IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMM. ARBITRATION PETITION (L.) NO. 33928 OF 2024

WITH

INTERIM APPLICATION (L.) NO. 59 OF 2025

Bharat Sanchar Nigam Ltd. **.....PETITIONER/ APPLICANT**

: VERSUS :

Microtex Energy Pvt. Ltd. **....RESPONDENT**

Ms. Disha Karambar i/b. Disha Karambar & Associates, for the Petitioner/Applicant.

Mr. Shivaraj N. Arali (through V.C.) with Ms. Pooja Singh, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

JUDGMENT RESD. ON : FEBRUARY 24, 2026.

JUDGMENT PRON. ON : MARCH 10, 2026.

JUDGMENT

1) This is a Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 **(Arbitration Act)** challenging the award of the learned sole arbitrator dated 3 May 2024. By the impugned award,

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the learned arbitrator has directed Petitioner to pay to the Respondent an amount of Rs.2,76,82,030/- with further directions that some of the amounts shall carry further interest in accordance with provisions of Section 16 of the Micro, Small and Medium Enterprises Development Act, 2006 **(MSMED Act)** from the date of the award till payment and realization. The Arbitral Tribunal has further awarded interest in accordance with the provisions of Section 31(7)(b) of the Arbitration Act on the amount of Rs.1,87,04,974/- from the date of interim award till realization.

2) Petitioner is a Government of India enterprise providing telecommunication services. The Chief General Manager of the Petitioner floated online tender for supply of VRLA batteries on 8 March 2016. Respondent is a private limited company, which apparently had registered itself as a Small Enterprise and has Udyog Aadhar registration. Respondent participated in the online tender process. The bids were opened on 1 April 2016. Respondent turned out to be the successful bidder and Advance Purchase Order (**APO**) dated 10 June 2016 was issued for supply of 1361 sets of batteries. Respondent accepted the purchase order **(PO)** vide acceptance letter dated 15 June 2016 and submitted 5% bank guarantee in the sum of Rs.56,07,298/-. The first PO **(PO-1)** was issued to the Respondent on 20 September 2016 for supply of 544 sets of 200 AH batteries. The second PO **(PO-2)** for supply of 544 sets of 200 AH batteries was issued on 1 November 2016. According to the Petitioner, delivery of the batteries was delayed and the supply was not made within 21 days of the contracted delivery period. Respondent requested vide letter dated 21 February 2017 for

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amendment to PO-1 by extending the delivery period for 45 to 60 days. On 4 April 2017, Respondent requested for amendment to PO-2 for extension of delivery period for further 30 to 45 days. Respondent again requested for extension to PO-2 vide letter dated 25 May 2017 seeking further extension of 30 to 45 days. It appears that the Petitioner granted extension of time.

3) According to the Petitioner, the invoices for the supplied material were processed during the extended delivery period and the payment was made before determination of the firm prices. According to the Petitioner, after determination of the firm prices, it was found that there was overpayment of Rs.34,57,920/- as the firm prices were lower than the original prices mentioned in the APO conveyed to the Respondents vide letter dated 21 June 2018. According to the Petitioner, reduced prices were applicable only in respect of batteries delivered beyond the schedule date of delivery. On 21 June 2018, Petitioner demanded refund of amount of Rs. 34,57,920/- claiming that the price per battery stood reduced to Rs.60,000/- instead of earlier price of Rs.71,808/-. Respondent disputed the contention of the Petitioner. By letter dated 7 August 2018, Petitioner cited the rates of Gujarat Circle as the basis for price reduction and issued reminder dated 10 October 2018 for refund of the amount. On 10 November 2018, Respondent refuted Petitioner's claim of refund and demanded outstanding amount of Rs.62,10,355/-. On 1 December 2018, Petitioner invoked Performance Bank Guarantee (**PBG**) for recovery of alleged cost amount of Rs.34,57,920/-. Respondent filed suit before the Bangalore City Civil Court seeking restraint order against encashment of PBG.

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The PBG was however encashed by the Petitioner. Thereafter, conciliation exercise took place between the parties, which did not lead to any successful outcome. On 5 July 2019, Petitioner unilaterally appointed arbitrator, who was ultimately replaced by this Court by order dated 25 November 2021 passed under Sections 14 and 15 of the Arbitration Act in Arbitration Petition No. 403/2020. This is how the Arbitral Tribunal of the learned sole Arbitrator was constituted.

4) Respondent filed Statement of Claim for recovery of alleged outstanding dues under the invoices alongwith interest. Respondent also sought refund of amount recovered by encashment of PBG. Respondent also claimed damages from the Petitioner. The claim was resisted by the Petitioner by filing Statement of Defence. The parties led evidence in support of their respective claims.

5) It appears that at the stage of final arguments, Petitioner raised the issue of jurisdiction of the Arbitral Tribunal by contending that the Respondent is registered under the MSMED Act and that therefore, arbitration could not be conducted by the ad hoc arbitrator and could only be conducted by the Facilitation Council under the MSMED Act.

6) After considering the pleadings, documentary and oral evidence, the Arbitral Tribunal proceeded to make Award dated 3 May 2024, directing the Petitioner to pay to the Respondent amount of Rs.2,76,82,030/-. The Tribunal has directed that amount of Rs.89,77,056/- shall carry further interest in accordance with Section 16

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of the MSMED Act from the date of the Award till payment and realisation. It further directed that an amount of Rs.1,87,04,974/- shall carry further interest in accordance with Section 31(7)(b) of the Arbitration Act from the date of the award till realisation. Aggrieved by the award dated 3 May 2024, the Petitioner has filed the present Petition.

7) Ms. Disha Karambar, the learned counsel appearing for the Petitioner-BSNL has submitted that the Arbitral Tribunal lacked jurisdiction to adjudicate the disputes and differences between the parties. That Respondent is admittedly registered under the MSMED Act and is covered by definition of the term 'supplier' under the Act. That therefore the Petitioner could not have opted for ad hoc arbitration in the light of provisions of Section 18 of the MSMED Act. She relies on judgment of the Apex Court in ***M/s. Harcharan Dass Gupta Vs. Union of India*** [1] in support of her contention that arbitration can only be conducted in accordance with the provisions of Section 18 of the MSMED Act. That the provisions of MSMED Act have overriding effect over the provisions of the Arbitration Act. She would therefore submit that the impugned arbitral award is wholly without jurisdiction.

8) Ms. Karambar further submits that the Arbitral Tribunal has erroneously rejected the objection of jurisdiction raised on behalf of the Petitioner. That Petitioner relied upon judgment of the Apex Court in ***Gujarat State Civil Supplies Corporation Ltd. Vs. Mahakali Foods***

1 Civil Appeal-6807-2025 decided on 14 May 2025

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Private Limited (Unit 2) and Anr.[2] in support of the contention that a private arbitrator is divested of jurisdiction to decide the dispute in the light of provisions of Section 18 of the MSMED Act. That the learned arbitrator has erred in relying upon the judgment of this Court in ***Porwal Sales Vs. Flame Control Industries***[3] which was not cited by any of the parties. That in any case, the subsequent judgment of the Apex Court in ***M/s. Harcharan Dass Gupta*** would make observations made by this Court in ***Porwal Sales*** inapplicable to the present case.

