



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9081 OF 2025**

Dodal Electro Instruments,
having its address at Building – D,
Flat No.13, Chattraban Co-op.
Housing Society, S.No.127/2, Aundh,
Pune – 411 007,
through its Proprietor Mr. Arinjay Dodal ... Petitioner

versus

1. The Micro and Small Enterprises
Facilitation Council,
At Daman, Union Territory of Dadra
and Nagar Haveli and Daman and Diu,
District Industries Centre, 1st Floor,
Udhyog Bhavan, Bhenslore,
Daman – 396 210.
2. Mexim Adhesive Tapes Pvt. Ltd.,
Flat No.Surve No.351/1, Block-D
and E, Village / Town Kachigam,
Kachigam Char Rasta Road,
Daman & Diu, Daman – 396 210 ... Respondents

**WITH
WRIT PETITION NO.9082 OF 2025**

Dodal Electro Instruments,
having its address at Building – D,
Flat No.13, Chattraban Co-op.
Housing Society, S.No.127/2, Aundh,
Pune – 411 007,
through its Proprietor Mr. Arinjay Dodal ... Petitioner

versus

1. The Micro and Small Enterprises
Facilitation Council,

At Daman, Union Territory of Dadra
and Nagar Haveli and Daman and Diu,
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2. Mexim Adhesive Tapes Pvt. Ltd.,
Flat No.Surve No.351/1, Block-D
and E, Village / Town Kachigam,
Kachigam Char Rasta Road,
Daman & Diu, Daman – 396 210 ... Respondents

Mr. Chanakya Keswani with Mr. Tanmay Bhawe i/by Economic Laws Practice,
for Petitioner.

Mr. Rohan Agarwal with Ms. Vidisha Rohira i/by Jonathan D. for Respondent
No.2.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 25 AUGUST 2025
PRONOUNCED ON : 23 SEPTEMBER 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.
2. By these Petitions, the Petitioner takes exception to an order dated 7 March 2024 passed by the Micro and Small Enterprises Facilitation Council – MSEFC – Respondent No.1, at Daman, thereby directing the Petitioner to pay to the Respondent No.2 – seller, a sum of Rs.28,49,940/- and Rs.42,35,504/- respectively, along with interest as admissible under Section 16 of the Micro, Small and Medium Enterprises Development Act, 2006 (the Act of 2006).
3. The background facts necessary for the determination of these petitions

can be summerized as under :

3.1 Mexim Adhesive Tapes Pvt. Ltd. (Mexim) - Respondent No.2 is a private limited company. Mexim is engaged in the business of manufacture of paper, rubber and plastic products. Dodal Electro Instruments (Dodal) is a proprietorship concern of Mr. Arinjay Dodal. It is engaged in the business of manufacture and supply of electrical instruments and associated components.

3.2 The Petitioner entered into commercial transactions with Mexim. Pursuant thereto, Work Order no.001 was issued for supply of 2,40,692.42 sq. meters of self-adhesive tape. The Petitioner purchased the material aggregating to Rs.15,00,631/- from Mexim. Another Work Order No.003 was issued for supply of 2,40,335.77 sq. meters of self-adhesive tape. Thereunder, the Petitioner purchased the material from Mexim worth Rs.14,88,789/-.

3.3 Mexim instituted two proceedings before the MSEFC – Respondent No.1 being Case No.DD/01/S/DND/000074 and DD/01/S/DND/000075 for recovery of the amounts which allegedly remained outstanding for the supply of the material under the respective work orders. In case No.75 (subject matter of WP No.9081 of 2025), the claim was for Rs.1,47,610/-. In case No.74 (subject matter of WP No.9082 of 2025), the claim was for Rs.3,00,631/-.

3.4 By the impugned orders of even date, in case No.75, MSEFC directed

the Petitioner to pay to Mexim – Respondent No.2, the principal amount of Rs.1,47,610/- along with interest of Rs.27,02,330/-. In case No.74, MSEFC directed the Petitioner to pay to the Respondent No.2 a sum of Rs.3,00,631/- along with interest of Rs.39,34,873/-. It was further declared that Mexim was entitled for the interest as per Section 16 of the Act, 2006 from the date of the filing of the application till realization.

4. The Petitioners have invoked the writ jurisdiction asserting, inter alia, that the impugned orders were passed by the MSEFC ex-parte. The impugned orders suffer from grave legal infirmities. Firstly, notices of hearing were not properly served on the Petitioners. There was gross violation of fundamental principles of natural justice. Secondly, MSEFC did not follow mandatory procedure envisaged by the Act of 2006 and the Arbitration and Conciliation Act, 1996. Without terminating the conciliation proceeding, MSEFC went on to pass impugned orders which are completely denuded of the character of an arbitration award.

