

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

Before:

The Hon'ble Justice Shampa Sarkar

AP-COM/980/2024

Dhananjai Lifestyle Limited
vs.
Sanvie Retail Private Limited

For the Petitioner : Mr. Jishnu Saha, Sr. Adv.
Mr. Aniruddha Mitra, Sr. Adv.
Mr. Debraj Sahu, Adv.
Mr. Hareram Singh, Adv.
Ms. Antara Biswas, Adv.
Mr. Bhaskar Dwivedi, Adv.

For the Respondent : Mr. Rishabh Karnani, Adv.
Mr. Anurag Bagaria, Adv.

Hearing concluded on : 30.04.2025

Judgment on : 20.05.2025

Shampa Sarkar, J.:-

1. This is an application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the A&C Act).

2. The facts run by the petitioner were that the petitioner was engaged in the business of textiles and manufacture of apparels. The petitioner was a registered manufacturing enterprise under the provisions of the Micro, Small and Medium Enterprise Development Act, 2006 (in short MSME Act). The respondent approached the petitioner through its directors for

manufacture of apparels and clothing of various kinds and for supply thereof.

3. The parties allegedly entered into an oral agreement. The understanding was that the respondent would issue purchase orders to the petitioner. On the basis of the purchase orders, the petitioner would manufacture the apparels, supply the same to the respondent and raise invoices. Several purchase orders were placed from time to time by the respondent and the petitioner manufactured and supplied the products. Accordingly, the petitioner raised invoices. The respondents received the said products without any objection as to the quality or quantity of the goods sold and delivered. Payments fell due. A miniscule payment was made, thereby, leaving a sum of Rs.49,00,101/- due and payable as on October 31, 2024.

4. Despite several requests, the respondent did not liquidate the dues. The respondent requested the petitioner to settle the claim at a lesser amount. The parties decided that the dues would be settled at Rs.51,84,208/- on account of principal along with accrued interest. An account payee cheque was issued by the respondent. The petitioner presented the cheque for encashment, but the same was dishonoured and returned with the endorsement (insufficient funds).

5. Under such circumstances, the petitioner caused an Advocate's notice to be served upon the respondent on September 23, 2024, under Section 138(b) of the Negotiable Instruments Act, 1881. According to the petitioner, the principal and interest at a compounding rate came to more than Rs.1,36,45,143/-. The interest payable was calculated as per the provisions

of the MSME Act, i.e., compound interest at three times the bank rate notified by the Reserve Bank of India.

6. In view of the above, the petitioner apprehended that the respondent would alienate its assets and properties and remove the money lying in its bank accounts. It was urged that the dishonour of the cheque, was indicative of the fact that the respondent was siphoning off the funds. The rightful claims of the petitioner would be defeated, even if the petitioner was successful in obtaining an award.

7. It was contended that the respondent was trying to defraud the petitioner and necessary orders of injunction should be passed by freezing the bank accounts and by appointing a receiver over the movable and immovable properties of the respondent. The details of such assets were mentioned in paragraphs 31 and 32 and Schedules X and Y of the said application.

8. On the first occasion, this Court had denied the prayer for an ad-interim order. The Court was not, *prima facie*, satisfied that Section 9 of the A & C Act, could not be availed of by the petitioner, in the absence of an arbitration agreement between the parties. The court opined that only a party to an arbitration agreement could pray for an order of injunction or for other interim measures under Section 9 of the Arbitration and Conciliation Act. The matter came up for final hearing after exchange of affidavits. The the issue of maintainability of the said application was kept open.

9. Mr. Karnani, learned Advocate for the respondent, raised an objection with regard to the maintainability of the application. Mr. Karnani submitted that there was no arbitration agreement between the parties. The

conciliation proceeding had been initiated by the petitioner before the MSME Facilitation Council on November 25, 2024, under the provisions of the MSME Act. Such fact was brought on record by way of a supplementary affidavit. During the pendency of such conciliation, the application for interim protections was filed. Section 18(3) of the MSME Act, provided that in the event of failure of conciliation under Section 18(2) of the MSME Act, the Council would either take up the dispute for arbitration or refer the dispute to any other institution providing alternate dispute resolution services. The provisions of the A & C Act, were made applicable from that stage. Section 18(2) of the MSME Act, provided that Sections 65 to 81 of the Arbitration and Conciliation Act would apply during conciliation. Section 77 of the A&C Act, operated as a bar to initiation of any arbitral or judicial proceeding during the course of conciliation. The applicable law prohibited a party from resorting to an arbitral or judicial proceeding during conciliation, unless such proceeding was necessary for preserving the rights of the said party.

