IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CARBC No. 6 of 2018
Reserved on 12.11.2025
Date of Decision: 20.11.2025

Controller of Stores, Northern Railway
.........Petitioner

Versus

M/s CBM Industries Pvt. Ltd. and Anr.
.......Respondents

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? Yes.

For the Petitioner: Mr. Vir Bahadur Verma, Senior Panel Counsel.

For the respondents: Mr. Sunil Mohan Goel, Senior Advocate with Mr. Vibhu Anshuman, Mr. Raman Jamalta, Mr. Vipul Sharda, Mr. Prateek Kumar, Mr. Yuvan Raj Gandhi, Mr. Abhinav Mohan Goel and Mr. Neeraj Kumar, Advocates.

Sandeep Sharma, J.

Instant petition lays challenge to award dated 5.3.2018 published on 19.3.2018 by the Sole Arbitrator, awarding therein sum of Rs. 4,80,35,154/- as principal amount plus interest Rs.50,38,09,370/-, totaling sum of Rs. 55,18,44,524/-.

2. For having bird's eye view, key facts relevant for adjudication of case at hand, as emerge from the pleadings as well as documents adduced on record by the parties to the lis are that respondent No.1 registered itself as an entity with the District Industries Centre (DIC), Nahan District Sirmaur on 22.12.2004.

Pursuant to the registration, respondent No. 1 came to be granted permission for production of TS Indicator Board, Road pavement markers, Signage etc. w.e.f. 30.04.2005 (Annexure R-2 available at Page 280). In the month of May 2007, petitioner issued various purchase orders in favour of respondent No.1 for supply of certain items. Pursuant to aforesaid purchase orders, respondent No.1 supplied the material to the petitioner and at no point of time, objection, if any, ever came to be raised with regard to quality of material supplied by the respondent. In the month of June/July 2007, the Office of the Controller of Stores issued instructions to stop the payment against the purchase orders including those for which the material had already been supplied and delivered on the ground that material was supplied at much higher rate (Annexure R-7 available at page 297). Initially, vigilance proceedings were initiated, but subsequently, matter was handed over to CBI for investigation.

3. On 2.10.2006, the Micro, Small and Medium Enterprises Development Act, 2006 (herein after referred to as the *MSMED Act*) came into force vide S.O. 1154(E), dated 18.07.2006. On 12.10.2007, Government of Himachal Pradesh framed the rules called Himachal Pradesh Micro and Small Enterprise Facilitation Council Rules 2007, (in short the *"Facilitation Council Rules"*). Respondent No.1 applied for Part-II Memorandum on 10.3.2008, which was granted on 23.10.2008. EM-II registration gives reference to the registration dated 30.4.2005 i.e. the date from which respondent No.1 was allowed to start production. With effect from afore date, respondent No.1 had been manufacturing TS indicator board, road pavement markers, signage etc. and same were being supplied to various institutions including the Northern Railways.

4. Since CBI was unable to find evidence, if any, adduced on record suggestive of the fact that material supplied by the petitioner in terms of purchase orders issued in the month of May 2007, was purchased on higher rates and as such, it submitted closure report in the CBI Court. On 7.1.2012, CBI Court accepted the closure report (Annexure R-6 available at page 284). After acceptance of closure report, respondent No.1 submitted representation to the petitioner praying therein to release the payments (Annexure R-7 page 305). Though respondent was assured that payments shall be made expeditiously, but since no steps were taken in that regard, respondent No.1 filed online complaint through CPGRAM on PM Portal regarding the stoppage of payment.

5. On 2.9.2015, petitioner filed detailed reply to the above mentioned complaint lodged by respondent No.1, thereby refusing to release the payment on the ground that appropriate action will be taken once investigation is brought to logical conclusion. Though respondent No.1 attempted to persuade the petitioner that on account of acceptance of closure report submitted by CBI, investigation initiated in the month of July 2007 has come to an end, but since no heed was paid to the aforesaid submission of respondent No.1, on 1.10.2016, respondent No.1 made a reference to the MSEFC under Section 18 of the MSMED Act.

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

> 18.Reference to Micro and Small Enterprises Facilitation Council.—
>
> (1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.
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> (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.
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> (3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section(1) of section 7 of that Act.
>
> (4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation

> Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.
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> (5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference."

7. Perusal of aforesaid provision contained in the Act clearly suggests that 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, which on receipt of a reference under sub-section (1), 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 shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

8. At this stage, it would be also apt to take note of Section 17 of the Act, which reads as under:

> "Recovery of amount due.—For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16."

9. As per aforesaid provision of law, buyer shall be liable to pay the amount with interest thereon as provided under section 16 to the supplier, for any goods supplied or services rendered by the supplier.

10. Section 16 reads as under:

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

11. Aforesaid provision of law suggests that where any buyer fails to make payment of the amount to the supplier, as required under Section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank. In nutshell, afore clause seeks to specify the date from which and the rate at which interest will be payable by the buyer to the supplier in case of the former failing to make payments of the amount to the supplier as required under Section 15.

12. Section 15, which provides for liability of buyer to make payment, reads as under:

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

13. As per afore provision of law, a buyer shall make payment on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day.