9) Ms. Karambar would further submit that the Arbitral Tribunal has grossly erred in directing payment of interest under Section 16 of the MSMED Act. She relies on judgment of the Delhi High Court in ***Shristi Infrastructure Development Vs. Scorpio Engineering Pvt. Ltd. and Anr.***[4].

10) Ms. Karambar invites the attention of the Court to arbitration clause in support of her contention that only claims of Petitioner-BSNL can be adjudicated before the ad hoc arbitrator and the claims of a supplier cannot be adjudicated through the mechanism of ad hoc arbitration. Invalidation of the award is sought by Ms. Karambar only on the basis of the above submissions though several grounds are pleaded in the Petition. She has not canvassed any submissions relating to the merits of the claim. Her submissions center around the objection of jurisdiction of the arbitrator and permissibility to award interest under Section 16 of the MSMED Act.

2 (2023) 6 SCC 401
3 2019 SCC Online Bom 1628
4 OMP (Comm.) 246-2022 decided on 1 May 2025

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11) The Petition is opposed by Mr. Arali, the learned counsel appearing for the Respondent. He submits that the Arbitral Tribunal has rendered a well-reasoned award after considering the entire material available on record and after grant of due opportunity of hearing to the parties. That the findings of the Arbitral Tribunal are well-supported by the evidence on record. That the findings do not suffer from the vice of perversity nor there is any patent illegality in the award. That therefore the Petition filed by the Petitioner is beyond the scope of enquiry under Section 34 of the Arbitration Act.

12) Mr. Arali would further submit that the objection of jurisdiction of the arbitrator was never raised by the Petitioner and was sought to be introduced only in the written submissions. That ad hoc arbitrator was itself unilaterally appointed by the Petitioner, which was objected to by the Respondent and this Court substituted the unilaterally appointed arbitrator and constituted the Tribunal of the learned sole arbitrator, who has rendered the impugned award. That at the time of decision of Arbitration Petition No. 403/2020 also, Petitioner never objected to conduct of ad hoc arbitration nor insisted that arbitration must be conducted under Section 18 of the MSMED Act. That even in the Statement of Defence, no objection to the jurisdiction of the Tribunal was raised. That the belated objection introduced vide written submissions has rightly been repelled by the Arbitral Tribunal. He invites my attention to the findings recorded by the Arbitral Tribunal in paras-78 to 84 of the Award dealing with the objection of jurisdiction. He submits that the remedy under Section 18 of the MSMED Act is only an option made available to the supplier and the

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remedy under Section 18 is not an exclusive remedy. That an entity fitting into the definition of the term 'supplier' under the MSMED Act, can at its option, go for arbitration under the provisions of the Arbitration Act and there is no bar under the provisions of the MSMED Act for conduct of ad hoc arbitration. He submits that the Arbitral Tribunal has rightly relied on the judgment of this court in ***Porwal Sales*** (supra) which recognises the principle of remedy under Section 18 of the MSMED Act being merely an optional remedy.

13) Mr. Arali would further submit that the claim of the Respondent involves outstanding invoice amounts, damages, unlawful invocation of PBG etc. That it was a comprehensive claim raised before the Arbitral Tribunal, which went beyond the scope of Section 17 of the MSMED Act and that therefore, adjudication of disputes by ad hoc arbitrator cannot be said to be without jurisdiction. He submits that the Arbitral Tribunal has rightly awarded interest under Section 16 of the MSMED Act. He submits that no interference is warranted in the impugned Award. He would pray for dismissal of the Petition.

14) Rival contentions of the parties now fall for my consideration.

15) The arbitral award is sought to be invalidated by the Petitioner principally on the ground of jurisdiction. The provisions of Section 18 of the MSMED Act are relied upon in support of the contention that the arbitration could only have been conducted by the Facilitation Council since Respondent is registered under the MSMED

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Act. It is contended on behalf of the Petitioner that provisions of MSMED Act have an overriding effect over the provisions of the Arbitration Act and that therefore, impugned award rendered by the Arbitral Tribunal is without jurisdiction and *ab initio* void.

16) Under Section 18 of the MSMED Act, any party to a dispute involving amount due under Section 17 of the Act can make reference to Micro and Small Enterprises Facilitation Council which can conduct mediation and upon failure of mediation, the Council can take up the dispute for arbitration or refer the same to any other institution or center for arbitration. After the Council takes up the dispute for arbitration or refers it to arbitration to any other institution or centre, provisions of Arbitration Act become applicable to the dispute as if it is an arbitration in pursuance to an arbitration agreement under Section 7(1) of the Arbitration Act. Section 18 of the MSMED Act provides thus :

> **18. Reference to Micro and Small Enterprises Facilitation Council.—**
>
> (1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.
>
> (2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.
>
> (3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any

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institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section(1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.

17) Since reference under Section 18 can be made only in respect of the dispute with regard to any amount due under Section 17, it would also be necessary to make reference to the provisions of Section 17 of the MSMED Act, which provides thus :

17. Recovery of amount due.—

For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.

18) In the present case, there is no dispute to the position that Respondent is a small enterprise and has received Udhyog Aadhar registration. Respondent had a claim, *inter alia* in respect of non-payment by the Petitioner in respect of the goods supplied. However, instead of making a reference to the Facilitation Council under Section 18 of the MSMED Act, it appears that Petitioner has opted for arbitration by invoking clause 20 of the General (Commercial) Conditions of Contract **(GCC)**, forming part of SECTION-5 PART-A of

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the tender document, which is undoubtedly a part of contract between the parties. The arbitration clause-20 is as under :

> **20. ARBITRATION:**
> 20.1 In the event of any question, dispute or any difference arising under this agreement or in connection there-with (except as to the matters, the decision to which is specifically provided under this agreement), the same shall be referred to the sole arbitration of the CGM, BSNL, MHTC or in case his designation is changed or abolished, then in such cases to the sole arbitration of the officer for the time being entrusted (whether in addition to his own duties or otherwise) with the functions of the CGM, BSNL, MHTC or by whatever designation such an officer may be called (hereinafter referred to as the said officer), and if the CGM, BSNL, MHTC or the said officer is unable or unwilling to act as such, then to the sole arbitration of some other person appointed by the CGM, BSNL, MHTC or the said officer. The agreement ot appoint an arbitrator will be in accordance with the Arbitration and Conciliation Act 1996 as amended from time to time. There will be no objection to any such appointment on the ground that the arbitrator is a BSNL/Government Servant or that he has to deal with the matter to which the agreement relates or that in the course of his duties as a Government Servant he has expressed his views on or all of the matters in dispute. The award of the arbitrator shall be final and binding on both the parties to the agreement. In the event of such an arbitrator to whom the matter is originally referred, being transferred or vacating his office or being unable to act for any reason whatsoever, the CGM, BSNL, MHTC or the said officer shall appoint another person to act as an arbitrator in accordance with terms of the agreement and the person so appointed shall be entitled to proceed from the stage at which it was left by his predecessors.
>
> 20.2 The arbitrator may from time to time with the consent of both the parties enlarge the time frame for making and publishing the award. Subject to the aforesaid, Arbitration and Conciliation Act, 1996 and the rules made there under, any modification thereof for the time being in force shall be deemed to apply to the arbitration proceeding under this clause.
>
> 20.3 The venue of arbitration shall be CGM, BSNL, MHTC at Mumbai or such other places as the Arbitrator may decide.