5. An affidavit in reply has been filed on behalf of Respondent No.2, assailing the very tenability of the Petitions in view of the statutory remedy under Section 19 of the Act, 2006. Even otherwise, Respondent No.2 contends, the Petitioner is guilty of *suggestio falsi* and *suppressio veri*. Thus, the Petitioner is not entitled to any discretionary relief.

6. On the merits of the matter, Respondent No.2 asserts, the Petitioner

has, in fact, acknowledged its liability; made part payment during the pendency of the Reference before the MSEFC and never disputed the claims. It is only with an oblique motive to avoid the pre-deposit envisaged by Section 19 of the Act, 2006, the Petitioner has invoked the writ jurisdiction.

7. I have heard Mr. Keswani, learned Counsel for the Petitioners, and Mr. Agarwal, learned Counsel for Respondent No.2, at some length. Learned Counsel took the Court through the material on record.

8. Mr. Keswani, learned Counsel for the Petitioners canvassed multi-pronged submissions. Firstly, Mr. Keswani would urge, the impugned orders have been passed in flagrant violation of the principles of natural justice and express statutory provisions. Therefore, the objection to the tenability of the petitions raised on behalf of Respondent No.2 about the existence of a statutory remedy, is completely misconceived.

9. Amplifying the submission, Mr. Keswani made an endeavour to demonstrate that the notices of hearing of the Reference proceedings before MSEFC, were not duly served on the Petitioners and the orders were passed behind the back of the Petitioners.

10. Secondly, MSEFC passed the impugned order without following the mandate contained in Section 18(3) of the Act, 2006. The conciliation proceedings were never declared to be unsuccessful or otherwise terminated. On the contrary, all the notices which were issued to the Petitioners were for

settlement of the dispute, which clearly implied that the conciliation proceedings were underway. At no point of time, MSEFC indicated that it had donned the role of an arbitrator. The impugned orders, thus, suffer from the vice of clubbing the conciliation proceedings with the arbitration proceedings. Such a course is not legally permissible. A very strong reliance was placed by Mr. Keswani on the judgment of the Supreme Court in the case of **Jharkhand Urja Vikas Nigam Ltd. V/s. State of Rajasthan and Ors.**¹, wherein it was enunciated that the proceedings for conciliation and arbitration cannot be clubbed.

11. Thirdly, MSEFC assumed jurisdiction not vested in it by law, in as much as the reference under Section 18 of the Act, 2006 was itself infirm. Mexim (R2) was not the seller within the meaning of Section 2(n) of the Act, 2006, and, therefore, lacked the essential qualification to make a reference under Section 18 of the Act, 2006. Since Mexim (R2) was not registered as a Small Scale Industry on the date of the supply of the material to the Petitioners, it was not entitled to make a reference under Section 18 of the Act, 2006.

12. To this end, Mr. Keswani placed reliance on the judgment of the Supreme Court in the case of **Silpi Industries and Ors. V/s. Kerala State Road Transport Corporation and Anr.**² In the said case, it was enunciated that to seek the benefit of provisions under MSMED Act, the seller should

1 (2021) 19 SCC 206

2 (2021) 18 SCC 790

have been registered under the provisions of the Act, as on the date of entering into the contract.

13. Lastly, Mr. Keswani would urge, the impugned orders do not have the trappings of an award under the Arbitration and Conciliation Act, 1996. There is nothing to indicate that MSEFC resorted to the provisions contained in the Arbitration and Conciliation Act, with a view to arbitrate the dispute between the parties and adhered to the procedure prescribed thereunder. Since the impugned orders are bereft of the characteristic of the award, the Petitioner is not enjoined to invoke the statutory remedy under Section 19 of the Act, 2006.

14. In opposition to this, Mr. Agarwal, learned Counsel for Respondent No.2 would urge that the Petitioner does not deserve to be heard on the merits of the matter as the Petitioner has approached the Court with demonstrably false statements. Inviting attention of the Court to the communication addressed by the Petitioner in the year 2018, upon being served with the notice of the Reference proceedings by MSEFC in the year 2018 itself, Mr. Agarwal strenuously submitted that the assertions in the Petitions that the Petitioner, for the first time, became aware of the said proceedings in the month of February 2020, is a blatant lie. According to Mr. Agarwal, the Petitioner has suppressed the material facts about the service of multiple notices by MSEFC and the acknowledgment of the liability. On this count

alone, the Petitions deserve to be thrown over-board, submitted Mr. Agarwal.

