IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 17.09.2025	Delivered on: 26.09.2025

CORAM

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

O.S.A.(CAD).No.101 of 2025
& C.M.P.No.22466 of 2025

M/s.Jain Steels Industries,
Rep. by its Managing Partner Mr.Pankaj Jain,
Having its works & office at
G.T.Road, Khanna Side, Mandi Gobindgarb,
District Fatehgarh Sahib, Punjab – 147 301. ... Appellant

/versus/

M/s.Larsen & Toubro Ltd,
Rep. by its Authorised Signatory Mr.K.Manikandan,
Having its registered office at:
L&T House, Ballard Estate,
P.O.Box 278, Mumbai - 400 001.
Also having Construction Headquarters at:
Mount Poonamallee Road,
Manapakkam, Chennai – 600 089. ... Respondent

Prayer: Original Side Appeal filed under Order XXXVI Rule 9 of Rules of the High Court, Madras, Original Side, 1994 read with Clause 15 of the Letters Patent and Section 13(1A) of the Commercial Courts Act, 2015 read with Section 37 of the Arbitration and Conciliation Act, 1996, to set aside the Order and Decretal Order dated 23.07.2025 passed in Arb.O.P.(Comm.Div) No.10 of 2025.

For Appellant : Mr.B.Arvind Srevatsa

For Respondent : Mr.Anirudh Krishnan

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JUDGMENT

(Order of the Court was made by G.Jayachandran, J.)

Being aggrieved by non-payment of the sale consideration for the goods sold, the appellant, a supplier of steel materials to the respondent for the Dedicated Freight Corridor Corporation of India Limited (DFCCIL) project had approached the District-Level Micro & Small Enterprises Facilitation Council at Fatehgarh Sahib Punjab *(hereinafter 'MSMED Council')*, claiming a sum of Rs.59,42,986.21 is due and payable, along with interest. The claim petition before the MSMED Council claiming a sum of Rs.59,42,986.21 is primarily based on the alleged admission of the respondent in its email dated 12.05.2017.

2. The respondent, who participated in the proceedings before the MSMED Council, had made a counter-claim, stating that the goods supplied was not in tune with the specifications and were not delivered in time. Therefore, for breach of the terms of Letter of Intent (LOI), the respondent attempted to invoke the Performance Bank Guarantee (PBG). However, the claimant approached the Civil Court at Punjab seeking injunction against the invocation of the Bank Guarantee. The said application for injunction was dismissed after hearing both sides. Meanwhile, the 1st respondent claims to have suffered financial loss to Rs.70,44,017/- had laid the claim petition before the MSMED Council under Section 18(1) of the MSMED Development Act, 2006. The said claim is not maintainable in view of dispute pending between the parties and in view of dispute resolution clause in the contract ended between the parties.

3. The MSMED Council, based on the pleadings, framed issues regarding jurisdiction, the counter-claim and the civil dispute between the parties regarding invocation of bank guarantee. It held that the claimant, being the supplier of the goods, have a right to make a claim before the MSMED Council in Punjab by taking recourse to the provisions under Sections 15, 16 & 17 of MSMED Act, 2006. After upholding the jurisdiction to decide the dispute, the Council rejected the counter-claim made by the respondent and passed an award for payment of Rs.1,99,29,166/- as principal along with interest on delayed payment up to 02.07.2024. Additionally, future interest also was awarded on the delayed payment from 03.07.2024, till the date of realisation.

4. Aggrieved by the above award passed by the MSMED Council, the respondent herein under Section 34 of the Arbitration and Conciliation Act, 1996 read with Section 19 of MSME Act, had preferred the Arb.O.P.(Comm.Division) No.10 of 2025 before the High of Madras contending that the award of the MSMED Council, Punjab, is liable to be set aside since the findings squarely falls within the grounds envisaged under Section 34 of the Arbitration and Conciliation Act.

