



W.P.No.31369 of 2025

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 20.02.2026

CORAM

**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

W.P.No.31369 of 2025

and

W.M.P.Nos.35112 & 55165 of 2025

M/s.RS Development and Construction India Pvt. Ltd.,  
Represented by its Authorised Signatory, M.Thangaraju,  
No.131/1, APT Road,  
Erode – 638 003.

.. Petitioner

**Vs.**

1.Micro & Small Enterprises Facilitation Council,  
Represented by its Chair Person,  
Director of Industries & Commerce,  
Guindy, Chennai – 600 032.

2.M/s.Anitech Infra,  
A partnership firm,  
Represented by its Managing Partner,  
T.Gagarin, A-10, RAMS Apartments,  
21, Dr.Raja Annamalai Road,  
Purasawakkam, Chennai – 600 084.

.. Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India  
praying to issue a Writ of Certiorari, calling for the records of the first  
respondent comprised in order bearing reference  
Ref.No.MSEFC/CR/360/2021 dated 20.12.2024, quash the same as  
arbitrary, illegal, unconstitutional.



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W.P.No.31369 of 2025

For Petitioner : Mr.S.Ramesh  
For R1 : Mr.L.S.M.Hasan Fizal  
Additional Government Pleader  
For R2 : Mr.M.Mubarak Ahmad  
for M/s.Ahmad Associates

### **ORDER**

The petitioner challenges an award passed by the 1<sup>st</sup> respondent under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, (hereinafter referred to as the '2006 Act').

2.The 2<sup>nd</sup> respondent herein had filed a petition under Section 18(1) of the 2006 Act, on 18.10.2021. It claimed for the recovery of a sum of Rs.2,38,22,126/-, together with interest against the writ petitioner. The 2<sup>nd</sup> respondent claimed that it had entered into an agreement with the writ petitioner, who had defaulted in payments of money due to it. It submitted that, it made several requests, but as the payment had not been made by the petitioner, it approached the 1<sup>st</sup> respondent for resolution of the dispute.

3.Summons were issued by the 1<sup>st</sup> respondent to the writ petitioner. The writ petitioner filed a reply to the same. In December 2022, as mandated by the 2006 Act, the Council took up the matter for

2/16



W.P.No.31369 of 2025

conciliation. However, the efforts for conciliation failed. Consequently, the 1<sup>st</sup> respondent closed the conciliation proceedings on 22.02.2024, and decided to proceed under Section 18(3) of the 2006 Act.

4. Notice of Arbitration was issued to the writ petitioner. The 1<sup>st</sup> respondent recorded that on 09.10.2024, the writ petitioner and the 2<sup>nd</sup> respondent were asked to give their consent to proceed with the arbitration either by the Micro and Small Enterprises Facilitation Council (MSEF Council) itself, or require the matter to be referred to the Madras High Court Arbitration Center. The matter was taken up on 14.11.2024. On that date, the 1<sup>st</sup> respondent recorded that the 2<sup>nd</sup> respondent was present, but the writ petitioner was absent. The matter was again called on 12.12.2024. On that day too, the Council recorded that the 2<sup>nd</sup> respondent alone was present and the writ petitioner was absent. The case was again adjourned to 20.12.2024. The same situation prevailed even on that day.

5. Pending the arbitration proceedings, the 2<sup>nd</sup> respondent filed an application in I.A.No.1 of 2024, seeking a relief under Section 17 of the Arbitration and Conciliation Act, 1996. By this application, the 2<sup>nd</sup> respondent called upon the 1<sup>st</sup> respondent to pass an interim order to secure a sum of Rs.13,56,73,497/-, pending disposal of the arbitration



W.P.No.31369 of 2025

proceedings. By an order dated 20.12.2024, the 1<sup>st</sup> respondent passed an award, directing the writ petitioner to pay a sum of Rs.2,38,22,126/-, together with compound interest with monthly rests, at three times the bank rate, notified by the Reserve Bank of India and disposed of the arbitration claim. Challenging the same, the present writ petition.

6.This Court entertained the writ petition, issued rule nisi and granted an order of interim stay of the impugned award on 20.08.2025.

7.When the interlocutory application came up for hearing before on 11.09.2025, this Court directed the petitioner to deposit 50% of Rs.2,79,45,258/-, in a fixed deposit in a Nationalized Bank in the name of the Registrar General of this Court, and granted four weeks' time for the said exercise. The petitioner deposited a sum of Rs.1,39,72,629/- in a fixed deposit and handed over the same to the Registrar General in compliance with the order granted by this Court. Thereafter, the interim order was extended and the matter was posted for final hearing.