15. Mr. Agarwal would urge that the submission on behalf of the Petitioner that MSEFC has clubbed the stages of conciliation and arbitration is a subterfuge. Laying emphasis on the contents of the notices addressed by MSEFC to the Petitioner, Mr. Agarwal urged, with a degree of vehemence, that the notices were issued for hearing in regard to the complaint of non-payment of dues. After having succeeded in protracting the proceedings before the MSEFC by non-appearance and seeking time on multiple occasions, the Petitioner cannot be heard to urge that MSEFC clubbed the conciliation and arbitration proceedings.

16. Mr. Agarwal joined the issue on the point that Mexim (R2) is not the supplier, by placing reliance on the registration certificate of Mexim as a small scale industry in the year 2004 itself. Even otherwise, all these contentions ought to be raised in the proceeding challenging the award under Section 19 of the Act, 2006 and not before the writ Court, was the thrust of the submission of Mr. Agarwal. It was submitted with tenacity that, entertaining the petitions despite the existence of a statutory remedy would defeat the object of the provisions of the Act, 2006, especially the avowed purpose of the provisions contained in Section 19 of the Act, 2006, under which the Court is precluded from entertaining any proceedings for setting aside a decree, award or order, unless the appellant, not being a supplier, deposits 75% of the

amount. A defaulting party cannot be permitted to circumvent the statutory requirement by invoking writ jurisdiction, submitted Mr. Agarwal.

17. To buttress this submission, Mr. Agarwal placed reliance on the judgment of a learned Single Judge of the Himachal Pradesh High Court in the case of **Surinder Sharma V/s. Himachal Pradesh Micro Small Enterprises Facilitation Council and Ors.**³.

18. At any rate, according to Mr. Agarwal, the conduct of the Petitioner is such that no relief can be granted to the Petitioner. Mexim (R2) has been made to run from pillar to post since the year 2014 for a legitimate claim. The instant Petitions came to be instituted only when Mexim (R2) filed execution proceedings and coercive orders were about to be passed therein. In these circumstances, the Petitions deserve to be dismissed.

19. To begin with the aspect of tenability of the writ petitions against the orders passed by the MSEFC under Section 18 of the Act, 2006. The availability of an efficacious alternate remedy is self-imposed restraint on the exercise of the writ jurisdiction by the High Court. Normally, the exceptions to the rule of efficacious alternate remedy arise where the writ petition has been filed for the enforcement of a fundamental right; there has been a violation of principle of natural justice; the impugned order or proceedings are wholly without jurisdiction or vires of the legislation under which the orders have

³ Manu/HP/1136/2025

been purportedly passed itself is challenged. When a right is created by a statute which has also prescribed the remedy or procedure for enforcing such right or liability, resort must be had to that particular statutory remedy before invoking extra-ordinary writ jurisdiction under Article 226 of the Constitution. This rule of exhaustion of the statutory remedy is a rule of policy, convenience and discretion.

20. To put it in other words, the existence of the statutory remedy does not affect the jurisdiction of the High Court to issue a prerogative writ. Nonetheless, the writ jurisdiction being discretionary, as a matter of policy, writ Courts insist that the parties exhaust the alternate statutory remedy. However, in exceptional cases, the writ jurisdiction can be exercised by the High Court.

21. As the aforesaid legal position is well settled, it may not be necessary to refer to the precedents on the limits of the exercise of the writ jurisdiction, in the face of the availability of the statutory remedy under various enactments. In the backdrop of the controversy at hand, reference can be made to a three Judge Bench judgment of the Supreme Court in the case of **India Glycols Ltd. and Anr. v/s. Micro and Small Enterprises Facilitation Council, Medchal and Ors.**⁴ wherein the Supreme Court enunciated in clear and explicit terms that Section 18 of the Act, 2006 provides for recourse to a

4 (2025) 5 SCC 780

statutory remedy for challenging an award under the 1996 Act. That recourse to the remedy is subject to the discipline of complying with the provisions of Section 19. The entertaining of a petition under Articles 226/227 of the Constitution, in order to obviate compliance with the requirement of pre-deposit under Section 19, would defeat the object and purpose of the special enactment which has been legislated upon by Parliament.

22. In the case of **Tamil Nadu Cements Corporation Ltd. V/s. Micro and Small Enterprises Facilitation Council and Anr.**⁵, another three Judge Bench of the Supreme Court expressed its reservations on the aforesaid dictum in the case of **India Glycols Ltd. and Anr. (supra)**. It was observed that whether there would be an absolute and complete bar to invoke writ jurisdiction under Article 226 of the Constitution, even in exceptional and rare cases where fairness, equity and justice may warrant the exercise of writ jurisdiction, warranted consideration. Thus, a reference was made to a larger Bench of five Judges on the following questions :

“64. In the light of the aforesaid decisions, we deem it appropriate to refer the following questions raised in the present appeal to a larger Bench of five Judges, namely :

64.1(i) Whether the ratio in India Glycols (supra) that a writ petition could never be entertained against any order/award of MSEFC, completely bars or prohibits maintainability of the writ petition before the High Court ?