5. Before the Learned Single Judge, the appellant herein had contended that the petition under Section 34 of the Arbitration and Conciliation Act, before the High Court of Madras is not maintainable. The supply was effected at Punjab and the award impugned passed by the MSMED Council at Punjab. Therefore, only the High Court having supervisory jurisdiction over the MSMED, Punjab, can entertain the Arbitration Original Petition. The appellant had also raised a preliminary objection that under MSMED Act. As per the provisions of Section 19 of MSMED Act, appeal preferred against the award, 75% of the award amount ought to have been pre-deposited. Whereas, in this case, the respondent herein has not deposited 75% of the award amount.

Further, it was contended by the appellant herein that there was clear admission by the respondent through the e-mail dated 12.05.2017, admitting the due. The plea of alleging goods supplied were defective is an afterthought. The Arbitral Tribunal had passed the award based on the admission of liability.

6. The appellant herein further contended that the respondent having admitted the liability through e-mail dated 12.05.2017, has no case for defence and therefore, petition under Section 34 of the Arbitration and Conciliation Act is not maintainable.

7. The Learned Single Judge, after examining the documents relied by the parties before the MSME Council, found that the Learned Arbitrator had passed the impugned award without granting opportunity to the respondent herein to dispute the interest claimed by the claimant. Stating that *"Reason is soul of Justice"* and in the absence of any reasoning, the award passed suffers arbitrariness.

8. Regarding jurisdiction, considering the terms of the contract which specifics venue and seat of arbitration in Chennai, the Learned Single Judge has held that the Arbitration Original Petition filed before the Original Side of the Madras High Court is maintainable.

9. Relying upon the judgment of the Hon'ble Supreme Court in ***Vijay Karia vs. Prysmian Cavi E Sistemi*** reported in ***2020 (11) SCC 1***, held that the Council failed to consider vital evidence, particularly the inspection reports dated 25.03.2017 and 29.03.2017, placed before the Council and marked as Exhibits, which disclosed that the material supplied by the claimant were found defective. However, the Council, in its award had omitted to discuss about the vital document and had passed the award ignoring the vital document. Likewise, the Civil Suit instituted by the supplier, restraining the buyer from invoking the bank guarantee, is a crucial point which ought to have been taken into consideration by the Council before imposing interest for the delayed payment.

10. The Learned Judge has observed that accepting the calculation sheet produced by the claimant without any discussion, being a patent illegality, attracts Section 34 of the Arbitration and Conciliation Act for interference. The Learned Single Judge, therefore, allowed the Original Petition and set aside the award passed by the MSMED Council dated 02.07.2024, holding it as conflict with public policy and also patently illegal. However, the Leaned Judge has also considered the nature of the dispute and granted liberty to the parties to initiate fresh arbitration in accordance with law and time spent by the parties before the Council and before the Court shall stand excluded for the purpose of limitation.

11. Being aggrieved, the supplier has preferred this intra-Court appeal, reiterating that the award of the MSMED Council does not fall within the scope and ambit of Section 34 of Arbitration and Conciliation Act to interfere. Against the award passed by the MSMED Council, the petition under Section 34 of Arbitration and Conciliation Act ought not have been entertained since the petition under Section 34 of Arbitration and Conciliation Act, tantamount to appeal over the Arbitral Tribunal. Merely because there is an alternate and plausible view, the Court at Madras under Section 34 of Arbitration and Conciliation Act ought not to have exercised its jurisdiction. The Commercial Division of the Madras High Court has no territorial jurisdiction over the MSME Tribunal at Punjab. While so, the parties cannot confer jurisdiction on a Court by agreement when such Court has no jurisdiction. It is further contended in the appeal that the pre-condition to deposit 75% of the award amount not been satisfied and complied by the appellant. Hence, for violation of Section 19 of MSME Act, the Arbitration Original Petition ought not to have been entertained.

