2025:DHC:3185

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 16.12.2024

Judgment pronounced on:01.05.2025

\+ **O.M.P.(COMM.) 246/2022**

SHRISTI INFRASTRUCTURE DEVELOPMENT .....Petitioner

Through: Mr. Vaibhav Gaggar, Adv.

versus

SCORPIO ENGINEERING PRIVATE LIMITED AND ANR.

.....Respondents

Through: Mr. Satyam Dwivedi, Mr. Harshit Prakash and Mr. Puja Jakhar, Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: JASMEET SINGH, J

1. This is a petition filed under section 34 of the Arbitration and Conciliation Act, 1996 ("***1996 Act***") seeking to challenge the Arbitral Award dated 16.10.2019 ("***Impugned Award***"), whereby the petitioner has been held to be jointly and severally liable along with respondent no. 2 to pay a sum of Rs. 6,56,84,982/- (Rs. 5,73,15,078/- towards claim no. 1 and Rs. 83,69,904/- towards claim no. 4) to respondent no. 1 along with interest at the rate of 38.85% from the date of the award till the actual payment is made.

FACTUAL MATRIX AS PER THE PETITIONER

2. The petitioner is a leading civil engineering, construction and infrastructure development public limited company, registered under the Companies Act, 1956 having its registered office at Plot No. X - l, 2 and 3, Block - Ep, Sector- V, Salt Lake City, Kolkata- 700091.

3. Respondent no. 1 is a private limited company registered under the Companies Act, 1956 having its registered office at No. 132, Wheeler Road, Cox Town, Bangalore, Karnataka – 560005 and is engaged in the business of bulk material handling systems. Respondent no. 2, formerly known as India Power Corporation (Haldia) Limited is a public limited company registered under the Companies Act, 1956, having its registered office at Plot No. X - l, 2 and 3, Block - Ep, Sector- V, Salt Lake City, Kolkata- 700091. Respondent no. 2 is the owner of a 3x150 MW Thermal Power Plant in Haldia, Purba - Medinipur, West Bengal.

4. In the year 2010, respondent no. 2 invited bids through a tender for the engineering, procurement, transportation, supply to site and insurance of main plant equipment and accessories along with balance of plants (BOP) equipment and accessories in connection with the establishment of the 3x150 MW Thermal Power Plant in Haldia, Purba - Medinipur, West Bengal ("***plant***"). In response to the said tender, BF Infrastructure Limited ("***BFIL***") submitted its proposal. BFIL was appointed as the EPC Contractor for the plant of respondent no. 2.

5. Thereafter, in the year 2012, respondent no. 2 invited bids for designing, engineering, manufacturing, supply, erection, and commissioning of a Coal Handling Project ("***project***") pertaining to the plant. Respondent

no. 1 in response, approached the respondent no. 2 and submitted its bid for the project. Thereafter, a contract came to be executed between respondent no. 1, respondent no. 2 and BFIL. The contract price for the project was finalized at Rs 47,50,00,000/-, out of which Rs 43,00,00,000/- was towards purchase price and the remaining amount of Rs. 4,50,00,000/- was for the services rendered. The said contract contained the arbitration clause being clause 29 of the GCC which reads as under:

> *"29.0 ARBITRATION*
>
> *29.1 In the event of any dispute or difference arising out of the execution of the Order/Contract or the respective rights and liabilities of the parties or in relation to interpretation of any provision by the Seller/Contractor in any manner touching upon the Order/Contract, such dispute or difference shall (except as to any matter the decision of which is specifically provided for therein) be referred to the arbitration of the person appointed by the competent authority of the Purchaser.*
>
> *Subject as aforesaid, the provisions of Arbitration and Conciliation Act, 1996 (India) and statutory modifications or reenactments thereof and the rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause. The venue of arbitration shall be at NOIDA/New Delhi/Delhi."*

6. Thereafter, in the year 2013, BFIL, acting on behalf of respondent no. 2, invited quotations for design, engineering, manufacturing/procurement, transportation, unloading, site storage, erection, testing, commissioning,

and performance guarantee testing of equipment and items for the project. The petitioner submitted its quotation, which was approved by BFIL. Accordingly, BFIL issued two Letter(s) of Intent in favour of the petitioner, both dated 10.12.2013. On 20.12.2013, respondent no. 2 issued a Purchase Order in favour of respondent no. 1, for designing, engineering, manufacturing, inspecting, testing and supplying, including transportation and transit insurance, of all equipment/items for the project including mandatory spares and structural components (technological and non-technological) for a consideration of Rs 43,00,00,000/-.

7. Thereafter, respondent no. 2 also issued a Work Order to respondent no. 1 for unloading, storing, providing security from fabrication, transporting from works to site and within site, erection, testing, commissioning, conducting PG test for the project in accordance with the technical specification, discussions, etc. for a consideration of Rs. 4,50,00,000/-.

8. On 20.12.2013, complying with the directions of respondent no. 2 and BFIL, the petitioner also re-issued identical Purchase order and Work order in favour of respondent no. 1.

9. Pursuant thereto, on 06.06.2014, a Tripartite Agreement was executed between BFIL, respondent no. 2, and the petitioner, whereby BFIL assigned all its rights, obligations, and liabilities arising under the previous agreements in favour of respondent no. 2. Consequently, BFIL ceased to be the EPC Contractor for the project. Upon such substitution, the petitioner commenced coordination directly with respondent no. 2 for execution of the work with respect to the project, in accordance with the Purchase Order dated 10.12.2013. Further, the petitioner became the

EPC contractor for the project which was formally done by a Supply contract being executed between the petitioner and respondent no. 2 on 03.07.2015, whereby respondent no. 2 transferred the obligations of BFIL to the petitioner, which had been assigned to respondent no. 2 under the Tripartite Agreement dated 06.06.2014.