19) While the Petitioner now seeks to question jurisdiction of the Arbitral Tribunal, there is no dispute to the position that the Petitioner itself appointed an arbitrator unilaterally in terms of arbitration agreement in Clause-20 of the GCC. Unilateral appointment

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of arbitrator was objected to by the Respondent by filing Arbitration Petition 403/2020 under the provisions of Sections 14 and 15 of the Arbitration Act. However, when Arbitration Petition No.403/2020 came up for hearing on 25 November 2021, the learned counsel appearing for the Petitioner agreed for appointment of an independent arbitrator. This is how Arbitral Tribunal comprising of the learned sole arbitrator came to be constituted by this Court by order dated 25 November 2021, which reads thus:

> 1] Heard learned Counsel for the respective parties.
>
> 2] This is a petition fled under Section 14 read with Section 15 of the Arbitration and Conciliation Act, 1996 whereby the petitioner has prayed for appointment of a substitute Arbitrator to adjudicate the disputes and differences between the parties which have arisen under the contract for supply of VRLA Batteries. Initially, the Chief General Manager of the respondent – BSNL Maharashtra Circle, Mumbai had appointed an Arbitrator unilaterally. This was being objected by the petitioner to be not in accordance with law.
>
> 3] After this petition was heard for sometime, learned Counsel for the respondents has fairly stated that an independent Arbitrator may be appointed. Considering the fair approach of the respondents, this petition is required to be allowed by the following order:-
>
> **ORDER**
>
> (i) Mr. Aditya Shiralkar, Advocate of this Court, is appointed as a substitute Arbitrator to adjudicate the disputes and differences between the parties for supply of VRLA Batteries;
>
> (ii) The learned substitute Arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master, to be placed on record of this petition with a copy to be forwarded to both the parties;
>
> (iii) The arbitral proceedings shall commence from the stage the proceedings had reached before the erswhile arbitral tribunal.
>
> (iv) At the frst instance, the parties shall appear before the prospective arbitrator within 15 days from today on a date which may be mutually fxed by the prospective sole Arbitrator;

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(v) The Record and Proceedings placed before the Arbitrator earlier appointed shall be placed before the new Arbitrator on the frst date of hearing.

(vi) All contentions of the parties on merits of the disputes are expressly kept open;

(vii) The fees payable to the arbitral tribunal shall be in accordance with the Bombay High Court (Fee Payable to the Arbitrators) Rules, 2018;

(viii) The petition is disposed of in the above terms. No costs.

(ix) Office to forward a copy of this order to the learned Arbitrator at the following address:
"1102, 11th Floor, Ramini, 12/C, Bawaji Patel Masjid, Fort, Mumba-400 001.
Contact No. 9920040804."

20) Even before the Arbitral Tribunal, the Petitioner did not raise any objection to the jurisdiction in the Statement of Defense. It is only in the written submissions filed on 2 March 2024 that Petitioner raised the plea of lack of jurisdiction of the learned arbitrator by referring to the provisions of the MSMED Act. The objection has been rejected by the Arbitral Tribunal by recording detailed reasons in paras-78 to 81 of the Award, which read thus:

> 78. The Respondent has belatedly, in its Written Submissions dated 2nd March 2024, raised a plea that this Tribunal lacks the jurisdiction to pass an award, for the reason that the Facilitation Council under the MSMED Act, 2006 is vested with the exclusive jurisdiction to decide the disputes between the supplier, i.e. the Claimant, being an MSME organization/entity, and their counter parties, i.e. Respondent. The Respondent, in support of this plea, has relied on a judgment of the Hon'ble Supreme Court of India in ***Gujarat State Civil Supplies vs. Mahakali Foods***, now reported in **(2023) 6 SCC 401** (Paras 40 to 53).
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> 79. The Claimant has placed its points of distinction in respect of this judgment.
>
> 80. Having perused the judgment and the rival submissions made thereon, this Tribunal finds that the Respondent's plea is not supported by the *ratio decidendi* of the said ruling. This ruling is an authority for the proposition that 'an MSME organization/entity or its counter party can trigger the

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statutory dispute resolution mechanism under Section 18 of the MSMED Act, 2006, despite the existence of an arbitration agreement providing for a private *ad hoc* arbitrator'. This is on account of the *non-obstante* provision in the MSMED Act, 2006. The ratio decidendi of this judgment cannot be extended to encompass a wholly distinct proposition of law as canvassed by the Respondent, i.e. 'a private arbitrator, appointed ad hoc, is divested of jurisdiction to decide the dispute merely because one of the parties is an MSME entity, even if both the parties have consented to private ad hoc arbitration'.

81. Neither the MSMED Act, 2006 nor the interpretation placed on it in the said ruling bars any party, including the MSME organization/entity from choosing a private arbitrator under the Arbitration Act, 1996, instead of proceedings before the Facilitation Council under the MSMED Act, 2006. This is purely a matter of choice for the parties. Moreover, Section 18 of the MSMED Act, 2006, requires to be triggered by a party by invoking the jurisdiction of the Facilitation Council for the statutory bar to arbitration to be attracted. This trigger event is absent in the present case as, admittedly, neither party jhas invoked the jurisdiction of the Facilitation Council.

21) It is Petitioner's case that the provisions of MSMED Act have overriding effect over the provisions of the Arbitration Act and that only Facilitation Council under Section 18 has exclusive jurisdiction to conduct arbitral proceedings. To paraphrase, it is contended on behalf of the Petitioner that conduct of ad hoc arbitral proceedings is not a remedy when one of the parties to the dispute is a 'supplier' within the meaning of MSMED Act and is entitled to recover dues under Sections 16 and 17 of the Act. Reliance is placed on judgment of the Apex Court in ***Harcharan Dass Gupta*** (supra). Perusal of the findings recorded in the judgment in ***Harcharan Dass Gupta*** would indicate that the Apex Court has essentially reiterated the principles enunciated in its judgment of ***Mahakali Foods*** (supra), in which it is held that provisions of Chapter-V of MSMED Act shall have an effect of overriding the provisions of the Arbitration Act. It is further held in ***Mahakali Foods*** that a private agreement between the parties

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cannot obliterate the statutory provisions and once statutory mechanism under Section 18 (1) of the MSMED Act is triggered by any party, it can override any other agreement independently entered into between the parties in view of non-obstante clauses in Section 18(1) and (4). In ***Mahakali Foods***, it further held that no party to dispute covered under Section 17 of the MSMED Act would be precluded from making use of Facilitation Council under Section 18(1) thereof merely because there is an arbitration agreement existing between the parties.

