**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1681 OF 2026

IGL Industries Limited
Through Its Authorized Representative,
Dilip Joshi, Aged : 64 years,
Plot No.P-31, MIDC Chikalthana,
Aurangabad, Maharashtra – 431006. ..Petitioner

VERSUS

Vardhaman Auto Components Private Limited
through its Director, Mr. Rajesh H. Kothari,
Plot No.H-57, MIDC Waluj,
Dist. Chh. Sambhajinagar,
Aurangabad – 431136. ..Respondent

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Mr. R.R. Totala, Advocate for petitioner.
Mr. S.S. Bora, Advocate for Respondent.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : MARCH 30, 2026

JUDGMENT :-

1. Rule. Rule made returnable forthwith. With consent of parties matter is taken up for final hearing at admission stage.

2. Present petition is filed with following prayers :

> *B1: This Hon'ble Court may kindly be pleased to issue a writ of certiorari or a writ of similar nature and after examining the record and proceedings, be pleased to quash and set aside the impugned award passed by the Micro and Small Enterprise Facilitation Council in CASE ROABADA4SEFC/AWARD/2023/45 dated 30/11/2023 for being void ab-initio and non- enforceable due to non-compliance of Section 31(1) and (2) of the Arbitration and Conciliation Act, 1996 and Section 18 (1) and (2) of the Micro, Small and Medium Enterprise Development Act, 2006 and oblige;"*

3. The respondent lodged complaint with Micro Small and Medium Enterprises Council (MSME) for recovery of amount of Rs.18,32,161/- along with interest towards material supplied to petitioner. The petitioner was served with notice under Section 18(2) of MSME Act. Accordingly, petitioner appeared on 11.04.2023 before MSME Council. The petitioner was directed to file reply to complaint. On 16.05.2023, parties were directed to file respective submissions. On 30.11.2023, the Council pronounced impugned award adjudicating dispute. Petitioner availed remedy under section 19 of MSME Act before District Court but failed to deposit 75% statutory amount of award, hence, suffered rejection of application.

4. The respondent filed R.D. No.5035 of 2025 for execution of award. The petitioner filed objection below Exhibit-7 that award is nullity. The Executing Court dismissed his objection and directed compliance under Section 19 of MSME Act. The petitioner filed an application for recall of order, however, same is dismissed. Hence, present writ petition.

5. Mr. Totala, learned advocate appearing for petitioner raises two fold objections to impugned award. He submits that Section 18(2) of MSME Act, mandate that council shall first conduct conciliation and only on failure or termination of such conciliation proceed to pass arbitration award under Section 18(3). However, in present case mandatory procedure of conciliation was not

undertaken. He would further submit that arbitral award is not signed by one of the member i.e. Mr. Anant Sarda. No reason is recorded in award as to why he has omitted to sign. On this count also, award is vitiated. According to him, aforesaid objections were raised before executing court and it was incumbent upon Court to consider same. Mr. Totala relies upon observations of High Court of Delhi in case of **Kotak Mahindra Bank Ltd Vs. Narender Kumar Prajapat reported in 2023 SCC Online Del 3148**, to contend that once it is found that award is not compliant with mandatory provisions of law, it shall be treated as nullity. Relying on another decision of Delhi High Court in case of **M/s. ISC Projects Private Ltd Vs. Steel Authority of India reported in 2025 SCC Online Del 1133,** he contends that in absence of reason for omission to sign by member of Tribunal, arbitral award would be invalid.

6. Per contra, Mr. Bora, learned advocate appearing for respondent supports impugned award contending that award passed by MSME Council has attained finality. The petitioner had availed remedy under Section 19 by filing application for setting aside award. However, his application has been disposed of for want of statutory deposit. Hence, award attained finality. According to Mr. Bora, award is passed by majority of members of Council. The absence of signature of one of member would not render award invalid in terms of Section 31 of Arbitration and Conciliation Act. According to him,

objection to award on technicalities need not be entertained once petitioner has exhausted remedy under Section 19 of MSME Act and suffered dismissal.

7. Having considered submissions advanced by learned advocates appearing for respective parties, it can be observed that Section 18 of MSME Act provides reference to Council with regard to recovery of amount due under Section 17 i.e. goods supplied or services rendered by supplier. Sub-section (2) of Section 18 provides that Council itself can conduct mediation or refer matter to mediation service provider for conduct of mediation as per provisions of Mediation Act, 2023. Sub-section (4) of Section 18 provides that where mediation under sub-section (3) is not successful and stands terminated without settlement between the parties, the Council shall itself take up dispute to arbitration or refer to any alternative dispute resolution services for such arbitration. Sub-section (4) of Section 18 preserves power of MSME Council to act as arbitrator or mediator between supplier located within its jurisdiction and a buyer located anywhere in India.

8. Careful reading of scheme depict that first step after reference of a dispute to council is to resort remedy of conciliation or mediation and it is only when conciliation or mediation fails or stands terminated without settlement between parties, the further step of arbitration needs to be taken. In present case, there is nothing to

indicate that procedure contemplated under sub-section (4) of Section 18 was undertaken. There is nothing to show that mediation was unsuccessful or it was terminated without settlement between the parties. Therefore there is force in contention of Mr. Totala that award is nullity being non-compliant of mandatory requirement of reference to arbitration and conciliation.