10. Soon after, certain disputes arose between the parties, the respondent no.1 invoked arbitration *vide* legal notice dated 14.04.2017, however, it is stated that the said notice was only delivered to the respondent no. 2 and not to the petitioner.

11. Thereafter, respondent no. 1 filed a petition under section 11 of the 1996 Act, being Arb. P. No. 406/2017 and sought appointment of a sole arbitrator for adjudication of disputes between the petitioner and respondent nos. 1 and 2. Vide order dated 18.07.2017, the learned Sole Arbitrator came to be appointed and the Arbitral Award came to be passed on 16.10.2019.

12. Aggrieved, the petitioner has filed the present petition.

IMPUGNED AWARD

13. The learned Sole Arbitrator passed the impugned award in favor of the respondent no. 1, by allowing its claim nos. 1 and 4. Rest other claims of the respondent no.1 and the counter claim(s) of respondent no. 2 were rejected by the learned Sole Arbitrator.

14. As regards, the claim no. 1, a sum of Rs. 5,73,15,078/- was awarded in favor of the respondent no. 1, towards outstanding amounts of supplies and service, to be paid by the petitioner and respondent no. 2 jointly and severally under the ‘Group of Companies’ doctrine.

15. As regards, the claim no. 4, being towards keeping the bank guarantee(s) alive, a sum of Rs. 83,69,904/- was awarded in favor of respondent no. 1 towards the cost incurred by the respondent no. 1 for keeping the bank guarantees alive.

16. In addition, the Arbitrator awarded interest at the rate of 38.85% on the principal amount of Rs 6,56,84,982/- (Rs. 5,73,15,078/- + Rs. 83,69,904/-) from the date of the impugned award till the actual date of payment. It further directed the petitioner and respondent no. 2 to pay the awarded sum within 6 weeks, failing which the petitioner and respondent no. 2 would pay the awarded sum at the rate of 2% higher than the current rate of interest prevalent on the date of award and from the date of award to the date of payment.

SUBMISSIONS ON BEHALF OF THE PETITIONER

17. At the outset, it is stated that the appointed arbitrator lacked inherent jurisdiction to adjudicate any claim arising under the Micro, Small and Medium Enterprises Development Act, 2006 ("***MSMED Act***"). As such, the Impugned Award is without jurisdiction and is null and void in law.

18. In this regard, reliance is placed upon the judgment passed by the Hon'ble Gujarat High Court in ***Principal Chief Engineer v. Manibhaiand Brothers (Sleeper) and Another***, 2016 SCC OnLine Guj 10012, to state that section 18 of the MSMED Act, being a special provision, overrides any other law for the time being in force, including the 1996 Act. Therefore, in case of disputes governed by the MSMED Act, the procedure prescribed under section 18 alone is applicable and must be mandatorily followed.

19. It is stated that section 18 of the MSMED Act prescribes a specific mechanism for resolution of disputes, whereby the Facilitation Council or a Centre providing alternate dispute resolution services appointed by the Facilitation Council is empowered to adjudicate disputes by itself taking the matter for arbitration or refer it to any other institution for arbitration in accordance with the provisions of the 1996 Act. In view of the statutory mandate under Section 18(3) of the MSMED Act, the jurisdiction of the Council cannot be ousted by way of a mutually agreed arbitration clause between the parties.

20. It is further stated that the petitioner was not a signatory to the agreement dated 20.12.2013, and therefore, no privity of contract existed between the petitioner and respondent nos. 1 and 2. Consequently, the petitioner could not have been impleaded as a party to the arbitration proceedings by invoking the Arbitration Clause. Further, the petitioner is not a Group Company of respondent no. 2. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court, in ***Cox and Kings Ltd. v. SAP India Pvt. Ltd. and Another***, 2023 SCC OnLine SC 1634, to state that the Hon'ble Supreme Court has laid down the test and requirements for treating an entity as a 'group company', however in the present petition, none of those parameters are satisfied. Despite the absence of any common directors, promoters, or any such association between the petitioner and respondent no. 2, the arbitrator erroneously applied the 'Group of Companies' doctrine to bring the petitioner within the scope of arbitration.

21. The Arbitrator has failed to consider the categorical finding of the auditor, who stated that no evidence was found to suggest that the petitioner was a group company of the respondent no. 2. Additionally,

the process and flow of the transactions for supply and services shows that the payment of any outstanding to respondent no. 1 was to be done by respondent no. 2.

22. In addition, after holding that the petitioner was a group company of the respondent no. 2, Arbitrator erroneously went on to hold that the petitioner was working as an agent of the respondent no. 2. It is stated that in terms of section 230 of the Indian Contract Act, 1872, the agent cannot be held to be personally liable and cannot be proceeded against when the acts done were on the instructions of the principle.

23. It is further submitted that the claims and allegations in the Statement of Claims filed by respondent no. 1 are solely directed against respondent no. 2, with no specific allegation or averment made against the petitioner. The alleged acts and omissions—such as changes in the layout plan, encashment of bank guarantees, and delays—have all been attributed to respondent no. 2 alone. In the absence of any pleading against the petitioner and without any reasoning in the impugned award, the petitioner cannot be held liable.

24. It is further stated that the petitioner was neither a party to any of the correspondences related to the performance of the contract, nor did it participate in any meetings concerning the same.

25. Further, the interest awarded at the rate of 38.85% under section 16 of the MSMED Act could not have been granted as the benefit of section 16 is applicable only where arbitration is conducted institutionally under section 18 of the MSMED Act. As the present arbitration is an ad hoc proceeding, such a high rate of interest could not have been granted in law.

26. As regards, the amount of 5,73,15,078 is concerned, it is stated that the same is awarded without any evidence. In support of the said contention, the petitioner submitted that during the course of arbitral proceedings, the respondent no. 1 provided various invoices claiming certain amounts, however the same were never approved by the petitioner. Respondent no. 1 failed to submit any document, such as acknowledgments or approvals from the petitioner, to support its claim. Despite this, the awarded amount is based on the said invoices, without questioning their validity or seeking corroborative evidence.