8.The 1<sup>st</sup> respondent has produced the records and the 2<sup>nd</sup> respondent has filed a counter. The pleadings having been completed, the matter was taken up for final disposal.



W.P.No.31369 of 2025

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9.I heard Mr.S.Ramesh for the petitioner, Mr.L.S.M.Hasan Fizal, Additional Government Pleader for the 1<sup>st</sup> respondent and Mr.Mubarak Ahmad for the 2<sup>nd</sup> respondent.

10.After narrating the facts of the case, Mr.S.Ramesh urged as follows:-

(i)The writ petition challenging the award passed by MSEF Council is maintainable, as the order is in violation of the principles of natural justice. He submitted that, the petitioner had attempted to login for the hearings conducted on 14.11.2024 and on 12.12.2024 and that, they were not permitted to enter the virtual hearing and hence, the recording of the 1<sup>st</sup> respondent that the writ petitioner did not appear before him on those two dates, which resulted in the award, is erroneous and is a violation of principles of natural justice.

(ii)The order passed by the 1<sup>st</sup> respondent suffers from serious lacunae of non-application of mind. He points out that the writ petitioner had filed his counter, and the same had been recorded by the 1<sup>st</sup> respondent. However, while passing the award, the MSEF Council had



W.P.No.31369 of 2025

recorded as if no counter had been presented.

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(iii)The award is void, since the very same parties who had acted as conciliators, had also acted as arbitrators. This being contrary to Section 80 of The Arbitration and Conciliation Act, 1996, the award deserves to be set aside.

(iv)Referring to Paragraph Nos.18 and 19 of the award, he points out that no reason has been given by the MSEF Council for decreeing the claim. This, he states, is violative of Section 31(3) of The Arbitration and Conciliation Act, 1996, and on this ground too, he urges that the award deserves to be set aside.

(v)Finally, he pleaded that this court, if it comes to a conclusion to quash the impugned proceedings, it may refer the matter to the Madras High Court Arbitration Center, instead of pushing the parties to file an application under Section 11 of The Arbitration and Conciliation Act, 1996.

11.Rejecting these arguments, Mr.M.Mubarak Ahmad pointed out as follows:-



W.P.No.31369 of 2025

(i)The writ petition is not maintainable, as the petitioner has an effective alternate remedy by way of filing a petition to set aside the impugned award under Section 34 of the Arbitration and Conciliation Act, 1996.

(ii)The plea of the petitioner that the conciliation and the arbitration proceedings were presided over by one and the same person is factually erroneous. The conciliation proceedings had taken place in the presence of the Regional Joint Director of the 1<sup>st</sup> respondent, and he was not a part of the panel of the Arbitrators who passed the final order.

(iii)Arbitration notices were sent as per Section 18(3) of the 2006 Act, pursuant to a decision taken by the Council on 19.06.2024, and that, the petitioner was served with the summons on all occasions and that, he had not appeared before the authority and hence, the petitioner cannot blame anyone else, except himself for the award having been passed.

(iv)On the plea that the writ petitioner had filed a counter, but the same had not been taken note of by the 1<sup>st</sup> respondent, he urged that the word 'counter statement' or 'written arguments' refers to filing a counter statement to the statement of accounts filed by the 2<sup>nd</sup> respondent. In any



W.P.No.31369 of 2025

event, the counter statement that had been filed by the petitioner was during the course of conciliation proceedings and not during the course of arbitration and hence, it need not be referred to.

12.Mr.L.S.M.Hasan Fizal, Additional Government Pleader has produced the records and placed the same for the perusal of the Court.

13.I have carefully considered the submissions of both sides and gone through the records in detail.

14.Both the counsel argued on maintainability, as well as on the merits of the case. When issues of maintainability are raised, I have to deal with that issue first before proceeding on merits. This is because, if I agree with the respondents on the issue of maintainability, I should not go into the merits of the case.

