L. itself indicates exploitation of the supplier by cutting down direct procurement and to compel him to bend knees. The supplier was also threatened that no business would be given if he refuses

to accept such amount. Thus, considering the apprehension of shutting down the business from B.A.L. and in order to run his small unit in future, the supplier was left with no other choice but to accept the said amount of Rs.35,000/-. The supplier was also assured that he would be continued as a second tier supplier of B.A.L. and the additional business would be given. However, B.A.L. did not honour their commitment of additional business. Though the supplier had tried to contact them on telephone and requested them for additional business and made representations on 18.05.2004 and 30.04.2005, B.A.L. has not paid any heed to it.

8. Learned counsel submits that the supplier was therefore constrained to approach the Facilitation Council under the provisions of the Act of 2006. However, the supplier was not given opportunity of hearing. The said counsel rejected the claim of the supplier by order dated 17.02.2009. Learned counsel submits that the impugned order is in violation of the principles of natural justice. The said order refers no provisions of the Act of 2006. Even the contradiction in the debit note and the letter dated 16.04.2002 was also not considered, so also violation of the condition of the purchase orders. Learned counsel submits that in terms of Section

15 of the Act of 2006, it is the liability of the buyer to make payment on or before the date agreed upon between them in writing and where there is no agreement in this behalf, before the appointed day. The said period cannot exceed 45 days from day of acceptance of the supply of goods. Learned counsel submits that in terms of the provisions of Section 15 of the Act of 2006, the B.A.L. was liable to pay the amount as per the purchase order and due to failure to pay such amount on the ground of the illegal debit note, B.A.L. ought to have been held liable to pay compound interest with monthly rests at three times of the bank rate notified by the Reserve Bank as provided under Section 16 of the Act of 2006. Learned counsel submits that the Facilitation Council has only referred the acceptance of Rs.35,000/- by the supplier but failed to appreciate the unequal position of the parties, violation of the terms of purchase orders, contractual fraud by B.A.L. by violating the terms of the purchase orders and ignorance of B.A.L. towards the communications by the authorities of the Central and State Government and further ignoring the non-obstante clause provided in Section 16 of the Act of 2006. Even on 17.02.2009, the Chairperson of the Facilitation Council did not allow the supplier to argue the case even for half minute. She even did not refer to any

single document in the order. The Chairperson only saw the Minutes of Meeting and that Rs.35,000/- already paid, and dismissed the case in its entirety.

9. Learned counsel submits that the supplier had thereafter approached various Government authorities and even the Hon'ble Prime Minister. The supplier was not given time to argue his case on both occasions i.e. on 17.02.2009 and 17.05.2009. The Secretary, Industries, advised the Directorate of Industries vide letter dated 01.06.2015 to give an opportunity to the supplier to rehear and review the case, and accordingly respondent Sukarta Parishad/Facilitation Council passed the final order dated 11.11.2016 and directed B.A.L. to release the payment with interest at the rate of 13.76% in terms of the provisions of Section 16 of the Act of 2006 with effect from December 1990. Learned counsel submits that the provisions of the Act of 2006 or the Act of 1993 for interest on delayed payment came to be enacted with the intention to protect the interest of small scale and medium industries. Provisions of both these Acts do not prescribe any limitation for making claim in respect of the outstanding amount from the buyer. Learned counsel submits that the provisions of the Limitation Act may not apply in the instant case for the amount of

Rs.35,000/- was pending till 2004 and was not paid till 2004 and the interest there on for such period remained unpaid to the supplier thereafter. There is a continuous cause of action available to the supplier. Learned counsel submits that in terms of Section 19 of the Act of 2006, for entertaining any application or proceeding challenging the order of the Facilitation Council, B.A.L. is required to deposit 75% of the amount under challenge. Even the Writ Petition No. 6928 of 2016 preferred by B.A.L. may not be tenable unless the said amount is deposited before this Court. Thus Writ Petition No. 6928 of 2016 deserves to be dismissed on this count alone. Learned counsel submits that Writ Petition No. 3508 of 2013 filed by the supplier thus deserves to be allowed.