27. As of today, respondent no. 2 has been admitted to CIRP by order dated 02.01.2024 passed by the learned NCLT, Kolkata. Respondent no. 1 submitted its claim for the entire award amount, which was admitted by the Resolution Professional on 01.05.2024.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 1

28. *Per contra*, it is stated that the present petition is not maintainable, as it has been filed during the pendency of an earlier section 34 petition, resulting in two section 34 petition(s) before the same Court challenging the same Arbitral Award. The first section 34 petition filed by the petitioner continues to remain pending in defect, with objections yet to be removed even after a lapse of three years from its filing. In an attempt to circumvent the limitation period and revive a time-barred challenge, the petitioner has deliberately chosen to file a second petition under section 34 of the 1996 Act.

29. Even otherwise, the impugned Award was passed on 16.10.2019, and the present petition was filed only on 16.05.2022, after an inordinate delay of approximately 1320 days. The statutory limitation period of 90

days in filing the present petition expired on 14.01.2020, and even the outer limit of 120 days as prescribed under section 34 (3) of 1996 Act, lapsed on 13.02.2020. Since the delay far exceeds the maximum period permissible under law, this Hon'ble Court is barred from entertaining the present petition. In this regard, the petitioner has blamed their counsel(s) at every stage.

30. It is further stated that the petitioner in the present petition has raised grounds that were never raised before the learned Arbitrator. In this regard, reliance is placed upon the judgment passed by the Hon'ble Supreme Court in ***Union of Indiav. Susaka (P) Ltd and Others.*** 2017 SCC OnLine SC 1436 to state that no new legal or factual objections can be raised for the first time under a petition filed under section 34, which were never raised before the Arbitrator.

31. It is stated that the petitioner, having directly issued work and purchase order(s) to the respondent no. 1, allowed the petitioner the right to levy liquidated damages, which shows that the petitioner clearly acted with full interest in the business transaction. It cannot now claim to be a mere agent of the respondent no. 2. Reliance is placed on ***Tashi Delek Gaming Solutions Ltd. and Another v. State of Karnataka and Others***, (2006) 1 SCC 442, where the Hon'ble Supreme Court held that an agent with an interest in the contract can also be held liable.

32. It is stated thatwhile the petitioner takes the shelter of section 230 of the Indian Contract Act, 1872, being the agent of respondent no. 2, the petitioner has on the other hand admitted being an independent contractor. Even otherwise, section 231 of the Indian Contract Act, 1872 presupposes the existence of an agency relationship, which is not the case between the petitioner and respondent no. 2.

33. It is stated that the respondent no. 1 raised invoices against the work and purchase orders issued by the petitioner against which payments were made by the petitioner to respondent no. 1.

ANALYSIS AND CONCLUSION

34. I have heard the learned counsel for the parties and perused the material and documents placed on record.

Scope of Section 34 of the 1996 Act

35. The courts in a catena of judgments have held that the jurisdiction of a court under Section 34 of the 1996 Act, is narrowly circumscribed. The provision does not envisage an appellate review of the arbitral award on merits; rather, it permits judicial intervention only on limited and specific grounds. These include incapacity of a party, invalidity of the arbitration agreement, procedural irregularities, denial of a fair hearing, and the award being in conflict with the public policy of India, inter alia. The court is not empowered to reappreciate evidence or substitute its own view for that of the arbitral tribunal. As consistently reiterated by the Supreme Court, Section 34 embodies the principle of minimal judicial interference, thereby preserving the finality and efficacy of arbitral awards. In this regard, reliance is placed on the following judgments passed by the Hon'ble Supreme Court: (1) ***Associate Builders v. Delhi Development Authority***, (2015) 3 SCC 49; (2) ***Delhi Airport Metro Express (P) Ltd. v. Delhi Metro Rail Corporation Limited***, (2022) 1 SCC 131; (3) ***Oil and Natural Gas Corporation Ltd. v. Saw Pipes Ltd.,*** (2003) 5 SCC 705; (4) ***McDermott International Inc. v. Burn Standard Co. Ltd. and Others***, (2006) 11 SCC 181; (5) ***SsangYong Engineering and Construction Company Limited v.***

National Highways Authority of India (NHAI)(2019) 15 SCC 131 and (6) ***Hindustan Zinc Ltd. v. Friends Coal Carbonisation***(2006) 4 SCC 445.

36. Before proceeding further, it is pertinent to mention that the matter was listed for clarification on 17.04.2025, wherein it was stated by the petitioner that the petitioner had not filed any statement of defense before the learned Arbitrator. In the absence of a statement of defense filed before the learned Arbitrator, the statement(s) made by the respondent no. 1 in its statement of Claim have not been traversed. Keeping that in mind, I have to examine whether the impugned award suffers from any infirmity as contemplated under section 34 of the 1996 Act.

37. The preliminary objection raised by respondent no. 1 is that this court cannot entertain the present petition in light of another petition filed by the petitioner under section 34 of the 1996 Act, pending in defects.

38. The objection of the respondent no. 1 is outrightly rejected. To my mind, the earlier petition filed by the petitioner was nothing more than a mere submission of a bundle of documents, without any effective steps being taken to bring it before this Court for adjudication. The petition was neither listed for hearing nor was any substantial action pursued by the petitioner to have the matter entertained. At best it can be said that the filing of the earlier petition was a *non-est* filing. However, no benefit of limitation will accrue to the benefit of the petitioner from that filing.