14. "**Appointed day**" has been defined under Section 2 (b), which reads as under:

> "2(b) "appointed day" means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.
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> Explanation.—For the purposes of this clause,—
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> (i) "the day of acceptance" means,—
>
> (a) the day of the actual delivery of goods or the rendering of services; or
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> (b) where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier;

ii) "the day of deemed acceptance" means, where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services."

15. As per aforesaid provision of law, day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier would mean "appointed day".

16. Section 2 (d) defines "buyer". "Buyer" means *whoever buys any goods or receives any services from a supplier for consideration.* Similarly, "supplier" as has been defined under Section 2 (n), would mean *a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8 and includes **(i)** the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956); **(ii)** the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956); and **(iii)** any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises.*

17. In the case at hand, though at the first instance, an attempt was made by the Facilitation Council in terms of Section 18 of the Act, but since parties failed to resolve their dispute amicably, it vide order dated 6.3.2017, appointed Mr. George, learned District and Sessions Judge (Retd.), as Sole Arbitrator (respondent No.2) in terms of Section 18 (2) of the MSMED Act. Learned Arbitrator vide notice of appearance dated 17.3.2017, directed both the parties to appear on 20.4.2017. It was only after the said reference, the arbitration proceedings as per MSMED Act, commenced.

18. Being aggrieved and dissatisfied with appointment of afore Arbitrator, petitioner herein filed CWP No. 967 of 2017, praying therein inter-alia for relief of quashing of appointment of Arbitrator as well as reference made to MSEFC. Since dispute in question already stood adjudicated by the Arbitrator (Annexure R10 pages 326-327), said petition was disposed of as infructuous vide order dated 11.9.2018. On 5.3.2018, learned Arbitrator on the basis of pleadings as well as evidence adduced on record by the respective parties passed award thereby allowing claim petition of the petitioner in following manner:

> "(82. That after the consideration of the entire facts, circumstance of the dispute, evidence of the Claimant and Respondent, also taking into consideration the provisions of section 15, 16 & 17 of the MSMED Act of 2006 and the rules framed there under, I am constrained to allow the claim petition and I proceed to pass an award in favour of the Claimant and against the Respondent as under:
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> i) That the claimant is held to be entitled to recover a sum of Rs. 4, 80,35,154/- Principle amount plus Interest Rs

50,38,09,370/- Total Rs. 55,18,44,524/- (Rupees Fifty Five Crore Eighteen Lac Forty Four Thousand and Five Hundred Twenty Four Only) as Interest amount as detailed above in account statement dated 28.02.2018 in accordance with section 16 of MSMED Act 2006.

ii) That the Claimant is also held to be entitled to recover compound interest in accordance with the prevailing RBI interest rate on the amount referred to in clause (i) above as per the provision of section 16 & 17 of the MSMED Act 2006 from 01.03.2018 to the date of this award i.e.(05.03.2018).

iii) That the Claimant is also held to be entitled to recover compound interest in accordance with the prevailing RBI interest rate on amount refer to in clause (i) & (ii) above as per the provision of section 16 and 17 of the MSMED Act, 2006 from the date of this award i.e. 05.03.2018 till the date the Respondent pay the entire award amount to the Claimant.

iv) That the Claimant is also held to be entitled to recover a sum of Rs. 50,000/-(Fifty Thousand Only) on account of payment of the arbitration fees.

v) That the Claimant is also held to be entitled to recover lump sum amount of Rs. 1,00,000/- (Rs. One Lac Only) on account of the expenses incurred by the Claimant in filing of the reference application for conciliation proceedings as well as present arbitral proceedings in terms of the cost of the Claim petition, which include charges for clerkage, counsel fees, travelling expenses, the mental agony and harassment, the Claimant has undergone for the forced litigation etc.

vi) As such award is announced and published on 5th day of March, 2018."

19. Being aggrieved and dissatisfied with aforesaid award, petitioner has approached this Court in the instant proceedings, praying therein to set-aside the award on the grounds as set out in the petition.

20. If the objections raised/filed by the petitioner, are read in their entirety, it clearly suggests that primarily, challenge has been laid to award on the ground of limitation and claims being time barred. It has been urged by the petitioner that respondent herein filed reference nearly nine months of cause of action and as such, it being hopelessly time barred ought not have been entertained by the Facilitation Council. While raising aforesaid point it has been further submitted by the petitioner that respondent has not registered itself under Section 8 (1) of the MSMED Act, within the stipulated time and as such, it cannot be termed to be "supplier". If it is so, it is/was stopped from making reference to Facilitation Council. It has been further urged at the behest of the petitioner that claim relates to March 2006-May 2007, whereas reference came to be filed on 1.10.2016. As per Section 15 of MSMED Act, the cause of action would arise from the day following immediately after expiry of fifteen days from acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier. Since supplies were made upto May 2007, cause of action, if any, had accrued on June 2007, whereas petitioner made reference to MSEFC under Section 18 of the

MSMED Act on 1.10.2016. It has been further submitted at the behest of the petitioner that Vigilance/CBI inquiry does not extend limitation and merely by writing a letter on 2.9.2015, praying therein for release of amount, limitation cannot be extended.