10. Mr. Karnani urged that, in the absence of an arbitration agreement between the parties, the petitioner could initiate a judicial proceeding for preservation of its rights, under very exceptional circumstances. The expression “shall then apply” in Section 18(3) was incorporated with a definite purpose. The legislative intent was to make the A & C Act, 1996 applicable, only after conciliation failed and the dispute was either taken up for arbitration by the Council or referred by the Council to an institute or centre providing such dispute redressal mechanism. From that stage, the proceeding would be treated as an arbitration conducted in pursuance of an

arbitration agreement within the meaning of sub-section (1) of Section 7 of the Act. All remedies available under the A & C Act, would then be available to the petitioner and not before.

11. Mr. Karnani relied on the following decisions:- i) ***Sri Ram Saha vs. State of W.B. & ors.*** reported in **(2004) 11 SCC 497**, ii) ***Rananjaya Singh vs. Baijnath Singh & ors.*** reported in **(1954) 2 SCC 314**.

12. Mr. Jishnu Saha, learned Senior Advocate appeared on behalf of the petitioner and submitted that, as an MSME enterprise, the petitioner was entitled to all the benefits under the MSME Act. The protections under the A & C Act, should be read into the MSME Act. An arbitral proceeding had been contemplated under the MSME Act, as well.

13. Learned Advocate submitted that the legislature had consciously permitted an MSME enterprise to seek adjudication of the disputes arising out of goods sold and delivered, by resorting to arbitration, even in the absence of an arbitration agreement. However, before an arbitration proceeding could be initiated, conciliation by the Facilitation Council was mandatory. Upon failure of conciliation, arbitration would follow. The disputes were then to be arbitrated upon, as if there existed an arbitration agreement, as per the definition of the said expression under sub-section (1) of Section 7 of the A & C Act. Mr. Saha urged that Section 9 of the said Act provided that, a party to an arbitration agreement, either before, during or after the award had been passed, but before enforcing the award, could avail of the protection under Section 9 of the said Act. Thus, a harmonious construction of the provisions of sections 18(2) and 18(3) of the MSME Act, and Section 9 of the said Act, should lead this court to the inevitable

conclusion that, before the arbitration commenced under Section 18 (3) of the MSME Act, the provision of Section 9 of the A & C Act, could be made applicable. The petitioner would become a party to an arbitration agreement as soon as the conciliation failed, but it could seek protection under Section 9 of the A & C Act, even before arbitral proceedings commenced. The provision of Section 9 of the A & C Act, should be read into the statute along with Section 77 of the A & C Act, and interim protections during the pendency of a conciliation under Section 18 (2) of the MSME Act, should be passed.

14. It was submitted that, the law had conferred a right upon the MSME enterprises to proceed under the MSME Act, for payment of the sum due upon goods delivered and sold. Such beneficial legislation, could not limit the right of an enterprise to seek interim protections during the conciliation proceeding. The denial of the right to interim protection would defeat the very purpose of the MSME Act. By the time the conciliation was terminated, the party who owed the money to the supplier, could easily siphon off the funds, alienate the assets, or remove the assets from the jurisdiction of the Council. As a result of which, the situation would become irreversible.

15. Strong reliance was placed on the objects and reasons behind the promulgation of the MSME Act, 2006, in support of the contention that, the government and various experts had felt the need for a comprehensive central enactment to provide an appropriate legal framework for the small, scale sector and facilitate its growth and development. The concerns of the entire small and medium sector were sought to be addressed. In order to facilitate their promotion and development and to enhance the

competitiveness amongst the small and medium enterprises, the bill was introduced in the parliament. In most developed and developing countries, and in India too, there were serious concerns about the small and medium enterprise sector. It was urged by Mr. Saha that, when the aims and objects of the MSME Act were to promote, develop and enhance the competitiveness of the MSME enterprises, such goal could be achieved only if special protections were given to the MSMEs. This Court should give a purposive reading to the provisions of Sections 18(2) and 18(3) and hold that the legislature had, upon deliberating the grave need to facilitate the promotion and development of these enterprises, intended to protect, promote and preserve the enterprises. Interim protections available under Section 9 of the A & C Act should be available to these enterprises, in view of the legislative intent. Provisions of Section 77 of the A & C, Act were also applicable to conciliations under the MSME Act. The section permitted an arbitral proceeding to be initiated for an urgent need to preserve the rights of a party, even if a conciliation proceeding was pending. The intention of the legislature was to provide all kinds of protections to the MSME enterprises, which were also available under the A & C Act, including an interim protection during the period of conciliation. The provisions of Sections 18(2), 18(3), and 77 of the A & C Act, should be read in harmony. The object of Section 77 was clear. It sought to interdict any attempt to derail a conciliation proceeding, by commencing a judicial or arbitral proceeding. However, an exception had been carved out, permitting the parties to a conciliation proceeding to take recourse to an arbitral or judicial proceeding, for preservation of their rights.

