NEUTRAL CITATION NO. 2026:MPHC-JBP:40297

W.P. No. 2350 of 2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE SANJEEV SACHDEVA,
CHIEF JUSTICE
&
HON'BLE SHRI JUSTICE VINAY SARAF
WRIT PETITION No. 2350 of 2025

AURIONPRO SOLUTIONS LTD. A PUBLIC LISTED COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES

Versus
MADHYA PARDESH MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL BHOPAL AND OTHERS

J U D G M E N T FOR CONSIDERATION

(SANJEEV SACHDEVA)
CHIEF JUSTICE
21/05/2026

HON'BLE SHRI JUSTICE VINAY SARAF

(VINAY SARAF)
JUDGE
21/05/2026

ORDER POST FOR : 22/05/2026

(SANJEEV SACHDEVA)
CHIEF JUSTICE
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Appearance:

Ms. Mansi Chatpalliwar with Shri Pranav Proothi, Shri Prateek Jain, Shri Aditya Singh and Shri Anshveer Singh Nalwa - Advocates for the petitioner.

Shri Siddharth Sharma - Advocate with Ms. Rida Ahmed, Shri Subham Manchani, Mayank Upadhyay, Shri Lavkush Rathore, Shri Satyam Shukla - Advocates for respondents.

Reserved on – 18.03.2026

Pronounced on – 22.05.2026

JUDGMENT

Per*: *Justice Sanjeev Sachdeva

1. Award passed by the Madhya Pradesh Micro and Small Enterprises Facilitation Council, Bhopal (hereinafter referred to as the 'MSE Facilitation Council') in MSEFC Case No.1999/2023 on 08.11.2024 under Section 18(3) of the Micro, Small and Medium Enterprises (Development) Act, 2006 ("MSMED Act")has been assailed by the petitioner in the instant writ petition filed under Article 226 of the Constitution of India.

2. On 19.05.2021, M.P. Police Department floated issued a Request for Proposal (RFP for short) seeking proposals for comprehensively maintaining and upgrading the existing Safe City System for a period of three years. Petitioner - Aurionpro Solutions Ltd. and respondent No.2- Hypersthene IT Solutions Pvt. Ltd. entered into an agreement on 08.06.2021 and in furtherance of the same, Petitioner Company participated in the RFP. As per the agreement, respondent No.2 was under obligations for comprehensively maintaining and upgrading the existing Safe City System and it was decided between them that petitioner would pay the agreed amount to respondent No.2 as and when it received the payment from the M.P. Police. Petitioner was declared successful bidder and on 27.10.2021 an agreement was entered between the petitioner and M.P. Police.

3. M.P. Police issued two purchase orders dated 13.12.2021 and 28.12.2021 to respondent No.2. It is alleged by the M.P. Police that the petitioner was extremely negligent and proved himself incapable of performing. Resultantly, petitioner was found liable under the penalty clause 4.17 of the RFP and penalty was imposed upon the petitioner due to non-performance of the respondent No.2 and substantial amount was deducted from the payments due to the petitioner from the month of November 2021 till December 2022 on account of breaches committed by respondent No.2.

4. Petitioner issued a show cause notice on 19.09.2022 pointing out the negligence committed by respondent No.2 and the penalty deductions by M.P. Police. Petitioner paid the salaries of the employees of respondent No.2 for the month of October and November, 2022 and as the respondent No.2 was unable to perform its obligation under the project/agreement, petitioner terminated the agreement with respondent No.2 on 29.11.2022.

5. As per the petitioner, at the time of termination of agreement, all the outstanding amounts were duly paid to the respondent No.2 as received from the M.P. Police, after deduction of penalty amount. As the balance amount were not paid by M.P. Police, therefore, respondent No.2 was not found entitled by the petitioner for the balance amount. Respondent No.2 did not make the payment to the vendors and they approached to the petitionerfrom time to time. After

the termination of the agreement, respondent No.2 demanded the balance amount for which he was not entitled due to poor and incomplete performance under the agreement dated 08.06.2021.

6. Petitioner and respondent No.2 entered into a settlement agreement on 04.04.2023 for final settlement of the claims of respondent no.2 under the agreement dated 08.06.2021 and the M.P. Police projects. In the settlement agreement *inter alia*, petitioner agreed to return the earnest money deposit amount of Rs.2,23,50,000/- and pay an amount of Rs.2,45,36,706/- as full and final settlement towards all the invoices raised by respondent No.2, which remained unpaid. It was recorded in the settlement agreement that the execution of agreement would result into the extinguishment of all claims and liabilities that either party may have against the other, in respect of all *inter-se* disputes *inter alia* disputes relating to invoices, security, guarantees, earnest money deposit etc. or any other payments. It was recorded in the settlement agreement that settlement agreement would supersede all the previous agreements/understanding between the parties, including the agreement dated 08.06.2021.