15.It is the plea of Mr.M.Mubarak Ahmad that as the petitioner has an effective alternate remedy under Section 34 of the Arbitration and Conciliation Act, 1996, this Court should not interfere with the same in exercise of its power under Article 226 of the Constitution of India. Meeting this point, Mr.S.Ramesh invites my attention to the judgment of



W.P.No.31369 of 2025

the Supreme Court in *Jharkhand Urja Vikas Nigam Limited Vs. State of*

*Rajasthan and others, (2021) 19 SCC 206*. He states that, this very issue had been a subject matter of discussion by the Supreme Court, which had held that a writ petition is maintainable. A perusal of the judgment in *Jharkhand Urja Vikas Nigam Limited's* case, shows that the submission of Mr.S.Ramesh is correct.

16.It is necessary for me to discuss the facts involved in that case before its application to the case on hand. The appeal arose before the Supreme Court from an order passed by the High Court of Judicature at Rajasthan, Jaipur Bench. The appellant before the Supreme Court filed a writ petition challenging the order passed by Rajasthan MSEF Council. The Council, in that case, had called upon the parties to appear before it for conciliation. On the date on which the parties were to appear, the appellant did not do so. Hence, the Council passed an award directing the appellant to pay an amount to the claimant. This order was challenged before the learned Single Judge of the Rajasthan High Court in Civil Writ Petition No.11657 of 2017. The learned Single Judge dismissed the writ petition. Aggrieved by the same, the Jharkhand Urja Vikas Nigam Limited preferred an appeal before the Division Bench in DB Special Appeal Writ No.1854 of 2017. The Appellate Court confirmed the order



W.P.No.31369 of 2025

of the learned Single Judge. Challenging the said order, the original writ petitioner preferred a special leave petition to the Supreme Court.

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17.The point urged in the appeal was that when conciliation proceedings fail, the Council should have called the parties to conduct arbitration. Thereafter, it should have adjudicated the dispute between the parties. However, in that case, the Rajasthan MSEF Council had passed an award on the very day when it posted for conciliation. Hence, the Supreme Court held that passing of an arbitration award on the same day on which the matter is posted for conciliation is not in accordance with Sections 18(2) and 18(3) of the 2006 Act and declared the award to be a nullity. The Court held that there is no Arbitral award in the eye of law and since, the award had been passed without recourse to arbitration and in utter disregard of the proceedings of the Arbitration and Conciliation Act, 1996, Section 34 of the said Act will not apply.

18.In other words, this judgment would apply to a situation, where, without calling upon the parties to appear for arbitration, if a MSEF Council were to pass an award immediately on the closure of the conciliation proceedings, then the award so passed cannot be treated as an award itself. This is clear from a perusal of paragraph No.18 in



W.P.No.31369 of 2025

**Jharkhand Urja Vikas Nigam Limited's** case. The Court had not held

that an award, even when validly passed after the issuance of summons, is still susceptible to challenge by way of a writ petition under Article 226 of the Constitution of India.

19.The Supreme Court was again presented with the very same issue in **Gujarat State Civil Supplies Corporation Ltd. Vs. Mahakali Foods Private Limited and another, (2023) 6 SCC 401**. This judgment came up before another two Judges Bench of the Supreme Court. The attention of the later Bench was not drawn to the view earlier expressed in **Jharkhand Urja Vikas Nigam Limited's** case.

20.In **Gujarat State Civil Supplies Corporation Ltd's** case, the Bench observed that on account of the *non-obstante* clause in Sections 18(1) and 18(4) of the 2006 Act, it will have an overriding effect over any other law, including the Arbitration and Conciliation Act. Having come to this conclusion, the Bench held that a Council can act as a conciliator, and on the completion of the conciliation proceedings, it can take up the issue and decide the matter as an arbitrator. It further held that Section 80 of the Arbitration and Conciliation Act, 1996, will not act as a bar for the Council to act as a Conciliator, and thereafter, as an Arbitrator.



W.P.No.31369 of 2025

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21.This judgment was taken note of by a three Judges Bench of the Supreme Court in ***India Glycols Limited and another Vs. MSEF Council, Medchal – Malkajgiri and others, (2025) 5 SCC 780***. This case arose on account of an application filed by one, M/s.S.R.Technologies, before the MSEF Council in Telangana. The Council decreed the claim. The award was challenged before the Telangana High Court by way of a writ petition. A learned Single Judge of Telangana High Court allowed the writ petition and set aside the award holding that the claim itself is barred by limitation. This judgment was carried in an appeal before the Division Bench. The Division Bench, speaking through Chief Justice Ujjal Bhuyan, (as he then was) held that when the writ petitioner has an adequate, efficacious and alternate remedy under Section 34 of the Arbitration and Conciliation Act, 1996, the learned Single Judge ought not to have entertained the writ petition. Consequent to the aforesaid conclusion, the Court allowed the appeal and dismissed the writ petition.