16. According to Mr. Saha, once such exception under Section 77 of the said Act was provided by the legislature, there could not be a total restriction on the right of the petitioner to seek interim protection under Section 9 of the said Act. An arbitral proceeding was also a judicial proceeding. The expression, “shall then apply” as used in Section 18(3), was not incorporated with the object to deprive a party of its right to seek interim protection in the course of conciliation. Such restrictive interpretation would be in complete contradiction to the purpose behind the legislation and in conflict with the aims and objects thereof. The expression, “shall then apply” could not be read in a restrictive manner and such interpretation would be contrary to the very object of MSME Act. In this context, Mr. Saha relied on the decision of ***Lalit Kumar Modi vs. Board of Control for Cricket in India and ors.*** reported in **(2011) 10 SCC 106.**

17. Mr. Saha contended that the restrictive meaning, as given by Mr. Karnani, would result in depriving the petitioner from a protection, merely because an MSME enterprise had approached the Facilitation Council, under Section 18, for redressal of its grievances and settlement of dispute. The law could not be interpreted in a way which would militate against the jurisprudential doctrine:- “where there was a right, there was a remedy”. The petitioner had approached the Council for redressal of its grievances in compliance of the law which mandated an attempt at conciliation. That could not be a ground for keeping the petitioner without the remedy of interim protections. In this context, Mr. Saha relied on the decision of ***Dhannalal vs. Kalawatibai and ors.*** reported in **(2002) 6 SCC 16.** According to Mr. Saha, a welfare legislation must be liberally construed. The

decision of **Joginder Pal vs. Naval Kishore Behal** reported in **(2002) 5 SCC 379**, was also relied upon.

18. On the proposition that a purposive interpretation of the statute should lead this Court to hold that the petitioner was entitled to seek interim orders under Section 9 of the said Act, reference was made to the following decisions:-i) **National Textile Corporation Limited vs. Sitaram Mills Limited and ors.** reported in **(1986) Supp SCC 117**; ii) **Ramesh Kymal vs. Siemens Gamesa Renewable Power Private Limited** reported in **(2021) 3 SCC 224**; and iii) **Union of India vs. Rajiv Kumar** reported in **(2003) 6 SCC 516**.

19. Distinguishing the decisions cited by Mr. Karnani, it was submitted by Mr. Saha that, this was not a case of casus omissus. The legislature had not consciously omitted the applicability of Section 9 of the A & C Act or any analogous section. The legislature never intended to prohibit the parties undergoing a conciliation process, from availing of interim reliefs and protections.

20. Upon hearing the learned Advocates for the respective parties, this Court deems it fit to discuss the relevant laws. Section 9 of the A & C Act reads as follows:-

“9. Interim measures, etc., by Court.—1 [(1)]A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

- (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
- (ii) (ii) for an interim measure of protection in respect of any of the following matters, namely:—

- (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
 - (b) securing the amount in dispute in the arbitration;
 - (c) the detention, preservation or inspection of any property or thing which is the subjectmatter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
 - (d) interim injunction or the appointment of a receiver;
 - (e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.
- [(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.]”.

21. The section provides that a party may, before or during an arbitral proceeding or at any time after the making of the arbitral award, but before it is enforced in accordance with Section 36, apply to a court for interim measures.

22. The crucial expression here is “party”. Party has been defined under Section 2(h) of the A & C Act. The section is quoted below:-

“2. (h) “party” means a party to an arbitration agreement.”

23. In the case in hand, there is no arbitration agreement. Thus, the petitioner is not a party who can take recourse to Section 9 of the A & C Act.

24. Section 18 of the MSME Act is quoted below:-

“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 to it 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.”

25. Section 18(1) provides that notwithstanding anything contained in any other law for the time in force, in case of a dispute with regard to any amount due under Section 17, a party may make a reference to the MSME Council. On receipt of the reference, the council shall either conduct conciliation or seek assistance of an institution providing alternative dispute redressal services for conducting such conciliation. The expression party, has not been defined under the MSME Act, but the statute refers to ‘buyer’ ‘supplier’, and ‘enterprise’. These are the entities recognized by the MSME Act. Thus, irrespective of the fact whether there was an arbitration

agreement or not, the petitioner, being an MSME enterprise and a ‘supplier’, could approach the Facilitation Council with the dispute of non-payment of dues. The law provides that the Council shall either conduct the conciliation itself, or seek assistance from any institution or centre to conduct such conciliation. Thus, the process of conciliation is binding as per the legislative mandate. During such process of conciliation, the provisions of Section 65 to 81 of the said Act have been made applicable. Sections 65 to 81 of the said Act deal with matters relating to submission of statements to conciliator, role of conciliator, the laws which would not bind the conciliators, administrative assistance available to the conciliators, communication between the conciliator and the parties, disclosure of information, cooperation of parties with conciliator, suggestions by parties for settlement of dispute, the settlement agreement to be arrived at upon conciliation being successful, status and effect of a settlement agreement, confidentiality, termination of conciliation proceedings, resort to arbitral or judicial proceeding, costs, deposits, role of conciliator in other proceedings and admissibility of evidence from other proceedings. Section 77 is quoted below:

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

26. Section 77 operates as a statutory bar upon the parties who have submitted to conciliation, from initiating any arbitral or judicial proceeding in respect of the dispute which was already the subject matter of

conciliation. In effect, the said provision creates an embargo upon the parties who are in the midst of a conciliation, from availing of any further remedy by way of an arbitral or judicial proceeding. Such prohibition is to ensure that conflicts do not arise when the conciliation is going on. However, a very small window has been kept open by providing an exception. A party may refer the dispute to arbitration or initiate a judicial proceeding, if in its opinion, such proceeding is necessary for preserving its rights. In very exceptional cases, such remedy can be resorted to. Thus, the legislative intent is to encourage alternative, non-adversarial resolution of disputes between the parties. The petitioner has already taken steps under the Negotiable Instruments Act, by issuing a notice after the cheque was dishonoured.

27. In my opinion, an arbitral proceeding can be initiated under Section 77, only if there is a subsisting arbitration clause. The petitioner is not without any remedy. Section 77 also provides that judicial proceedings can be initiated. Black's law dictionary (Ninth Edition) defines judicial proceedings as follows :-

“judicial proceeding- Any court proceeding; any proceeding initiated to procure an order or decree, whether in law or in equity.”

The intention of the legislature is very clear from a reading of the provisions of Sections 18(2) and 18(3). Section 18(3) of the MSME Act, specifically provides the stage from which all the provisions of the Arbitration and Conciliation Act, is applicable. The petitioner and respondent become signatories to an arbitration agreement from that stage. Under the MSME Act, resolution of a dispute by arbitration has been incorporated by statute.

The definition of party under the A & C Act, will include the petitioner, from the stage mentioned under Section 18(3) of the MSME Act. Here, the intention of the legislature is paramount and significant. Until conciliation fails, the settlement of dispute by arbitration cannot be resorted to. Whereas, arbitration contemplated under the A & C Act, is by agreement between the parties. Such parties to an arbitration agreement can pray for interim measures under Section 9 of the A & C Act. In this context, upon termination of the conciliation, arbitration shall commence and the proceeding shall be governed by the provisions of the A & C Act, 1996 as if there is an arbitration agreement between the parties as contemplated under the A & C Act. Thereafter, Section 9 of the said Act becomes applicable. Only upon the council recording termination of conciliation and upon reference of the dispute to arbitration unto itself or to an institution or centre, the A & C Act, can be applied. There is no ambiguity in the legislative intent. There is no vacuum left for the court to fill up, by giving a purposive interpretation and making Section 9 of the A & C Act applicable at the stage of conciliation. This is not a case where right to interim protection at the stage of conciliation exists under the MSME Act, but the interpretation thereof needs a clarification by the Court. Only if a literal interpretation leads to an absurd consequence, such interpretation should be avoided and a purposive interpretation should be supplied. A proceeding under Section 18 of the MSME Act, can be initiated notwithstanding anything contained in any other law for the time being in force. Thus, the petitioner can take recourse to a judicial proceeding and pray for an injunction under exceptional circumstances and still approach the Council under Section 18

of the MSME Act. Section 77 of the A & C Act, puts a limit to such right to approach the court. Section 77 of the A & C Act, ensures that while conciliation is ongoing, parties do not engage in adversarial litigation and the spirit of good faith and co-operation is maintained for a successful settlement. The said provision is in the nature of a statutory stay on litigation and has been consciously made applicable to conciliation under the MSME Act.

28. The A & C Act, is applicable only when the conciliation is not successful and stands terminated. If a party refers a dispute to the council, compulsory conciliation has to be initiated at first. Upon failure of such conciliation and upon termination thereof, arbitration shall commence and all the provisions of the A & C Act, become applicable. Thereafter, the petitioner can seek all reliefs permitted by the A & C Act.

