

***THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
*THE HON'BLE JUSTICE GADI PRAVEEN KUMAR**

+ CIVIL REVISION PETITION NO.503 OF 2026

% 15-04-2026

M/s. Kendriya Bhandar

... Petitioner

AND

\$ Atlantis Agritech Private Limited and Three Others

...Respondents

!Counsel for the Appellant: Mr. Avinash Desai, learned Senior Counsel representing Mr.M.Pranav, learned counsel for the petitioner.

^Counsel for Respondents: Mr. A. Venkatesh, learned Senior Counsel representing Mr.Mohammed Omer Farooq, learned counsel for the respondent No.1

<Gist :

>Head Note :

? Cases referred

¹ WRIT APPEAL No.734 of 2022

² (1991) 4 SCC 139

³ 2023 SCC OnLine Cal 2200

⁴ (2021) 18 SCC 790

⁵ (2023) 6SCC 401

⁶ 2025 INSC 54

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

* * *

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE GADI PRAVEEN KUMAR

CIVIL REVISION PETITION NO.503 OF 2026

15th April, 2026

BETWEEN:

M/s. Kendriya Bhandar

... Petitioner

AND

Atlantis Agritech Private Limited and Three Others

...Respondents

Mr. Avinash Desai, learned Senior Counsel representing Mr. M. Pranav, learned counsel appearing for the petitioner.

Mr. A. Venkatesh, learned Senior Counsel representing Mr. Mohammed Omer Farooq, learned counsel appearing for the respondent No.1.

ORDER: (Per Hon'ble Justice Moushumi Bhattacharya)

1. The Civil Revision Petition has been filed against an order dated 06.02.2026 passed by Commercial Court at Hyderabad dismissing an application filed by the petitioner for exemption the petitioner from the mandatory deposit requirement under section 19 of The Micro, Small and Medium Enterprises Development Act, 2006 ("MSMED Act"). The petitioner made an alternative prayer for directing one KPJ Tradings/KPJ Industries Limited to deposit 75% of the awarded

amount or to permit the petitioner to deposit Rs.1,00,000/- in instalments.

2. The petitioner sought the above reliefs in respect of the petitioner's challenge to an Arbitral Award passed by the Micro and Small Enterprises Facilitation Council ("Facilitation Council") on 07.08.2024 whereby the petitioner (respondent before the Facilitation Council) was directed to pay Rs.41,86,98,166/- along with interest of Rs.29,70,66,757/- along with future interest.

3. The total amount payable by the petitioner to the respondent No.1 under the Arbitral Award is Rs.98,78,88,428.94/- inclusive of interest as on 15.02.2026. The admitted position is that the petitioner has not paid a single rupee to the respondent No.1 till date.

4. By the impugned order, the Commercial Court dismissed the petitioner's application on *inter alia* the basis that section 19 of the MSMED Act bars the Court from entertaining any application under section 34 of the 1996 Act until the petitioner deposits 75% of the awarded amount.

5. The Commercial Court also relied on an order passed by this Court (consisting of one of us – Justice Moushumi Bhattacharya) dated 02.05.2025 in CRP No.1591 of 2025 wherein the Court held

that the Award-Debtor must comply with the statutory mandate of section 19 of the MSMED Act, 2006.

6. A Writ Petition filed by the petitioner challenging the Award was also dismissed by a learned Single Judge of the High Court of Gujarat on 18.11.2024. The petitioner's Appeal challenging the said order was dismissed by the Division Bench of the High Court of Gujarat on 27.01.2025. The Supreme Court dismissed the petitioner's SLP against the order of the Division Bench on 09.05.2025

7. It is also undisputed that this Division Bench, sitting in a different combination, had passed an *ex parte* order in favour of the petitioner in an earlier CRP (No.1591 of 2025) granting a limited stay of the Execution Proceedings filed by the respondent No.1 arising out of the Arbitral Award till the said respondent was served and had an opportunity to present its case, while making it clear that the order shall not prevent the petitioner from approaching the Trial Court to file an appropriate application for compliance with section 19 of the MSMED Act and for the Trial Court to entertain the same in accordance with law.

8. On 11.06.2025, after hearing learned Senior Counsel appearing for the petitioner as well as the respondent No.1, the Court directed the Commercial Court to number the section 34 petition filed by the

petitioner and further that the petitioner shall file an application for compliance of section 19 of the MSMED Act by 16.06.2025.

