S.No. 10
Regular Cause list

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

WP(C) 1723/2026 CM 4560/2026

Reserved on : 27.07.2026
Pronounced on : 31.07.2026
Uploaded on : 31.07.2026
Whether the operative part or full judgment is pronounced: Full

M/S MASHAD STEEL INDUSTRIES THROUGH ITS PARTNER
…Appellant(s)/Petitioner(s)

Through: Mr. Azhar Ul Amin, Adv with
Mr. Shahid Ashraf, Advocate

Vs.

UNION TERRITORY OF J AND K AND OTHERS
...Respondent(s)

Through: Mr. Waseem Gul, GA

CORAM:
HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE.

JUDGMENT

1. Petitioner herein is seeking extraordinary jurisdiction under Article 226 of Constitution of India, the petitioner, a micro enterprise registered under Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, (hereinafter for short to be referred as "Act of 2006"), is seeking writ in the nature of mandamus directing the respondents 1 to 3 to pay the amount of Rs. 5,93,137/- along with interest in terms of Sections 15 and 16 of the Act of 2006.

FACTUAL MATRIX

2. It is stated in the petition that the petitioner in the year 2011 and 2012 was allotted work orders by respondent No.4 as a nodal agency for the

construction of various panchayat ghars across Kashmir division on the basis of 13th Finance Scheme to various micro and small- scale industry holders including the petitioner. Subsequent thereto, the petitioner carried out certain works between 2013 and 2017 @ Rs. 20 lacs per panchayat ghar. The construction of each steel roof truss was fixed at 7.20 lacs per panchayat ghar. The scope of original work as per work orders was only the cost of steel roof truss, the site engineers directed the petitioner to install eaves boards & soffits which were not the part of the work, as such the work was executed at an enhanced cost.

3. It is further stated in the writ petition that the amount due to the petitioner on account of construction of the afore-stated works was not released in its favour, although the factum of the execution of works and the amount due therefor is not disputed. The withholding of the payment due against the works allegedly executed by the petitioner has constrained the petitioner to approach this court by filing the instant petition for release of an amount of Rs. 5,93,137/- along with interest in terms of Sections 15 and 16 of the Act of 2006.

4. The learned counsel for the petitioner was pointedly asked, as to how the writ petition in hand is maintainable in view of express statutory remedy available to the petitioner under the Act of 2006. The learned counsel for the petitioner in response has submitted that the jurisdiction of this court in terms of Article 226 of the Constitution of India is not barred and the writ courts have shown their indulgence in similar matters earlier in time also. In support of such contention, learned counsel for the petitioner referred to the judgment of this court passed in a petition filed in terms of Article 227 of the Constitution of India bearing CM(M) No. 287/2023

decided on 14.12.2023 titled "*Union Territory of J&K and Anr. vs. Aibak Electric Industries"* and WP(C) 2686/2024 decided on 25.02.2026 titled "*M/S Northern Engineers vs. UT of J&K and Ors."*

5. Heard learned counsel for the petitioner and perused the material on record.

6. The Act of 2006 has been enacted by the Parliament for the purpose of facilitation, promotion, development and enhancing the competitiveness of Micro, Small and Medium Enterprises and for the matters connected therewith and incidental thereto. The object of the Act of 2006 is to protect and promote the interests of micro, small and medium enterprises. The definition of "buyer" in terms of Section 2(d) and "supplier" in terms of Section 2(n) reads as follows respectively:

> ***Section 2(d)*** *states that a* ***"buyer"*** *means whoever buys any goods or receives any services from a supplier for consideration.*
>
> ***Section 2(n)*** *states that a* ***"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;*

7. Chapter V of the Act of 2006 deals with the delayed payments to micro and small enterprises:

> ***15. Liability of buyer to make payment****.—Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day: Provided that in no case the period agreed upon between the supplier and the buyer*

in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

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.*

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.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 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.*

8. The Micro and Small Enterprises Facilitation Council is a creation of Chapter V of Act of 2006 and is governed by rules framed under Section 30

of MSMED Act issued vide SRO 251 dated 19.06.2017. Rules 7 and 8 of 'The Jammu and Kashmir Micro and Small Enterprises Facilitation Council Rules, 2017' prescribes the mechanism for making a reference before the council, which are reproduced as under:

> *7. **Objective. —**To provide a structured mechanism for recovery of dues of a supplier MSE from any buyer firm or MSE and to deal with the issue of delayed payments as prescribed in Chapter V of the Act.*
>
> ***8. Procedure to be followed in the discharge of functions of the Council**. —(1) An aggrieved MSE unit can move a reference to the Council having jurisdiction of the area in the format provided in Schedule-I to these rules. The reference must have the Udyog Aadhaar Memorandum (UAM) provided in Schedule-I.*
>
> *(2) Such references should be attached with fee or processing charges as notified by the Government as per rule 3(4) above and with an undertaking from aggrieved MSE unit that it has not moved a reference before any Civil Court regarding the same dispute.*
>
> *(3) Upon receipt of references from the Supplier MSE unit, the Secretariat of the Council shall enter the data in the web portal created for this purpose.*
>
> *(4) After entering the data, acknowledgement of the receipt of reference shall be issued by the Secretariat to the applicant MSE unit through registered post including e-mail & SMS.*
>
> *(5) The Council shall examine the reference at preliminary stage to check the fee or competency of MSE unit to file the reference.*
>
> *(6) In case, the reference or the particulars entered in it are not found to the satisfaction of Council, it may return the reference.*
>
> *(7) The Council shall either itself conduct conciliation in the matter or seek the assistance of any institute for conducting the same and if it decides to do so, shall refer the parties to the institute.*
>
> *(8) The institute to which the issue is referred shall make efforts to bring about conciliation between the parties and shall submit its report to the Council as soon as possible, preferably within a period of 15 days from the date of reference.*
>
> *(9) Where the conciliation between the parties does not lead to settlement of the dispute, the Council shall either itself take up the dispute for further action, i. e. arbitration or refer it to an "Institute" for the same in terms of Jammu and Kashmir Arbitration and Conciliation Act, 1997.*
>
> *(10) If the matter is referred for arbitration, the institute shall arbitrate the issue as per the provisions of Jammu and Kashmir*

Arbitration and Conciliation Act, 1997 and refer the award to the Council

(11) The Council after finalizing the award or receiving the award from the institute shall consider the case and pass appropriate final orders in the matter.

9. The MSE Scheme on Online Dispute Resolution for Delayed Payments issued by Ministry of Micro, Small and Medium Enterprises launched on 27.06.2025 seeks to address the issue of delayed payments faced by Micro and Small Enterprises, the relevant guidelines of the scheme, more particularly, 11 and 12 are reproduced as under:

11.1. NATURE AND JURISDICTION OF DISPUTE

11.1.1. Disputes between the Micro and Small Enterprises (MSE) seller, and any buyer, arising out of failure of payment for supply of goods or rendering of services by the MSE seller, on or before the date agreed upon between the supplier and the buyer, in writing, and where there is no agreement in this behalf, after the expiry of fifteen (15) days from the day of acceptance or deemed acceptance of goods or services by a buyer, and in no case, beyond forty-five (45) days from the day of acceptance or deemed acceptance of goods or services by a buyer, will be resolved through MSME ODR Portal. The nature and jurisdiction of the dispute shall be as mandated under the MSMED Act, 2006, and its amendments thereof.

11.1.2. Disputes between Micro and Small Enterprises (MSE) seller, and any buyer, arising out of failure of payment for supply of goods or rendering of services by the MSE seller, can be resolved, at the option of the Micro and Small Enterprises (MSE) seller: (i) By leveraging Digital Guided Pathway (DGP) and Unmanned Negotiation under the preMSEFC phase through MSME ODR Portal; and/or (ii) By leveraging mediation and arbitration as per the MSMED Act, 2006 through Micro and Small Enterprises Facilitation Council (MSEFC), or any institution or centre providing alternative dispute resolution services in India and to whom a reference has been made by the respective MSEFC having jurisdiction over the subject matter, through the MSME ODR Portal.

11.2. MSME ODR PORTAL

11.2.1. The Ministry of MSME had launched the MSME Delayed Payment Portal – MSME SAMADHAAN to facilitate the online filing and registration of applications for the recovery of delayed payments by MSE suppliers having a valid registration.