12. It is contended that the Learned Single Judge erred in holding that no opportunity was given to the respondent to dispute the calculation sheet pertaining to interest. This observation is contrary to the evidence and perverse. In fact, there was no request from the respondent to cross-examine the witnesses to dispute the document and their testimony. While so, the Learned Single Judge has presumed that no opportunity been granted to the respondent to controvert the calculation sheet and other documents.

13. The Learned Counsel appearing for the appellant further stated that the calculation sheet was not produced by the appellant herein as erroneously observed by the Learned Single Judge. It is the document relied by the members of the Council, who had expertise in the banking process. When the admission of liability in the e-mail dated 12.05.2017 was not been disputed by the respondent, the Learned Judge ought not to have exceeded the scope of its power under Section 34 of the Arbitration and Conciliation Act to set aside the Arbitral award. Taking exception to the conduct of the respondent for not depositing 75% of the award amount with interest, as contemplated under Section 17 of the Act, the Learned Counsel for the appellant contended that, the breach of mandatory condition to sustain the petition is incurable.

14. The learned Counsel for the appellant submitted that the non-compliance of the mandatory provisions ought to have been taken note by the Learned Single Judge and the appeal ought to have rejected at the threshold itself. Instead, the offer made by the appellant to deposit the difference amount to satisfy Section 18 of MSME Act was taken into consideration in favour of the respondent, ignoring the prejudice caused to the interest of the appellant herein. The numbering of the petition by the Registry which is an Administrative Act, cannot substitute the discretion of the Court conferred under the statute. However, the Learned Single Judge, contrary to the law and the dicutm laid down ***in Olympic Cards Ltd vs. Standard Chartered Bank*** *reported in* ***2013 (1) LW 385***, had set aside the award of the MSMED Council against facts and law, when there is no case made out to interfere under Section 34 of the Arbitration and Conciliation Act.

15. The scope of the Court exercising power under Section 37 of the

Arbitration and Conciliation Act is well-defined and structured by the statute as well as the pronouncements of the Hon'ble Supreme Court. Courts have time and again have reiterating that while the powers under Section 34 of the Act are clearly demarcated, such restrictive jurisdiction has to be invoked in a conservative manner. The judicial interference should be minimal, otherwise it would defeat the very object of the Arbitration and Conciliation Act.

16. Keeping this in mind, when this Court examined the material and findings of the Learned Single Judge, we note that the award of the Council found to be faulty by the Learned Single Judge on three counts.

(i). The award is bereft of reasons.

(ii) The documents relied by the respondent herein for defence and counter claim not at all been considered before arriving at conclusion.

(iii) The interest awarded, which is three times the principal amount, without affording opportunity to the respondent to dispute the same is against conflict with the Public Policy of India.

17. It is correct to say that Section 34 of Arbitration and Conciliation Act, 1996 cannot be invoked merely because there is an alternate plausible view. However, when the view expressed by the Council is not backed by any reason and passed arbitrarily, it cannot be contended that such an award passed arbitrarily without any reasoning is beyond the scope of Section 34 of the Arbitration and Conciliation Act, 1996.

18. In this case, the MSMED Council, considering the pleadings and evidence, formulated three issues for consideration and given its finding.

Jurisdiction:-

The Letter of Intent (LOI) dated 10.09.2016 is the basis on which the appellant and the respondents agreed for sale and purchase of Masts. The LOI, coupled with the Performance Bank Guarantee, is already the subject matter of a civil dispute initiated by the supplier. Clause 28 of the General Conditions of Contract, entered by the parties, deals with dispute resolution. Wherein, Clause 28.2.6 specifically says, the venue and seat for the arbitration will be Chennai, Tamilnadu and the language for the conduct of the arbitration proceedings shall be English.

