IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1910 OF 2026

Hill Crest Hotels & Resorts Private Limited
Formerly known as Hill Crest Resort and Spa Pvt. Ltd.
Having registered Office Address at
102, Wind Fall, Sahar Plaza, Near Chakala Metro Station JB Nagar, Andheri E
Mumbai – 400 059. ...Petitioner

Versus

1. **Micro and Small Enterprises Facilitation Council, MMR Region**, Mumbai, Thr. Ex-Officio Chairperson. Office of the Joint Director of Industries Vikas Centre, 702, 7th Floor, Dr. C. G. Gidvani Marg, Near Basant Theatre, Chembur (East), Mumbai – 400074.

2. **Nashwin Electric Private Limited**, Through its Managing Director Mr. Dennis Lobo, Unit No. 505, Madhu Industrial Park, Avadh Narayan Tiwari Marg, Andheri (East), Bombay-400 069. …Respondents

Mr. Ashish Kamat, Sr. Advocate, a/w Mr. Rashmin Khandekar, Mr. Pritesh Burad, Mr. Pranav Nair, Ms. Samita Vaviya & Mr. Kiran Yadav, i/by Pritesh Burad Associates, for the Petitioner.
Mr. Mayur Khandeparkar, Mr. Akash Loya, Mr. Pratik amin, Mr. Harsh Agarwal i/by Pratik Amin Associates, for the Respondent No. 2.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 10th FEBRUARY 2026
PRONOUNCED ON : 27th FEBRUARY 2026

JUDGMENT:

1. This petition under Article 226 of the Constitution of India assails the legality and validity of an award dated 27th June, 2022, passed by the Micro and Small Enterprises Facilitation Council, MMR Region, Mumbai (R-1) (MSEFC) in the Reference Petition No. 309/2018, filed by the Respondent No. 2, purportedly under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 ("the MSMED Act").

2. The petitioner is a Private Limited Company. It operates a resort at village Khandpe, Dist. Raigad.

3. While the petitioner was constructing the resort, it had appointed various contractors for the project. According to the petitioner, the Respondent No. 2 entered into three electrical work contracts with the petitioner, for the supply, erection, testing, and commissioning of the electrical works on the site of the said resort project, during the period 17th February to 12th May, 2015. The Respondent No. 2 was, then not registered as a Micro, Small and Medium Enterprise ("MSME") under the provisions of the MSMED Act. On 07th November, 2015, the Respondent No. 2 came to be registered as MSME. On 31st August 2017, subsequent to the registration of Respondent No. 2 as MSME, another contract was entered into for external infra work at the resort project between the petitioner and Respondent No. 2.

4. In the wake of the disputes between the parties, regarding the quality and quantity of the works executed by the Respondent No. 2, the payment remained outstanding. The Respondent No. 2 filed a Reference before the Respondent No. 1 – MSEFC seeking a sum of Rs. 4,05,66,762/- (Rupees Four Crores Five Lakhs Sixty Six Thousand Seven Hundred and Sixty Two) comprising of the principal amount of Rs. 3,58,54,215/- (Rupees Three Crores Fifty Eight Lakhs Fifty Four Thousand Two Hundred and Fifteen) and the interest thereon. Future interest from 01st October, 2018 in accordance with the provisions of Section 16 of the MSMED Act, till the payment, was also sought.

5. After hearing the petitioner and Respondent No. 2, the Respondent No. 1 – MSEFC passed an award on 27th June, 2022, in terms of the prayers in the Reference.

6. Being aggrieved, the petitioner filed a petition, being Commercial Arbitration Petition No. 469/2022, under Section 34 of the Arbitration and Conciliation Act, 1996, before this Court to set aside the said award.