11.2.2. The MSME SAMADHAAN Portal is presently working as a case tracker and an e-filing portal. Once an application for delayed payments is filed on the Portal, the rest of the dispute resolution process requires manual intervention. The traditional dispute resolution process is thereby costly and time-consuming which may cause delay in the recovery of *payments by MSEs. A delay in disposal of delayed payment applications may impact the working capital availability for MSEs, pose risk to associated business relationships, and may result in loss of business opportunity, etc.*

11.2.3. The MSME ODR Portal will provide a twofold solution to delayed payment applications filed by Micro and Small Enterprises in two stages: (i) PreMSEFC, and (ii) MSEFC.

12. ONLINE DISPUTE RESOLUTION PROCESS

12.1. ***INITIATION OF DELAYED PAYMENT APPLICATION PROCEEDINGS***

12.1.1. The proceedings for delayed payment applications will initiate with an e-filing for the recovery of the delayed payment application by the MSE seller on the MSME ODR Portal.

12.2. ***COMMENCEMENT OF DELAYED PAYMENTS APPLICATIONS PROCEEDINGS***

12.2.1. In the case of pre-MSEFC stage, the online dispute resolution proceedings will commence, when following the filing of a delayed payment application on the MSME ODR Portal, an automated communication has been sent to the MSE seller and the buyer/s through text message and email, if any, provided through the MSME ODR Portal.

12.2.2. Conciliation/ Mediation under the MSEFC stage will be deemed to have commenced on the date of the appointment of the conciliator/ mediator for mediating a dispute between the parties. Arbitral proceedings in respect of a dispute commence as per the provisions of the Arbitration and Conciliation Act, 1996.

12.5.8. ARBITRATION UNDER THE MSEFC STAGE

(i) If the conciliation/ mediation process fails, that is, it does not result in the settlement of the dispute between the parties, the parties will be referred for statutory arbitration mandated under the MSMED Act, 2006. The arbitration proceedings will be facilitated through the MSME ODR Portal.

(ii) Arbitration proceedings under the MSEFC stage will be deemed to have commenced as per the procedure laid down under the Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be conducted as per the provisions of the Arbitration and Conciliation Act, 1996.

10. It has been held by Hon'ble Supreme Court in case titled "*Gujarat State Civil Supplies Corpn. Ltd. Vs. Mahakali Foods Pvt. Ltd. and Anr.*", reported as *(2023) 6 SCC 401.*

> *"37. Sections 15 to 25 contained in Chapter V of the MSMED Act, 2006 pertain to the "delayed payments to micro and small enterprises". A bare perusal of the said provisions contained in Chapter V shows that a strict liability is fastened on the buyer to make payment to the supplier who supplies any goods or renders any*

services to the buyer, prescribing the time-limit in Section 15. Section 16 further fastens the liability on the buyer to pay compound interest if any buyer fails to make payment to the supplier as required under Section 15. Such compound interest is required to be paid at three times of the bank rate notified by the Reserve Bank, notwithstanding contained in any agreement between the buyer and supplier or in any law for the time being in force. An obligation to make payment of the amount with interest thereon as provided under Section 16 has been cast upon the buyer and a right to receive such payment is conferred on the supplier in Section 17. Thus, Section 17 is the ignition point of any dispute under the MSMED Act, 2006. Section 18 thereof provides for the mechanism to enable the party to the dispute with regard to any amount due under Section 17, to make a reference to the Micro and Small Enterprises Facilitation Council.

38. Section 18 starts with a non obstante clause i.e. "notwithstanding anything contained in any other law for the time being in force". It means that the said provision has been enacted with the aim to supersede other laws for the time being in force. Further a dedicated statutory forum i.e. the Micro and Small Enterprises Facilitation Council (as established under Section 20 of the MSMED Act, 2006), has been provided to which a reference could be made by any party to the dispute. Sub-section (2) of Section 18 empowers the Facilitation Council, on receipt of such reference made under sub-section (1), to conduct conciliation in the matter or seek assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation, as contemplated in Sections 65 to 81 of the Arbitration Act, 1996. If the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council is further empowered under sub-section (3) to either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration. The provisions of the Arbitration Act, 1996 are then made applicable to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996. Sub-section (4) of Section 18 again starts with a non obstante clause i.e. "notwithstanding anything contained in any other law for the time being in force" and confers jurisdiction upon the Facilitation Council to act as an arbitrator or a conciliator in a dispute between the