39. It is a settled law that the courts ought not to be constrained by mere technicalities when substantive justice is at stake. Procedural rules are designed to aid the cause of justice, not to obstruct it. While such rules ensure discipline and uniformity in litigation, they are not intended to

defeat a legitimate claim or defense solely on the ground of a technical lapse, particularly when no prejudice is caused to the other side. In this regard, the Hon'ble Full Bench of this Court vide judgment dated 07.02.2025 passed in FAO(OS)(COMM) 70/2024 titled ***Pragati Construction Consultants v. Union of India andAnr.*** inter aliaheld as under:

> *"95. In this regard, it needs no emphasis that procedural defects cannot be allowed to triumph the substantive rights of a party, particularly since in view of our aforesaid observations, Section 34 of the A&C Act is the only remedy for a party aggrieved by an Arbitral Award. The said right, therefore, should not be negated on procedural technicalities and hence, for describing an application under Section 34 of the A&C Act as non-est, a more liberal view in favour of the party filing the same should be taken. Mere procedural errors or defects, thus, would not render the filing of an application under the Section 34 of the A&C Act to be treated as a non-est filing. Even in general law, objections like the pleadings not being properly signed on each and every page, or there being a defect in the affidavit, or verification, are treated as procedural and curable defects.Stand alone, therefore, they cannot be treated as defects which would make an application filed under Section 34 of the A&C Act to be declared as non-est. It is only cumulatively, and that too only after the Court finds that the above defects have been left by the petitioner while filing the application under Section 34 of the A&C Act with*

a mala fide intent of only stopping the period of limitation from running, without there being an actual initial intention of having the application listed before the Court for hearing, the Court may still find the application so filed to be non-est. Needless to state, it would surely depend on the facts and circumstances in each case; and there cannot be a straight jacket formula to determine whether any of the above-mentioned defects or combination thereof or how many such defects would render an application filed under Section 34 of the A&C Act to be declared as non-est."

(emphasis supplied)

40. It is true that once a procedural right crystallizes into a vested legal right in favour of a party, such as by way of limitation or waiver, the court is required to recognize it. Yet, short of such vesting, procedural deviations should not become a tool to thwart justice.

41. As regards the delay in filing the present petition, the arbitral award was received by the petitioner on 13.01.2020 and the present petition came to be filed on 16.05.2022. The period of limitation of 90 days under section 34 of the 1996 Act ended on 13.04.2020. However, in para 5 (iii) of the Suo Motu Writ Petition (C) 3/2020 passed by the Hon'ble Supreme Court, it has been held that "*In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall*

apply". Hence, the present petition is within the limitation period. The present petition filed is within 90 days from 01.03.2022.

MSME Forum

42. At the outset, the plea taken by the petitioner is that the Arbitral Award is liable to be set aside since the learned Arbitrator lacked the inherent jurisdiction to entertain and adjudicate claims under the MSMED Act, rendering the Impugned Award null and void in law. Further, section 18(3) of the MSMED Act mandates that disputes under the MSMED Act must be referred to and resolved exclusively through the Facilitation Council, which alone is empowered to act as an arbitrator itself or refer the dispute to the adjudicating authority. Accordingly, any contractual arbitration clause cannot override this statutory mechanism.

43. To my mind, the argument raised by the petitioner is misconceived. In this regard, it is pertinent to mention section 18 of the MSMED Act which 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 center 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 center 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."

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

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

> *"26. In the present case, it is not in dispute that the respondent has so far not raised any claim against the petitioner and the jurisdiction of the Felicitation Council has not been invoked by either the respondent or the petitioner. It thus cannot be accepted that the provisions of*

subsection (4) of Section 18 of MSMED Act are attracted in any manner in the absence of any reference being made to the Facilitation Council. When there are no proceedings before the Facilitation Council, it is difficult to accept the submission as urged on behalf of the respondents that provisions of Section 18 of the MSMED Act are attracted in the facts of the present case.

27. In any event, sub-section (4) of Section 18 cannot be read as a provision creating an absolute bar to institution of any proceedings other than as provided under section 18(1) of the MSMED Act, to seek appointment of an arbitral tribunal. If the argument as advanced on behalf of the respondent that Section 18(4) creates a legal bar on a party who has a contract with a Small Scale Enterprise, to take recourse to Section 11 under the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator, then the legislation would have so expressly provided, namely that in case one such party falls under the present Act, the arbitration agreement, as entered between the parties would not be of any effect and the parties would be deemed to be governed under the MSMED Act in that regard. However, subsection (4) of Section 18 of the MSMED Act does not provide for such a blanket consequence in the absence of any reference made by a party to the Facilitation Council. Also if Section 18 is read in the manner the respondent is insisting, it would lead to a two-fold consequence - firstly, it would amount to reading

something in the provision which the provision itself does not provide, which would be doing a violence to the language of the provision; secondly such interpretation in a given situation would render meaningless an arbitration agreement between the parties and it may create a situation that the party who is not falling within the purview of Section 17 and Section 18(1) would be foisted a remedy, which the law does not actually prescribe. Further sub-section (1) uses the word "may" in the context of a dispute which may arise between the parties under Section 17. In the present context, the word "may" as used in sub-section (1) of Section 18 cannot be read to mean "shall" making it mandatory for a person who is not a supplier (like the petitioner) to invoke the jurisdiction of the Facilitation Council. Thus, the interpretation of sub-section (4) of Section 18 as urged on behalf of the respondent of creating a legal bar against the petitioner to file a petition under section 11 of the Arbitration and Conciliation Act cannot be accepted."

(emphasis supplied)

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

beneficial forum for registered micro or small enterprises to resolve their disputes though the Facilitation Council, at their discretion.

47. Therefore, it cannot be said that the appointed arbitrator lacked inherent jurisdiction to adjudicate the disputes between the parties.