29. The decisions relied upon by Mr. Saha are not squarely applicable to the case in hand, insofar as, the legal propositions laid down therein, are concerned. The decision in ***Lalit Kumar Modi (supra)***, was on the proposition when, “shall” must be read as “may”. If the word “shall” is used in a statute, generally it is taken to be mandatory, but that does not necessarily mean that in every case, it shall have the same effect. In the given context, if the expression ‘shall then apply’ is read as “may then apply”, the provision of Section 18(3) is rendered meaningless. Under Section 18 (3) of the MSME Act, only if the dispute goes to arbitration, upon failure of conciliation, the A & C Act, has been made applicable. Similarly, the expression ‘shall’ in the opening sentence of section 18(2) cannot be interpreted as ‘may’. Such interpretation will be contrary to the legislative

intent. Conciliation is mandated by statute and the statute specifically provides the stage from which arbitration commences.

30. *Dhannalal (supra)*, is a decision on judicial activism and interpretation of ambiguous statutes. It was held that the courts must be guided by sound logic, rational thinking, common sense and the urge to act for the public good. In case of ambiguity regarding a forum selection, the courts must identify it. Procedural law could not be allowed to betray substantive law, by subordinating it to unnecessary complexity and technicalities. This judgment was cited, in support of the contention that, when a right was available to the petitioner to seek redressal of the dispute before the Council, the remedy of interim protections must be read into the provisions of Sections 18(2) and 18(3) of the MSMSE Act. The right to file an application under Section 9 of the said Act, should be upheld by the court, upon giving a purposive interpretation. The Court does not agree. The petitioner becomes a party to an arbitration proceeding once the conciliation fails, termination is recorded and arbitration commences, but not before that. The petitioner is not remediless. The decision is not applicable for the reason that, the provisions of Sections 18(2) and 18(3) are not ambiguous. Applicability of Section 77 of the said Act in the conciliation proceeding is provided by the statute. Section 77 of the said Act prohibits initiation of either arbitral or judicial proceedings, except for preservation of the right of a party during the conciliation process. The petitioner has a remedy before a court of law, under exceptional circumstances. ***Joginder Pal (supra)***, has been referred, in order to substantiate that rules of construction must agree with justice and reason. In determining the general object of the legislation

or the meaning of its language in any particular provision, the obvious interpretation would be the one which is convenient, reasonable, justifiable and legally sound.

31. This Court has already discussed in the foregoing paragraphs why the interpretation provided by Mr. Saha cannot be treated to be legally sound. The rules of construction laid down in the cited decisions will be applicable when the natural and ordinary meaning of the piece of legislation i.e., MSME Act, results in a vacuum. The decision also laid down that, a statute must be read with its true content and colour, in its widest sense and the preamble must also be read into the statute.

32. The preamble of the MSME Act provides as follows:-

“An Act to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto.

WHEREAS a declaration as to expediency of control of certain industries by the Union was made under section 2 of the Industries (Development and Regulation)

Act, 1951;

AND WHEREAS it is expedient to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto;

Be it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—”

33. There is no quarrel with the proposition that the statute is a beneficial legislation, which was enacted to provide a legal framework for promotion, development and enhancement of competitiveness of MSME enterprises. The preamble, read in the context of Section 18, persuades this Court to hold that the intent of the legislature was to ensure an attempt at settlement by conciliation. The law makes conciliation compulsory at the first instance. Only upon failure thereof and recording termination of conciliation,

arbitration will follow. Section 77 of the said Act should be read in such context, to be a bar to initiation of any arbitral or judicial proceeding, so that the conciliation process is not derailed. Only in very exceptional cases, a judicial proceeding can be initiated.

34. Thus, the legislature, in order to protect the MSME enterprises from being entangled in a time consuming, adversarial and expensive dispute redressal mechanism (Arbitration or Suit), permits a party to refer the dispute to the council. Once referred, conciliation is mandatory. The object is to minimise judicial intervention at the stage of conciliation. If this Court holds that even at the stage of mandatory conciliation, the protections envisaged under section 9 of A & C Act can be granted by entertaining this application, it will amount to the Court legislating, by incorporating equitable principles, which is not the intention of the legislature.

35. *Sitaram Mills Limited (supra)*, *Ramesh Kymal (supra)* and *Rajiv Kumar (supra)* have been cited in support of the contention that Courts should be slow to infer casus omissus in a statute and the Court could neither read anything into the statutory provision nor rewrite a provision which was otherwise plain and unambiguous. It was held that, the intention of the legislature was of primary importance and attention should be paid to what the statute said and intended to do. Two rules of construction were discussed.