> *supplier located within its jurisdiction and a buyer located anywhere in India. Sub-section (5) of Section 18 fixes the time-limit of ninety days to decide such reference."*

11. In view of the aforesaid judgment, Section 15, 16 and 17 are interlinked with each other and also part of the chapter V, which deals with the delayed payments to micro and small enterprises. Thus, the entire chapter V applies only in respect of the delayed payments to micro and small enterprise. Section 15 to 17 also makes it clear that the obligation is on the buyer to make the payment promptly in terms of Section 15 failing which an increased rate of interest would be liable to be paid by the buyer to the supplier. Section 16 lays down the procedure for recovery of interest and dues payable to the Micro, Small and Medium Enterprises. Section 16 further passes the liability of the buyer to pay the compound interest, if any buyer fails to make the payment to the supplier as required under Section 15 of the Act. Section 17 of the Act of 2006 creates an obligation on the buyer to pay an amount due to the supplier along with interest thereon. Section 18 lays down the procedure to be followed for the purpose of making a reference to micro, small and medium enterprises facilitation council. Rules of 2017 and scheme of MSE for online dispute resolution lays down the mechanism to approach the competent authority in terms of chapter V of Act of 2006.

12. Petitioner herein has approached this court by way of the instant petition, seeking direction upon respondents 1 to 3 to pay an amount of Rs. 5,93,137/- along with interest in terms of Section 15 and 16 of the Act of 2006, on the ground that the petitioner's rights have been violated by not making payments in terms of the Act of 2006, as such, respondents are

under legal obligation to make the payment in terms of the Act. He has further stated that the failure of the respondents to release the payment of the petitioner after accepting the goods or services within 15 days in terms of Act of 2006 and denial of remedy to accept the reference is in violation of legal and constitutional rights of India. It is nowhere stated that the petitioner has ever approached in terms of Act of 2006 and rules of 2017 by following the mechanism envisaged in the scheme (supra). Petitioner has opted to approach this court directly by way of filing the instant writ petition.

13. Perusal of the record would reveal that an amount of Rs. 5,93,137/-, which the petitioner is claiming by way of the instant petition has not been admitted by the respondents in any of the documents annexed with the petition except annexure-I which is supposedly drafted by the petitioner in a tabulated form the said document has neither signature nor seal of any of the office of respondents.

14. Petitioner herein has relied upon the judgment passed in ***CM(M) No. 287/2023*** titled ***Union Territory of J&K and Anr. Vs. Aibak Electrical Industries,*** the relevant paragraph is as under:

> *11. In the instant case, I am surprised to find that when the supplies made by the respondent to the petitioners were not disputed and the payment due to the respondent was also not in dispute, where was the occasion for the respondent to seek a reference before the Council under Section 18 of the Act of 2006. From plain reading of Sub Section (2) of Section 18 it clearly transpires that reference can be made by the aggrieved party to the Council only where there is a dispute with regard to any amount due under Section 17 of the Act. Ordinarily, in the present case the petitioners should have acted fairly and in the true spirit of the MSMED Act, 2006 and made payment to the respondent along with statutory interest envisaged under Section 16. However, the failure on the part of the petitioners to*

> *carry out the mandate of Section 15 and 16 did provide a cause of action to the respondent to directly approach this Court by invoking its extraordinary writ jurisdiction under Article 226 of the Constitution of India.*

Though it is referred in the judgment supra that the failure on part of the petitioners therein to carry out the mandate of Section 16 and 17 provides a cause of action to the respondent therein to directly approach the court by invoking its extraordinary jurisdiction under Article 226 of the Constitution of India, however, this is a mere passing reference made by the court. The dispute before the court was with regard to the award which was being passed against the UT of J&K in terms of the Act of 2006. It was held that since the amount which was being claimed by the respondent therein was not disputed by UT government as such, the award could not have been passed against respondent therein in terms of Act of 2006, the award was set aside. The question of maintainability of writ petition under 226 of constitution of India seeking release liability under section 15 and 16 of the Act of 2006, was neither raised nor pleaded by any of the parties in the petition.