22) In ***Harcharan Dass Gupta*** (supra), the appellant therein had invoked jurisdiction of Facilitation Council at Delhi under Section 18 of the MSMED Act. In exercise of powers under Section 18, the Facilitation Council decided to refer the dispute to arbitration to be conducted through an institute viz. Delhi Arbitration Centre. The Centre proceeded to appoint sole arbitrator. Centre's order was challenged before the Karnataka High Court which held that Delhi Arbitration Centre lacked jurisdiction to conduct the arbitral proceedings as the contract between the Appellant and Respondent provided that the seat of arbitration shall be at Bengaluru. The Apex Court allowed the Appeal and restored the arbitral proceedings under the aegis of Delhi Arbitration Center. In ***Harcharan Dass Gupta*** (supra), the Apex Court held that reference to Delhi Arbitration Centre was made by the Facilitation Council under Section 18(3) of the MSMED Act and that therefore, the seat of arbitration would be at Delhi. The judgment in ***Harcharan Dass Gupta*** extensively quotes the observations in ***Mahakali Foods.*** It would therefore be apt to extract

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paras-8 to 11 of the judgment in ***Harcharan Dass Gupta*** for facility of reference:

> 8. We have given our anxious consideration to the submissions of both the parties. In our view, the issue is no more res integra and is covered by the decision of this Court in Mahakali. As we need to do nothing more than refer to the relevant portions of the binding precedent, the reasoning, as well as the conclusion in this decision are extracted herein for ready reference. At the outset, the following two paragraphs clearly explain the principle on the basis of which the court holds that the MSMED Act overrides the Arbitration Act:
>
> > *"42. Thus, the Arbitration Act, 1996 in general governs the law of Arbitration and Conciliation, whereas the MSMED Act, 2006 5 governs specific nature of disputes arising between specific categories of persons, to be resolved by following a specific process through a specific forum. Ergo, the MSMED Act, 2006 being a special law and the Arbitration Act, 1996 being a general law, the provisions of the MSMED Act would have precedence over or prevail over the Arbitration Act, 1996. In Silpi Industries case [Silpi Industries v. Kerala SRTC, (2021) 18 SCC 790 : 2021 SCC OnLine SC 439] also, this Court had observed while considering the issue with regard to the maintainability and counter-claim in arbitration proceedings initiated as per Section 18(3) of the MSMED Act, 2006 that the MSMED Act, 2006 being a special legislation to protect MSMEs by setting out a statutory mechanism for the payment of interest on delayed payments, the said Act would override the provisions of the Arbitration Act, 1996 which is a general legislation. Even if the Arbitration Act, 1996 is treated as a special law, then also the MSMED Act, 2006 having been enacted subsequently in point of time i.e. in 2006, it would have an overriding effect, more particularly in view of Section 24 of the MSMED Act, 2006 which specifically gives an effect to the provisions of Sections 15 to 23 of the Act over any other law for the time being in force, which would also include the Arbitration Act, 1996.*
> >
> > *43. The Court also cannot lose sight of the specific non obstante clauses contained in sub-sections (1) and (4) of Section 18 which have an effect overriding any other law for the time being in force. When the MSMED Act, 2006 was being enacted in 2006, the legislature was aware of its previously enacted Arbitration Act of 1996, and therefore, it is presumed that the legislature had consciously made applicable the provisions of the Arbitration Act, 1996 to the disputes under the MSMED Act, 2006 at a stage when the conciliation process initiated under subsection (2) of Section 18 of the MSMED Act, 2006 fails and when the Facilitation Council itself takes up the disputes for arbitration or refers it to any institution or centre for such arbitration. It is also significant to note that a deeming legal fiction is created in Section 18(3) by using the expression*

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"as if" for the purpose of treating such arbitration as if it was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996. As held in K. Prabhakaran v. P. Jayarajan [K. Prabhakaran v. P. Jayarajan, (2005) 1 SCC 754 : 2005 SCC (Cri) 451] , a legal fiction presupposes the existence of the state of facts which may not exist and then works out the consequences which flow from that state of facts. Thus, considering the overall purpose, objects and scheme of the MSMED Act, 2006 and the unambiguous expressions used therein, this Court has no hesitation in holding that the provisions of Chapter V of the MSMED Act, 2006 have an effect overriding the provisions of the Arbitration Act, 1996."

9. Further, the Court proceeds to hold that even the agreement between the parties stands overridden by the statutory provisions under the MSMED Act:

44. The submissions made on behalf of the counsel for the buyers that a conscious omission of the word "agreement" in sub-section (1) of Section 18, which otherwise finds mention in Section 16 of the MSMED Act, 2006 implies that the arbitration agreement independently entered into between the parties as contemplated under Section 7 of the Arbitration Act, 1996 was not intended to be superseded by the provisions contained under Section 18 of the MSMED Act, 2006 also cannot be accepted. A private agreement between the parties cannot obliterate the statutory provisions. Once the statutory mechanism under sub-section (1) of Section 18 is triggered by any party, it would override any other agreement independently entered into between the parties, in view of the non obstante clauses contained in sub-sections (1) and (4) of Section 18. The provisions of Sections 15 to 23 have also overriding effect as contemplated in Section 24 of the MSMED Act, 2006 when anything inconsistent is contained in any other law for the time being in force. It cannot be gainsaid that while interpretating a statute, if two interpretations are possible, the one which enhances the object of the Act should be preferred than the one which would frustrate the object of the Act. If submission made by the learned counsel for the buyers that the party to a dispute covered under the MSMED Act, 2006 cannot avail the remedy available under Section 18(1) of the MSMED Act, 2006 when an independent arbitration agreement between the parties exists is accepted, the very purpose of enacting the MSMED Act, 2006 would get frustrated.

45. ...

46. The submission therefore that an independent arbitration agreement entered into between the parties under the Arbitration Act, 1996 would prevail over the statutory provisions of the MSMED Act, 2006 cannot be countenanced. As such, sub-section (1) of Section 18 of the MSMED Act, 2006 is an enabling provision which gives the party to a dispute covered under Section 17 thereof, a choice to approach the Facilitation Council, despite an arbitration agreement existing between the parties. Absence of

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the word "agreement" in the said provision could neither be construed as casus omissus in the statute nor be construed as a preclusion against the party to a dispute covered under Section 17 to approach the Facilitation Council, on the ground that there is an arbitration agreement existing between the parties. In fact, it is a substantial right created in favour of the party under the said provision. It is therefore held that no party to a dispute covered under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Facilitation Council under Section 18(1) thereof, merely because there is an arbitration agreement existing between the parties.