7. It was decided at the time of settlement that for the purpose of making payment to the vendors of respondent no.2, an Escrow account would be opened and in the said account, petitioner would deposit the amount for the purpose of making payment to the vendors of respondent No.2. The amount for vendors to be deposited by the

petitioner in the Escrow account would be deducted from the final settlement amount. However, reconciliation never took place and as per the petitioner, respondent No.2 failed to provide the details of the outstanding amount due to its vendors. Petitioner returned the EMD amount to respondent No. 2 through RTGS on 19.09.2023 in compliance of settlement agreement dated 04.04.2023.

8. As the depute could not be completely resolved despite the settlement agreement, respondent No.2 filed a claim reference under Section 18 of the MSMED Act and claimed an amount of Rs.4,56,18,888/- against the unpaid invoices raised by respondent No.2 in the name of petitioner.

9. Madhya Pradesh Micro and Small Enterprises Facilitation Council, Bhopal (respondent No.1) is constituted under the provisions of the MSMED Act and provides a platform for resolution of disputes between the MSMED and third parties. Respondent No.2 being aregistered MSMED filed its claim before respondent No.1. Respondent No.1 after receipt of the claim, initiated proceedings and issued notice to the petitioner on 09.10.2023 stating that conciliation proceedings in the matter would be carried out.

10. Petitioner and respondent No.2 appeared before respondent No.1 on 19.01.2024 and on subsequent dates, however, conciliation proceedings failed and on 06.03.2024, respondent No.1 - Council

forwarded the communications of respondent No.2 dated 08.02.2024 and 22.02.2024 to the petitioner informing that the conciliation proceedings had failed and the next date of hearing would be 15.03.2024.

11. Parties appeared before the Council on 15.03.2024 and informed the Council that the parties could not settle the disputes. Respondent No.2 prayed that the disputes may be referred to the Arbitration. As per the petitioner, no conciliation proceedings were ever conducted by the Council. On each date the Council directed them to explore the settlement themselves and thus, failed to fulfil its statutory obligations.

12. Petitioner requested that the matter be referred to Arbitration before a Tribunal having appropriate judicial and technical competence to adjudicate upon the matters and also requested to conduct fair proceedings. As per petitioner, parties had already entered into a settlement agreement on 04.04.2023 in view thereof no claim for payment of outstanding invoices could have been raised by respondent No.2 before the Council.

13. The Council passed the impugned award on 08.11.2024 under Section 18 (3) of the MSMED Act, 2006, whereby it directed the petitioner to pay Rs.4,56,18,888/- along with interest @ 4.40 % pa to

respondent No.2, within a period of 30 days. Said award has been assailed by the petitioner in the instant writ petition.

14. Ms. Mansi Chatpalliwar, learned counsel appearing on behalf of the petitioner submits that the dispute was in respect of failure on the part of respondent No.2 to perform its obligation under the agreement, and therefore, penalties were imposed by the employer M.P. Police and consequently the agreement between the petitioner and respondent No.2 was terminated on 29.11.2022. Thereafter, petitioner and respondent No.2 entered into the settlement agreement on 04.04.2023, whereby it was agreed that petitioner will return the security amount of Rs.2,23,50,000/- and towards the invoices raised by the respondent No.2, an amount of Rs.2,45,36,706/- will be paid to the respondent No.2 by the petitioner as full and final settlement.

15. It is submitted that from the mere reading of the terms of the settlement agreement, it is clear that the dispute was only in respect of the security amount and the unpaid invoices and the settlement terms were duly recorded in the settlement agreement.

16. Clause 2 of the Settlement Agreement dated 04.04.2023 reads as under:-

> *"2.* ***Payments Terms:***
>
> *2.1 Settlement towards FD paid by HPL:*

2.1.1. ASL agrees to return the amount equivalent to the EMD Amount with Interest rate or the FD itself which was submitted by HPL. However, the terms herein shall be contingent qua the terms as mentioned hereunder.