9. Secondly, Mr. Totala contends that Section 31 of Arbitration and Conciliation Act stipulates that every award shall be signed by members of Arbitral Tribunal. Sub-section (2) of Section 31 prescribes that in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated. In present case, perusal of award depict that one of member Mr. Amrut Sarda has not signed award. Further, it sans reasons for such omission. Even, it is not the case that reasons are separately supplied by subsequent order. On this count also, this Court finds that arbitral award is nonest or nullity. The Hon'ble Delhi High Court in case of ***M/s. ISC Projects Private Limited Vs. Steel Authority of India Limited,*** reported in ***2025 SCC Online Del 1133*** considered aforesaid aspect in great detail and by giving reference to judgment of Hon'ble Supreme Court in case of ***Dakshin Haryana Bijli Vitran Nigam Ltd. vs. Navigant Technologies Pvt. Ltd.*** reported in ***(2021) 7 SCC 657***, observed that in the case of a multi-member

tribunal, only a unanimous award or a majority award is an arbitral award; a dissenting opinion is not an award at all. However, it was also held that all members of the tribunal should have signed the award, and that a dissenting opinion, if any, must be delivered contemporaneously with the majority award. Reference was given to observations in para 26 of judgment in case of Dakshin Haryana (supra), which reads thus :

> *"26. Section 31 (1) is couched in mandatory terms, and provides that an arbitral award shall be made in writing and signed by all the members of the Arbitral Tribunal. If the Arbitral Tribunal comprises of more than one arbitrator, the award is made when the arbitrators acting together finally express their decision in writing and is authenticated by their signatures. An award takes legal effect only after it is signed by the arbitrators, which gives it authentication. There can be no finality of the award, except after it is signed, since signing of the award gives legal effect and validity to it. The making and delivery of the award are different stages of an arbitration proceeding. An award is made when it is authenticated by the person who makes it. The statute makes it obligatory for each of the members of the Tribunal to sign the award, to make it a valid award. The usage of the term "shall" makes it a mandatory requirement. It is not merely a ministerial act, or an empty formality which can be dispensed with."*

10. In case of ***Maharashtra State Electricity Distribution Company Ltd. vs. Deltron Electronics***, reported in ***2016 SCC OnLine Bom 9521***, Single Judge of this Court has held as under :

> *"6……No doubt, under the scheme of the Arbitration and Conciliation Act, 1996, the award within the meaning of the Act is really an award of the majority of the Arbitral Tribunal and the award of any dissenting minority is no award. That still does not dispense with the requirement of participation of all Arbitrators in the reference and in the deliberations for*

> *making of the award. Sub-section (2) of section 31 of the Arbitration and Conciliation Act, 1996 requires that if the award is not signed by all members of the arbitral tribunal the reason for omitted signature/s must be stated. As we have noted the law on the point, what this means is that not just that the reason must be stated mechanically and as a matter of form, but that such reason must be adequate and germane for fulfillment of the requirement of the law that though the arbitrator/s whose signature/s is/are omitted actually participated in the hearings and deliberations for making of the award, his/their signature/s is/are justifiably not appended to the award. The justifiable reason may be absence or unavailability of the arbitrator/s at the time of signing (which is merely a ministerial act) or his/their refusal on the ground of any dissention or disagreement with the majority or the like. As I have noted above, such adequate and germane reason is clearly absent in the present case. <u>In the premises, the impugned award cannot be termed as a valid award in the eyes of law.</u> The want of signature of the Chairman of the Arbitral Tribunal/Council cannot be attributed simply to any administrative exigency or ministerial lapse or difficulty or even his having taken a dissenting view. <u>It rather goes to the root of the award and undermines its validity.</u>"*

11. It is, therefore, evident that absence of signature by any member of Tribunal without explanation for such omission would be a fatal defect in award. In view of aforesaid discussion, this Court finds that impugned award dated 30.11.2023 is unsustainable.

12. Mr. Bora, learned advocate appearing for the respondent raised objection to the maintainability of the writ petition in wake of the remedy under section 19 of the MSMED Act, 2006. However, when impugned award is nonest being contrary to mandatory provisions under MSMED Act, 2006, as well as the Arbitration and Conciliation Act, 1996, it cannot be termed as Arbitral award in the eye of law.

Hence, when the order impugned is without recourse to the mandatory provisions of the Special Act and in utter regard to the provisions of Arbitration and Conciliation Act, 1996, this Court finds that Constitutional remedy to access writ court cannot be foreclosed. Availability of alternate remedy is not an omnibus rule of exclusion of the writ jurisdiction, but a principle applied by the High Court as a form of judicial restraint and refrain in exercising the jurisdiction. The powers to issue prerogative writs under Article 226 of the Constitution of India cannot be limited or curtailed by any provision of restrictions under any statute. It is well settled that where an order in a proceeding is without jurisdiction or in violation of principles of natural justice, it is open for the writ court to invoke constitutional powers. This Court finds that looking to the nature of controversy and nature of alternate remedy, which is onerous and burned-sum in character requiring pre-deposit of 75% of the amount, it is imperative to invoke writ jurisdiction in peculiar facts and circumstances of this case.

13. In result, following order is passed.

O R D E R

i. Writ petition is **allowed** by setting aside the impugned Award dated **30.11.2023** passed by Micro and Small Enterprises Facilitation Council Ch. Sambhajinagar.

ii. Matter is relegated back to Council to decide afresh

iii. The Council shall first follow the procedure as contemplated under section 18(2) and (4) of the MSMED Act, 2006.

iv. All contentions are kept open to be decided by the Council.

v. Parties to appear before the Council on **16.04.2026.**

vi. The council shall endeavor to decide the proceeding within period of three (3) months from today.

vii. Writ Petition stands disposed of.

viii. Rule is made absolute in above terms.

(S.G. CHAPALGAONKAR, J.)

Mujaheed//