10. Learned counsel for the supplier, in order to substantiate his submissions, place reliance on the following decisions:

1. **Snehadeep Structures Private Liimited vs. Maharashtra Small Scale Industries Development Corporation Limited,** reported in **AIR 2010 SC 1497** and

2. **Shewalkar Developers Ltd., Nagpur vs. Rupee Co-operative Bank Ltd., Pune and others**, reported in **2016 (1) Mh.L.J. 382**

11. Learned AGP appearing for the respondent-Secretary, Department of Industry, respondent–Secretary, General Administration Department, Mantralaya and the respondent – Chairman of the Divisional Commissioner Office (Sukarta Parishad), Aurangabad, submits that by Notification dated 11.12.2009, the Government of Maharashtra, Industries, Energy and Labour Department, Mumbai in exercise of powers conferred under Sections 20 and 21 of the Act of 2006 and Rule (3) of the Maharashtra Micro and Small Enterprises Facilitation Council Rules, 2007 (for short, 'Rules of 2007') established the Facilitation Council for Aurangabad Revenue Division consisting the Chairperson and three Members. The Chairperson is the Additional Commissioner (Revenue) and Ex-officio Additional Development Commissioner (Industries). Learned AGP submits that on 17.02.2009, the Joint Director of the Industries, Member Secretary of the council organized facilitation council meeting in the office of the Additional Development Commissioner (Revenue), Aurangabad and the Facilitation Council (hereinafter referred to as "the council"), on hearing both the parties, has considered the minutes dated 30.04.2004 with regard to the acceptance of Rs.35,000/- by

the supplier and disposed of the matter. Learned AGP submits that on 02.05.2016, the then Joint Director of the Industries, Aurangabad Region, Aurangabad has filed additional affidavit pointing out the change in the constitution of the Facilitation Council for Aurangabad Revenue Division by notification dated 21.01.2016. Learned AGP submits that though the supplier has filed Writ Petition No. 3508 of 2013 for directions to the B.A.L. to pay compensation, similarly, the supplier has consistently made several representations to the State Government for redressal of his grievance. Thus, considering the period of dispute and the legitimate grievance of the supplier, the State Government had expressed a desire to rehear and review the case of the supplier without affecting the ongoing official process. The communication dated 12.04.2016 is thus placed before this Court alongwith the said additional affidavit filed in Writ Petition 3508 of 2013. Learned AGP submits that thereafter, the order dated 05.10.2016/11.11.2016 came to be passed in terms of the provisions of the Act of 2006.

12. Learned senior counsel Mr. P. M. Shah for the B.A.L. (petitioner in Writ Petition no. 6928 of 2016) submits that despite

pendency of Writ Petition No. 3508 of 2013 and though the supplier was not granted any liberty to approach the respondent authorities to recall or review its earlier order, the supplier with connivance of respondent - Joint Director of Industries for Development Commissioner issued an order dated 06.06.2015 to the respondent Chairman, Micro, Small Enterprises Facilitation Council (Sukarta Parishad) for rehearing/reviewing the matter before its council and pass appropriate order in the light of the provisions of Sections 15 to 25 of the Act of 2006. Learned senior counsel submits that it is worthwhile to mention that the supplier has not filed any review application before the Sukarta Parishad but the said request has been made by the respondent Joint Director of Industries. Learned senior counsel submits that the supplier, after passing the order dated 17.02.2009, had earlier applied for review / reopening of the case against the B.A.L. which came to be rejected by the Government authorities vide letters dated 23.06.2009 and 30.11.2013. Learned senior counsel submits that there is no provision of review or rehearing in the Act of 1993 or the Act of 2006. However, under the directions of the respondent Joint Director of Industries, respondent-Chairperson, Facilitation Council had conducted review proceedings on