47. The aforesaid legal position also dispels the arguments advanced on behalf of the counsel for the buyers that the Facilitation Council having acted as a Conciliator under Section 18(2) of the MSMED Act, 2006 itself cannot take up the dispute for arbitration and act as an arbitrator. Though it is true that Section 80 of the Arbitration Act, 1996 contains a bar that the Conciliator shall not act as an arbitrator in any arbitral proceedings in respect of a dispute that is subject of conciliation proceedings, the said bar stands superseded by the provisions contained in Section 18 read with Section 24 of the MSMED Act, 2006. As held earlier, the provisions contained in Chapter V of the MSMED Act, 2006 have an effect overriding the provisions of the Arbitration Act, 1996. The provisions of the Arbitration Act, 1996 would apply to the proceedings conducted by the Facilitation Council only after the process of conciliation initiated by the Council under Section 18(2) fails and the Council either itself takes up the dispute for arbitration or refers to it to any institute or centre for such arbitration as contemplated under Section 18(3) of the MSMED Act, 2006.

48. When the Facilitation Council or the institution or the centre acts as an arbitrator, it shall have all powers to decide the disputes referred to it as if such arbitration was in pursuance of the arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996 and then all the trappings of the Arbitration Act, 1996 would apply to such arbitration. It is needless to say that such Facilitation Council/institution/centre acting as an Arbitral Tribunal would also be competent to rule on its own jurisdiction like any other Arbitral Tribunal appointed under the Arbitration Act, 1996 would have, as contemplated in Section 16 thereof."

10. The issue relating to 'seat of arbitration' in all cases covered under the MSMED Act is settled in view of the pronouncement of this Court in ***Mahakali***. This position is also true by virtue of the specific provision of the MSMED Act, that is, sub-Section (4) of Section 18, which vests jurisdiction for arbitration in the Facilitation Council where the supplier is located:

"(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the

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> *centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India."*

> 11. There is no dispute about the fact that the appellant-MSME is located in Delhi and as such the Facilitation Council, (SouthWest), GNCTD, Old Terminal Tax Building, Kapashera, New Delhi110037. In exercise of its power, the said Council entrusted the conduct of arbitration through the institutional aegis of the Delhi Arbitration Centre. The conclusions drawn by us are the logical consequence of the statutory regime as also declared by this Court in ***Mahakali***.

23) In my view, however, reliance by the Petitioner on judgments of the Apex Court in ***Mahakali Foods*** and ***Harcharan Dass Gupta*** is inapposite. It is well-settled position of law that judgment is an authority for what it decides and not what can be logically deduced therefrom (SEE: ***Commissioner of Customs (Port), Chennai vs. Toyota Kirloskar Motor (P) Ltd.***[5] , ***Secunderabad Club & Ors. v. CIT &Ors.***[6]). Both in ***Mahakali Foods*** and in ***Harcharan Dass Gupta,*** the statutory mechanism under Section 18(1) of MSMED Act was triggered and an objection was raised to the jurisdiction of Arbitral Tribunal. The ratio of both the judgments is that a supplier under MSMED Act or even the buyer can trigger the statutory dispute resolution mechanism under Section 18 of the MSMED Act and mere existence of arbitration agreement in the contract providing for a private or ad hoc arbitration cannot be mandate for compulsory exercise of remedy of reference under Section 18 of the Act. However, both the judgments cannot be read to mean as if they are an authority in the proposition that a private/ad hoc arbitrator appointed in terms of arbitration agreement

5 (2007) 5 SCC 371
6 2023 SCC Online SC 1004

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between the parties would get divested of its jurisdiction to decide the dispute only because one of the parties to the dispute is a supplier registered under the MSMED Act. Therefore, if parties opt for ad hoc arbitration, the award is not rendered invalid merely because one of the parties to the dispute is a supplier capable of seeking reference under Section 18 of the MSMED Act.

24) I am supported in my view by judgment of the learned Single Judge of this Court in ***Porwal Sales***. The issue is formulated in para-2 of the judgment as under:

> **2.** The question which arises for consideration in this Petition is as to whether the jurisdiction of this Court under section 11 of the Arbitration and Conciliation Act, 1996 is taken away merely because the respondent is a small scale enterprise falling under the Micro, Small and Medium Enterprises Development Act, 2006 (for short "**MSMED**" Act), and no application/reference has been made by the respondent invoking the provisions of Section 18(1) of the MSMED Act.

25) The issue is answered by this Court in ***Porwal Sales*** in paras-22 and 25 to 27 as under :

> **22. Now coming to the next submission as advanced on behalf of the respondent on the MSMED Act Learned counsel for the respondent has argued that in view of the provisions of Section 18 of the MSMED Act, this Court would not have jurisdiction to entertain this Petition under Section 11 of the Arbitration and Conciliation Act.** In support of this submission, learned counsel for the respondent has placed reliance on the decision of the Division Bench of the Allahabad High Court in *Paper & Board Convertors through partner Rajeev Agarwal* v. *U.P. State Micro and Small Enterprise*; in *Bharat Heavy Electricals Ltd.* v. *The Micro and Small Enterprises Facilitations Centre* of the learned Single Judge of the Delhi High Court; and in *Welspun Corporation Ltd.* v. *Micro and Small, Medium Enterprises Facilitation Council, Punjab* of the learned Single Judge of Punjab and Harayana High Court. **The contention as urged on behalf of the respondent referring to these decisions is that Section 18(4) of MSMED Act creates a bar on the jurisdiction of this Court to entertain any application under section 11 of the Act and/or that the arbitration agreement between the parties stands obliterated, extinguished and superseded by the provisions of sub-section (4) of Section 18 of MSMED Act.**

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25. Considering the scheme of Sections 17 and 18, in my opinion sub-section (4) of Section 18 cannot be read in isolation. It is required to be read in conjunction with sub-section (1) of Section 18. Section 18 of the MSMED Act is attracted when the jurisdiction of the Facilitation Council is invoked by a party to a dispute with regard to any amount due under section 17 of the Act.

26. In the present case, it is not in dispute that the respondent has so far not raised any claim against the petitioner and the jurisdiction of the Felicitation Council has not been invoked by either the respondent or the petitioner. It thus cannot be accepted that the provisions of subsection (4) of Section 18 of MSMED Act are attracted in any manner in the absence of any reference being made to the Facilitation Council. When there are no proceedings before the Facilitation Council, it is difficult to accept the submission as urged on behalf of the respondents that provisions of Section 18 of the MSMED Act are attracted in the facts of the present case.