9. The petitioner filed I.A.No.515 of 2025 for the Commercial Court to hold that section 19 is not applicable to the petitioner to the extent of the pre-deposit requirement. The Trial Court dismissed the said I.A. by way of the impugned order dated 06.02.2026.

Contentions of the Parties

10. Learned Senior Counsel appearing for the petitioner submits that the petitioner should be exempted from the pre-deposit requirement under section 19 since the petitioner is a “Supplier” as defined under section 2(n) of the MSMED Act and by reason of the fact that the petitioner itself is an MSME under section 2(n)(iii). Counsel relies on *M/s. S. R. Technologies (Unit-II) v. Micro and Small Enterprises Facilitation Council*¹ to urge that a Micro or Small Enterprise would be exempted from the pre-deposit requirement under section 19.

11. Counsel relies on the nature of the transaction also to urge that the petitioner is actually the “Supplier” (as opposed to the “Buyer”) by reason of a back-to-back transaction with the respondent No.1 and one other third party. According to counsel, the nature of the transaction would make it clear that the petitioner would only be

¹ WRIT APPEAL No.734 of 2022

liable for payment as and when amounts were received by it from one KPJ Industries Limited/KPJ Tradings. Counsel submits that the order passed by this Court on 11.06.2025 directing the petitioner to file an application for compliance of section 19 would have to be understood in terms of the objective of the MSMED Act.

12. Learned Senior Counsel appearing for the respondent No.1 gives the factual background with reference to the transaction between the petitioner and the respondent No.1 which involved the respondent No.1 supplying agricultural machinery to the petitioner under Supply Orders issued by the petitioner on the respondent No.1 from 26.08.2019 onwards. The respondent No.1 raised invoices on the petitioner and the petitioner acknowledged receipt of the goods.

13. Counsel construes section 19 of the MSMED Act to urge that exemption can only be given to an entity who is a "Supplier" and further that there is no privity of contract between the respondent No.1 and the entity to which the petitioner chose to sell the goods. It is further submitted that *M/s. S.R. Technologies (Unit-II)* (supra) cannot be interpreted to mean that all Micro or Small Enterprises are exempted from the requirement of pre-deposit and can be read only as an authority for the point which the Court was called upon to decide.

14. It is argued that the petitioner obtained MSME registration on 23.07.2021, whereas the invoice for the last supply made by the

respondent No.1 to the petitioner was raised much earlier on 08.01.2021. Counsel submits that the contention of the petitioner being exempted from the pre-deposit requirement by reason of being an MSME is beyond the pleadings of the petitioner before the Commercial Court.

Decision

15. We deem it fit to decide the issues raised by the parties under separate heads since several points have been raised on behalf of the parties.

Section 19 of the MSMED Act, 2006

16. Section 19 of the MSMED Act falls under Chapter V - "Delayed Payments to Micro and Small Enterprises". Section 19 is a culmination of sections 15-18, which encompass the liability of a Buyer to make payment to a Supplier before the appointed day, computation of interest on the failure of the Buyer to make payment of the agreed amount to the Supplier and recovery of the amount from any goods supplied/services rendered by the Supplier.

17. Section 18 (pre-notification pursuant to The Mediation Act, 2023) provides for the stages after reference of a dispute to the Facilitation Council with regard to any amount due under section 17. Section 18 provides for Conciliation and thereafter Arbitration through

the deeming provision under sub-section (3) thereof. Sections 18(3) and (4) provide for adjudication of the reference through the Facilitation Council acting as an Arbitrator (section 18(4)) in the dispute.

18. Section 19 begins with the use of mandatory words, which continues through the statement of the section, including the proviso thereto. Section 19 is set out below:

“No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose”

19. Section 19 makes it clear that the deposit requirement of 75% must be paid by all other entities, except the Supplier, for any application for setting aside any Award by the Facilitation Council. Section 19 further contains an express bar on the Court from entertaining any application challenging the Award/Decree passed by the Council unless the applicant deposits 75% of the awarded amount/Decree. Section 19 aligns with the stated object of the MSMED Act for facilitating the promotion, development and

enhancing the competitiveness of Micro, Small and Medium Enterprises.