36. In the case in hand, I hold that Sections 18(2) and 18(3) of the MSME Act, has left no ambiguity. The sections can be given their plain meaning. Here, the legislature did intend to make the provisions of the A & C Act applicable at the stage of section 18(2) of the MSME Act. It is not a case

that the legislature missed out inserting a provision for interim protection as contemplated under Section 9 of the said Act, although it had intended to do so. Section 9 of the A & C Act, need not be read into the provisions of Sections 18(2) and 18(3) of the MSME Act. The exception provided in Section 77 of the said Act, allowing a party to initiate a judicial or arbitral proceeding under special situations, does not leave the petitioner without a remedy. The general intention of the legislature was to first explore the possibility of resolution in a non-adversarial manner, through conciliation, so that the parties could voluntarily arrive at a settlement with the help of conciliators.

37. In this case, a plain reading of the statute does not lead to any ambiguity. The intention of the legislature is crystal clear. A reading of the provisions of section 18, as has been enacted, does not defeat the purpose behind such enactment. Similarly, the applicability of the A & C Act, and the use of the expression “shall then apply” cannot be treated as either superfluous or redundant. There is a definite purpose behind it. A liberal approach cannot extend the scope of the statute beyond the legislative intent.

38. In ***Sri Ram Saha (supra)***, the Hon’ble Apex Court held as follows:

“19. It is well-settled principle of interpretation that a statute is to be interpreted on its plain reading; in the absence of any doubt or difficulty arising out of such reading of a statute defeating or frustrating the object and purpose of an enactment, it must be read and understood by its plain reading. However, in case of any difficulty or doubt arising in interpreting a provision of an enactment, courts will interpret such a provision keeping in mind the objects sought to be achieved and the purpose intended to be served by such a provision so as to advance the cause for which the enactment is brought into force. If two interpretations are possible, the one which promotes or favours the object of the Act and purpose it serves, is to

be preferred. At any rate, in the guise of purposive interpretation, the courts cannot rewrite a statute. A purposive interpretation may permit a reading of the provision consistent with the purpose and object of the Act but the courts cannot legislate and enact the provision either creating or taking away substantial rights by stretching or straining a piece of legislation.

20. This Court in *CST v. Parson Tools and Plants* [(1975) 4 SCC 22 : 1975 SCC (Tax) 185] has taken the view that if the legislature did not, after due application of mind, incorporate a particular provision, it cannot be imported into it by analogy, observing that: (SCC p. 27, para 15)

“An enactment being the will of the legislature, the paramount rule of interpretation, which overrides all others, is that a statute is to be expounded ‘according to the intent of them that made it.’”

22. Further para 23 of the same judgment reads: (SCC p. 29)

“23. We have said enough and we may say it again that where the legislature clearly declares its intent in the scheme and language of a statute, it is the duty of the court to give full effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the lawgiver;”

23. In *Sankar Ram & Co. v. Kasi Naicker* [(2003) 11 SCC 699] this Court in para 7 has stated thus: (SCC pp. 704-05)

“7. It is a cardinal rule of construction that normally no word or provision should be considered redundant or superfluous in interpreting the provisions of a statute. In the field of interpretation of statutes, the courts always presume that the legislature inserted every part thereof with a purpose and the legislative intention is that every part of the statute should have effect. It may not be correct to say that a word or words used in a statute are either unnecessary or without any purpose to serve, unless there are compelling reasons to say so looking to the scheme of the statute and having regard to the object and purpose sought to be achieved by it.”

24. Thus, in the light of the legal position explained in various decisions, the High Court was not right in expanding the scope and application of Section 4-A so as to apply it to the areas in the State of West Bengal other than the area specified in three subdivisions of Darjeeling district. When the intention of the legislature is clear to confine its application to the limited area, the court could not ignore it. The High Court was also not right in reading something more in Sections 4-B and 4-C in regard to the felling of trees in the absence of any such legislative intention expressed in these provisions. The Court could not have added something more to these sections.”

39. In *Shailesh Dhairyawan v. Mohan Balkrishna Lulla*, reported in **(2016) 3 SCC 619**, the Hon’ble Apex Court held that the principle of

“purposive interpretation” or “purposive construction” was based on the understanding that the Courts were supposed to supply such meaning to the provisions, which served the “purpose” behind the provision. The relevant paragraph is quoted below:-

“31. ..The principle of “purposive interpretation” or “purposive construction” is based on the understanding that the court is supposed to attach that meaning to the provisions which serve the “purpose” behind such a provision. The basic approach is to ascertain what is it designed to accomplish? To put it otherwise, by interpretative process the court is supposed to realise the goal that the legal text is designed to realise. As Aharon Barak puts it: “Purposive interpretation is based on three components: language, purpose, and discretion. Language shapes the range of semantic possibilities within which the interpreter acts as a linguist. Once the interpreter defines the range, he or she chooses the legal meaning of the text from among the (express or implied) semantic possibilities. The semantic component thus sets the limits of interpretation by restricting the interpreter to a legal meaning that the text can bear in its (public or private) language.” [Aharon Barak, Purposive Interpretation in Law (Princeton University Press, 2005).]