19. Thus, the parties have agreed that both the venue as well as seat of the arbitration shall be Chennai. However, the appellant herein, being the supplier, had approached the MSMED Council at Punjab, alleging non-payment for the goods sold. The respondent had raised objections regarding lack of jurisdiction as well as made a counter claim. However, under Section 18 of MSME Act, the place of business of the supplier confers jurisdiction on the District Facilitation Council, therefore, it cannot be found fault with the MSMED Council at Punjab for entertaining the claim petition under MSME Act. This is the view of the Hon'ble Supreme Court also, as declared in ***Haricharan Dass Gupta vs. Union of india*** reported in ***(2025) SCC OnLine SC 1111***.

20. The point which requires examination is whether, after the award was passed by the MSME Council in Punjab, the said award can be challenged under Section 34 of the Arbitration Act before the Court at Chennai.

21. When an identical question came before the Delhi High Court in ***Indian Oil Corporation Ltd vs. Fepl Engineering (P) Ltd and others (2019 SCC OnLine Del 10265)***, the Division Bench, after considering the provisions of the MSME Act, the construction of Section 18, commencing with non-abstante clause and Section 18(4), dealt with a case where the supplier instituted claim petition at Thane, invoking Section 18 (4) of the MSME Act being his place of business. The buyer challenged the award under Section 34 of the Arbitration and Conciliation Act before the Delhi High Court, relying on the terms of contract construing the seat of arbitration is at Delhi. The Delhi High Court holding that the supplier had right to institute the claim petition before the Facilitation Council at Thane as per the provision of the MSME Act, which is a special Act and have overriding effect on the Arbitration and Conciliation Act, 1996. However, the Facilitation Council at Thane is only the venue and the seat for arbitration remains to be Delhi as per the terms of the contract.

> *"23. Undoubtedly, the MSME Act is a special legislation dealing with Micro, Small and Medium Enterprises and would have precedence over the general law. There are decisions of several Courts holding that the provisions of MSME Act would override the provisions of the Contract between the parties. However, we are not engaged with the said controversy and, in fact, we had made it clear to the learned counsel for the Appellant, during the course of arguments, that the questions relating to the jurisdiction of the MSME Council to act as an Arbitrator and other similar issues will not be examined by us, as the learned Single Judge has not considered any of those aspects and has decided the objection petition only on the ground of territorial jurisdiction. However, this does not mean that the jurisdiction clause agreed*

between the parties has to be given a go-by. The overriding effect of the MSME Act, cannot be construed to mean that the terms of the agreement between the parties have also been nullified. Thus, jurisdiction of the MSME Council which is decided on the basis of the location of the supplier, would only determine the 'VENUE', and not the 'SEAT' of arbitration. The 'SEAT' of arbitration would continue to be governed in terms of the arbitration agreement between the parties, which in the present case as per jurisdiction Clause No. 35 is New Delhi. As a result, in terms of the decision of the Supreme Court in Indus Mobile Distribution Pvt Ltd v. Datawind Innovations Private Limited and others reported in (2017) 7 SCC 678, it would be the Courts at New Delhi that would have exclusive jurisdiction to entertain the petition under Section 34 of the Act.

24. The writ petition filed by the Appellant before the Bombay High Court was against the MSME Council, and filing of the said petition would not oust the jurisdiction of the Court to deal with petition under Section 34 of the Amendment Act and accordingly, the contention of the Respondent that the filing of the aforesaid writ petition bars the Appellant to approach this Court is rejected."

22. Following the ***Indian Oil Corporation Ltd*** *cited supra*, again in

Ircon International Ltd vs. Pioneer Fabricators Pvt Ltd, reported in ***MANU/DE/2078/2023,*** it held as below: -