2.1.2. Subsequent to the Execution Date, ASL shall make a formal request to Madhya Pradesh Police seeking return of the Performance Bank Guarantee submitted by it (PBG") amounting to Rs. 2,23,50,000/-. HPL shall also make all the endeavours to ensure that the PBG is returned "by the Madhya Pradesh Police as soon 3spossible. Upon the receipt of the PBG amount by ASL, it shall remit the FD amount to HPL:ASL shall provide Replacement request to MP Police Letter with PBG within 15 Days of execution of this agreement.

2.1.3. ASL with do all acts necessary to ensure compliance with its obligation under Clause 2.1.1. within a period of 4 (four) months from the Execution Date.

2.2. 'Settlement towards the invoices raised by HPL which remain unpaid:

2.2.1. HPL has raised certain invoices during the course of the Service Agreement which have not been paid by ASL amounting to 4 total of Rs. 2,45,36,706 (Rupees Two Crores Forty-Five Lakhs Thirty-Six Thousands Seven Hundred and Six Rupees only) ("Due Amount').

2.2.2. Further, HPL has failed to make certain payments to Original' Equipment Manufacturers: ("OEMs") and certain employees. the exact amount due to the OEMs are being calculated and shall be decided mutually within 7 (Seven) days from the Execution Date. ("Deduction Amount') till 29" Nov 23. Mechanism of payment will be through Escrow Account for OEM & HPL within 7 days of mutually agreed amount.

2.2.3. For the settlement of HPL's unpaid invoices under the Service Agreement, ASL shall open an Escrow Account with a Bank and add HPL as a beneficiary, within a period of 10 (ten) days from the Execution Date.

2.2.4. Subsequent to opening the Escrow Account, the Due Amount to HPL shall be adjusted against and be subtracted from the Deduction Amount 25 mentioned under Clause 2.2.2 ('Final Due Amount').

2.3. Only once the Final Due Amount is calculated and arrived at in terms of Clause 2.2.4 read with Clause 2.2.1; ASI. shall remit the said amount in the Escrow Account within a period of 7 (seven) days.

2.4. The payment under Clause 2.1 shall be made by Demand Draft or Wire Transfer to an account so designated by HPL;"

17. Learned Counsel for the Petitioner submits that the dispute was finally settled between the parties and parties were under an obligation to follow the terms of settlement and undertook to remain bound by their respective obligations recorded in the settlement agreement. It is submitted that the security amount was duly paid by the petitioner to respondent No. 2in terms of Clause No.2.1.2.It was recorded that the respondent No.2 had failed to make certain payments to the original equipment manufacturers (OEMs) and certain employees, and by 29.11.2022 through the escrow account, the dues of OEMs and employees will be settled and thereafter the balance settlement amount will be paid to the respondent No.2.

18. It is submitted that after the execution of the settlement agreement, petitioner company transferred the amount of security deposit, but respondent No.2 failed to fulfil its obligations under the agreement and escrow account was not opened by respondent No.2 and the claims of OEMs and employees were also not settled, therefore, the balance part of the settlement agreement remained unperformed for which the petitioner was not liable.

19. Learned counsel for the Petitioner submits that once the parties had settled the overdue amount of the invoices and reached a settlement, respondent No.2 was not entitled to raise the issue of unpaid invoices under Section 18 of MSMED Act, 2006, by filing a claim before respondent No.1 - Council. Respondent No.2 submitted the claim before respondent No.1 on 06.10.2023 on the basis of alleged non-payment of the invoices of Rs.4,56,18,888/- despite settlement of the amount. It is submitted that Respondent No.2 itself mentioned in the claim that parties had entered into a settlement agreement,however, contended that petitioner company failed to honour the same and violated the terms and conditions of the settlement agreement. Claim was made by respondent No.2, of Rs.7,30,21,248/- including interest.

20. Learned counsel for the petitioner submits that once respondent No.2 entered into the settlement agreement, it had no right to file a claim on the basis of alleged unpaid invoices and respondent No.2

could have claimed only the settled amount as agreed in the settlement agreement. Once settlement was admittedly recorded between the parties, the claims submitted by respondent No.2 on the basis of unpaid invoices was not maintainable at all.

21. Learned counsel further submits that once parties had entered into the settlement agreement, dispute in respect of alleged non-performance and adherence to the terms of the agreement could have been raised by the aggrieved party by invoking arbitration under the provisions of Arbitration & Conciliation Act, 1996 as specifically agreed by the parties in the settlement agreement and no claim was maintainable on the basis of alleged unpaid invoices those were already reconciled and the parties had agreed to a final amount in respect of invoices.