⁵ (2025) 4 SCC 1

64.2(ii) If the bar/prohibition is not absolute, when and under what circumstances will the principle / restriction of adequate alternative remedy not apply ?

64.3(iii) Whether the members of MSEFC who undertake conciliation proceedings, upon failure, can themselves act as arbitrators of the Arbitral Tribunal in terms of Section 18 of the MSEMD Act read with Section 80 of the A & C Act ?

The first and second question will subsume the question of when and in what situation a writ petition can be entertained against an order / award passed by MSEFC acting as an Arbitral Tribunal or conciliator.”

23. Mr. Keswani would urge that, in view of the aforesaid reference and enunciation of law in the case of **Tamil Nadu Cements Corporation Ltd. (supra)**, the High Court is not completely denuded of the power to exercise writ jurisdiction, especially in the case like the present one, where the justice of the claim is firmly in favour of the Petitioner.

24. I am conscious of the settled position in law that, the mere fact that the decision is referred to a larger Bench does not erode the precedential value of the decision under reference. In my considered view, it may not be necessary to adopt a doctrinaire approach regarding the binding efficacy of the three Judge Bench judgment in the case of **India Glycols Ltd. (supra)**. I propose to evaluate the case on the touchstone, whether any of the exceptional circumstances to exercise the writ jurisdiction, despite existence of the

statutory remedy, is made out.

25. First, the ground of alleged violation of the principles of natural justice. Though Mr. Keswani made a valiant attempt to draw home the point that no effective opportunity of hearing was given to the petitioner, and, at times, the notices were served on the petitioner after the date of hearing had passed by, yet, the ground of failure to adhere to the principles of natural justice appears to be in the nature of a litany of grievances; unsubstantiated. It is imperative to note that as early as 24th July, 2018 itself, the petitioner had informed MSEFC that a notice in regard to the listing of the matter on 11th July 2018 was received on 23rd July, 2018 and a request to reschedule the hearing was made. This communication implied that the petitioner became aware of the proceedings before MSEFC in the month of July, 2018 itself. That gives heft to the submission on behalf of the respondents that the petitioner has approached this Court with an incorrect assertion that the petitioner for the first time became aware of such proceedings before the MSEFC on 5th February, 2020. On the own showing of the petitioner, the petitioner had sought adjournments and rescheduling of the hearing on a number of occasions during the period 2018 to 2023. Therefore, the submission on behalf of the petitioner that the impugned orders were passed in flagrant violation of the fundamental principles of natural justice and, therefore, this Court would be justified in exercising the writ jurisdiction, despite the

existence of the statutory remedy, does not commend itself.

26. The edifice of the next ground, assiduously canvassed by Mr. Keswani, that Mexim was not qualified to make a reference under Section 18 and, thus, MSEFC lacked jurisdiction to pass the impugned order, was sought to be built on the premise that there is no material to show that Mexim was duly registered under the Act, 2006 before it entered into the subject transactions with the petitioner. Mr. Keswani would urge that in the absence of material to show that the Mexim had filed a Memorandum in accordance with the provisions of the Act, 2006 the dispensation under the regime enshrined by the Act, 2006 is not at all attracted. A very strong reliance was placed on the judgment in the case of **Silpi Industries** (*supra*).

27. In the aforesaid case, the Supreme Court enunciated that for the supplies pursuant to the contract made before the registration of the unit under the provisions of the Act, 2006 no benefit can be sought by such entity, as contemplated under the Act, 2006. By taking recourse to filing Memorandum under sub-section (1) of Section 8 of the Act, 2006, subsequent to entering into a contract and supply of goods and services, one cannot assume the legal status of being classified under the Act, 2006, as an enterprise to claim the benefits retrospectively from the date on which a party (appellant therein) entered into a contract with the respondent. The observations in paragraph 44 of the judgment in the case of **Silpi Industries**

(*supra*) were pressed into service by Mr. Keswani. They read as under:

“44. The appellant cannot become micro or small enterprise or supplier, to claim the benefits within the meaning of MSMED Act 2006, by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods and services. If any registration is obtained, same will be prospective and applies for supply of goods and services subsequent to registration but cannot operate retrospectively. Any other interpretation of the provision would lead to absurdity and confer unwarranted benefit in favour of a party not intended by legislation.” (emphasis supplied)