7. In the intervening period, the Respondent No. 2 initiated Execution proceedings before the Executing Court at Panvel.

8. In Commercial Arbitration Petition No. 469/2022, this Court declined to grant any interim relief as the petitioner had not deposited 75% of the award amount in terms of Section 19 of the MSMED Act. Pursuant to the directions passed by this Court in Commercial Arbitration Petition No. 469/2022, the Executing Court has determined the liability of the petitioner under the Award at Rs. 13,99,19,998/- (Rupees Thirteen Crores Ninety Nine Lakhs Nineteen Thousand Nine Hundred and Ninety Eight), together with further interest in accordance with the provisions contained in Section 16 of the MSMED Act, 2006 until realization.

9. As the Executing Court has passed an order allowing the application of Respondent No. 2 for Police protection and service of warrant of attachment by hand, the petitioner has invoked the writ jurisdiction.

10. I have heard Mr. Ashish Kamat, the learned Senior Advocate for the petitioner, and Mr. Mayur Khandeparkar, the learned Counsel for the Respondent No. 2, at some length.

11. At the outset, the issues of maintainability and entertainability of the petition were raised on behalf of the Respondent No. 2.

12. Mr. Ashish Kamat, the learned Senior Advocate, strenuously submitted that, the facts of the case are so gross and the injustice likely to be caused to the petitioner is so patent and irretrievable, that the writ Court would be justified in entertaining the petition, despite the petitioner having invoked the remedy of filing a petition to set aside the Award under Section 34 of the Arbitration and Conciliation Act.

13. Amplifying this submission, Mr. Kamat would urge that, the impugned award suffers from jurisdictional error on two counts. First, the respondent No. 2 was not registered as MSME when the first three contracts were entered into. Though the fourth contract was executed after the registration of Respondent No. 2 as MSME, yet, a composite reference was made without any bifurcation of the claims under the respective contracts. Thus, the entire award is rendered a nullity, as it was passed by the Respondent No. 1 without jurisdiction.

14. To this end, Mr. Kamat would urge that, the position is settled by a line of decisions of the Supreme Court. Reliance was placed on the judgments of the Supreme Court in the case of ***Silpi Industries & Ors. Vs. Kerala State Road Transport Corporation & Another***[1], ***Vaishno Enterprises Vs. Hamilton Medical AG & Anr***[2].

---

1 (2021) 18 SCC 790

2 (2024) 12 SCC 214

15. Mr. Kamat submitted that, though a discordant note was struck by a Bench of co-equal strength in the case of ***NBCC (India) Ltd. Vs. State of West Bengal & Ors.***[3], it is well settled that, the reference of a decision to a larger Bench does not dilute the precedential authority of the referred judgment.

16. Second, the Respondent No. 1 – MSEFC could not have entered into the adjudication of the dispute as it was beyond the purview of the MSMED Act. The contracts in question are plainly 'works contracts.' It is settled law that MSMED Act does not govern the works contracts. Thus, the award passed by the Respondent No. 1 suffers from serious jurisdictional incompetence. Reliance was placed on a judgment of a learned Single Judge of this Court in the case of ***National Textile Corporation Ltd. Vs. Elixir Engineering Pvt. Ltd. & Anr.***[4], wherein it was enunciated that the lack of jurisdiction in the Facilitation Council to conduct the arbitration proceedings in relation to a dispute arising out of a works contract rendered the award patently illegal.

17. The challenge to the maintainability was sought to be met by Mr. Kamat, by canvassing a two fold submission. One, the decision in the case of ***India Glycols Ltd. & Anr. Vs. Micro and***

---

3 (2025) 3 SCC 440

4 2023 SCC OnLine Bom 653

Small Enterprises Facilitation Council, Medchal – Malkajgiri & Ors.[5], wherein the Supreme Court cautioned against entertaining a petition under Articles 226/227 of the Constitution filed in order to obviate compliance with the requirement of pre-deposit under Section 19, has been referred to a larger Bench by another judgment of the Supreme Court in ***Tamil Nadu Cement Corporation Ltd. Vs. Micro and Small Enterprises Facilitation Council & Anr***.[6].