22. It is further submitted on behalf of the petitioner that no claim could have been lodged by respondent No.2 on the basis of settlement agreement under Section 18 of MSMED Act, 2006 as the amount in respect of goods supplied were already reconciled and respondent No.2 was entitled to receive the agreed amount, after adjusting the due amount payable to the OEMs and the employees. Petitioner submits that as the claim itself was not maintainable under Section 18 of MSMED Act, 2006, the reference to MSEF Council under Section 18 of MSMED Act, 2006 was without jurisdiction.

23. It is further, without prejudice submitted that the Council also failed to perform its obligations under Section 18(2) of the MSMED Act, which mandated holding of conciliation proceedings before proceeding further. It is submitted that no steps were taken by the Council towards conciliation, it simply asked the parties to sit together and settle the disputes. No efforts were made by the Council for conciliation between the parties and thus, the provisions of Section 65 to 81 of Arbitration and Conciliation Act, 1996 were not complied with, and therefore, the mandate of Section 18(2) of MSMED Act, 2006 was not followed. Consequently, any further proceedings under Section 18(3) of MSMED Act was without jurisdiction and thus, liable to be quashed.

24. Petitioner contends that the Council not only failed to perform its obligations mandated under Section 18(2) of the MSMED Act, 2006, but also did not record any satisfaction that conciliation initiated under sub section 2 was not successful. The conciliation proceedings were neither conducted nor termination and as such the council could not have initiated arbitration proceedings, which could be commenced only after holding conciliation proceedings and terminating them after recording that conciliation had failed.

25. While drawing attention to the record of the Council, learned counsel for the Petitioner submits that the Council failed to conduct conciliation proceedings as per the provisions of Section 65 to 81 of

the Arbitration & Conciliation Act, 1996, and thus, the Council had no authority to enter into the arbitration under Section 18(3) of the Act.

26. Reliance is placed on the judgment of Supreme Court in *Jharkhand Urja Vikas Nigam Limited v. State of Rajasthan and Others (2021) 19 SCC 206*, wherein the Supreme Court considering the powers of the MSE Facilitation Council under sub section 2 and 3 of Section 18 and had observed that :-

> *"14. From a reading of Sections 18(2) and 18(3) of the MSMED Act it is clear that the Council is obliged to conduct conciliation for which the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 would apply, as if the conciliation was initiated under Part III of the said Act. Under Section 18(3), when conciliation fails and stands terminated, the dispute between the parties can be resolved by arbitration. The Council is empowered either to take up arbitration on its own or to refer the arbitration proceedings to any institution as specified in the said section. It is open to the Council to arbitrate and pass an award, after following the procedure under the relevant provisions of the Arbitration and Conciliation Act, 1996, particularly Sections 20, 23, 24 and 25.*
>
> *15. There is a fundamental difference between conciliation and arbitration. In conciliation, the conciliator assists the parties to arrive at an amicable settlement, in an impartial and independent manner. In arbitration, the Arbitral Tribunal/arbitrator adjudicates the disputes between the parties. The claim has to be proved before the arbitrator, if necessary, by adducing evidence, even though the rules of the Civil Procedure Code or the Evidence Act may not apply. Unless otherwise agreed, oral hearings are to be held.*

> *16. If the appellant had not submitted its reply at the conciliation stage, and failed to appear, the Facilitation Council could, at best, have recorded the failure of conciliation and proceeded to initiate arbitration proceedings in accordance with the relevant provisions of the Arbitration and Conciliation Act, 1996, to adjudicate the dispute and make an award. Proceedings for conciliation and arbitration cannot be clubbed."*

27. The Supreme Court in *Jharkhand Urja Vikas Nigam Limited (supra)* has held that the Council is obliged to conduct conciliation in terms of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996. When conciliation fails and stands terminated, the dispute between the parties can be resolved by arbitration. There is a fundamental difference between conciliation and arbitration. In conciliation, the conciliator assists the parties to arrive at an amicable settlement, in an impartial and independent manner.

28. The proceedings for Conciliation and Arbitration cannot be clubbed as there is a fundamental difference between conciliation and arbitration. During the conciliation proceedings, the Council was under obligation to assists the parties to arrive at an amicable settlement, in an impartial and independent manner, but the council failed to do so and did not comply with the provisions of Section 65 to 81 of the Arbitration & Conciliation Act, 1996, therefore, the mandate of Section 18(2) of the Act was not complied with and the whole action was without jurisdiction and consequently the subject writ petition is maintainable as the impugned award has been passed in

violation of principles of natural justice and the mandate of the Act. The award is nullity and liable to be set aside.