28. It must be recorded that Mr. Keswani fairly invited the attention of the Court to a two-Judge Bench judgment of the Supreme Court in the case of **NBCC (India) Limited vs. State of West Bengal and others**⁶, wherein the Supreme Court observed that **Silpi Industries** (*supra*) is not an authority on the issue that a reference under Section 18 cannot be made by a micro or small enterprise if supplies were made or contracts were executed before filing of the memorandum under Section 8 of the Act, 2006. Though it was possible for the two-Judge Bench to arrive at the conclusion that the judgments in **Silpi Industries** (*supra*) and **Gujarat State Civil Supplies Corporation Limited vs. Mahakali Foods Private Limited (Unit-2) and another**⁷ coupled with the subsequent orders in **Vaishno Enterprises vs.**

⁶ (2025) 3 Supreme Court Cases 440.

⁷ (2023) 6 Supreme Court Cases 401.

Hamilton Medical AG⁸ and Nitesh Estates Ltd. vs. Outsourcing Xperts⁹

cannot be considered to be binding precedents on the issue that had arisen for the consideration of the Division Bench, yet, taking into account the compelling need to ensure clarity and certainty about the applicability of the precedents on the subject, the Division Bench deemed it appropriate to refer the said appeal to a three-Judge Bench.

29. This Court is of the considered view that, in the facts of the instant case, the character and qualification of Mexim to invoke the remedies under the Act, 2006 does not appear debatable. Under the first proviso to Section 8(1) of the Act, 2006, any person, who before commencement of the Act, 2006, has established a Small Scale Industry and obtained a registration certificate, may, at his discretion, file the memorandum in accordance with the provisions of the Act, 2006. In contrast, a person who established a industry covered by the Notification of the Government of India in the erstwhile of Ministry of Industry (Department of Industrial Development) dated 25th July, 1991, shall within one hundred and eighty days from the commencement of the said Act, 2006, file the memorandum in accordance with the provisions of the Act, 2006. The Parliament has thus designedly made a distinction in the matter of filing of the memorandum, in accordance with the provisions of the Act, 2006, in the case of a small scale industry which had a registration

8 (2024) 12 SCC 214.

9 (2024) 12 SCC 221.

certificate and an industry which had filed an Industrial Entrepreneur's Memorandum. It was thus not obligatory for the person, who had established a small scale industry and obtained a registration certificate, prior to the commencement of the Act, 2006 to file such memorandum within one hundred eighty days from the commencement of the said Act, 2006. The Parliament has used the word 'may' as well as the expression 'at his discretion' in the matter of the filing of a memorandum by the person who established the Small Scale Industry and obtained a registration certificate also, before the Act, 2006 came into force.

30. In the case at hand, Mexim was registered as a Small Scale Industry on 13th February, 2004. The MSME Udyog Aadhar issued on 13th January, 2016, records the fact that Mexim commenced the business on 19th April, 2001. It had obtained registration as a small scale industry on 13th February, 2004. In this view of the matter, *prima facie*, it appears that Maxim having been registered as a small scale industry in the year 2004 itself was not obligated to file the memorandum under the proviso to Section 8(1) of the Act, 2006 within one hundred and eighty days from the commencement of the said Act, to claim the benefits of the provisions under the Act, 2006.

31. This propels me to the main plank of Mr. Keswani's submission that the impugned orders have been passed by MSEFC in gross violation of the mandate of the provisions contained in Section 18(3) of the Act, 2006, in as

much as the MSEFC had not at all resorted to arbitrate the dispute as warranted by the provisions contained in the Arbitration and Conciliation Act, 1996. The conciliation and arbitration proceedings were arbitrarily clubbed, which is in teeth of the express statutory provisions and the governing judicial precedents.

32. For a proper evaluation of the aforesaid submission, recourse to the provisions contained in Section 18 of the Act, 2006, becomes imperative. Upon receipt of a reference, the MSEFC was required to follow the procedure as delineated in sub-sections (2), (3) and (4) of Section 18, which read as under :

“(1).....

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and

Conciliation Act, 1996 (26 of 1996) shall then apply to the disputes as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India. ”

33. A perusal of the aforesaid provisions would indicate that the Parliament has devised a two stage mechanism for the resolution of the dispute. First, under sub-section (2) of Section 18, MSEFC was obligated to itself conduct the conciliation or refer the parties for conducting the conciliation. The mandate to either conciliate or refer the parties to conciliation was emphasised by the use of the word “shall”, and by further providing that, once the parties are referred to conciliation, the provisions of Section 65 to 81 of the Act, 1996 shall apply to such a dispute as if the conciliation was initiated under Part III of the said Act, 1996. Upon the failure of the conciliation or termination of the conciliation proceedings, the next stage of arbitration was to be compulsorily resorted to by the MSEFC. Sub-section (3) of Section 18, MSEFC was empowered to itself arbitrate the dispute or refer the parties to arbitration. Once the parties were referred to arbitration, the provisions of the

Arbitration and Conciliation Act, 1996 would then apply to the dispute resolution process.