18. Two, emphasizing the plenary nature of the writ jurisdiction, Mr. Kamat would urge, in a case where the writ court finds that, the party is made to suffer an exorbitant payment under a statutory provision bordering on impossibility of performance, the writ court can intervene. Mr. Kamat would urge, in the facts of the case, despite a substantive jurisdictional challenge to the award having been raised by the petitioner, it is virtually rendered remediless. In the petition under Section 34 of the Arbitration and Conciliation Act, the prayers of the petitioner are not being entertained for want of the pre-deposit. On the other hand, if the petitioner is not heard in the exercise of the plenary writ jurisdiction, the petitioner would suffer irretrievable prejudice. In such a situation, though the petitioner has availed a statutory remedy yet for want of the pre-deposit, the statutory remedy

5 (2025) 5 SCC 780

6 2025 4 SCC 1

cannot be said to be efficacious and, therefore, this Court would be justified in exercising the writ jurisdiction.

19. In opposition to this, Mr. Khandeparkar the learned Counsel for Respondent No. 2, would submit that, the petition does not deserve to be entertained for a multitude of reasons; the conduct of the petitioner being the most egregious.

20. Elaborating the challenge to the entertainability of the petition, Mr. Khandeparkar would urge that, the legal position as regards the exhaustion of alternate remedy is well-nigh settled. However, in the case at hand, rather than maintainability it is the entertainability of the petition, given the attendant circumstances and the conduct of the petitioner, that requires consideration. The award was passed on 27th June, 2022. The petitioner filed the petition under Section 34 of the Arbitration and Conciliation Act on 20 October 2022. No effort was made to move the said petition and seek interim relief. It is only after the Executing Court passed orders towards the execution of the award, an abortive attempt was made to move interim application.

21. By an order dated 16th January, 2026 in Commercial Arbitration Petition No. 469/2022, this Court categorically declined to entertain the prayer for interim relief observing that, the requirement of deposit under Section 19 of the MSMED Act, being mandatory, no indulgence can be shown to the petitioner. Thereafter, the instant petition was filed on 4th February, 2026, while still maintaining the challenge to the award in the petition under Section 34 of the Arbitration and Conciliation Act, 1996.

22. Mr. Khandeparkar, further submitted with tenacity that, the petition deserves to be dismissed on the ground of delay. It was urged that, though there is no period of limitation for filing writ petition, yet, where an alternate remedy exists which is required to be availed within the prescribed period of limitation, that limitation would be a measure for determining the reasonable time to entertain the petition under Articles 226 and 227 of the Constitution of India.

23. Reliance was placed by Mr. Khandeparkar on the judgments in the cases of ***Rikhab Chand Jain Vs. Union of India & Ors***[7]., ***Uttar Pradesh Power Corporation Ltd. & Ors. Vs. Ram Gopal***[8], and a Division Bench judgment in the case of ***Pramod Vasantrao Deshmukh & Ors. Vs. State of Maharashtra***[9].

24. Mr. Khandeparkar laid emphasis on the fact that, by this petition, the petitioner is taking a chance. The petitioner continues to maintain the challenge to the award under Section 34 of the Arbitration and Conciliation Act. In this petition no statement has been made that, the petitioner would not pursue the said challenge. In such circumstances, the instant petition, which has

---

7 2025 SCC OnLine SC 2510

8 (2021) 13 SCC 225

9 2025 SCC OnLine Bom 3473

been filed with the only objective of putting hindrances in the execution of the award, does not deserve to be entertained.

25. Mr. Khandeparkar would urge that, the Reference of the judgment in the case of ***India Glycols Ltd. (supra)***, to a larger Bench does not alter the fundamental principle that the exercise of writ jurisdiction is discretionary and subject to the rule of exhausting the statutory remedy.