15. In WP(C) No. 2686/2024 titled "*M/S Northern Engineers vs. UT of J&K and Ors.*", this Court has held :

> *"5.Mr. Azhar Ul Amin, appearing counsel for the petitioner while making his submissions in line with the case setup in the petition, invited the attention of this Court to the judgment passed by the Coordinate Bench in case titled as "Union Territory of J&K & Anr. Vs. Aibak Electric Industries being CM(M) No. 287/2023" and would submit that the said judgment squarely covers the case of the petitioner rendering the respondents liable to make the payments due to the petitioner for the supplies made along with the compound interest in terms of Section 16 of Act of 2006.*

> *6. On the contrary Mr. Faheem Shah, appearing counsel for respondent 3 while opposing the submissions of Mr. Amin would submit that the petitioner is not entitled to the grant of relief sought in the petitioner in general and in particular the grant of compound interest in terms of the Act of 2006, as according to Mr. Shah the petitioner has never invoked the provisions of the Act of 2006 before "the council" under the Act and has directly approached this Court invoking extraordinary writ jurisdiction.*
>
> *7.Insofar as the aforesaid plea of Mr. Shah is concerned, the Coordinate Bench in the judgment of Union Territory of J&K supra has specifically ruled that the failure on the part of the department to carry out the mandate of sections 15 & 16 of the Act would provide a cause of action to the supplier to directly approach this Court by invoking its extra ordinary writ jurisdiction under Article of the 226 of the Constitution. Thus, in view of the facts in hand and having regard to the aforesaid position of law this bench has no reason to take a view different than what has been taken by the Coordinate Bench in the case supra."*

16. The ratio laid down in the aforesaid judgment is that the failure on the part of the department to carry out the mandate of Section 15 and 16 of the Act would provide a cause of action to the supplier to directly approach this court by invoking writ jurisdiction under Article 226 of the constitution of India despite the objection being raised by the learned counsel for the respondent therein that the petitioner is not entitled to any compound interest in terms of the Act of 2006 on the ground that he had never invoked the provisions of Act of 2006 before the council under the Act.

17. The provisions of Section 15 to 23 of the Act of 2006 are having an overriding effect under Section 24 of the Act, which states that these sections shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. The act of 2006 is a beneficial legislation to small medium and micro enterprises. As such, if a

seller would be allowed to approach this court directly, it would defeat the very object of the Act and would also bypass the mechanism set up by the statute, Rules and scheme in vogue.

18. In ***"Godrej Sara Lee Limited versus Excise and Taxation Officer-cum-Assessing Authority and Others"*** reported as ***2023 SCC online SC 95***, Apex Court discussed the concept of entertainability and maintainability of a petition and held that these are distinct concepts and held as under:

> *"4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by article 226 of the Constitution having come across certain orders passed by the High Courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the*

> *jurisdiction of the High Court under article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper."*

19. It is held in the judgment (*supra*) that the writ petition, though being maintainable, may not be entertained by a court for many reasons and a relief could also be refused to the petitioner despite setting up a sound legal issue. The court further held that dismissal of a petition by High Court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

20. Since the petitioner has approached this court directly without availing statutory remedy which is available to the petitioner in terms the Act of 2006, as such, in the opinion of this court, if this writ petition under

Article 226 is accepted, the purpose of the Act of 2006 would become redundant. The intent of the legislature is reflected in chapter V of the Act of 2006 that it is a welfare legislation exclusively for the suppliers, therefore, it is incumbent upon the petitioner to approach appropriate forum in terms of Act of 2006, rules and scheme meant for MSME suppliers like petitioner herein.