34. The aforesaid dispute resolution mechanism, envisaged under sub-section (3) of Section 18, is in contrast to the fundamental principle of arbitration i.e. party autonomy. Section 18(3) introduces a measure of compulsory arbitration, *de hors* the consent of the parties. To ensure that such compulsory arbitration is in accord with the regime of arbitration governed by the Act, 1996, the Parliament has not only provided that the provisions of Arbitration and Conciliation Act, 1996, should apply to the disputes which are taken up for arbitration, or referred to arbitration, by MSEFC, but also that, the Act, 1996 would apply as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of the Act, 1996. Thus, by a deeming fiction, the arbitration agreement is presumed to exist between the parties to the reference under Section 18(1) of the Act, 2006 before the MSEFC.

35. Keeping in view the aforesaid scheme of the dispute resolution by MSEFC, the decision of the Supreme Court in the case of **Jharkhand Urja Vikas Nigam Ltd. V/s. State of Rajasthan and Ors. (supra)**, deserves to be consulted. In the said case, MSEFC had issued notices to the appellant therein. As the appellant did not respond to the notices, the Council had issued summons for appearance to the appellant before the Council. On 6

August 2012, on the ground that the appellant did not appear on that day, the Council passed an order on the very day directing the appellant to make the payment to the third respondent therein, as claimed.

36. In the backdrop of the aforesaid facts, the Supreme Court after extracting the provisions of Section 18 of the Act, 2006, expounded the legal position as under :

“14. From a reading of Section 18(2) and 18(3) of the MSMED Act it is clear that the Council is obliged to conduct conciliation for which the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 would apply, as if the conciliation was initiated under Part III of the said Act. Under Section 18(3), when conciliation fails and stands terminated, the dispute between the parties can be resolved by arbitration. The Council is empowered either to take up arbitration on its own or to refer the arbitration proceedings to any institution as specified in the said Section. It is open to the Council to arbitrate and pass an award, after following the procedure under the relevant provisions of the Arbitration and Conciliation Act, 1996, particularly Sections 20, 23, 24 and 25.

15. There is a fundamental difference between conciliation and arbitration. In conciliation the conciliator assists the parties to arrive at an amicable settlement, in an impartial and independent manner. In arbitration, the Arbitral Tribunal/ arbitrator adjudicates the disputes between the parties. The claim has to be proved before the arbitrator, if necessary, by adducing evidence, even though the rules of

the Civil Procedure Code or the Indian Evidence Act may not apply. Unless otherwise agreed, oral hearings are to be held.

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

17. In this case only on the ground that the appellant had not appeared in the proceedings for conciliation, on the very first date of appearance, that is, 06.08.2012, an order was passed directing the appellant and/or its predecessor Jharkhand State Electricity Board to pay Rs.78,74,041/- towards the principal claim and Rs.91,59,705/- odd towards interest. As it is clear from the records of the impugned proceedings that the Facilitation Council did not initiate arbitration proceedings in accordance with the relevant provisions of the Arbitration and Conciliation Act, 1996.

18. The order dated 06.08.2012 is a nullity and runs contrary not only to the provisions of MSMED Act but contrary to various mandatory provisions of Arbitration and Conciliation Act, 1996. The order dated 06.08.2012 is patently illegal. There is no arbitral award in the eye of law. It is true that under the scheme of the Arbitration and Conciliation Act, 1996 an arbitral award can only be questioned by way of application under Section 34 of the Arbitration and Conciliation Act, 1996. At the same time

when an order is passed without recourse to arbitration and in utter disregard to the provisions of Arbitration and Conciliation Act, 1996, Section 34 of the said Act will not apply. We cannot reject this appeal only on the ground that appellant has not availed the remedy under Section 34 of the Arbitration and Conciliation Act, 1996.”