26. On the aspect of the Respondent No. 2 not being registered as MSME when the first three contracts were executed, Mr. Khandeparkar would urge that, the decision of the Supreme Court in the case of ***NBCC (India) Ltd. (supra)***, is a complete answer to the challenge sought to be mounted on behalf of the petitioner. Mr. Khandeparkar placed special emphasis on the fact that, in ***NBCC (India) Ltd. (supra)***, the Supreme Court enunciated in clear and explicit terms that, the earlier decisions in ***Silpi Industries (supra),*** and ***Vaishno Enterprises (supra)*** do not lay down the correct law, yet, to ensure clarity and certainty about the applicable precedents, a reference has been made to a three-Judge Bench.

27. Likewise, the question as to whether the contracts in question, are 'work contracts' is a question of fact and can be properly considered in the petition under Section 34 of the

Arbitration and Conciliation Act. Therefore, the petition does not deserve to be entertained, submitted Mr. Khandeparkar.

28. To start with the tenability of the writ petition against the award passed by the MSEFC under Section 18 of the MSMED Act. The availability of an efficacious alternate remedy is self-imposed restraint on the exercise of the writ jurisdiction by the High Court. Normally, the exceptions to the rule of efficacious alternate remedy arise where the writ petition has been filed for the enforcement of a fundamental right; there has been a violation of principle of natural justice; the impugned order or proceedings are wholly without jurisdiction or vires of the legislation under which the orders have been purportedly passed itself is challenged. When a right is created by a statute which has also prescribed the remedy or procedure for enforcing such right or liability, resort must be had to that particular statutory remedy before invoking extra-ordinary writ jurisdiction under Article 226 of the Constitution. This rule of exhaustion of the statutory remedy is a rule of policy, convenience and discretion.

29. In the context of the controversy at hand, it may be apposite to make a reference to the three-Judge Bench judgment in the cases of ***India Glycols Ltd. (supra)***, and the subsequent decision in the case of ***Tamil Nadu Cement Corporation Ltd. (supra).*** In **India Glycols Ltd. (supra)**, the Supreme Court enunciated in clear and explicit terms that, Section 18 of the Act, 2006 provides for recourse to the statutory remedy for challenging an award under 1996 Act. That recourse to the remedy is subject to the discipline of complying with the provisions of Section 19. Thus, entertaining a petition under Articles 226/227 of the Constitution in order to obviate compliance with the requirement of pre-deposit under Section 19 would defeat the object and purpose of the special enactment which has been legislated upon by Parliament.

30. In the case of **Tamil Nadu Cements Corporation Ltd. (supra),** another three Judge Bench of the Supreme Court expressed its reservations on the aforesaid dictum in the case of **India Glycols Ltd. and Anr. (supra).** It was observed that whether there would be an absolute and complete bar to invoke writ jurisdiction under Article 226 of the Constitution, even in exceptional and rare cases where fairness, equity and justice may warrant the exercise of writ jurisdiction, warranted consideration. Thus, a reference was made to a larger Bench of five Judges on the following questions :

> "64. In the light of the aforesaid decisions, we deem it appropriate to refer the following questions raised in the present appeal to a larger Bench of five Judges, namely :
>
> 64.1(i) Whether the ratio in India Glycols (supra) that a writ petition could never be entertained against any order/award of MSEFC, completely

> bars or prohibits maintainability of the writ petition before the High Court ?
>
> 64.2(ii) If the bar/prohibition is not absolute, when and under what circumstances will the principle / restriction of adequate alternative remedy not apply ?
>
> 64.3(iii) Whether the members of MSEFC who undertake conciliation proceedings, upon failure, can themselves act as arbitrators of the Arbitral Tribunal in terms of Section 18 of the MSEMD Act read with Section 80 of the A & C Act ?
>
> The first and second question will subsume the question of when and in what situation a writ petition can be entertained against an order / award passed by MSEFC acting as an Arbitral Tribunal or conciliator."