29. Mr. Siddharth Sharma, learned counsel appearing on behalf of respondent No.2 raises a question of maintainability and submits that the award passed under the provisions of Section 18(3) of MSMED Act, 2006 can be challenged only in accordance with the provisions of Section 34 of Arbitration & Conciliation Act, 1996. As per Section 19 of MSMED Act, 2006, no application for setting aside any decree, award or order made either by the Council itself or by any institution or centre providing alternative dispute resolution services to which reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited 75% of the amount in terms of the decree/award, or as the case may be. He submits that subject petition is not maintainable as 75% amount of the award has not been deposited by the petitioner with this Court and in order to circumvent the provisions of Section 19 of MSMED Act, 2006, petitioner has approached this Court under the provisions of Article 226 of the Constitution of India, which is not entertainable on the ground of availability of an alternative procedure.

30. Reliance is placed on the Judgment of the Supreme Court in *Gujarat State Civil Supplies Corporation Ltd. vs. Mahakali Foods Pvt. Ltd. (Unit No.2), (2023) 6 SCC 401*, to contend that the non obstante clauses contained in sub-section (1) and sub-section (4) of

Section 18 of MSMED Act have the effect of overriding any other law for the time being in force, including the Arbitration and Conciliation Act 1996 and consequently the MSE Facilitation Council can act as a conciliator and thereupon itself can take up the disputes for arbitration, and there is no bar on the MSE Facilitation Council acting as a conciliator and there upon acting as an arbitrator, despite the bar created in Section 80 of Arbitration & Conciliation Act, 2006.

31. Further reliance is placed on the judgment of the Supreme Court in *M/s India Glycols Limited &Anr. v. Micro and Small Enterprises Facilitation Council, Medchal - Makajgiri and Ors., 2023 SCC Online SC 185*, to contend that a writ petition under Article 226/227 of the Constitution is not maintainable as Section 18 of MSMED Act provides for recourse to a statutory remedy for challenging an award under Section 34 of the Arbitration & Conciliation Act and further that until and unless the amount equivalent to 75% of the award is deposited with the court, no application for setting aside the decree, award or order would be maintainable.

32. Learned counsel for the Respondent No. 2 further submits that Section 18 of MSMED Act provides for statutory and mandatory conciliation on the reference being made to the MSE Facilitation Council by any party to a dispute with regard to an amount due under Section 17 of the MSMED Act. Section 17 states that for the goods

supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided in Section 16, which provides that where buyer fails to make the payment of amount to the supplier, as required under Section 15, the buyer shall liable to pay the interest. Learned counsel further submits that it is not in dispute that in compliance of the purchase order issued by petitioner, supplies were made by respondent No.2 and there was outstanding amount of the invoices issued for supply of the material.

33. It is submitted that as the outstanding amount was not paid by the petitioner, respondent No.2 being a registered MSE, had the right to approach the MSE Facilitation Council for redressal of its disputes despite entering into a settlement agreement on 04.04.2023, which was later on not honoured by the petitioner. He further submits that respondent No.2 supplied the material of Rs.4,56,18,888/- and no amount was paid by the petitioner against the said supply. Even the security amount was not returned to the respondent No.2, within the time stipulated in the settlement agreement and no interest was paid to the respondent No.2 by the petitioner upon the security amount. The settlement agreement had no binding effect,as Section 24 of MSMED Act, 2006 provides that the provisions of Section 15 to 23 shall have effect notwithstanding anything inconsistence there being contained in any other law for the time being in force. It is further contended that by entering into the settlement agreement dated 04.04.2023, the claim

of respondent No.2 towards the unpaid invoices had not been extinguished and the respondent No.2 could have approached the MSE Facilitation Council in accordance with law.

34. Learned Counsel for the Respondent No. 2 further submits that in compliance of order dated 16.09.2025 passed by this Court in the instant petition, Rs.2,47,00,000/- were paid by the petitioner to respondent No.2, but said amount was not towards full and final settlement and cold only be adjusted towards the final due amount. Along with the written submission, respondent No.2 has submitted a claim amount sheet claiming Rs.5,98,306,55.39/- as on 31.03.2026. Compound Interest has been calculated @ 18% per annum with monthly rests.