32. Of the aforesaid three components, namely, language, purpose and discretion “of the court”, insofar as purposive component is concerned, this is the ratio juris, the purpose at the core of the text. This purpose is the values, goals, interests, policies and aims that the text is designed to actualise. It is the function that the text is designed to fulfil.

33. We may also emphasise that the statutory interpretation of a provision is never static but is always dynamic. Though the literal rule of interpretation, till some time ago, was treated as the “golden rule”, it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced. Not only legal process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered purposivism, this principle is now widely applied by the courts not only in this country but in many other legal systems as well.”

40. In *State of U.P. vs. Dr. Vijay Anand Maharaj*, reported in **AIR 1963 SC 946** the Hon’ble Apex court observed as follows:-

“8. But it is said, relying upon certain passages in Maxwell on the Interpretation of Statutes, at p. 68, and in Crawford on “Statutory Construction” at p. 492, that it is the duty of the Judge “to make such construction of a statute as shall suppress the mischief and advance the remedy”, and for that purpose the more extended meaning could be attributed to the words so as to bring all matters fairly within the scope of such a statute even though outside the letter, if within its spirit or reason. But both Maxwell and Crawford administered a caution in resorting to such a construction. Maxwell says at p. 68 of his book: “The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words.” Crawford says that a liberal construction does not justify an extension of the statute's scope beyond the contemplation of the legislature. The fundamental and elementary rule of construction is that the words and phrases used by the legislature shall be given their ordinary meaning and shall be construed according to the rules of grammar. When a language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself. It is a well-recognized rule of construction that the meaning must be collected from the expressed intention of the legislature.”

41. In *New India Assurance Co. Ltd., v. Nusli Neville Wadia & Anr.*

reported in **(2008) 3 SCC 279**, the Hon’ble Apex Court held as follows:-

“51.With a view to read the provisions of the Act in a proper and effective manner, we are of the opinion that literal interpretation, if given, may give rise to an anomaly or absurdity which must be avoided. So as to enable a superior court to interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator/author. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act is fulfilled, which in turn would lead the beneficiary under the statutory scheme to fulfil its constitutional obligations as held by the Court inter alia in Ashoka Marketing Ltd. [(1990) 4 SCC 406]”.

42. In the decision of *Nathi Devi v. Radha Devi Gupta*, reported in **(2005) 2 SCC 271, the Hon’ble Apex Court held as follows:-**

“13. The interpretative function of the court is to discover the true legislative intent. It is trite that in interpreting a statute the court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When the language is plain and

unambiguous and admits of only one meaning, no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional.

14. It is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the legislature. The courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors. (See *State of U.P. v. Dr. Vijay Anand Maharaj* [AIR 1963 SC 946 : (1963) 1 SCR 1] , *Rananjaya Singh v. Baijnath Singh* [AIR 1954 SC 749 : (1955) 1 SCR 671] , *Kanai Lal Sur v. Paramnidhi Sadhukhan* [AIR 1957 SC 907 : 1958 SCR 360] , *Nyadar Singh v. Union of India* [(1988) 4 SCC 170 : 1988 SCC (L&S) 934 : (1988) 8 ATC 226 : AIR 1988 SC 1979] , *J.K. Cotton Spg. and Wvg. Mills Co. Ltd. v. State of U.P.* [AIR 1961 SC 1170] and *Ghanshyamdas v. CST* [AIR 1964 SC 766 : (1964) 4 SCR 436] .)

15. It is well settled that literal interpretation should be given to a statute if the same does not lead to an absurdity.

43. In the matter of ***Urmila Dixit vs Sunil Sharan Dixit & Ors.*** reported in **2025 INSC 20**, the Hon'ble Apex Court held as follows:-

“9. This Court in ***K.H. Nazar v. Mathew K. Jacob reported in 2019 INSC 1100***, reiterated the above expositions and stated that:

“11. Provisions of a beneficial legislation have to be construed with a purpose-oriented approach. [Kerala Fishermen's Welfare Fund Board v. Fancy Food, (1995) 4 SCC 341] The Act should receive a liberal construction to promote its objects. [Bombay Anand Bhavan Restaurant v. ESI Corpn., (2009) 9 SCC 61 : (2009) 2 SCC (L&S) 573 and Union of India v. Prabhakaran Vijaya Kumar, (2008) 9 SCC 527 : (2008) 3 SCC (Cri) 813] Also, literal construction of the provisions of a beneficial legislation has to be avoided. It is the Court's duty to discern the intention of the legislature in making the law. Once such an intention is ascertained, the statute should receive 1 (2021) 6 SCC 512 2 (2020) 14 SCC 126 a purposeful or functional interpretation [Bharat Singh v. New Delhi Tuberculosis Centre, (1986) 2 SCC 614 : 1986 SCC (L&S) 335] ...