31. The reference on the questions extracted above, would indicate that the reference in question No.(i) is essentially on the point as to whether there is an absolute bar for the entertainability of the Petition in the face of the statutory regime under Sections 18 and 19 of the MSMED Act. Thus, caution administered by the Supreme Court in the case of **India Glycols Ltd. (supra)** itself, cannot be said to be under further judicial scrutiny.

32. In any event, the Petitioner would be required to surmount an impediment of persuading the Court to make an exception to the rule of compelling a party to exhaust statutory remedy as a matter of policy, convenience and discretion.

33. This propels me to the distinction, forcefully canvassed by Mr. Khandeparkar, in the maintainability and entertainability of the Petition. In the case of **Godrej Sara Lee Ltd. V/s. Excise and Taxation Officer-cum-Assessing Authority and Ors.**[10], the Supreme Court reiterated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by the High Court, despite the Petitioner setting up a sound legal point, if grant of the claimed relief would not further public interest.

34. Before adverting to the two grounds, namely, the conduct and delay pressed into service on behalf of Respondent No.2 to the entertainability of the Petition, I deem it appropriate to delve into the foundational challenges to the jurisdiction of MSEFC (R1), lest the Petition may not be pre-judged.

35. The first ground of attack was the non-registration of the Respondent No.2 as MSEE before execution of the first three

---

10 2023 SCC Online SC 95

contracts. On facts, there does not seem to be much controversy. Rather the very necessity of the registration of the Petitioner as MSME under Section 18 of the Act, 2006 was at the heart of the debate at the bar.

36. Mr. Kamat placed reliance on the judgment of the Supreme Court in the case of **Silpi Industries and Ors. (supra)**, wherein a two judge Bench of the Supreme Court observed that, to seek benefit of the provisions under MSMED Act, the seller should have registered under the provisions of the Act, as on the date of entering into the contract. In any event, for the supplies pursuant to the contract made before the registration of the unit under provisions of the MSMED Act, no benefit can be sought by such entity, as contemplated under MSMED Act.

37. The decision in **Silpi Industries and Ors. (supra)**, was followed by another two Judge Bench in the case of ***Vaishno Enterprises (supra)***, wherein the legal position was enunciated as under :

> "20. Considering the relevant provisions of the MSME Act more particularly Section 2(n) read with Section 8 of the MSME Act, the provisions of the MSME Act shall be applicable in case of supplier who has filed a memorandum with the authority referred to in subsection (1) of Section 8. Therefore, the supplier has to be a micro or small enterprise registered as MSME, registered with any of the authority 13 mentioned in

> subsection (1) of Section 8 and Section 2(n) of the MSME Act.
>
> 21. It is admitted position that in the present case the appellant is registered as MSME only on 28.08.2020. Therefore, when the contract was entered into the appellant was not MSME and therefore the parties would not be governed by the MSME Act and the parties shall be governed by the laws of India applicable and/or prevailing at the time of execution of the contract. If that be so the Council would have no jurisdiction to entertain the dispute between the appellant and the Respondent no.1, in exercise of powers under Section 18 of the MSME Act."

38. In contrast, in the case of **NBCC (India) Ltd. (supra)**, a Bench of co-equal strength considered the proposition enunciated in **Silpi Industries and Ors. (supra)** and a line of decisions that followed the dictum in the case of **Silpi Industries and Ors. (supra),** and after an elaborate analysis, under the caption "whether the registration is necessary pre-condition to refer the dispute under Section 18 of the MSMED Act", observed that, in the case of **Silpi Industries and Ors. (supra),** the question as to whether the enterprises is disabled from seeking a reference by filing memorandum under Section 8 of the Act, never arose for consideration. More importantly, in the case of **Silpi Industries and Ors. (supra),** the Supreme Court did not examine any provisions of the Act, and, their implications on the right to seek reference under Section 18 of the Act.