31.07.2015. Learned senior counsel submits that the B.A.L. had appeared before the Facilitation Council and raised the objection that such review proceedings are not maintainable and the matter is subjudiced before the Hon'ble High Court. However, respondent - Facilitation Council after hearing the matter and without considering the objections, set aside the order dated 17.02.2009 and also passed the order for recovery of Rs.7,21,512/- inclusive of interest by impugned order dated 27.01.2016. Thereafter, respondent - Facilitation Council without any authority and power, has again reviewed the orders dated 17.02.2009 as well as 27.01.2016 whereby the findings came to be modified and corrected. The order came to be passed behind the back of B.A.L. The respondent - Facilitation Council had issued the notice of the said proceedings but it was served on the B.A.L. after the due date. The B.A.L. had therefore submitted a letter dated 04.11.2016 to the respondent - Facilitation Council stating therein that the notice of hearing was served after the scheduled date of hearing and therefore, requested the authority to give another date of hearing. Learned senior counsel submits that on perusal of the impugned order, it is revealed that it is an anti-dated order as the same is prepared and settled on 05.10.2016 and subsequently, the date of order has been changed to 11.11.2016 to get rid of the charges of favoritism and bias. Learned senior counsel submits that the respondent - Facilitation Council is having no jurisdiction, power and authority to take up review proceedings under the directions of the State Government when the statute/Act does not provide any power to review the impugned order. Learned senior counsel submits that it is settled principle of law that the review proceedings are not maintainable in law in absence of any provision in the Act granting an express power of review. Learned senior counsel submits that even in the affidavit of the State Government which came to be filed in Writ Petition No. 3508 of 2013, it is plainly stated that the State Government has no power to review and to interfere. Learned senior counsel submits that otherwise the claim made by the supplier is barred by limitation in terms of the provisions of Limitation Act, 1963. Learned senior counsel submits that, indisputably, the interest claimed by the supplier is relating to the supplies made prior to the Act of 2006 coming into force. The Act of 2006 is prospective in operation and cannot be applied retrospectively. Learned senior counsel submits that Writ Petition No. 3508 of 2013 is not maintainable since the supplier has not availed the alternative remedy available under the provisions of the Act of 1993 so also under the provisions of the Act of 2006.

13. Learned senior counsel, in order to substantiate his contentions, placed reliance on the following decisions:

1. **Chiranjilal Shrilal Goenka (Deceased) Through LRS. vs. Jasjit Singh and others**, reported in **(1993) 2 SCC 507**,

2. **Sarup Singh and Another vs. Union of India and another**, reported in **(2011) 11 SCC 198**,

3. **Patel Narshi Thakershi and others vs. Pradyumansinghji Arjunsinghji**, reported in AIR **1970 SC 1273**,

4. **Harbhajan Singh vs. Karam Singh and others**, reported in **AIR 1966 SC 641,**

5. **Dr. (Smt.) Kuntesh Gupta vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and others**, reported in **(1987) 4 SCC 525,**

6. **Kalabharati Advertising vs. Hemant Vimalnath Narichania and others**, reported in **(2010) 9 SCC 437** and

7. **State of Arunachal Pradesh vs. Damani Construction Co.**, reported in **(2007) 10 SCC 742,**

8. **Shakti Tubes Ltd vs. State of Bihar & others**, reported in **(2009) 7 SCC 673,**

9. **Purbanchal Cables and Conductors Private Limited vs. Assam State Electricity Board and others**, reported in **(2012) 7 SCC 462** and

10. **Assam Small Scale Industries Development Corpn. Ltd. And others vs. J. D. Pharmaceuticals and another**, reported in **(2005) 13 SCC 19.**

14. I would firstly take up Writ Petition No. 6928 of 2016 preferred by B.A.L. So far as the review proceedings taken up by the respondent - Facilitation Council and the orders passed thereon are concerned, I find much substance in the submissions made on behalf of B.A.L. by learned senior counsel Mr. P. M. Shah. It is necessary to state briefly the background of these impugned orders on rehearing/review of the order dated 17.02.2009. On perusal of the minutes of the meeting dated 30.04.2004, held between the supplier and the B.A.L. it appears that the supplier had accepted the payment of Rs.35,000/- as full and final settlement and further assured that the supplier would not raise any other matter in future