On Merits

48. In the arbitral proceedings, the respondent no. 1 had raised a total of 12 claims in its statement of claim(s), out of which, only two—being, Claim No. 1 i.e. towards the outstanding payment payable to respondent no. 1 and Claim No. 4 i.e. towards the cost incurred by the respondent no. 1 in keeping the Bank Guarantees alivehas been allowed. While allowing Claim No. 1, as regards the petitioner, the learned Arbitrator was of the view that the petitioner, though not a signatory to the arbitration agreement, was nonetheless bound by it under the 'Group of Companies' doctrine on the ground that it is a group company of respondent no. 2. In addition, the Arbitrator observed that the petitioner acted like an agent of respondent no. 2 in the underlying transactions (appointed for the purpose of approving the invoices at the behest of the Respondent no. 2). Based on these findings, the Arbitrator held that petitioner was jointly and severally liable, along with respondent no. 2, for the awarded amount. In this regard, relevant findings of the Arbitrator are as under:

> *"65. It is evident that it was the Respondent no.1 who had directed the Claimant to deal with the Respondent no.2 for the purpose of approval of the invoices and the Claimant dealt with the Respondent no 2. pursuant to such directive. In fact the Respondent no.2 was only an agent of the Respondent no.1, appointed for the purposes of checking*

invoices and clearing them. Accordingly, the Respondent no.1 must bear responsibility for the Respondent no.2's actions particularly when the Respondent no.2 was appointed for the purpose of approving the invoices at the behest of the Respondent no.1 and consequently the invoices approved by the Respondent no.2 bind the Respondent no.1 and it is responsible for such payment. Besides, the above, the office address of the Respondent no.1 and 2 is the same, which establishes without doubt that the Respondents are group companies. Since the Respondent no.2 at the instance of the Respondent no.1 started dealing with the Claimant for the clearance of invoices, it is evident that the present dispute is covered by the above judgment m Mahanagar Telephone Nigam.

In Mahanagar Telephone Nigam v. Canara Bank (2019 (10) SCALE 619), the Hon'ble Supreme Court held that a party who is not a signatory to the arbitration agreement can be bound by an arbitration agreement and subject to the arbitration proceedings under the 'group of companies' doctrine where the conduct of the parties show the intention of tile parties to bind the non-signatory party as well. The court held that this doctrine would apply particularly when the funds of one company are used to financially support other companies of the same group."

49. Further, as regards the claim no. 4, the arbitrator was of the view that the contract between the parties was extended for a period of 14 months plus 1 month of grace period and due to the change in plan and scope of work

by the Respondent no.2 as a result of which the respondent no. 1 had to incur extra cost in keeping the bank guarantees alive. The operative portion reads as under:

> *"75. In the absence of relevant bank statements, the Financial Expert was unable to comment upon the utilization of advances directly. However, the Financial Expert has relied upon the financial ledgers provided by the Claimant and noted that the entire amount of advance has been utilized by the Claimant on the project The said adjustment has been depicted on the face of every invoice and settled in each invoice as evident from the supporting vouchers. The date wise utilization is as under:*

S. No.	*Date of Receipt*	*Advance received*	*Remarks*	*Utilization*	*Utilization Remarks*	*Date*
1.	*08.02.14*	*4,19,00,000*	*10% received of Rs. 41.90 crores on submission of Advance bank guarantee*	*1,45,59,190*	*Utilized towards invoices raised on Shristi for supplies*	*31.03.15*
2.	*08.02.14*	*45,00,000*	*10% received of Rs. 4.5 crores Advance bank guarantee*	*1,52,77,170*	*Utilized towards invoices raised on Shristi for supplies from 2015-16*	*30.09.15*
3.	*27.08.14*	*25,04,777*	*5% received of Rs. 41.90 crores performance*	*90,79,382*	*Utilized towards invoices raised on Shristi for supplies for sale invoices 01.10.2015-31.03.2016*	*31.03.16*
4.	*11.11.14*	*30,00,000*	*5% received of Rs. 41.90 crores*	*13,57,617*	*Transferred to Shristi services account for utilization towards services*	*31.03.16*

5.	*09.12.14*	*1,04,40,446*	*5% received of Rs. 41.90 crores*	*13,57,617*	*Being 10% advance Rs. 905078 and 5% Rs/ 452539 recovered from services bills during 15-16*	*31.03.16*
6.	*24.12.14*	*50,04,777*	*5% received of Rs. 41.90 crores*	*2,90,53,071*	*Utilized towards invoices raised on Shristi for supplies for invoices during 2016-17*	*31.01.17*
7.	*25.04.15*	*25,28,100*	*5% of contract price of Rs. 4.50 crores plus Service tax*	*19,09,287*	*Utilized towards invoices raised on Shristi for services raised during 2016-17*	*31.03.17*
Total		*6,98,78,100*		*6,98,78,100*		

The Financial Expert has also noted that the payment of advance has been secured against bank guarantees of Rs. 6.98 crores and the last such renewal was valid up to 15.04.2019. The Financial Expert has noted that though the advances have been provided by the Respondent no. 1, their utilization/adjustments, have been carried out on the face of the invoices raised on the Respondent no.2. From the review of financial ledger, it appears that none of the advances has been utilized for payment to sub-vendors.

In my view, the claim towards bank guarantees is being allowed in favour of the Claimant as detailed below. However the said sum of Rs. 6.98 Crores has already been adjusted in the figure of Rs. 5, 73,15,078/- found due from the Respondent no.2.

It has been proved by the Claimant that the contract between the parties was extended beyond the original 14 months plus 1 month grace period due to the change in plan and scope of work by the Respondent no.1 as a result of which the Claimant had to incur extra cost in keeping the bank guarantees alive. Thus, the Claimant's claim for Rs. 83,69,904/- towards cost incurred by the Claimant for keeping the bank guarantees alive during the extended period is being allowed in favour of the Claimant as per the documents placed on record by the Claimant."

50. In the present case, the petitioner has primarily challenged the impugned Award under the following heads:

I. Group of Companies Doctrine

51. It is contended that the petitioner was not a signatory to the agreement containing the arbitration clause and thus lacked any privity of contract with the respondent(s). Further, the petitioner was wrongly impleaded in the arbitral proceedings despite there being no basis to invoke the 'Group of Companies'doctrine, especially in the absence of any corporate, managerial, or functional nexus with respondent no. 2.