> "*(i) Once the arbitral award is pronounced, and there is an exclusionary clause of jurisdiction agreed between the parties, thereby, agreeing upon the jurisdiction of only one court, in exclusion to others, the challenge initiated by the aggrieved party under the Act of 1996, even against an award passed by the Facilitation Council under the MSMED Act, will lie only before the court upon which the parties have agreed to place exclusive jurisdiction.*
>
> *(ii) Similar is the conclusion of the Division Bench of this Court in Indian Oil Corpn. Ltd. v. FEPL Engg. (P) Ltd., 2019 SCC OnLine Del 8007], to the effect that arbitration proceedings undertaken before the Facilitation Council under Section 18 of the MSMED Act, are undertaken at the "venue" where the Facilitation Council is located.*
>
> *(iii) The place of the arbitration continues to be the place over which the court has exclusive jurisdiction, as agreed between the parties.*
>
> *(iv) By operation of the provisions of the MSMED Act, only the procedure of constitution of the*

Arbitral Tribunal is obliterated in terms of the law laid down by the Supreme Court in Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd., [2019 SCC OnLine Guj 4302] .

(v) The same does not eclipse the agreement between the parties of foisting exclusive jurisdiction on a particular court."

<u>23. Pre condition to deposit 75% of the award amount:-</u>

In terms of Section 19 of the MSME Act, an application for setting aside an award of the Facilitation Council cannot be entertained by any Court unless the appellant has deposited 75% of the amount in terms of the award. Therefore, it is the contention of the learned counsel for the appellant that the respondent, while challenging the award of the MSME Council, ought to have deposited 75% of the award amount, which includes the interest payable till the date of filing the petition. Whereas, in this case, admittedly 75% of the amount payable as on the date of filing the petition not tendered. However, the Registry has numbered the petition and taken up for consideration. The deficit in payment been raised by the appellant and relying on the expression used in Section 19 of the MSME Act and judgments which has held that it is mandatory to deposit 75 % of the award amount to file any petition challenging the MSME award. The learned counsel for the appellant contented that, for non compliance of the mandatory condition, the Learned Single judge ought to have dismissed the Original Petition *inlimine.*

24. While considering the language used in Section 19 of MSME Act and the interpretation in the judgment of the Hon'ble Supreme Court of India in ***Tirupati Steel vs. Shubh Industrial Component and Another*** reported in ***2022 (7) SCC 429***, it was held that,

> *"The requirement of deposit of 75% of the amount in terms of the award as a pre-deposit as per Section 19 of the MSMED Act, is mandatory. It is also observed that however, at the same time, considering the hardship which may be projected before the appellate court and if the appellate court is satisfied that there shall be undue hardship caused to the appellant/applicant to deposit 75% of the awarded amount as a pre-deposit at a time, the court may allow the pre-deposit to be made in instalments. Therefore, it is specifically observed and held that pre-deposit of 75% of the awarded amount under Section 19 of the Msmed Act, 2006 is a mandatory requirement."*

25. The judgments cited undoubtedly has held that pre-deposit of 75% of the award is mandatory. However, non-deposit of the amount before entertaining the petition is a curable defect. In this case, we find the deposit made but less than what to have been deposited towards 75% of the award payable.

26. The Learned Counsel for the respondent submitted that the 75% deposit was calculating upto the date of award. Since there was objection raised by the appellant that, the award to be calculated upto the date of challenging the award, the balance payable till the date of appeal calculated and remitted. The delayed payment and payment in instalments been entertained by Courts protecting the right of the aggrieved parties to contest the award on merits.

27. Taking note of the fact that the deficit in complying the deposit of 75% as precondition later rectified, the petition filed challenging the award of the MSME Council is maintainable due to the subsequent ratification.

<u>28. Effect of a non-speaking award:-</u>

The Council, when considering the objection of the respondent regarding the substandard goods supplied, ignoring the documents relied by the respondent had observed that the respondent failed to submit any documentary evidence in support of its contentions regarding any timely effective steps taken or communicated to the claimant as per the statutory provisions. This observations, *exfacie* a perverse observation since the statement of defence, along with the counter claim filed by the respondent before the Council, contains details of documents relied. 34 documents were annexed along with the statement of defence. Nonetheless, without considering any of these documents and without any whisper about these documents award passed. Thus, the non-speaking order, without any reasoning was passed suffers from arbitrariness. The Learned Single Judge, on considering the patent violation of public policy in exercise of the power under Section 34 of the Arbitration and Conciliation Act, 1996 had allowed the petition, granting liberty to both the parties to initiate fresh arbitration proceedings, if they so desire.