relating to the supplies or stoppage of direct or indirect procurement. In terms of the said settlement agreement, B.A.L. was pleased to release the cheque dated 15.12.2003 for Rs.35,000/- in favour of the supplier as full and final settlement. It is to be mentioned here that in terms of Section 4 of the Act of 1993 or in terms of the provisions of Section 16 of the Act of 2006, the buyer shall, not withstanding 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. So far as the order dated 17.02.2009, which is impugned in Writ Petition No. 3508 of 2013 is concerned, undisputedly, the then Chairman of the Sukarta Parishad has rejected the application of the supplier only for the reason that in terms of the said agreement of settlement dated 30.04.2004, the matter has been finally settled and in terms of the said settlement agreement the supplier had also accepted the cheque of Rs.35,000/-

15. In the backdrop of these facts, the annexures of Writ Petition No. 6928 of 2016 (“Exhibit E” page 149) assumes importance. The

Joint Director of Industries by letter dated 06.06.2015 by referring the letter issued by the Government dated 01.06.2015 (reference no.2) has directed the Chairman of the Facilitation Council to urgently rehear and review the case. Reference nos. 1 and 2 of the said communication alongwith the relevant portion of the order dated 06.06.2015 are reproduced herein below:

*"Ref: 1. No.DI/UM/MSEFC/Ajanta-Mankar/2015/A1295 dated 13.05.2015*

*2. Government in IE & LD Letter In Marathi No. bearing No. SME/C.R. No.203/IND-7, dated 01.06.2015*

***Preamble:***

*……………………….*

***Order***

*……………………….*

*In view of the above and directions from the Government you are requested to urgently rehear and review the case in the ensuing Micro Small Enterprises Facilitation Council (MSEFC), Aurangabad in light of the provisions of Section 15 to 25 of the MSMED Act, 2006. The Government has stated that as a matter of principle and natural justice without affecting the Judicial process pending in Hon. High Court, (Copy of letter from IE & LD is enclosed) Mr. P. V. Mankar of M/s. Ajanta Pressing and Mechanical Works, Waluj, Aurangabad should be* *given sufficient and reasonable time to present his case, since on the previous two accessions he had not been given sufficient time or not called for the hearing.*

*Action taken in the matter may directly be communicated to the Government under an intimation to this Office."*

16. So far as reference no.2 i.e. the letter issued by the Government dated 01.06.2015 is concerned, as per the reference no.1, by letter dated 13.05.2015, the Joint Director of Industries sought guidance from the Government for rehearing or reviewing of the matter decided under order dated 17.02.2009 by the Sukarta Parishad. The letter under reference no.2 dated 01.06.2015 is also annexed to the Writ Petition marked at page 164. On perusal of the same, it appears that the Government of Maharashtra has informed to the Development Commissioner (Industries) to issue directions to the Facilitation Council to rehear/review the order dated 17.02.2009. Interestingly, in pending Writ Petition No. 3508 of 2013, the Joint Director of Industries, Aurangabad Region, Aurangabad on 08.01.2014 has filed an affidavit-in-reply wherein in para no. 8 it has been specifically stated that the Sukarta Parishad had taken a decision as per the jurisdiction and the State

Government has no power to interfere in the said decision. Thus, the Government has informed to the supplier accordingly on 30.11.2013. It is also interesting to note here that in terms of the said subsequent development about the directions given by the Government for rehearing/review of the order dated 17.02.2009 by the Facilitation Council, the then Joint Director of the Industries, Aurangabad Region, Aurangabad on 02.05.2016 has filed another affidavit-in-reply in Writ petition No. 3508 of 2013 pointing out therein the change in the constitution of the Facilitation Council for Aurangabad Revenue Division and also informed to this Court that the State Government has desire to rehear and review the case of the supplier.

17. In case of **Patel Narshi Thakershi and others vs. Pradyumansinghji Arjunsinghji** (supra)**,** in para 4, the Supreme Court has held that the power to review is not inherent power. It must be conferred by law either specifically or by necessary implication. in case of **Harbhajan Singh vs. Karam Singh and others** (supra), the Supreme Court has held that the power to review must also be given by the Statute and in absence of any such express power to review, the same court/authority cannot subsequently

reconsider its previous decision. In case of **Dr. (Smt.) Kuntesh Gupta vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and others** (supra), the Supreme has held that the quasi-judicial authority not competent to review its own order in absence of express statutory power to that effect. In the case of **Kalabharati Advertising vs. Hemant Vimalnath Narichania and others** (supra), the Supreme Court has held that in the absence of statutory provisions for review, review application cannot be entertained and the earlier order cannot be modified or corrected under the garb of clarification.