52. I find no merit in the said submission of the petitioner.

53. The law is well settled regarding the 'Group of Companies' doctrine. The Hon'ble Supreme Court in ***Cox and Kings Ltd. v. SAP India Pvt. Ltd***., 2023 SCC OnLine SC 1634, observed that if a non-signatory party actively participates in the execution of a contract and its actions are consistent with those of other members of the group, it may create the impression that the non-signatory is effectively a party to the contract,

including the arbitration agreement. Based on this perception, the other party may reasonably conclude that the non-signatory is indeed a legitimate party to the contract, thereby binding it to the arbitration agreement. The operative portion reads as under:

> *"96. An arbitration agreement encapsulates the commercial understanding of business entities as regards to the mode and manner of settlement of disputes that may arise between them in respect of their legal relationship. In most situations, the language of the contract is only suggestive of the intention of the signatories to such contract and not the non-signatories. However, there may arise situations where a person or entity may not sign an arbitration agreement, yet give the appearance of being a veritable party to such arbitration agreement due to their legal relationship with the signatory parties and involvement in the performance of the underlying contract. Especially in cases involving complex transactions involving multiple parties and contracts, a non-signatory may be substantially involved in the negotiation or performance of the contractual obligations without formally consenting to be bound by the ensuing burdens, including arbitration.*
>
> *.....*
>
> *123. The participation of the non-signatory in the performance of the underlying contract is the most important factor to be considered by the Courts and tribunals. The conduct of the non- signatory parties is an indicator of the intention of the non- signatory to be bound*

by the arbitration agreement. The intention of the parties to be bound by an arbitration agreement can be gauged from the circumstances that surround the participation of the non-signatory party in the negotiation, performance, and termination of the underlying contract containing such agreement. The UNIDROIT Principle of International Commercial Contract, 2016 [UNIDROIT Principles of International Commercial Contracts, 2016, Article 4.3.] provides that the subjective intention of the parties could be ascertained by having regard to the following circumstances:

(a) preliminary negotiations between the parties;

(b) practices which the parties have established between themselves;

(c) the conduct of the parties subsequent to the conclusion of the contract; (d) the nature and purpose of the contract;

(e) the meaning commonly given to terms and expressions in the trade concerned; and

(f) usages.

.....

127..... [T]he Courts or tribunals should closely evaluate the overall conduct and involvement of the non-signatory party in the performance of the contract. The nature or standard of involvement of the non-signatory in the performance of the contract should be such that the non-signatory has actively assumed obligations or performance upon itself under the contract. In other words, the test is to

determine whether the non- signatory has a positive, direct, and substantial involvement in the negotiation, performance, or termination of the contract. Mere incidental involvement in the negotiation or performance of the contract is not sufficient to infer the consent of the non-signatory to be bound by the underlying contract or its arbitration agreement. The burden is on the party seeking joinder of the non-signatory to the arbitration agreement to prove a conscious and deliberate conduct of involvement of the non- signatory based on objective evidence.

.....

132. We are of the opinion that there is a need to seek a balance between the consensual nature of arbitration and the modern commercial reality where a non-signatory becomes implicated in a commercial transaction in a number of different ways. Such a balance can be adequately achieved if the factors laid down under Discovery Enterprises [ONGC Ltd. v. Discovery Enterprises (P) Ltd., (2022) 8 SCC 42 : (2022) 4 SCC (Civ) 80] are applied holistically. For instance, the involvement of the non-signatory in the performance of the underlying contract in a manner that suggests that it intended to be bound by the contract containing the arbitration agreement is an important aspect. Other factors such as the composite nature of transaction and commonality of subject-matter would suggest that the claims against the non-signatory were strongly interlinked with the subject-matter of the

tribunal's jurisdiction. Looking at the factors holistically, it could be inferred that the non-signatories, by virtue of their relationship with the signatory parties and active involvement in the performance of commercial obligations which are intricately linked to the subject-matter, are not actually strangers to the dispute between the signatory parties.

.....

H. Conclusions

170. In view of the discussion above, we arrive at the following conclusions:

170.1. The definition of "parties" under Section 2(1)(h) read with Section 7 of the Arbitration Act includes both the signatory as well as non-signatory parties;

170.2. Conduct of the non-signatory parties could be an indicator of their consent to be bound by the arbitration agreement;

170.3. The requirement of a written arbitration agreement under Section 7 does not exclude the possibility of binding non- signatory parties;"

(emphasis supplied)

54. Thus, whether the arbitrator has rightly invoked the 'Group of Companies' doctrine is to be seen from factors such as mutual intent, relationship between the signatories and non-signatories, commonality of subject matter, composite nature of transactions and performance of the contract.

55. In the present case, the arbitration clause is encapsulated in the General Terms and Conditions in consonance with the agreement executed between the respondent nos. 1, 2 and BFIL, in the year 2012. The petitioner was not a party to the said contract and the petitioner only became a party in the year 2013 by way of Letter(s) of Intent dated 10.12.2013 issued by the BFIL for the purpose of design, manufacturing, and commissioning of equipment for the complete project on behalf of respondent no. 2. As per the contract executed between the BFIL and the petitioner, the petitioner was to conduct a reliability test of equipment and items for complete Coal Handling System Package. In addition, the petitioner was also appointed for the purposes of checking invoices and clearing them (Ref. Para 65 of the Impugned Award). Thereafter, BFIL exited the said contract and assigned all its rights, liabilities, and obligations in favor of respondent no. 2 by way of the Tripartite Agreement dated 06.06.2014. It is an admitted position that BFIL was appointed as an EPC Contractor by the respondent no. 2. Since, BFIL exited the project, the rights and liabilities of the BFIL was transferred in favor of the petitioner by way of Supply Contract dated 03.07.2015.