20. The construction of section 19, which is relevant to the present matter, is that a Buyer or any other entity, not being a Supplier, is under a statutory obligation to comply with the pre-deposit requirement for assailing any Award passed by the Facilitation Council. In this case, the petitioner seeks exemption from the mandate on the ground that the petitioner is not a Supplier but an MSME and would hence not be amenable to the mandatory requirement.

21. Section 24 of the Act seals the mandate by declaring that sections 15 to 23 (which includes section 19) shall have overriding effect over any inconsistent laws for the time being in force.

“Supplier” under the MSMED Act

22. Section 2(n) defines a “Supplier” as follows.

“(n) “supplier” means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes,—

(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956);

(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time

being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;”

23. The above definition would make it clear that a Supplier would have to be a Micro or Small Enterprise as defined under sections 2(h) and 2(m), respectively. The definition of Supplier assumes importance with reference to section 19, which exempts only a Supplier from the pre-deposit requirement. The definition of Supplier must also be seen in the context of the petitioner’s argument that the petitioner is actually a Supplier (and not a Buyer as held by the Commercial Court) in relation to the back-to-back transaction where the petitioner was to supply goods to a third party/KPJ Tradings.

The Court’s View

24. The definition of “Supplier” under section 2(n) must be seen within the prism of not only the object of the MSMED Act but also the “relief provisions” in favour of the Supplier under sections 15-19 of the MSMED Act.

25. In essence, the MSMED Act favourably looks upon a Supplier who has supplied goods to a Buyer but has not received payment. Sections 15-19 are the protective provisions whereby the un-paid Supplier can not only demand payment from the Buyer, under the statutory liability cast upon the Buyer under sections 15, 16 and 17 of the MSMED Act, but an enhanced liability to pay compound interest

with monthly rests to the Supplier in relation to the failed payment. The Act also entitles the aggrieved party to make a reference to the Facilitation Council with regard to the unpaid amounts under section 17.

26. Section 18(1) read with section 17 would make it clear that 'any party to a dispute' would mean a Supplier who has not received payment despite supply of goods and services to the Buyer and the liability of the Buyer to pay the amount with interest as provided under section 16.

27. The tilt in the statute in favour of the Supplier would also be evident from section 18, which confers jurisdiction on the Council to act as an Arbitrator or Conciliator (or Mediator) in a dispute between the Supplier located within its jurisdiction and a Buyer located anywhere in India.

28. The proposed amendment to section 18 retains this authority of the Council under section 18(5). The un-amended section 18(5) also mandates that every reference made under section 18 shall be decided within a period of ninety days from the date of making such a reference. However, the protection given to a Supplier under the Act is most pronounced in section 19 where every other entity, who is not a Supplier, must comply with the mandate of depositing 75% of the awarded/decretal amount before seeking to set aside the Award.

29. The exemption is contained in the express words is reiterated below:

‘...No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount...’

30. The purposive construction of the exception carved out for the Supplier in section 19 is that the exemption would apply only to a Supplier as defined under section 2(n) of the MSMED Act, as opposed to any other entity or, in other words, the world at large. The un-exempted category would include not only a Buyer, which is obvious from sections 15-18, but also any possible stakeholders or transactional entities to the transaction or the dispute which was adjudicated by the Council and culminated in the Award or Decree.

31. The petitioner’s interpretation of the definition of a Supplier as also including a company, co-operative society, trust, or a body registered or constituted under any law (section 2(n)(iii)) is self-defeating since sub-clause (iii) ends with the qualification – set out below.

‘...and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises...’

32. Therefore, section 2(n)(iii) qualifies that the company, co-operative society, trust, or a body registered or constituted under any law must to be a Seller of Goods or Supplier of Services produced by, or provided by, a micro or small enterprise.

33. The proviso to section 19 confirms the statutory favour granted to a Supplier by empowering the Court to order the payment of a percentage of the amount deposited by the other entity under section 19, pending disposal of the application to set aside the Award, Decree, or Order.

34. As a consequence, the express exemption in section 19 would only apply to a "Supplier" as understood by a combined reading of section 2(n), i.e., entities mentioned under that section (under (i), (ii), and (iii)) and other entities who are engaged in selling goods and rendering services produced and provided by Micro or Small Enterprises.