35. The undisputed facts that emerge from the record is that petitioner participated in the RFP issued by M.P. Police and was successful and was awarded the contract. Thereafter, petitioner entered into a back to back agreement with respondent No.2. Respondent No.2 supplied the material in furtherance to the contract with the petitioner. M.P. Police deducted substantial amount from the invoices of the petitioner on the account of deficiencies and negligence. Petitioner stopped the payment of respondent No.2 raising a dispute that respondent No.2 had failed to perform its obligations under the agreement with the petitioner and consequently penalties were imposed by M.P. Police and the default was attributable to

respondent No.2. As per the Petitioner Respondent No. 2 is entitled to only the amount that has been paid by M.P. Police after deductions.

36. It is not in dispute that both the parties entered into a settlement agreement on 04.04.2023, whereby the two claims of respondent No.2, one in respect of security amount of Rs.2,23,50,000/- and another in respect of material supplied by respondent No.2, amounting to Rs.4,56,18,888/- towards the unpaid invoices were settled. It was settled between the parties that the amount of performance bank guarantee of Rs.2,23,50,000/- with interest either in the form of the FD itself or otherwise will be returned to respondent no.2, within a period of four months from the date of execution of the settlement agreement. It is not in dispute that thereafter petitioner paid Rs.2,23,50,000/- to the respondent No. 2 on 19.09.2023 by way of RTGS. There was a delay of 45 days in payment of the EMD amount. It appears that the FD itself was not returned, and no interest was paid on the amount by the petitioner. In the claim submitted before the MSE Facilitation Council, respondent No.2, claimed Rs.1,46,17,931/- towards interest on the EMD amount. By the subject award, no amount has been awarded towards the interest on the EMD amount. There is nothing on record to establish that the respondent No.2 has further raised this issue in any forum in accordance with law claiming interest on the EMD.

37. Clause 5.8 of the Settlement Agreement contains an Arbitration clause and provides that any/or dispute in relation to the instant agreement shall be settled between the parties by arbitration. The Arbitral Tribunal shall comprise of a sole arbitrator, who shall be mutually appointed by the parties. The arbitration shall be governed by the Arbitration & Conciliation Act, 1996. The seat of the Arbitration shall be at Bhopal (MP).

38. The Supreme Court in *Gujarat State Civil Supplies Corporation Ltd. vs. Mahakali Foods Pvt. Ltd. (2023) 6 SCC 401*, has held that the provisions contained in Chapter V of MSMED Act, 2006 are having an effect overriding over any other law for the time being in force including the Arbitration Act. The Supreme Court has further held that facilitation Council shall have the jurisdiction to proceed with the reference made by the party in respect of dispute covered under Section 17 of MSMED Act, 2006, despite the existence of an independent arbitration agreement between the parties.

39. Thus, the MSE Facilitation Councilhas jurisdiction to entertain a claim raised by MSE under Section 18 of MSMED Act despite an independent arbitration agreement between the parties to refer the disputes to Arbitration. Section 18 of MSMED Act has an overriding effect on the provisions of Arbitration & Conciliation Act, 1996. We may place a caveat that the said issue has been referred to a larger

bench by the Supreme Court in *Tamil Nadu Cement Corporation Ltd. Vs. MSEFC and another, 2025, SCC Online SC 127.*

40. Respondent No.2 has raised the issue of maintainability of the subject writ petition on the ground that statutory remedies are available to the petitioner to approach to the competent court under the provisions of Arbitration & Conciliation Act, 1996 for setting aside the award passed by MSE Facilitation Council.

41. In so far as maintainability of the writ petition is concerned, the law is settled that despite there being an efficacious alternative remedy, the writ petition under Article 226 of the Constitution of India is entertainable and the High Court may place a self imposed restriction upon itself and decline to entertain a petition in the facts and circumstances of a case. There is no absolute bar in entertaining a Petition under Article 226/227 of the Constitution of India. No Act can override the provisions of the Constitution of India unless the Constituion itself provides so. Reference may be had to the Judgment of the Supreme Court in *Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others (1998) 8 SCC 1*, wherein the Supreme Court has held as under:

> *"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo*

> *warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".*
>
> *15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."*

42. In *Jharkhand Urja (supra),* the Supreme Court has held that if the proceedings conducted by MSE Facilitation Council were not in consonance with the mandate of the provisions of Section 18 (2) (3) of MSMED Act, a writ petition under Article 226 of the Constitution of India would be maintainable.

43. Section 18(2) of the MSMED, 2006 provides that the Council shall itself conductthe conciliation in the matter or will seek the assistance of any institute or centre providing alternative dispute resolution services by making a reference to such an institution. For conducting the conciliation, the provisions of Section 65 to 81 of the

Arbitration & Conciliation Act, 1996 shall apply to such a dispute as if the conciliation was initiated under part III of that Act.