56. Admittedly, the role of the petitioner was to issue purchase and work order(s) to respondent no. 1 and also to check the invoices raised by respondent no. 1 and thereafter, recommending payments of the invoices raised to the respondent no. 2. The petitioner played a pivotal role in the overall execution of the project, even though it was not originally a party to the contract(s) between respondent nos. 1, 2, and BFIL. The petitioner was responsible for issuing the purchase and work orders that formed the basis for the invoices raised by the involved parties. Following this, the petitioner reviewed and verified the invoices to ensure their

completeness. Only after the petitioner's clearance of these invoices did respondent no. 2 proceed with the release of payments to respondent no. 1. In my view, considering the role, obligations and responsibilities of the petitioner, the petitioner is indeed a veritable party to the contract(s). On this basis, the learned arbitrator has rightly concluded that the petitioner is a group company of respondent no. 2. Therefore, I find no infirmity in the said finding.

57. The petitioner had the opportunity to file a written statement and lead evidence to demonstrate that it was not a veritable party to the contract and had no active role in the performance of the contractual obligations. However, the petitioner chose not to file any evidence or defense during the arbitral proceedings. Having failed to do so, the petitioner cannot now be permitted to raise these issues for the first time in a petition under Section 34 of the 1996 Act.

II. Allegation(s) only against Respondent No. 1

58. As regards the contention raised by the petitioner that the claims of respondent no. 1 were solely against respondent no. 2, I am of the view that the learned arbitrator has rightly invoked the 'Group of Companies' doctrine to fasten liability upon the petitioner as well. The arbitrator, after appreciating the material on record and the conduct of the parties, has correctly concluded that the petitioner, though not a signatory to the arbitration agreement, was closely involved in the negotiation and performance of the underlying contract.

59. The petitioner did not avail the opportunity to rebut the presumption arising from the application of the 'Group of Companies' doctrine by participating in the arbitral proceedings. In such circumstances, the

petitioner cannot be permitted to raise, for the first time, factual disputes or contest the arbitrator's findings at the stage of proceedings under section 34 of the 1996 Act.

III. Agent

60. Another line of contention that has been raised by the petitioner is that the Arbitrator after determining that the petitioner is a group company of respondent no. 2, went on to hold that the petitioner was acting as an agent of respondent no. 2. Therefore, the petitioner cannot be held liable for the amount(s) under the impugned award as in light of section 230 of the Indian Contract Act, 1872, the petitioner (agent) cannot be held liable for the acts of its principle.

61. I am unable to accept the said submission.

62. The argument of the petitioner is only in the alternative and is based on mis reading of para 65 of the impugned award. A plain reading of para 65 of the impugned award makes it evident that the arbitrator has not imposed liability on the petitioner on the ground that it was acting as an agent of respondent no. 2. Since no liability has been fastened on the petitioner on the ground of it being an agent, the reliance on section 230 of the Indian contract Act is misconceived. Rather, the arbitrator has fastened liability on the petitioner by invoking the 'Group of Companies' doctrine. The 'Group of Companies' doctrine finding is a finding of fact based on the pleading(s) and the argument(s) made before the arbitral tribunal. In the absence of any material brought by the petitioner to show otherwise, this court cannot interfere in the arbitral award. Additionally, my attention has been drawn to the clause 5.3 of the Tripartite Agreement dated 06.06.2014, executed between the petitioner, respondent no. 2 and BFIL, whereby BFIL assigned all its rights,

liabilities, and obligations in favor of respondent no. 2. Clause 5.3 of the Tripartite Agreement reads as under:

> "*5.3 No Partnership: No Party shall act as agent of the other Party or have any authority to act for or to bind the other party.*"

63. Pursuant to the Tripartite Agreement, being executed between the parties, the petitioner became the EPC Contractor, responsible for the overall execution of the project, which was formally done by way of the Supply Contract dated 03.07.2015.

64. Even otherwise, I am of the view that the issues raised by the petitioner in the present proceedings are purely factual and pertain to the merits of the dispute. Such issues fall squarely within the domain of the arbitral tribunal and cannot be reagitated at the stage of a Section 34. It is evident that the grounds raised in the present petition were neither urged nor argued before the learned arbitrator. In this regard, the Hon'ble Supreme Court in ***MMTC Ltd. v. M/s. Vedanta Ltd*** 2019 SCC OnLine SC 220 inter alia held as under:

> *"11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence*

of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses v. WednesburyCorpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.

12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] . Also see ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705]; Hindustan Zinc Ltd. v. Friends Coal Carbonisation [Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445] ; and McDermott International Inc. v. Burn

Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181])"

(emphasis supplied)

65. Following the law laid down by the Hon'ble Supreme Court in ***MMTC Ltd.*** (supra), a Hon'ble Division Bench of the Bombay High Court in ***Azizur Rehman Gulam and Others v. Radio Restaurant and Others*** 2023 SCC OnLine Bom 2320 inter aliaheld as under:

"27....

B. Additionally, we must note that every ground of challenge to the Arbitral Award in the present Appeal was neither raised as a ground of defense before the Arbitral Tribunal nor was taken as a ground of challenge to the Arbitral Award in the Petition filed under Section 34. The Hon'ble Supreme Court in the case of MMTC Ltd. v. Vedanta Ltd.44 has specifically held as follows, viz.

"14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the Court under Section 34 and by the Court in an appeal under Section 37, this

Court must be extremely cautious and slow to disturb such concurrent findings."

28. What the Appellants have therefore sought to do in the present Appeal is to effectively challenge the Arbitral Award afresh on grounds never taken before. We find that such a course of arguments, apart from being in the teeth of the law laid down by the Hon'ble Supreme Court in the case of MMTC Ltd. (Supra), if allowed, would infact unsettle the entire scheme of Chapters VII, VIII and IX of the Arbitration Act. Thus, equally on this ground alone, the present Appeal must also fail."