The Transaction between the Parties:

35. The respondent No.1 supplied agricultural machinery to the petitioner pursuant to supply orders issued by the petitioner on the respondent No.1 from 26.08.2019 onwards. The respondent No.1 raised invoices on the petitioner and the petitioner acknowledged

receipt of the goods and its liability to pay the respondent No.1 *vide* letters dated 07.09.2021, 09.01.2021 and 08.09.2022.

36. The respondent No.1 initiated arbitral proceedings before the Micro Small Enterprise Facilitation Council, Gandhinagar, Gujarat since the petitioner failed to make payment for the supplies. The Facilitation Council passed an Award dated 07.08.2024 in favour of the respondent No.1. Under the Award, the petitioner was held liable to pay a principal amount of Rs.41,86,98,166/- and interest of Rs.29,70,66,757/-, in addition to future interest. The total amount payable by the petitioner to the respondent No.1, under the Arbitral Award, including interest, stood at Rs.98,78,88,428.94 as of 15.02.2026.

i. The Petitioner is described as the 'Buyer' in the Transaction:

37. The petitioner is described as the 'Buyer' in the material documents filed before the Commercial Court.

- It was specifically averred by the respondent No.1 in the Statement of Claim that the respondent No.1 had supplied goods to the petitioner and the same were accepted by the petitioner, leaving an outstanding principal balance of Rs.41,86,98,166/-.

- In the Statement of Defense filed by the petitioner before the Facilitation Council, the petitioner specifically admitted receipt of goods and further acknowledged its liability to make payments to the respondent No.1.
- The Statement of Defence filed by the petitioner before the Facilitation Counsel is captioned as '*Statement of Defense by the respondent/Buyer*'.
- The petitioner is also shown as the 'Buyer' in the Memorandum of Understanding (MoU) dated 09.08.2019 executed between the respondent No.1 and the Regional Manager of the petitioner. The MoU describes the respondent No.1 as the 'Supplier' and the petitioner as 'Stockist' (Spelt as 'Stockiest' at various places). Furthermore, several clauses in the MoU refer to the petitioner as the 'Buyer/Stockist'.
- The supply orders on record, issued by the petitioner to the respondent No.1, clearly stipulate that the respondent No.1 was required to supply and deliver the goods to the petitioner in accordance with the terms and conditions specified therein.

38. Hence, contrary to the stand taken by the petitioner, the documents filed before the Commercial Court, which also form part of the record before this Court, unequivocally and consistently describe

the petitioner as the 'Buyer'. The respondent No.1, on the other hand, is uniformly described as the 'Supplier'.

ii. 'Back-to-Back Contract' – as alleged by the Petitioner:

39. The petitioner's primary contention with regard to the claimed exemption under section 19 of the MSMED Act is that the petitioner is, in fact, a 'Supplier' (as opposed to a 'Buyer') in respect of the goods allegedly supplied by the petitioner to a third party. The petitioner contends that the petitioner's liability to pay the respondent No.1 arises only upon receipt of payment from KPJ Industries, which is the ultimate beneficiary of the contract. Consequently, the petitioner sought for an alternative prayer for a direction to KPJ Industries to deposit 75% of the awarded amount under the impugned Arbitral Award, in compliance with section 19 of the Act. The aforesaid curious prayer made in the petitioner's I.A. before the Commercial Court must be understood in light of this argument.

40. This Court is of the firm view that the petitioner's contention of a 'Back-to-Back Contract' is devoid of merit, for the following reasons:

41. A party may act as a 'Buyer' in respect of a particular transaction, while the same party may act as a 'Supplier' in an entirely different transaction and context. The term 'Supplier', as defined under section 2(n) of the MSMED Act, derives its meaning

from the specific transaction between the 'Supplier' and the other party, the 'Buyer'. The characterization of a party as a 'Supplier' is further reinforced by the reference made to the Facilitation Council under section 18(1) of the MSMED Act.