44. In the matter of ***Independent Sugar Corporation Ltd. vs Girish Sriram Juneja & Ors.*** reported in **2025 INSC 124**, the Hon'ble Apex Court held as follows:-

“41. In *Corp of the City of Victoria vs. Bishop of Vancouver Island, reported in (1921) AC 2 384*, the celebrated judgment, Lord Atkinson stated: “In the construction of statutes, their words must be interpreted in their ordinary grammatical sense, unless there be something in the context, or in the object of the statute in which they occur, or in the circumstances in which they are used, to show that they were used in a special sense different from their ordinary grammatical sense. The literal interpretation leads to hardship, inconsistency or obstruct the accomplishment of the object of the statute steps in. In other words, the doctrine of purposive interpretation is taken recourse to for the purpose of giving full effect to the statutory provisions and the Courts must state what meaning the statute should bear rather than rendering the statute in nullity. A statute must be construed in such a manner as to make it workable.

42. In a few cases, the Courts have declined to be bound by the letter when the letter frustrates the patent purposes of the statute. Ld. Justice J.C. Shah in *New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar*,⁷ noted that “it is a recognized rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature”. The limitation of the purposive role of construction is that the interpretation shall not result in legislation by the Court. Hardship, inconvenience, injustice, absurdity and anomalous results are avoided while construing the statute they need be. 43. Lord Shaw in *Shannon Realities Ltd. v. St. Michel (Ville De)*,⁸ notes that “[w]here words of a statute are clear, they must, of course, be followed but in their Lordships' opinion, where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system”.

44. T. L. Venkatarama Aiyar, J in *Tirath Singh vs. Bachittar Singh*,⁹ stated that “where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence”. The literal and purposive rules of interpretation, as well as their scope, obligation, and limitations, are prefaced for further discussion. The right consideration of issues on hand is achieved by not referring to the precedents on literal or purposive interpretation. It is axiomatic that

the precedents on interpretation are specific to the statute, language and case. The Court, in a given case before it, goes by the first principles of the respective tools of interpretation.”

45. In the matter of ***Dr. Jaishri Laxmanrao Patil vs The Chief Minister & Ors.*** decided in ***Civil Appeal No. 3123 of 2020***, the Hon’ble Apex Court laid down the rules of interpretation:-

“**8.** It is a cardinal principle applicable to all kinds of statutes that you may not for any reason attach to a statutory provision a meaning which the words of that provision cannot reasonably bear. If they are capable of more than one meaning, then you can choose between these meanings, but beyond that the Court must not go.¹⁵ Lord Parker, CJ observed in *R. v. Oakes* reported in [1959] 2 Q.B. 350 there is no ground for reading in words according to what may be ‘the supposed intention of Parliament

18. Craies culled out the following principles of interpretation of legislation: -

1. Legislation is always to be understood first in accordance with its plain meaning.
2. Where the plain meaning is in doubt, the Courts will start the process of construction by attempting to discover, from the provisions enacted, to the broad purpose of the legislation.
3. Where a particular reading would advance the purpose identified, and would do no violence to the plain meaning of the provisions enacted, the Courts will be prepared to adopt that reading.
4. Where a particular reading would advance the purpose identified but would strain the plain meaning of the provisions enacted, the result will depend on the context and, in particular, on a balance of the clarity of the purpose identified and the degree of strain on the language.
5. Where the Courts concluded that the underlined purpose of the legislation is insufficiently plain, or cannot be advanced without an unacceptable degree of violence to the language used, they will be obligated, however regretfully in the circumstances of the particular case, to leave to the legislature the task of extending or modifying the legislation.’

46. In this case, what the legislature intended, can be legitimately ascertained from what it had chosen to enact in express words. A construction which furthers the purpose or object of an enactment, is

described as purposive construction. A purposive construction of an enactment is one which gives effect to the legislative purpose by (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose or (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose. The case in hand, falls under situation (a). The legislature mandates conciliation, only to reduce chances of adversarial litigation amongst the buyer and supplier or service provider. The intention is to protect and promote MSMEs from a prolonged and costly litigation or arbitration. Thus, the provision of Section 9 of the said Act cannot be read into the statute at the stage of conciliation, when the legislature had reserved the applicability of the A & C Act, to a stage when conciliation fails and is terminated.

47. Accordingly, it is held that the application is not maintainable.

48. The application is thus disposed of.

(SHAMPA SARKAR, J.)