37. In the case of **Silpi Industries (supra)** also, the Supreme Court enunciated the import of the provisions contained in Section 18(3) of the Act, 2006 in relation to the provisions contained in the Arbitration and Conciliation Act, 1996. The observations in paragraph No.33 are material, and, hence, extracted below :

“33. From a reading of Section 18(3) of the 2006 Act it is clear that when the conciliation initiated under sub-section (2) of Section 18 of the said Act is not successful, the Council shall either itself take up the dispute for arbitration or refer to any institution for arbitration. Further Section 18(3) of the said Act also makes it clear that the provisions of 1996 Act are made applicable as if there is an agreement between the parties under sub-section (1) of Section 7 of the 1996 Act. Section 23 of the 1996 Act deals with the statement of claim and defence. Section 23(2A), which gives a right to respondent to submit a counter claim or plead set-off with regard to claims within the scope of the arbitration agreement, is brought into Statute by Amending Act 3 of 2016. If we look at the Statement of Objects and Reasons of the Amending Act, same is also enacted to provide for speedy disposal of cases relating to arbitration with least

court intervention. Clause 11 of the Bill, by which sub-section (2A) was proposed to be inserted, states that sub-section (2A) was intended to give an opportunity to the respondent, in support of his case, to submit counter-claim or a set-off if such counter-claim or set-off falls within the scope of arbitration agreement. When Section 18(3) makes it clear that in the event of failure by the Council under Section 18(2) if proceedings are initiated under Section 18(3) of the 1996 Act, the provisions of 1996 Act are not only made applicable but specific mention is made to the effect as if the arbitration was in pursuance to an arbitration agreement referred to in sub-section (1) of Section 7 of the 1996 Act. When there is a provision for filing counter-claim and set-off which is expressly inserted in Section 23 of the 1996 Act, there is no reason for curtailing the right of the respondent for making counter-claim or set-off in proceedings before the Facilitation Council.”

38. Whether the aforesaid enunciation of law governs the facts of the case at hand ? For an answer, a reference to the impugned order which spells out the manner in which the MSEFC approached the matter of resolution of the disputes, becomes necessary. Relevant observations in Case No.75 read as under :

“In this matter, the Conciliation proceedings were initiated under the MSMED Act, 2006. As per the Section 18 of Chapter V of the Act, the said case is referable to the MSEF Council. The Section 17 of the Act is with reference to recovery of the due amount and the reference of outstanding

amount which are due is required to be made under section 18 of the Act, which has been done by the Petitioner. Accordingly, the Council constituted under the MSMED Act, 2006 continued with the hearing of the said case and initiated conciliation proceedings.

The matter was heard on 30/01/2019, 27/05/2019, 15/11/2019, 10/02/2020, 23/10/2020, 12/01/2021, 17/02/2021, 19/08/2021, 31/07/2023, 14/08/2023, 31/08/2023 and 22/09/2023. The Purchaser /Buyer has remained absent from hearing. However, purchaser / buyer has submitted letter on dated 29/08/2023, 21/09/2023 and Email on dated 22/09/2023 for request to time for settlement.

After the perusal of records and documents, the claim of the Seller towards the purchaser is genuine and the Purchaser has failed to repay the amount for the goods supplied, and, hence, the Council allows the claim submitted by the Seller.”

39. Critising the approach, evinced by the aforesaid observations, of MSEFC, Mr. Keswani would urge that, at no point of time, MSEFC decided to proceed to the next stage of arbitration. Inviting attention of the Court to the notices of hearing, Mr. Keswani would urge that, none of the notices referred to the fact the MSEFC had taken up the dispute for arbitration. On the contrary, in each of the notices the Petitioner was called upon to submit response for settlement of the dispute.

40. Mr. Agarwal, learned Counsel for Respondent No.2, joined the issue by

canvassing a submission that the notices cannot be read in a selective manner. Laying emphasis on the statement in the body of notices that the matter was fixed for hearing on the complaint of non-payment of dues, Mr. Agarwal would urge that the Petitioners cannot be permitted to take advantage of their own wrong in not appearing before the MSEFC, despite multiple notices of hearing, and, yet, contend that the provisions of the Act, were not followed.

41. In my considered view, the contents of the notices may not have the decisive significance. The pivotal question that comes to the fore is, whether the MSEFC decided to proceed to the stage of arbitration, and, if so, whether the arbitration proceedings were conducted in conformity with the provisions of the Act, 1996 ?

42. From the perusal of the observations in the impugned order (extracted above), it becomes evident that the MSEFC has referred to initiation of conciliation proceedings. The consideration on the said point, stops at that. The impugned order does not indicate that the MSEFC reckoned that the conciliation proceedings did not succeed and stood terminated. Even if one were to presume that, on account of the non-appearance of the Petitioners, in the proceedings before the MSEFC, despite notices, the MSEFC construed, by implication, that the conciliation proceedings failed, yet, further question as to whether MSEFC resorted to itself arbitrate the dispute or refer the parties to

arbitration, is neither answered by the impugned order nor any other material on record. It does not appear that the proceedings were recorded in the Reference that the MSEFC took upon itself the task of arbitration.