29. One of the issue is regarding the jurisdiction is whether MSME Act will have primacy over the general conditions of contract. Being the situs of the supplier, the claim petition filed before the MSMED Council at Punjab cannot be contended that the MSME Council at Punjab lack jurisdiction to entertain the claim petition. However, with regard to the other two issues, namely, quality of material supplied and pendency of Civil Suit regarding invocation of the Performance Bank Guarantee, this Court finds that the award of the Council is conspicuously silent about the documents relied and the conclusions are bereft of any reasoning.

30. The Arbitral Award had extracted Section 2(b) of the MSME Act, which deals about the appointed date and the judgment of the Allahabad High Court in ***Hameed Leather Finishers vs. Associated Chemical Industries Kanpur Pvt Ltd & Another,*** reported in ***2013 SCC OnLine All 9058,*** but had ignored the documents putforth by the respondent herein to establish that the material supplied was of substandard quality and same was brought to the notice of the supplier within 15 days of the supply.

31. Section 2(b) deals with "*appointed date*" while Section 2(b)(ii) deals with *"deemed acceptance"*. This deeming friction provision is with regard to the limitation for questioning the quality of the goods supplied. In the case in hand, the documents clearly show that the respondent has informed the appellant about the substandard quality even before expiry of 15 days. While so, the award does not explain how Section 2(b)(ii) of MSME Act can be applied to the facts of the present case.

32. In view of this Court, the non-assignment of reasons and the failure to discuss the documents produced, go to show the conclusion is manifestation of perversity.

33. In the given facts and circumstances, the Learned Judge, in the order dated 23.07.2025 interfered with the award for want of reasoning and not on the reasonableness of the reasoning. Hence, it is incorrect to say that the learned Judge, while exercising powers under Section 34 of the Arbitration and Conciliation Act, had sit on appeal over the findings of the Arbitral Award. When the impugned award, on the face, bristles with arbitrariness and contrary to the principle of natural justice, it is just and necessary to set aside the award on the ground that is contrary to public policy.

34. Hence, this Court finds no reason to interfere with the finding of the Single Judge, which has rightly invoked the powers under Section 34 of Arbitration and Conciliation Act and set aside the award for arbitrariness and failure to assign reasons besides conscious omission to consider of material evidence placed before it by the parties.

35. The Council under the MSME Act cannot act arbitrarily and ignore the fundamental legal principles which constitutes the public policy of the State. The dispute regarding the quality of the goods supplied and the invocation of the performance bank guarantee proves the subject matter in dispute already been seized by a Competent Civil Court. This vital fact overlooked completely by the Tribunal which considering the claim petition. Conveniently, the Council, in four lines, declined to take note of the pendency of the litigation regarding invocation of bank guarantee. After relegating the parties to approach the Competent Court of law for adjudication, it need not have at the same time, ventured to adjudicate the claim petition and allow it with three times of the claimed principal amount as penal interest. Since the perversity and illegality is apparently seen from the award, the Learned Single Judge has rightly pointed in his order that the award cannot be sustained being passed contrary to public policy of India.

36. In the light of the above discussion, we hold that the facts of the present case clearly warrants interference under Section 34 of Arbitration and

Conciliation Act. The Learned Judge has rightly exercised the power, hence it need no interference under Section 37 of the Arbitration and Conciliation Act.

37. As a result, O.S.A(CAD).No.101 of 2025 stands dismissed. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.

(Dr.G.J, J.) & (M.S.K, J.)
26.09.2025

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bsm

Dr.G.JAYACHANDRAN, J.
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