18. The Act of 1993 was enacted to provide for and regulate the payment of interest on delayed payments to small scale and ancillary industrial undertakings. So far as the Act of 2006 is concerned, the same has been enacted after repeal of the provisions of the Act of 1993 to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises. The object behind both the enactments is to ensure statutorily the prompt payment of money by buyers and mandatory provisions for payment of interest on the outstanding money, in case of default. It is also apparent from both the

enactments that a mechanism has been created by composition of Facilitation Council and any party to a dispute may make a reference to such Facilitation Council. In both enactments, however, I do not find any express provision empowering the State Government to issue any directions or pass an order directing such Facilitation Council to rehear/review the matter already taken up for hearing and decided by an order. In terms of the provisions of the Act of 1993 or the Act of 2006, the Facilitation Council acts as a quasi-judicial forum and unless the power to review is expressly conferred on it by the statute under which it denotes its jurisdiction, the quasi-judicial authority cannot review its own order. Even in absence of any statutory provision for review, review application cannot be entertained under the garb of clarification and as such, the earlier order cannot be modified or corrected. So far as the order dated 17.02.2009 which is impugned by way of Writ Petition No. 3508 of 2013 by the supplier is concerned, the said order was based upon the settlement agreement between the supplier and the buyer which is expressly prohibited by the provisions of the Act of 1993, so also the Act of 2006. However, in absence of any provision in the Act of 1993 or in the Act of 2006 granting express power of review to the Facilitation Council or to the State Government, it is manifest that the Facilitation Council cannot review its previous order dated 17.02.2009. There is no provision in the Act of 1993 or in the Act of 2006 empowering the State Government to issue directions to the Facilitation Council for rehearing or review of the matter. On careful perusal of the provisions of the Act of 1993 and so also the Act of 2006, I am not inclined to consider that by necessary implication the State Government can issue such directions and the Facilitation Council can rehear/review its own order. It is necessary to mention here that in the impugned orders itself, the Facilitation Council has made it clear that the rehearing/review of the order dated 17.02.2009 has been done as per the directions given by the State Government. Thus, I have no hesitation to hold that the orders of the Facilitation Council dated 27.01.2016 and 05.10.2016/11.11.2016 are without jurisdiction and the said orders are thus liable to be quashed and set aside.

19. So far as the order dated 17.02.2009 impugned in Writ Petition No. 3508 of 2013 is concerned, the facts are somewhat peculiar. Though the B.A.L. had issued the debit note dated 14.11.1990 for effective recovery of Rs.35,000/- for the back

supplies from 01.01.1988 to 31.03.1990, the supplier had immediately raised the objection. The B.A.L. [Section Manager (Int. Audit)] had communicated to the supplier vide its letter dated 06.05.1999 that the subject debit note had been raised on the advice of the Materials Department and hence the same will be reversed on the advice of the Materials Department only. As soon as they get the advice, they will be taking necessary action at their end and the same will be informed to the supplier. Furthermore, the B.A.L. [Vice President (Materials)] has informed the supplier by fax dated 16.04.2002 justifying the action of debit note and further expressed that the matter should be treated as closed as the issue was explained to the supplier twelve years back. It has been explained to the supplier that the scrap generated actually was on higher side as was observed by the audit department of the B.A.L. On perusal of the debit note (Exhibit “B” page no. 28 of Writ Petition No. 3508 of 2013) and the supplier had also pointed out about the same to respondent Vice President of Bajaj Auto Limited that the debit note pertains to the differential value of the Brass scrap generated by the supplier from 01.01.1988 to 31.03.1990. The said debit note does not say anything about the scrap generated actually was on higher side.