44. From perusal of the order sheets and the proceedings recorded by the MSE Facilitation Council, it appears that the Council neither conducted conciliation itself nor referred the same to any other institute. Provisions of Section 65 to 81 of the Arbitration & Conciliation Act, 1996 were not complied with by the Council. On each date the Council merely requested the parties to sit together and settle the disputes and thereafter inform the Council.

45. No conciliation proceedings were conducted by the Council. In proceedings dated 19.01.2024, the Council recorded that the applicant informed the Council that on 04.04.2023 meeting was held between the parties for settlement and non-applicant is not making the payment as per the settlement, therefore, the claim had been filed. Considering the same, the council directed both the parties to sit together once again for the purpose of compromise and intimate the counsel regarding the outcome of the same. This clearly establishes that the Council did not conduct any conciliation itself.

46. Thereafter, again on 15.03.2024, the Council directed the parties to proceed with the conciliation proceeding and sit together to decide the same and intimate the outcome of the proceedings. No. Conciliation proceedings were conducted by the Council. Ultimately

on 26.06.2024, the applicant informed to the Council that conciliation proceedings had failed.

47. Section 18 of the MSMED Act reads as under:

> *"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 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 disputes 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."

48. Section 18(2) of the MSMED Act, 2006 mandates that on receipt of a reference the Council shall either itself conduct conciliation or seek the assistance of any institution or centre providing alternate dispute resolution services and the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply to such a dispute as if the conciliation was initiated under Part III of that Act. Section 18(2) uses the expression 'shall' which shows that conciliation is mandatory. Without conducting conciliation between the parties as provided under the provisions of Section 65 to 81 of the Act,the Council had no jurisdiction to precede further under the provisions of Section 18 (3) of the Act, 2006 and conduct the arbitration. Section 18(3) provides that where conciliation under section 18(2) is not successful and stands terminated without any settlement, the arbitration is to commence. The Council cannot reach the stage of Arbitration without complying with conciliation.

49. The role of the conciliation is described in Section 67 of the Arbitration & Conciliation Act, 1996, which reads as under:-

"67. Role of conciliator.

> *(1) The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.*
>
> *(2) The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.*
>
> *(3) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.*
>
> *(4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor."*

50. Section 76 of the Arbitration & Conciliation Act, 1996 provides that conciliation proceedings shall be terminated either by reaching a settlement and execution of an agreement or by a written declaration of the conciliator in consultation with the parties that efforts of conciliation are no longer justified or by a written declaration by the parties to terminate the proceedings or by a written declaration of a party to the other party and the conciliator to terminate the proceedings.

51. Section 76 reads as under:-

> *"**76. Termination of conciliation proceedings**.—The conciliation proceedings shall be terminated—*
>
> *(a) by the signing of the settlement agreement by the parties, on the date of the agreement; or*
>
> *(b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or*
>
> *(c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or*
>
> *(d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration."*

52. Section 77 of the Arbitration & Conciliation Act, 1996 prohibits a party to initiate any arbitration or judicial proceedings in respect of the dispute, which is the subject matter of the conciliation proceedings and reads as under:

> ***"77. Resort to arbitral or judicial proceedings**.—The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject- matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights."*

53. Perusal of the proceedings of MSE Facilitation Council dated 19.01.2024 and 06.03.2024 clearly shows that no conciliation proceedings were ever conducted by the Council or the same referred

to any Institute or Centre providing Alternative Dispute Resolution services. The Council merely left it to the parties to conciliate between themselves. Conciliation proceedings have received a statutory recognition. The manner of conducting conciliation and even the role to be played by the conciliator to assist the parties in an independent and fair manner to arrive at a settlement has been statutorily proscribed. There is a legal sanctity attached the entire process of conciliation. It can not be made a mere eyewash as has been done in the present case.

54. Neither were the conciliation proceedings held as mandated by law nor were they terminated in accordance with law. They were terminated by a simple declaration of the applicant, without following the due procedure prescribed for termination of proceedings under Section 76 of the Arbitration & Conciliation Act, 1996. The provisions of Section 18(2) of the MSMED Act, 2006 are mandatory in nature and without complying the provisions of Section 18(2) of the Act, no proceedings could be initiated under Section 18(3) of the MSMED Act, 2006. Thus the very initiation of the arbitration proceedings under section 18(3) of the MSMED Act, 2006 were illegal, incorrect, unjust and without jurisdiction and thus non est.