39. Dealing with the subsequent judgments as well, the Supreme Court concluded that, though it was possible for the Supreme Court to follow the precedents referred to in paragraphs 53 and 54 (of the said judgment) to arrive at the conclusion that the judgments in **Silpi Industries and Ors. (supra), Gujarat State Civil Supplies Corporation Ltd. V/s. Mahakali Foods (P) Ltd.[11],** coupled with the subsequent orders in **Vaishno Enterprises (supra)**, and **Nitesh Estate Ltd. V/s. Outsourcing Xperts**[12] cannot be construed to be the binding precedents on the issue that has arisen for consideration before the Supreme Court taking into account the compelling need to ensure clarity and certainty about the applicable precedents on the subject, the Supreme Court deemed it appropriate to refer the said Appeal to a three-Judge Bench.

40. Indeed, the consideration in ***NBCC (India) Ltd. (supra)***, on the question of registration as MSME to be eligible to make a reference under Section 18 of the Act, as elaborate, textual and contextual. Under Section 8 of the MSMED Act, the registration by filing a memorandum is plainly discretionary. This court considers it appropriate not to delve more on this issue.

41. The second ground of challenge was premised on the underlying contracts being the work contracts, and, thus, beyond

---

11 (2023) 6 SCC 401

12 (2024) 12 SCC 221

the remit of the resolution under the regime of MSMED Act. Taking the Court through the contract formed by the letters dated 17 February 2014, 22 February 2015 and 12 May 2015, Mr. Kamat would urge, the nature of the work which was undertaken, squarely falls within the ambit of works contract. The transaction was not that of pure supply of goods and/or services. The Petitioner, thus, would not fall within the definition of supplier under Section 2(n) read with 2(e) of the MSMED Act, 2006.

42. A strong reliance was placed on the decision in the case of ***National Textile Corporation Ltd. (supra)***, wherein the learned Single Judge of this court had enunciated that, as the contract was in the nature of a works contract, the provisions of MSMED Act, could not have been invoked and, therefore, the impugned award therein were rendered without jurisdiction. It is pertinent to note that the said findings were recorded in a Petition under Section 34 of the Arbitration and Conciliation Act, 1996.

43. What constitutes the works contract is not free from difficulties and has engaged attention of the Courts. Often the question whether a particular contract is the works contract is rooted in facts. To determine the character of the contract, whether it is works contract or contract for supply of goods or rendering services or a combination of both, which may fall within the definition of “enterprise” under Section 2(e) of the MSMED Act, an investigation into facts would be warranted. It may be hazardous to record a finding on the basis of apparent tenor of the document.

44. In the case of **Larsen and Toubro Ltd. and Anr. V/s. State of Karnataka and Anr.**[13], a three-Judge Bench of the Supreme Court enunciated that the determination as to whether the contract involved in a transaction constitutes a contract of sale or a contract of work or service depends in each case upon its facts and circumstances. Mere passing of property in article or commodity during the course of the performance of the transaction does not render it a transaction of sale.

45. A reference was made to the earlier decision in the case of **STO v/s. B.C.Kame**[14,] wherein the Supreme Court has observed that, determination of the question whether a contract is a contract for “work and labour” or a contract for “sale” was not free from difficulty, particularly when the contract is a composite one.

46. A useful reference can also be made to another three-Judge Bench judgment in the case of **Bhaven Construction V/s. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd. and Anr.**[15] wherein the context of the provisions contained in Section 2(k) of the Gujarat Public Works Contract Disputes Arbitration Tribunal Act, 1992, which defines the “works contract”, the Supreme Court observed that the question as to whether the

13 (2014) 1 SCC 708

14 (1977) 1 SCC 634

15 (2022) 1 SCC 75

contract which is composite in nature, falls within the ambit of a works contract under Section 2(k) of the said Act, 1992 is the question that requires contractual interpretation, and is a matter of evidence, especially when both parties have taken contradictory stands regarding this issue. It was further observed that, it is settled law that the interpretation of contracts in such cases shall generally not be done in the writ jurisdiction. Thus, the mere fact that the Gujarat Act, 1992 might apply may not be sufficient for the writ courts to entertain the plea of Respondent No.1 to challenge the ruling of the arbitrator under Section 16 of the Arbitration Act.