42. Section 18(1) of the Act permits a party to a dispute to make a reference to the Facilitation Council specifically regarding an amount due under section 17 of the Act. Section 17 of the Act, in turn, imposes liability on the Buyer to pay the amount along with interest for any goods supplied or services rendered by the Supplier. Consequently, when read in conjunction with the undisputed facts of the present case, it is clear that the respondent No.1 approached the Facilitation Council to recover unpaid dues from the petitioner. The dispute was adjudicated based on the Statement of Defense filed by the petitioner, wherein the petitioner described itself as the 'Buyer'. Therefore, the alleged 'Back-to-Back' nature of the Contract does not alter the legal import of the term 'Supplier', which must be construed in light of the fundamental principle of Privity of Contract.

iii. There is no Privity of Contract between the Respondent No.1 and KPJ Industries:

43. The only privity of contract in the present case is between the respondent No.1 and the petitioner, as the 'Supplier' and 'Buyer', respectively. The respondent No.1 has no role in, or connection with, the petitioner's decision to supply goods to a third party. While the petitioner may choose to supply goods procured from the respondent No.1 to a third party, this does not bring such third party within the contractual privity established between the respondent No.1 and the petitioner. The petitioner has not established any contractual relationship between the respondent No.1 KPJ Industries. Hence, no contract exists between the respondent No.1 and the entity to which the petitioner chooses to sell the goods.

44. Thus, it follows that there is no 'privity of contract' between the respondent No.1 and KPJ Industries Limited, as averred by petitioner in its I.A filed before the Commercial Court.

45. Even otherwise, it is undisputed that the petitioner's attempt to shift the burden of compliance on a third party was only taken in the section 34 proceedings. This plea was not raised in the arbitration proceedings. Arguable, such a defense would not withstand the limited scrutiny available to the petitioner for setting aside the award under section 34 of the 1996 Act. The document relied on by the

petitioner is a letter from one Rotoking to the petitioner and does not even carry an inference of a tripartite contract between the petitioner, the respondent No.1 and KPJ Industries.

46. The exception in section 19 would apply when a 'Supplier' seeks to set aside an Award under section 19 of the MSMED Act. In such instances, the applicant/appellant 'Supplier' is exempted from the requirement to deposit 75% of the awarded amount. This exemption may arise in various situations including when a claim/reference made by the Supplier is dismissed by the Facilitation Council and the Supplier subsequently chooses to challenge the Award.

S.R. Technologies Case

47. The petitioner has relied on the above decision pronounced by a Division Bench of this Court in W.A.No.734 of 2022 setting aside an order passed by a learned Single Judge in W.P.No.16918 of 2022.

48. The issue before the Division Bench was whether a Writ Court can interfere under Article 226 of the Constitution of India with an Award passed by the Facilitation Council under the provisions of the MSMED Act. In that case, the learned Single Judge had held that section 34 of the 1996 Act was not an effective alternative remedy and that the Facilitation Council had not followed the procedure laid down

under section 18(2) of the MSMED Act. The Learned Single Judge accordingly held that the Writ Petition was maintainable and proceeded to set aside the Award passed by the Facilitation Council. The appellant/Supplier approached the Division Bench urging that the that the learned Single Judge had erred in entertaining the Writ Petition and setting aside the Award passed by the Facilitation Council since the respondent No.2/Buyer had the remedy of assailing the Award under section 34 of the 1996 Act. The appellant also took the point that the respondent No.2/Buyer had not deposited 75% of the Awarded amount as required under section 19 of the MSMED Act and that the learned Single Judge had completely overlooked this issue. The Division Bench considered the relevant provisions of the MSMED Act and concluded that the learned Single Judge had erred in entertaining the Writ Petition and setting aside the Award passed by the Facilitation Council.

49. Senior Counsel for the petitioner relies on paragraph 11.8 of the decision where the Division Bench held that the mandate under section 19 of the MSMED Act would not be applicable where the appellant is a micro or small enterprise and urges that this would include the petitioner in the present case since the petitioner claims to be a micro and small enterprise.

50. We are unable to accept the reliance on S.R. Technologies since it would be clear from a comprehensive reading of the decision, including paragraph 11.8 thereof, that the Division Bench took the definition of a Supplier under section 2(n) of the MSMED Act as a 'micro or small enterprise' as being exempted from making the pre-deposit. This would be clear from the observations of the Division Bench in paragraphs 11.7, 11.8, 12 as well as the ultimate conclusion arrived at in favour of the appellant/Supplier therein. In fact, S.R. Technologies reinforces the mandate contained in section 19 of the MSMED Act to the extent of all others (except the Supplier) being under the statutory obligation to deposit 75% of the awarded amount along with the application/appeal a challenge to the Award/Decree passed by the Facilitation Council. We fail to see how the petitioner can read paragraph 11.8 of the decision to its benefit since clause (iii) of section 2(n) of the MSMED Act qualifies the meaning of Supplier in relation to company, corporate society, trust or a body or any other entity with the foundational requirement of that particular entity being a seller of goods or a provider of services provided by or rendered by a micro or small enterprise.