27. In any event, sub-section (4) of Section 18 cannot be read as a provision creating an absolute bar to institution of any proceedings other than as provided under section 18(1) of the MSMED Act, to seek appointment of an arbitral tribunal. If the argument as advanced on behalf of the respondent that Section 18(4) creates a legal bar on a party who has a contract with a Small Scale Enterprise, to take recourse to Section 11 under the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator, then the legislation would have so expressly provided, namely that in case one such party falls under the present Act, the arbitration agreement, as entered between the parties would not be of any effect and the parties would be deemed to be governed under the MSMED Act in that regard. However, subsection (4) of Section 18 of the MSMED Act does not provide for such a blanket consequence in the absence of any reference made by a party to the Facilitation Council. Also if Section 18 is read in the manner the respondent is insisting, it would lead to a two-fold consequence - firstly, it would amount to reading something in the provision which the provision itself does not provide, which would be doing a violence to the language of the provision; secondly such interpretation in a given situation would render meaningless an arbitration agreement between the parties and it may create a situation that the party who is not falling within the purview of Section 17 and Section 18(1) would be foisted a remedy, which the law does not actually prescribe. Further sub-section (1) uses the word "may" in the context of a dispute which may arise between the parties under Section 17. In the present context, the word "may" as used in sub-section (1) of Section 18 cannot be read to mean "shall" making it mandatory for a person who is not a supplier (like the petitioner) to invoke the jurisdiction of the Facilitation Council. **Thus, the interpretation of sub-section (4) of Section 18 as urged on behalf of the respondent of creating a legal bar against the petitioner to file a petition under section 11 of the Arbitration and Conciliation Act cannot be accepted.**

(emphasis supplied)

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26) Thus, in ***Porwal Sales,*** the learned Single Judge of this Court has held that Section 18(4) of MSMED Act cannot be read as a provision creating absolute bar to institution of any proceedings other than the one provided under Section 18(1) to seek appointment of Arbitral Tribunal. It is further held that the provisions of Section 18 of the MSMED Act cannot be read to mean creation of foisted remedy for adjudication of disputes raised by an entity registered under the Act.

27) The judgment of this Court in ***Porwal Sales*** has been followed by learned Single Judge of Delhi High Court in ***Shristi Infrastructure Development*** (supra)**.** In case before the Delhi High Court, award passed by the ad hoc arbitrator appointed in pursuance of arbitration clause in the contract was sought to be invalidated under Section 34 of the Arbitration Act on the ground that the appointed arbitrator lacked inherent jurisdiction to adjudicate any claims arising out of MSMED Act. The Delhi High Court has negatived the objection holding that the scheme of MSMED Act does not render the mechanism under Section 18 mandatory or exclusive. It has been held that the mechanism under Section 18 offers an additional and beneficial forum for registration of Micro, Small or Medium Enterprises to resolve their disputes through Facilitation Council at their discretion. The Delhi High Court held in paras-42, 44, 45 and 46 as under :

> 42. At the outset, the plea taken by the petitioner is that the Arbitral Award is liable to be set aside since the learned Arbitrator lacked the inherent jurisdiction to entertain and adjudicate claims under the MSMED Act, rendering the Impugned Award null and void in law. Further, section 18(3) of the MSMED Act mandates that disputes under the MSMED Act must be referred to and resolved exclusively through the Facilitation Council, which

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alone is empowered to act as an arbitrator itself or refer the dispute to the adjudicating authority. Accordingly, any contractual arbitration clause cannot override this statutory mechanism.

44. Section 18 of the MSMED Act provides that if there is an arbitration agreement between the parties being Micro and Small Enterprises, then any of the party may under section 18 of MSMED Act approach the Facilitation Council and thereafter the mechanism envisaged under section 18 of MSMED Act will follow, however, in the present case, the respondent no. 1 did not choose to approach the Micro and Small Enterprises Facilitation Council under section 18(1) of MSMED Act and hence, the mechanism envisaged under section 18 has not been triggered. The provisions of Section 18 of MSMED Act will only be triggered if the party, regardless of the arbitration clause, approaches the Micro and Small Enterprises Facilitation Council under section 18 of MSMED Act.

45. Section 18 (1) of the MSMED Act uses the phrase that "*any party to a dispute may.....make a reference to the Micro and Small Enterprises Facilitation Council.*" The use of the word "may" is significant and has consistently been interpreted by courts to indicate a discretionary, rather than a mandatory process. This means that although the Facilitation Council offers a specialized forum for MSMEs, it is not the only forum available. Parties are free to pursue remedies either under the arbitration clause in their contract or under general law, without being bound to first approach the Council. In this regard, the Hon'ble Bombay High Court in Porwal Sales v. Flame Control Industries, 2019 SCC OnLine Bom 1628 inter alia held as under:

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46. The act of respondent no. 1 choosing to file a petition under section 11 of the 1996 Act, instead of approaching the Micro and Small Enterprises Facilitation Council under section 18 of the MSMED Act, cannot per se be termed as legally incorrect or impermissible. This is because the scheme of the MSMED Act does not render the mechanism under Section 18 mandatory or exclusive. Rather, it offers an additional and beneficial forum for registered micro or small enterprises to resolve their disputes though the Facilitation Council, at their discretion.

28) This Court notices another judgment of Delhi High Court rendered few days before rendering of judgment in ***Shristi Infrastructure Development***. In ***Idemia Syscom India Pvt. Ltd. vs.***

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Conjoinix Total Solutions Pvt. Ltd.[7], learned Single Judge of Delhi High Court has held that the provisions of MSMED Act have overriding effect over the provisions of the Arbitration Act and that provisions of MSMED Act would become ineffective if, by way of independent arbitration agreement between the parties, the process mandated under Section 18 is sidestepped. In ***Idemia*** (supra), the Delhi High Court has decided the application under Section 11 of the Arbitration Act. The contract between the parties contained arbitration agreement and the arbitration clause was invoked by the respondent therein proposing name of an ad hoc arbitrator. Since the petitioner had some reservations, it filed application under Section 11 of the Arbitration Act for appointment of arbitrator. After filing an application under Section 11 by the petitioner therein, the respondent therein initiated proceedings under Section 18 of the MSMED Act before the Facilitation Council, Chandigarh. In the light of the above position, the issue before the Delhi High Court was whether reference under Section 11 could be made after the provisions of Section 18 of the MSMED Act were already triggered. The Delhi High Court took into consideration *inter alia* the judgment of the Apex Court in ***Mahakali Foods,*** and has held in paras-11 and 12 as under:

> 11. MSMED Act has been enacted for the facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto. Section 17 of the MSMED Act provides for the recovery of dues of the supplier from the buyer for goods supplied or services rendered. Section18 (1) of the MSMED Act contains a non-obstante clause and provides that for any amount due under Section 17, any party to the dispute may make a reference to the Micro and Small Enterprises Facilitation Council. Thereafter, the facilitation

7 ARBP-1284/2024 decided on 24 February 2025

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council would either conduct conciliation itself or refer the matter for conciliation to any institution or centre providing alternate dispute resolution services. Only upon failure of such conciliation proceedings, arbitration proceedings are initiated, either by itself or by reference to any institution.