22.Challenging the same, an appeal was preferred by the original writ petitioner before the Supreme Court. It was heard by a three Judges Bench, consisting of Dr.DY.Chandrachud, CJ, J.B.Pardiwala and Manoj Misra, JJ. This three Judges bench affirmed the view taken in the case of



W.P.No.31369 of 2025

***Gujarat State Civil Supplies Corporation Ltd. Vs. Mahakali Foods***

***Private Limited and another*** and dismissed the SLP, confirming the view taken by the Division Bench of Telangana High Court. Hence, the law declared by the Supreme Court as on 06.11.2023 is that, it is impermissible for a person, who has a remedy under Section 34 of the Arbitration and Conciliation Act, 1996, to resort to a proceeding under Article 226 of the Constitution of India to quash an Arbitral award.

23.Subsequently, the Supreme Court, yet again considered this issue in ***M/s.Tamil Nadu Cements Corporation Limited Vs. Micro and Small Enterprises Facilitation Council and another, (2025) 4 SCC 1.*** This case was dealt by another three judges Bench. Speaking through Justice Sanjiv Khanna, CJ, the Court observed that it has reservations on the dictum rendered in ***M/s.India Glycols Limited*** case, that a writ petition is not maintainable against any order passed by MSEF Council, and that the only recourse available is to resort to Section 34 of the Arbitration and Conciliation Act, 1996. It also noticed the divergence of opinion taken in ***Jharkhand Urja Vikas Nigam Limited***'s case, and ***Gujarat State Civil Supplies Corporation Ltd.***'s case and referred the matter to be decided by a Larger Bench consisting of Five Judges.



W.P.No.31369 of 2025

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24.A reference to the Supreme Court website shows that the reference is still pending and it has not been answered so far.

25.As to how a Court should proceed when an issue has been referred to a Larger Bench has been settled by the Supreme Court in *Ashok Sadarangani and another Vs. Union of India and others, (2012) 11 SCC 321*. The Supreme Court declared that pendency of a reference to a Larger Bench does not mean all other proceedings involving the same issue shall remain stalled till the judgment is rendered in the reference.

26.Therefore, the law that will be applicable, as on today, is the view of the Three Judges Bench in *India Glycols Limited and another Vs. MSEF Council, Medchal – Malkajgiri and others, (2025) 5 SCC 780* (cited supra). If that verdict is to be applied to the facts of the present case, then the writ petition would necessarily have to fail.

27.Accordingly, the **Writ Petition is dismissed**. It is open to the petitioner to avail the remedy under Section 34 of The Arbitration and Conciliation Act, 1996.



W.P.No.31369 of 2025

28.At this stage, I should point out that by an order dated

11.09.2025, I called upon the petitioner to deposit a sum of 50% of the decreed amount of Rs.2,79,45,258/- to the credit of the Registrar General of Madras High Court. In the event of the petitioner filing an application under Section 34, he would have to deposit 75% of the award amount before contesting the petition. The Registrar General of the Madras High Court shall forthwith return the Fixed Deposit receipt to the petitioner.

29.On the aspect of limitation, the typed set of papers indicate that though the order was passed on 20.12.2024, it was communicated to the writ petitioner only on 10.07.2025. He had received the same on 12.07.2025. This writ petition was filed within 30 days, i.e., on 12.08.2025. Since the matter has been pending before this Court from 12.08.2025 till date, the said period will stand excluded for the purpose of calculating the limitation to move the petition under Section 34 of The Arbitration and Conciliation Act, 1996. Consequently, the connected miscellaneous petitions are closed. No costs.

**20.02.2026**

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Index : Yes / No  
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Neutral Citation : Yes / No

15/16



WEB COPY



W.P.No.31369 of 2025

**V.LAKSHMINARAYANAN, J.**

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To

1. Micro & Small Enterprises Facilitation Council,  
Represented by its Chair Person,  
Director of Industries & Commerce,  
Guindy, Chennai – 600 032.
2. M/s. Anitech Infra,  
A partnership firm,  
Represented by its Managing Partner,  
T. Gagarin, A-10, RAMS Apartments,  
21, Dr. Raja Annamalai Road,  
Purasawakkam, Chennai – 600 084.
3. The Registrar General,  
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