51. Even if the petitioner claims to be a micro or small enterprise, the petitioner is certainly not the 'Seller'/'Supplier' in the context of the transaction between the petitioner and the respondent No.1 as evidenced from the MOU dated 09.08.2019. We do not wish to repeat

the various documents wherein the petitioner has expressly been described as the Buyer/Stockist.

52. In any event, a decision is only an authority on the point decided by the Court. Further, the question of interpretation of the words 'not being a supplier' in section 19 of the MSMED Act did not fall for consideration by the Division Bench in *S.R. Technologies* at all. We may refer to *State of U.P. v. Synthetics and Chemicals Ltd.*² in this context where the Supreme Court held that a conclusion, which was neither raised nor preceded by any discussion, cannot be treated as a binding precedent or a declaration of law under Article 141 of the Constitution of India.

53. We are hence of the view that the petitioner's reliance on *S.R. Technologies* is misplaced and does not take the petitioner's case forward.

'Still-born' Applications

54. The express bar contained in section 19 of the MSMED Act makes it clear that a Court is prohibited from entertaining an application for setting aside of an Award unless the applicant (not being a Supplier) has deposited 75% of the awarded amount along with the application. An application for setting aside of the Award

² (1991) 4 SCC 139

under section 34 of the 1996 Act remains inert (or lifeless) until the Buyer satisfies the condition-precedent in section 19 of the Act in terms of making the deposit of 75% of the awarded amount. In other words, failure to deposit the mandated amount along with the application to challenge the Award renders the application 'still-born'. The application takes shape and form only after the Buyer, or any other entity except the Supplier, fulfils the pre-deposit condition: The *Board of Major Port Authority for the Shyama Prasad Mookerjee Port v. Marine Craft Engineers Private Limited*³. In essence, there is no escape route for a Buyer for circumventing the mandate of section 19 of the MSMED Act.

The Petitioner's other Defence

55. The petitioner claims that it should be exempted from the mandate of section 19 of the MSMED Act also on account of being a micro and small enterprise. We do not wish to repeat the same since we have already dealt with this argument in the preceding paragraphs. The only relevant factual aspect in this context is that the petitioner obtained its micro and small enterprise registration on 27.03.2021 whereas the respondent No.1 raised the invoices for the last supply on the petitioner on an earlier point of time i.e., on 08.01.2021. Moreover, in *Silpi Industries v. Kerala State Road*

³ 2023 SCC OnLine Cal 2200

*Transport Corporation*⁴ the Supreme Court held that a micro or small enterprise which is registered subsequently cannot claim the benefit of being a Supplier retrospectively for the supplies made and completed prior to registration. *Silpi Industries* was followed in *Gujarat State Civil Supplies Corporation v. Mahakali Foods Private Limited*⁵.

56. We hence find that the Commercial Court correctly followed the above judgments and held that the petitioner is not entitled to claim any benefit by reason of being a micro and small enterprise or a Supplier as its registration as a micro and small enterprise was subsequent to the completion of supplies by the respondent No.1.

57. The striking facts which cannot be overlooked are that Facilitation Council passed the Award on 07.08.2024 with a liability on the petitioner to pay to the respondent No.1 an amount of Rs.98,78,88,428.94/-. The petitioner has failed to pay even a single Rupee to the respondent No.1 till date despite more than twenty months having elapsed from the date of the Award.

58. The petitioner filed a Special Civil Application challenging the Award before a learned Single Judge of Gujarat High Court and the same was dismissed on 18.11.2024. Thereafter, the Letters Patent Appeal filed by the petitioner was dismissed by the Gujarat High

⁴ (2021) 18 SCC 790

⁵ (2023) 6SCC 401

Court on 27.01.2025. The Special Leave Petition filed by the petitioner before the Supreme Court was also dismissed on 09.05.2025.