66. Further, the reliance placed by the respondent no. 1 on the judgment of the Hon'ble Supreme Court in***Union of India (Railways)*** (supra) is well placed where the Hon'ble Supreme inter alia held as under:

"27. If a plea is available, whether on facts or law, it has to be raised by the party at an appropriate stage in accordance with law. If not raised or/and given up with consent, the party would be precluded from raising such plea at a later stage of the proceedings on the principle of waiver. If permitted to raise, it causes prejudice to other party. In our opinion, this principle applies to this case."

(emphasis supplied)

67. To my mind, the arbitrator was never given the opportunity to consider or adjudicate upon the defense of the petitioner as the petitioner did not appear before the arbitral tribunal after the fifth hearing that has been

duly recorded in para 66 of the impugned award. Para 66 of the impugned award reads as under:

> *"66. Inexplicably the Respondent no.2 stopped appearing before the Tribunal from the 5th hearing, dated 23.01.2018, and the averments qua the Respondent no. 2 have remained unanswered by both the respondents. The Respondent no.2 sent no communications to the Tribunal as to why it stopped appearing. Thus, it is evident that the Respondent no.2's absence is motivated and deliberate. Consequently, the unrebutted averments and evidence adduced by the Claimant qua the Respondent no.2 stands proved and the Respondent no.2 is liable to pay the Claimant a sum of Rs. 5,73,15,078 as per report of the Financial Expert."*

68. Permitting the petitioner to raise such contentions for the first time in these proceedings would amount to bypassing the arbitral process and scuttling the very object and efficacy of arbitration. The petitioner, having chosen not to raise these issues before the arbitrator, cannot now be permitted to turn around and challenge the award on grounds that were never part of the arbitral record. Additionally, none of the issues are such that can hit at the root of the arbitral award.

IV. Interest

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

arbitration was ad hoc, the benefit of interest under section 16 does not apply.

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

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

> *"Section 16 - Date from which and rate at which interest is payable.*
>
> *Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank."*

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

> *"29. .... Section 16 of the MSMED Act provides for payment of interest on the amounts due to a supplier where the buyer has failed to pay the amounts as required under Section 15 of the MSMED Act. Undisputedly, the buyer's obligation to discharge its liability under Section 15 of the MSMED Act and to pay interest under Section 16 of the MSMED Act confers the right on "the supplier" to demand and recover the said amount.....*

……

34. It is apparent from the above that the provisions of Sections 15 and 16 of the MSMED Act confer substantive rights and impose obligations, which are not contingent upon recourse to any dispute resolution mechanism. Section 18 of the MSMED Act provides for a dispute resolution mechanism in respect of any amount due under Section 17 of the MSMED Act. It is obvious that it may not be necessary for a supplier to seek recourse to any proceedings for recovery of the amounts that may be otherwise due to it, if the buyer complies with its obligation under Sections 15 and 16 of the MSMED Act.

35. The import of the contentions advanced on behalf of IHMCL is that the obligations of the buyer under Sections 15 and 16 of the MSMED Act are contingent upon the supplier resorting to conciliation or the adjudicatory process under Section 18 of the MSMED Act. The plain language of Sections 15,16 and 17 of the MSMED Act, does not support this proposition.

……

39…..During the course of submissions, it was contended on behalf of the respondent that an award for interest under Section 16 of the MSMED Act could be made in proceedings under Section 18 of the MSMED Act but not by an Arbitral Tribunal appointed in terms of the A&C Act. In such cases, the Arbitral Tribunal was required to award reasonable interest under Section 31(7)(a) of the A&C Act. This Court

finds it difficult to accept this contention as it overlooks the express provisions of Section 18(3) of the MSMED Act. The provisions of the A&C Act are specifically applicable as they would be in case of arbitration pursuant to an arbitration agreement under Section 7(1) of the A&C Act. However, in case of repugnancy between the provisions of the A&C Act and the MSMED Act, the provisions of the MSMED would prevail.

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

> *37. According to the learned counsel for the respondent Corporation, the Arbitration Act treats 'appeals' and 'applications' separately under two distinct chapters: Chapters VII and IX respectively.*

It was also strenuously contended by the learned counsel for the respondent that the Arbitration Act contains specific provisions for awarding interest and that Act being a special enactment will prevail over the Interest Act. He relied on Jay Engg. Works Ltd. v. Industry Facilitation Council [Jay Engg. Works Ltd. v. Industry Facilitation Council, (2006) 8 SCC 677] to show that against the provisions of the Interest Act, the provisions of Arbitration Act will prevail, as the latter is a complete code in itself. The Interest Act will apply only when the party prefers a suit to arbitration.

38. The Preamble of the Interest Act sows that the very objective of the Act was 'to provide for and regulate the payment of interest on delayed payments to small-scale and ancillary industrial undertakings and for matters connected therewith or incidental thereto.' Thus, as far as interest on delayed payment to small-scale industries as well as connected matters are concerned, the Act is a special legislation with respect to any other legislation, including the Arbitration Act. The contention of the respondent that the matter of interest payment will be governed by Section 31(7) of the Arbitration Act, hence, is erroneous. Section 4 of the Interest Act endorses the same which sets out the liability of the buyer to pay interest to the

supplier 'notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force'. Thus, the Interest Act is a special legislation as far as the liability to pay interest, or to make a deposit thereof, while challenging an award/decree/order granting interest is concerned."

(emphasis supplied)

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

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

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

"(f.) make provisions for ensuring timely and smooth flow of credit to small and medium enterprises to minimise the incidence of sickness among and enhancing the competitiveness of such enterprises, in accordance with the guidelines or instructions of the Reserve Bank of India;

….

(k.) make further improvements in the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 and making that enactment a part of the proposed legislation and to repeal that enactment."

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

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

78. Consequently, I find no infirmity in the impugned Award dated 16.10.2019 and the same is upheld.

79. The present petition, along with any pending application(s), if any are dismissed.

JASMEET SINGH, J

MAY 01, 2025 / *priyesh*