12. While the A&C Act is the general law governing the field of arbitration, MSMED Act governs a very specific nature of disputes concerning MSME"s and it sets out a statutory mechanism for the payment of interest on delayed payments. MSMED Act being the specific law, and A&C Act being the general law, the specific law would prevail over the general law. Even otherwise. MSMED Act has been enacted subsequent to the A&C Act and the legislature is presumed to have been aware about the existence of A&C Act when the act was enacted. Sub-sections (1) and (4) of Section 18 contain non obstante clauses which have the effect of overriding any other law for the time being in force. Section 24 of the Act states that the provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Thus, the legislative intent is clear that MSMED Act would have an overriding effect on the provisions of A&C Act. The provisions of MSMED Act would become ineffective if, by way of an independent arbitration agreement between the parties, the process mandated in Section 18 of the MSMED Act is sidestepped. Moreover, the fact that the petitioner has approached the Court under Section 11 of the A&C Act first would be of no help to him as the MSMED Act does not does not carve out any such exception to the non-obstante clause.

29) Thus, even in ***Idemia*** (supra), trigger under Section 18 was already made and the Delhi High Court has decided the issue as to whether appointment of ad hoc arbitrator could be made under Section 11 after Facilitation Council was already approached by the supplier. This is a distinguishing factor in the judgment in ***Idemia***. In the present case, the Respondent did not seek reference under Section 18 of the MSMED Act and both the parties jointly agreed for resolution of their disputes by appointment of arbitrator in terms of arbitration agreement in Clause-20 of the GCC. The case is thus squarely covered by the judgment of this court in ***Porwal Sales*** and of Delhi High Court in ***Shristi Infrastructure.***

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30) In my view therefore, the award cannot be invalidated only on account of an option available to the Respondent to seek adjudication of disputes under Section 18 of the MSMED Act.

31) The second objection raised by the Petitioner before me is with regard to the award of interest under Section 16 of the MSMED Act by the Arbitral Tribunal. The Arbitral Tribunal has allowed the claims of the Respondent in following terms :

CLAIM	**AMOUNT (INR)**	**DECISION**
I	Rs.55,22,136/-	Granted
II	Rs.34,54,920/-	Granted
III	Rs.1,16,59,760/-	Granted
IV	*Future Interest on Awarded Sum under (I) – as per S.16 of MSMED Act*	Granted
V	Rs.47,12,714/-	Granted
VI	*Future Interest on Awarded Sum under (II) – as per S.16 of MSMED Act*	Granted
VII [(a) and (b)]	Rs.23,32,500/-	Granted
VII (c)	Rs.10,00,000/-	Rejected
TOTAL CLAIM (GRANTED)		**Rs.2,76,82,030/-**

32) The operative part of the Award reads thus :

> The Tribunal
> a. Orders and directs that the Respondent to pay the Claimant an amount of Rs. 2,76,82,030/-;
> b. Orders and directs, in respect of Claims (IV) and (VI), that the Award on Claims (I) and (II), i.e. Rs.89,77,056/-, shall carry further interest in accordance with Section 16 of the MSMED Act, 2006 from the date of the Award till payment and realization; and

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c. Orders and directs that the Award on Claims (III), (V), (VII)[(a) and (b)], i.e. Rs.1,87,04,974/-, shall carry future interest in accordance with Section 31(7)(b) of the Arbitration and Conciliation Act, 1996 (as amended) from the date of the Interim Award till realization.

33) Thus, in respect of the amounts covered by Claims I and II, totally amounting to Rs.89,77,056/-, the Arbitral Tribunal has awarded interest under Section 16 of the MSMED Act from the date of the award till payment and/or realisation.

34) The issue of entitlement of an enterprise registered under the MSMED Act to claim interest under Section 16 of the Act in arbitral proceedings conducted outside the Facilitation Council has also been dealt with by the Delhi High Court in ***Shristi Infrastructure***. The Delhi High Court has referred to its judgment in ***Indian Highways Management Company Ltd. vs. SOWIL Limited***[8] and has held that Sections 15 and 16 of MSMED Act are substantive rights and are independent of Section 18. It further held that in order to attract the rigours of Sections 15 and 16, it need not be that dispute redressal mechanism as provided under Section 18 must be initiated. It further held that interest contemplated under Section 16 can also be attracted under *ad hoc* arbitration. It has been held in paras- 69 to 77 of the judgment in ***Shristi Infrastructure*** as under:

> **69.** As regards, the interest component is concerned, the argument advanced by the petitioner is that the award of interest at the rate of 38.85% under section 16 of the MSMED Act is legally unsustainable, as the arbitration was not conducted under section 18 of the MSMED Act. Since the arbitration was ad hoc, the benefit of interest under section 16 does not apply.

8 2021 SCC OnLine Del 5523

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70. I am unable to accept the said submission of the petitioner.

71. Section 16 of the MSMED Act is relevant and the same reads as under:

> *"Section 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 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."*

72. In this regard, a coordinate bench of this court has already taken a view in ***Indian Highways Management Company Limited vs SOWiL Limited*** 2021 SCC OnLine Del 5523 and the same is being reproduced below:

> *"29. .... Section 16 of the MSMED Act provides for payment of interest on the amounts due to a supplier where the buyer has failed to pay the amounts as required under Section 15 of the MSMED Act. Undisputedly, the buyer's obligation to discharge its liability under Section 15 of the MSMED Act and to pay interest under Section 16 of the MSMED Act confers the right on "the supplier" to demand and recover the said amount.....*
>
> .....
>
> *34. It is apparent from the above that the provisions of Sections 15 and 16 of the MSMED Act confer substantive rights and impose obligations, which are not contingent upon recourse to any dispute resolution mechanism. Section 18 of the MSMED Act provides for a dispute resolution mechanism in respect of any amount due under Section 17 of the MSMED Act. It is obvious that it may not be necessary for a supplier to seek recourse to any proceedings for recovery of the amounts that may be otherwise due to it, if the buyer complies with its obligation under Sections 15 and 16 of the MSMED Act.*
>
> *35. The import of the contentions advanced on behalf of IHMCL is that the obligations of the buyer under Sections 15 and 16 of the MSMED Act are contingent upon the supplier resorting to conciliation or the adjudicatory process under Section 18 of the MSMED Act. The plain language of Sections 15,16 and 17 of the MSMED Act, does not support this proposition.*
>
> .....