20. It has already been discussed in the foregoing paragraphs that the Facilitation Council by order dated 17.02.2009 has rejected the claim of the supplier only on the ground that in terms of the settlement agreement dated 30.04.2004, the supplier had accepted the cheque for the amount of Rs.35,000/- towards full and final settlement.

21. So far as the making of a reference to the Facilitation Council by any party to a dispute with regard to any amount due from the buyer, such reference is required to be decided either in terms of settlement between the parties or by way of alternative dispute resolution services such as arbitration. In the instant case, the Facilitation Council has not acted in conformity with the said provisions and on the other hand decided the reference contrary to the provisions of Section 4 of the Act of 1993 or Section 16 of the Act of 2006. Section 4 of the Act of 1993 and Section 16 of the Act of 2006 are relevant to be reproduced herein below:

**Section 4 of the Act of 1993**

***"4. Date from which the rate at which interest is payable*** – *Where any buyer fails to make payment of the amount to the supplier, as required under section 3, 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 interest 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 one and a half time of Prime Lending Rate charged by the State Bank of India.*

*Explanation. - For the purposes of this section, "Prime Lending Rate" means the Prime Lending Rate of the State Bank of India which is available to the best borrowers of the bank."*

**Section 16 of the Act of 2006.**

***"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 time 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."*

22. In both the provisions, if the buyer fails to make payment of the amount to the supplier as required under the provisions of the

Act, notwithstanding anything contained in the agreement between the buyer and the supplier, the buyer shall be liable to pay interest to the supplier on that amount. In both Sections, the provisions are akin and the buyer's liability to pay interest has been determined notwithstanding any agreement between them or any law for the time being in force. In view of the provisions discussed above, the impugned order dated 17.02.2009 does not stand and I am left with no other choice but to remand the matter to the Facilitation Council for deciding it afresh.

23. Learned senior counsel appearing for the B.A.L. has also raised the grounds of limitation and the prospective application of the Act of 1993 so also the Act of 2006. In the foregoing paragraphs, I have observed about the peculiar facts of the case and since the matter is now required to be remanded to the Facilitation Council for deciding it afresh, it would not be appropriate on the part of this Court to decide the question of limitation which, in the facts and circumstances of the present case, is a mixed question of law and fact. It is open for both the parties to make appropriate submissions in this regard before the Facilitation Council and the Facilitation Council may consider the

same on its own merits. So far as the applicability of the Act of 1993 in view of the debit note of the year 1990, it is open for the Facilitation Council to consider the same on its own merits by referring various correspondence/communications between the parties at various stages. So far as the applicability of the Act of 2006 is concerned, the Facilitation Council may consider the same after due regard to the provisions of Section 32(2) of the Act of 2006. However, it is open for both the parties to make appropriate submissions in this regard. In view of the above, it would be an empty formality to discuss the cases cited by both the parties on the point of limitation so also the applicability of the Act of 1993 as well as the Act of 2006. In view of the discussion above, I proceed to pass the following order:

**ORDER**

I. Writ Petition No. 3508 of 2013 is hereby partly allowed.

II. The order dated 17.02.2009 passed by the respondent-Facilitation Council, which is impugned in Writ Petition No. 3508 of 2013, is hereby quashed and set aside.

III. The matter is remanded to the Facilitation Council to decide the reference afresh.

IV. The parties shall appear before the Facilitation Council on 25.11.2019 and the Facilitation Council shall dispose of the reference within 90 days from the date of appearance of the parties.

V. Rule made partly absolute in Writ Petition No. 3508 of 2013.

VI. In view of disposal of Writ Petition No. 3508 of 2013, nothing survives in Civil Application No. 12294 of 2013 and the same stands disposed of.

VIII. Writ Petition No. 6928 of 2016 is hereby allowed.

IX. Order dated 06.06.2015 passed by the respondent-Joint Director of Industries for Development Commissioner (Industries), Directorate of Industries, Mumbai and the orders dated 27.01.2016 and 05.10.2016/11.11.2016 passed by Facilitation Council are hereby quashed and set aside.

**( V. K. JADHAV, J.)**

vre/-