47. The aforesaid being the position in law, this Court is not inclined to accept the invitation of Mr. Kamat to delve into the nature of the contract so as to record a finding of fact in regard to the nature of the contract between the Petitioner and Respondent No.2 and then rule, whether MSEFC had no jurisdiction to pass the impugned award. It is more so for the reason that, the Petitioner has already availed a statutory remedy by filing a Petition under Section 34 of the Act, 1996 to set aside the impugned award. All these questions can be legitimately examined in the said Petition.

48. This leads me to the aspect of conduct of the Petitioner and the delay in invoking the writ jurisdiction. First and foremost, the Petitioner has already filed a Petition seeking to set aside the impugned award way back in the year 2022. Prima facie, this Court finds substance in the submission of Mr. Khandeparkar that the said Petition was sought to be moved for interim reliefs only after orders were passed in the execution proceedings.

49. What accentuates the situation is the fact that, during the course of the submissions before this Court, when an objection was raised, a submission was canvassed on behalf of the Petitioner that the Petitioner would withdraw the said Petition under Section 34 and pursue the writ petition. After this Petition was heard, an adjournment was sought in Comm. Arbitration Petition No.469 of 2022. At that stage, when an objection was raised on behalf of the Respondent No.2, the co-ordinate Bench taking up Commercial Arbitration Petition was informed that the following statement was made on behalf of the Petitioner before this Court (as recorded in the order dated 13 February 2026 in Comm. Arbitration Petition No.469 of 2022) :

> "If this Court entertains the Writ Petition, the Petitioner would not press the Arbitration Petition under section 34 of the Arbitration and Conciliation Act, 1996 and would withdraw the same."

50. Plainly, the Petitioner has been invoking simultaneous remedies before two forums. The case at hand is not one of not availing the alternate statutory remedy. But that of having availed the said statutory remedy, the Petitioner has invoked the writ

Jurisdiction keeping in abeyance the statutory remedy as the statute warrants pre-deposit. Such a course cannot be countenanced, especially when the statutory remedy is made conditional upon the pre-deposit which is not an unusual legislative mechanism.

51. The aspect of delay also flows from keeping statutory remedy in a state of hibernation after having availed the same. In effect, the writ jurisdiction is invoked after almost three years and eight months of the passing of the award. This delay is required to be considered in conjunction with the reluctance to pursue the statutory remedy as the Petitioner perceives the statutory remedy onerous.

52. In the case of ***Rikhab Chand Jain (supra)***, the Supreme Court enunciated the legal position as under :

> "13. Although there is no period of limitation for invoking the writ jurisdiction of a High Court under Article 226, all that the courts insist is invocation of its jurisdiction with utmost expedition and, at any rate, within a "reasonable period". What would constitute "reasonable period" cannot be put in a straight-jacket, and it must invariably depend on the facts and circumstances of each particular case. Nonetheless, the period of limitation prescribed by an enactment for availing the alternative remedy AIR 1961 SC 1506 provided thereunder in certain cases does provide indication as to what should be the "reasonable period" within which the writ jurisdiction has to be invoked.

53. The conspectus of aforesaid consideration is that the Petitioner has made an endeavour to invoke the writ jurisdiction as a buffer for an unfavourable outcome in Comm. Arbitration Petition No.469 of 2022, consequent to the failure to make the pre-deposit. The Writ Petition, therefore, does not deserve to be entertained.

54. Hence, the following order:-

: : O R D E R : :

i] The Writ Petition stands dismissed with costs.

[N. J. JAMADAR, J.]