59. The petitioner filed C.R.P.No.1591 of 2025 before this Court against a docket order dated 01.04.2025 passed by the Commercial Court whereby the petitioner's application under section 34 of the 1996 Act was returned for non-compliance of the pre-deposit condition under section 19 of the MSMED Act. The Court granted a limited protection on 02.05.2025. The said Civil Revision Petition was disposed of on 11.06.2025 with a direction on the Commercial Court to consider the application filed by the petitioner for compliance of section 19 of the MSMED Act. The Court made it clear that there cannot be any leap-frogging of that provision by any entity apart from a Seller.

60. Instead of filing an application for compliance of section 19, the petitioner filed I.A.No.515 of 2025 before the Commercial Court seeking exemption of the pre-deposit requirement. The reasons given in the preceding paragraphs make it clear that the petitioner's application was ill-conceived given the legislative thrust of the MSMED Act.

61. The decisions pronounced by the Supreme Court reinforce that section 19 of the MSMED Act does not contemplate a circumvention

or a shortcut - unless the applicant/appellant is a Supplier: *Silpi Industries* (supra) and *Gujarat Civil supplies* (supra). The only relaxation granted by the Supreme Court was compliance by way of staggered payments, that too subject to the applicant showing a special case of hardship. *NBCC v. State of West Bengal*⁶ in fact weakens the argument of the petitioner since the Supreme Court held that the definition of a Supplier is relatable only to a micro or small enterprise (and does not encompass a medium enterprise) and includes the entities in section 2(n)(iii) of the MSMED Act. The decision follows the definition of a Supplier under section 2(n) of the MSMED Act.

62. As already held above, the petitioner cannot escape the qualifying criterion of an entity under section 2(n)(iii) being a seller of goods or provider of services produced or rendered by a micro or small enterprise. The inclusion of section 2(n)(iii) in the MSMED Act as a departure to the repealed “Interest on Delayed Payments to Small scale and Ancillary Industrial Undertakings Act, 1993” hence does not take the petitioner’s case forward.

⁶ 2025 INSC 54

Conclusion

63. We are thus constrained to hold that the petitioner does not have a case in the present Civil Revision Petition insofar as its contention that the petitioner should be exempted from the pre-deposit mandate under section 19 of MSMED Act. We conclude that the petitioner is not a 'Supplier' as defined under the MSMED Act and was admittedly not a Supplier in the subject transaction between the petitioner and the respondent No.1.

64. The records in the case describe the petitioner as a Buyer/Stockist; the petitioner is also described as the Buyer in the Arbitration proceeding conducted by the Facilitation Council. The petitioner's reliance on S.R. Technologies is misconceived since S.R. Technologies only bolsters the non-negotiable nature of section 19 of the MSMED Act. The parenthesis in section 19 '*(not being a supplier)*' unerringly points to the exception being applicable only to a Supplier challenging the Award/Decree. All other entities including a Buyer would be covered by the mandate of pre-deposit. We also take note of the petitioner's repeated attempts to try every loophole in the book for avoiding the condition precedent in section 19 of the MSMED Act. The petitioner's attempt to foist the liability of section 19 on a third party (KPJ Industries), with which the respondent No.1 has no privity of contract, is an instance of such mis-directed attempts.

65. The Commercial Court correctly refused the petitioner's prayer for a direction on KPJ Industries to deposit 75% of the awarded amount or permission to the petitioner to deposit only Rs.1 lakh in instalments. The Commercial Court accordingly directed the petitioner to deposit 75% of the amount to the respondent No.1 within three months from the date of impugned order i.e., by 06.05.2026.

66. We do not find any infirmity in the impugned order dated 06.02.2026 or any direction contained therein. We have stated our reasons above. C.R.P.No.503 of 2026, along with all connected applications, is accordingly dismissed. No costs.

MOUSHUMI BHATTACHARYA, J

GADI PRAVEEN KUMAR, J

15th April, 2026.

Note: L.R. Copy be marked.
(b/o.) NDS/VA/BMS

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE GADI PRAVEEN KUMAR

CIVIL REVISION PETITION NO.503 OF 2026

15th April, 2026

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Note: L.R. Copy be marked.
(b/o.) *NDS/VA/BMS*