43. On the contrary, upon perusal of the observations in paragraph No.2 (extracted above), one gets an impression that the MSEFC proceeded to pass the impugned orders as the Petitioners did not appear, and, on 22 September 2023, the Petitioners had sought time for settlement.

44. As noted above, once the stage of arbitration under Section 18(3) was reached, the dispute was required to be arbitrated in accordance with the provisions contained in the Arbitration and Conciliation Act, 1996. It does not appear that MSEFC adverted to any of the provisions contained in the Act, 1996. The parties were not called upon to file statements of claim and defence. Even when the Petitioner did not appear, the MSEFC was enjoined to follow the procedure contained in Sections 23 and 25 of the Act, 1996; which provides for the procedure to be adopted in the event of a default of a party.

45. Under Section 25 clause (b) of the Act, 1996, where the Respondent fails to communicate his statement of defence in accordance with sub-section (1) of Section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant and shall have the discretion to treat the right of the respondent to file such

statement of defence as having been forfeited. Under clause (c) of Section 25, where a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it. Thus, there are adequate provisions under the Act, 1996, which regulate the arbitral proceedings where the respondent commits default in appearance.

46. I am mindful that it could be urged that the Petitioner's right to file the statement of defence could be deemed to have been forfeited. However, for that purpose, there ought to be a clear indication either in the order or in the record of proceedings or other material to unmistakably demonstrate that the MSEFC having crossed the stage of conciliation and embarked upon the adjudication of the dispute by itself taking up arbitration. In the absence thereof, the order passed by the MSEFC like the one, extracted above, where it is simply recorded that the claim of the seller appears genuine and the purchaser committed default, does not cloth it with the character of an arbitration award.

47. Thus, I find substance in the submission of Mr. Keswani that the impugned orders do not constitute an arbitration award, as envisaged by the provisions of the Act, 1996. The impugned orders, therefore, become unsustainable and susceptible to interference in exercise of the writ jurisdiction as the orders have been passed in breach of the mandatory

provisions of the Act, 2006 and the Arbitration and Conciliation Act, 1996. Failure to adopt express statutory provisions in conformity with which only the decisions were required to be rendered, furnishes a surer foundation for the exercise of the writ jurisdiction.

48. It is true, the conduct of the Petitioners in the matter of the participation in the proceedings before the MSEFC cannot be said to be unblemished. Yet, the failure of MSEFC to adhere to statutory mandate cannot be brushed aside as inconsequential on the premise that the Petitioners did not diligently participate in the proceedings before the MSEFC. The Court is also required to be sensitive to the fact that out of the total amount ordered to be paid in Case No.75 i.e. Rs.28,49,940/-; the outstanding principal amount was Rs.1,47,610/- and the balance Rs.27,02,330/- was the interest component. Likewise, in Case No.74, out of the total awarded amount of Rs.42,35,504/-, the principal amount was Rs.300,631/- only and the balance Rs.39,34,873/- was formed by interest. Therefore, the element of justice of the claim, notwithstanding the provisions contained in Sections 16 and 19 of the Act, 2006, is such that a rare and exceptional situation on account of the failure of the MSEFC to follow the mandatory procedure in passing the award, can be said to be made out.

49. The upshot of aforesaid consideration is that the Petitions deserve to be partly allowed and the impugned orders are required to be quashed and

set aside and the References under Section 18 of the Act, 2006 are required to be remitted back to the MSEFC for afresh decision in accordance with law.

50. Hence, the following order :

ORDER

- (i) The Writ Petitions stand partly allowed.
- (ii) The impugned orders stand quashed and set aside.
- (iii) Proceedings under Reference Nos.75 and 74 stand remitted back to the MSEFC at Daman, for afresh determination by way of arbitration.
- (iv) The parties shall appear before MSEFC, Daman on 6 October 2025.
- (v) On that day, MSEFC, Daman, shall pass appropriate orders to regulate the arbitral proceedings.
- (vi) In the event of default in appearance of the parties, MSEFC shall be at liberty to pass appropriate orders in accordance with the provisions of the Act, 1996.
- (vii) MSEFC, Daman, is requested to decide Reference Nos.75 and 74 on their own merits and in accordance with law and without being influenced by any of the observations hereinabove, which were confined to evaluate the legality, propriety and correctness of the impugned orders, in the light of the aforesaid challenges thereto. It is clarified that this Court has not entered into the merits of the matter.

(viii) Rule made absolute in the aforesaid terms with no order as to costs.

(N.J.JAMADAR, J.)