55. Mandatory provisions have not been followed by the Council and principles of natural justice have also been violated. Without entering into anyarbitration proceedings in the manner prescribed by

Section 18(3) of the MSMED Act, proceedings were conducted and award passed. Said award is a nullity and is thus liable to be quashed. Consequently, the award passed in MSEFC Case No.1999/2023 dated 08.11.2024 is hereby set aside.

56. Ordinarily, when an award is set aside on the grounds as noticed above, we would have remitted the matter to the Council to conduct fresh conciliation proceedings and to proceed thereafter in accordance with law. However, in the peculiar facts and circumstances of this case that the material was supplied under a contract of the year 2021 – 22, the dispute was admittedly settled between the parties in writing by execution of the settlement agreement on 04.04.2023, which is not disputed. The settlement agreement has also been acted upon by the parties and obligation to refund the amount payable towards return of security amount was complied with by the petitioner by making a payment of Rs.2,23,50,000/- on 19.09.2023. Other claims of the Respondent No. 2 were also reconciled and settled between the parties and it was decided that petitioner shall make the payment of Rs.2,45,36,706/- as full and final settlement towards unpaid invoices.

57. We may note that in these proceedings, Respondent No. 2 had filed an application for issuance of direction to the petitioner to make the payment of the amount as agreed in the settlement agreement. This court by order dated 16.09.2025, after hearing the parties and

considering the facts and circumstances of the case and considering the submissions of the counsel for the petitioner that without prejudice to the rights and contentions, petitioners were willing to pay a sum of Rs.2,47,00,000/- as the said amount was due and payable to the respondentsas per their own accounts,this court directed the petitioner to pay a sum of Rs.2,47,00,000/- to the respondent No.2, within a period of four weeks. Said order was passed in the presence of and with the consent of Mr. Sanjay Maheshwari,the authorised representative of Respondent No. 2 who had shown his willingness to accept the same without prejudice to the rights and contentions of the parties and without prejudice to the maintainability of the present writ petition.

58. In compliance of the order dated 16.09.2025, petitioner company has transferred Rs.2,47,00,000/- to an account of respondent No.2 company by way of an Online Internal Fund Transfer (IFT) transaction on 14.10.2025.

59. We may also note that parties had settled their disputes by way of the settlement agreement on 04.04.2023. Petitioner had agreed to pay the amount of Rs.2,23,50,000/- (towards refund of EMD) and Rs.2,45,36,706/-(towards the unpaid invoices as settled). The claim was preferred by respondent No.2 before the MSE Facilitation Council due to failure of the petitioner to make the payment of amount settled in the agreement within the stipulated time. However,

before filling the claim before the MSE Facilitation Council, Rs.2,23,50,000/- was paid by the petitioner and the sum of Rs.2,47,00,000/- hasalso been paid by the petitioner on 14.10.2025 in terms of the order dated 16.09.2025 during pendency of this petition. Meaning thereby, that the entire principal amount settled between the parties has already been paid by the petitioner,though belatedly. Since the entire amount has been paid we are of the view that no purpose would be served in remitting the matter to MSE Facilitation Council.

60. In view of the above, and with a view to give quietus to the dispute between the parties, this petition is disposed of in the following terms:

(i) The award passed by MSE Facilitation Council, Bhopal dated 08.11.2024 is hereby set aside;

(ii) Parties were under an obligation to honour the terms and conditions of the settlement agreement dated 04.04.2023 and since petitioner has already made the payment to Respondent No. 2 of Rs.2,23,50,000/- on 19.09.2023 towards the refund of EMD and Rs.2,47,00,000/- on 14.10.2025towards the unpaid invoices as settled no principal amount is due under the agreement to Respondent No. 2.

(iii) As petitioner failed to pay the interest on the refund of security amount, it is directed that petitioner shall pay simple interest @ 8% per annum upon the security amount from the date of furnishing the security by respondent No.2, till the date of return of the security amount.

(iv) The full and final settlement amount of Rs.2,45,36,706/- was payable within seven days from the date of execution of agreement, thus the petitioner shall pay simple interest @ 12% per annum from the date of execution of settlement agreement, till the date of transfer of amount of Rs.2,47,00,000/- i.e. 14.10.2025.

(v) Interest amount be paid within a period of 3 months from today.

(vi) All inter se disputes and claims of the parties shall be deemed to be fully and finally settled.

(vii) There shall be no order as to costs.

(SANJEEV SACHDEVA)
CHIEF JUSTICE

(VINAY SARAF)
JUDGE

Rk/Irfan