21. In the instant petition, petitioner has approached this court without availing an alternate remedy available to him under the Act of 2006, thereby seeking relief in terms of section 15 and 16 of the act of 2006, which is available to the petitioner in terms of the Act of 2006. The mechanism which is prescribed in the statute is interlinked with respect to different stages as per Section 15 to 23 in chapter V of the Act of 2006. Moreso, petitioner herein has not been able to make out a case on the basis of any of the document, annexed with the petition, where respondents have admitted the liability of 5,93,137/-. Therefore, petitioner has failed to make out any exceptional circumstance so as to entertain this petition so as to avail this extraordinary jurisdiction under article 226 of the constitution.

22. It has been held by the Division Bench of Hon'ble High Court of Gauhati, in case titled "***National Highways and Infrastructure Development Corporation Ltd. And Ors. vs. Girin Deka and Ors".,*** reported as ***(2025) 1 Gauhati Law Reports 44:***

> "*29. From a plain reading of the provisions of the Act of 2006, it is, thus, apparent that the Act of 2006 is a Special Statute, enacted by the Parliament with the objective of protecting the right of the micro, small and medium enterprises. The fact that section 18 of the Act of 2006 begins with a non-obstante clause is sufficient to indicate that the entitlement of the Micro, Small and Medium Enterprises to recover its lawful dues by taking recourse to the mechanism provided under the*

Act, would have an overriding effect over any other law for the time being in force. Therefore, in the event, any MSM Enterprise, coming within the ambit of the Act of 2006, is wrongfully denied payment for the goods delivered or services rendered by it, than in that event, regardless of any other law for the time being in force to the contrary, the enterprise will be entitled to recover its dues by taking recourse to section 18. Section 18 of the Act of 2006, in our view, not only provides an adequate and efficacious remedy to the MSM Enterprise to recover its legitimate dues but the same also provides an opportunity to fast track the resolution of all such disputes.

30. In the present case, as has been noted herein above, the fact that the sub-contractor a micro, small and medium enterprise and had supplied goods and/or rendered services, which was availed by the appellant No. 1 as a buyer, within the meaning of the Act of 2006, is not in dispute nor is there any controversy regarding the fact that the value of the work executed by the sub-contractor (writ petitioner Nos. 1 and 2) is Rs. 11,06,85,770, which amount has been specifically admitted. by the appellants by filing affidavit. In view of the above, we are of the considered opinion that the right of the sub-contractor under the Act of 2006 to recover payments for the goods and services rendered by it would be independent of the terms and conditions contained in any contract agreement to the contrary. In other words, the contract agreements dated 19.11.2014 or 31.5.2016, in our view, cannot create any legal obstacle for the sub-contractor to recover its dues from the "buyer" in accordance with the procedure prescribed under the Act of 2006.

31. We, therefore, set aside the judgment and order dated 12.6.2023 passed by the learned Single Judge.

32. This writ appeal is being disposed of by granting liberty to the sub-contractor (respondent Nos. 1 and 2 here-in) to invoke section 18 of the Act of 2006 for recovery of its dues. The matter be, accordingly, referred to the Micro, Small and Medium Enterprises Facilitation Council, having jurisdiction over the dispute, for resolution of the same in accordance with the scheme of the Act of 2006.”

23. It is no more *res-integra* that under Article 226 of the Constitution of India, the High Court having regard to the facts of the case has a discretion to

entertain or not to entertain a petition, but the High Court has imposed upon certain restrictions, one of which is that, if an equally efficacious alternative remedy is available, the High Court would not normally exercise its jurisdiction. Petitioner in this case is seeking a remedy which is available to him in terms of the Act of 2006, the grounds projected in the petitioner do not carve out a case to invoke extraordinary jurisdiction in view of the availability of an alternative remedy available to the petitioner. As such, on account of the statutory remedy available in terms of the Act of 2006, rules and scheme/mechanism provided exclusively for registered MSME suppliers like the petitioner herein and the liability of the respondents not clearly admitted in any of the documents annexed with this petition. This petition, therefore, is neither maintainable nor liable to entertained. In case this petition is entertained under article 226 of the Constitution of India, it would render the statutory mechanism under Act of 2006, otiose.

24. In view of above, this petition is dismissed at the threshold, without costs.

(MOKSHA KHAJURIA KAZMI)
JUDGE

SRINAGAR:
31.07.2026
"Misba"

- Whether the Judgment is Reportable? Yes/No
- Whether the Judgment is Speaking? Yes/No