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39.....During the course of submissions, it was contended on behalf of the respondent that an award for interest under Section 16 of the MSMED Act could be made in proceedings under Section 18 of the MSMED Act but not by an Arbitral Tribunal appointed in terms of the A&C Act. In such cases, the Arbitral Tribunal was required to award reasonable interest under Section 31(7)(a) of the A&C Act. This Court finds it difficult to accept this contention as it overlooks the express provisions of Section 18(3) of the MSMED Act. The provisions of the A&C Act are specifically applicable as they would be in case of arbitration pursuant to an arbitration agreement under Section 7(1) of the A&C Act. However, in case of repugnancy between the provisions of the A&C Act and the MSMED Act, the provisions of the MSMED would prevail.

40. It is also relevant to refer to the decision in Snehadeep Structures (P) Ltd. v. Maharashtra Small-Scale Industries Development Corpn. Ltd. [Snehadeep Structures (P) Ltd. v. Maharashtra Small Scale Industries Development Corporation Ltd., (2010) 3 SCC 34 : (2010) 1 SCC (Civ) 603] The said case was rendered in the context of Interest on Delayed Payments to Small Scale and Ancillary Undertakings Act, 1993. In that case, the court held that Interest on Delayed Payments to Small Scale and Ancillary Undertakings Act, 1993 (referred to as the "Interest Act" in short by the court) was a special legislation vis-à-vis to any other legislation including the A&C Act and the contention that the payment of interest would be governed by Section 31(7)(a) of the A&C Act, was rejected as erroneous. The relevant extract of the said decision is set out below:

> *37. According to the learned counsel for the respondent Corporation, the Arbitration Act treats 'appeals' and 'applications' separately under two distinct chapters: Chapters VII and IX respectively. It was also strenuously contended by the learned counsel for the respondent that the Arbitration Act contains specific provisions for awarding interest and that Act being a special enactment will prevail over the Interest Act. He relied on Jay Engg. Works Ltd. v. Industry Facilitation Council [Jay Engg. Works Ltd. v. Industry Facilitation Council, (2006) 8 SCC 677] to show that against the provisions of the Interest Act, the provisions of Arbitration Act will prevail, as the latter is a complete code in itself. The Interest Act will apply only when the party prefers a suit to arbitration.*
>
> *38. The Preamble of the Interest Act sows that the very objective of the Act was 'to provide for and regulate the payment of interest on delayed payments to small-scale and ancillary industrial undertakings and for matters connected therewith or incidental thereto.' Thus, as far as interest on delayed payment to small-scale industries as well as connected matters are concerned, the Act is a special legislation with respect to any other legislation,*

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> *including the Arbitration Act. The contention of the respondent that the matter of interest payment will be governed by Section 31(7) of the Arbitration Act, hence, is erroneous. Section 4 of the Interest Act endorses the same which sets out the liability of the buyer to pay interest to the supplier 'notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force'. Thus, the Interest Act is a special legislation as far as the liability to pay interest, or to make a deposit thereof, while challenging an award/decree/order granting interest is concerned."*

73. A perusal of the above judgment shows that section 15 and 16 are substantive rights and are independent of section 18. In order to attract the rigors of section 15 and 16, it need not be that dispute redressal mechanism as provided under section 18 of the MSMED Act be initiated. Interest as contemplated under section 16 can be granted under ad-hoc arbitration.

74. To my mind, the purpose of section 16 is to encourage timely payment(s) to medium and small-scale industries as their success/failure depends upon timely payment(s). Hence the high rate of interest contemplated under section 16 of the MSMED Act is a deterrent to prevent non-payment of the dues to micro and small industries.

75. In this regard, point nos. (f) and (k) of the statement of objects and reasons of the MSMED Act are relevant and the same reads as under:

> *"(f.) make provisions for ensuring timely and smooth flow of credit to small and medium enterprises to minimise the incidence of sickness among and enhancing the competitiveness of such enterprises, in accordance with the guidelines or instructions of the Reserve Bank of India;*
>
> ....
>
> *(k.) make further improvements in the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 and making that enactment a part of the proposed legislation and to repeal that enactment."*

76. A perusal of the said statement and object shows the basis/genesis for the high interest rate as contemplated under section 16.

77. Hence, the challenge to the interest is without merit and the same is rejected.

35) I am in respectful agreement with the view expressed by the learned Judge of the Delhi High Court in ***Shristi Infrastructure***

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(supra). Therefore, award of interest in terms of provisions of Section 16 of MSMED Act cannot really be found fault with.

36) Though merits of the award are not seriously contested before me during the course of oral submissions, I have gone through the findings recorded by the Arbitral Tribunal. The principal claim of the Respondent was towards unpaid/outstanding dues under the invoices raised by it for supply of batteries in the subject contract. The principal amount claimed was Rs. 55,22,136/-. The Arbitral Tribunal has noted that no defense was raised in the Statement of Defense to the claim of the Respondent. Even in the pre-arbitral correspondence, the Petitioner did not question the liability to pay the amounts under the invoices. It is only at the stage of written submissions that a vague plea was raised before the Arbitral Tribunal about non-production of the invoices. Though no dispute was raised in respect of the amounts payable, the Respondent produced the invoices by application filed in January 2023. Since the liability to pay under the concerned invoices is not disputed by the Petitioner, I do not find any error on the part of the Arbitral Tribunal in awarding Claim No. I.

37) Claim No. II was in respect of refund of amount of Rs.34,54,920/-, which was recovered by the Petitioner from encashment of the PBG. Adjudication of this claim depended on interpretation of Clauses-64, 15.3(b) and 24 of the Contract. The Arbitral Tribunal took up for consideration two issues of :

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(i) Petitioner's absolute right of price revision exercisable after delivery of goods and without notice or consent of the Respondent; and

(ii) whether tender of Gujarat Telecom Circle was a 'new tender' within the meaning of Clause-24.

38) The Arbitral Tribunal has interpreted the clauses of contract and has held that the provision conferring an unfettered right of price revision on one party with a concomitant liability on other to accept the dictated price borders on a feudal and unconscionable bargain. Similarly, the Arbitral Tribunal has construed Clause-24 of the Contract and held that Gujarat and Maharashtra Telecom Circles of BSNL are different entities having their own procurement policies. This is how Arbitral Tribunal has proceeded to allow Claim No. (II) by negativing Petitioner's right to claim refund in respect of alleged excess prices paid. It is well-settled principle that interpretation of contractual terms is in the exclusive domain of the Arbitral Tribunal and even if there is any error, the error would be within the jurisdiction, not warranting interference by Section 34 Court.

39) Thus, even on merits, no case is made out by the Petitioner-BSNL for invalidating the Award.

40) Considering the overall conspectus of the case, I am of the view that no interference is warranted in the impugned award. The Commercial Arbitration Petition is accordingly **dismissed.** There shall be no order as to costs.

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41) With dismissal of the main Petition, Interim Application (L) No. 59 of 2025 does not survive. The same also stands **disposed of**.

[SANDEEP V. MARNE, J.]

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