21. Mr. Vir Bahadur Verma, learned Senior Panel Counsel, while referring to Section 15 of the MSMED Act, vehemently argued that cause of action, if any, in the case at hand, would arise from the day following immediately after expiry of fifteen days from acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier. He submitted that since supplies in terms of purchase order were made upto May 2007, coupled with the fact that in terms of Proviso to Section 15, in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance, cause of action, if any, to the petitioner on account of supplies made by it pursuant to purchase orders issued by the petitioner had accrued in the month of June 2007, whereas respondent made reference to MSEFC under Section 18 of the MSMED Act on 1.10.2016 after inordinate delay of nine years. He further submitted that mere submission of reply dated 2.9.2015 given by the petitioner to the online complaint submitted through CPGRAM on PM Portal dated 5.5.2015, thereby rejecting the claim of the petitioner on the ground that investigation is still pending, cannot be a reason for the respondent to claim that limitation would start from afore date, rather in all eventuality, limitation to claim payment qua the supplies made in terms of purchase order would necessarily start from June 2007.

22. In support of his aforesaid submission, Mr. Verma, placed reliance upon judgment passed by the Hon'ble Apex Court in **Silpi Industries v. Kerala SRTC (2021) 8 SCC 710**, wherein it came to be ruled that Limitation Act, 1963, applies to MSME arbitrations. He also placed reliance upon judgment passed by the Hon'ble Apex Court in **Sonali Power Equipments Pvt. Ltd. V. MSEB & Ors. 2025 SCC OnLine SC 1467**. He submitted that learned Arbitrator wrongly treated letter dated 2.9.2015 as acknowledgement of claims submitted by the respondent.

23. Mr. Verma, further submitted that MSMED Act was enacted on 2.10.2006 and Rules were notified in terms of the aforesaid Act on 12.10.2007, whereas respondent applied for registration on 10.3.2008 and certificate in that regard was issued on 23.10.2008. Mr. Verma argued that respondent No.1 has failed to register itself as a "supplier" under the MSMED Act within 180 days of the commencement of the Act. He submitted that certificate under Memorandum Part-II issued vis-à-vis under the MSMED Act in favour of the petitioner is dated 23.10.2008, which is beyond the period of contract as well as purchase order. He submitted that respondent No.1 could not have raised reference in respect of those contracts/purchase orders, which were prior to the date of certificate under Memorandum Part-II dated 23.10.2008. In support of his aforesaid submission, he made specific reference to Section 8 of the Act, which reads as under:

> "8. Memorandum of micro, small and medium enterprises.—(1) Any person who intends to establish,—
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> (a) a micro or small enterprise, may, at his discretion; or
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> (b) a medium enterprise engaged in providing or rendering of services may, at his discretion; or
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> (c) a medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), shall file the memorandum of micro, small or, as the case may be, of medium enterprise with such authority as may be specified by the State Government under sub-section (4) or the Central Government under sub-section (3):
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> Provided that any person who, before the commencement of this Act, established—
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> (a) a small scale industry and obtained a registration certificate, may, at his discretion; and
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> (b) an industry engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951),having investment in plant and machinery of more than one crore rupees but not exceeding ten crore rupees and, in pursuance of the notification of the Government of India in the erstwhile Ministry of Industry (Department of Industrial Development) number S.O. 477(E), dated the 25th July, 1991 filed an Industrial Entrepreneur's Memorandum,

shall within one hundred and eighty days from the commencement of this Act, file the memorandum, in accordance with the provisions of this Act.

(2) The form of the memorandum, the procedure of its filing and other matters incidental thereto shall be such as may be notified by the Central Government after obtaining the recommendations of the Advisory Committee in this behalf.

(3) The authority with which the memorandum shall be filed by a medium enterprise shall be such as may be specified, by notification, by the Central Government.

(4) The State Government shall, by notification, specify the authority with which a micro or small enterprise may file the memorandum.

(5) The authorities specified under sub-sections (3) and (4) shall follow, for the purposes of this section, the procedure notified by the Central Government under sub-section (2)."

24. Aforesaid provision provides for requirement of filing Memorandum of micro, small and medium enterprises with the authority specified by the State Government or Central Government under the provision of this Clause. It also empowers the Central Government to notify the procedure for filing of the memorandum and the authority with which memorandum shall be filed by the medium enterprise. Most importantly, it provides that memorandum shall be filed within 180 days from the commencement of the Act. He submitted that filing of reference under the MSMED Act was an afterthought to evade limitation. He submitted that though cause of action under the MSMED Act, if any, had arisen in favour of the petitioner from the appointed day i.e. June/July 2007, whereas reference came to be made to MSEFC under Section 18 of the MSMED Act, i.e. after an inordinate delay of nine years. He submitted that reference made under Section 18 of the MSMED Act after several years of cause of action is barred by limitation. While referring to the judgment passed in **Silpi Industries** (supra), Mr. Verma again reiterated that provisions of Limitation Act squarely applying to MSME Facilitation Proceedings, hence reference filed on 1.10.2016, being hopelessly time barred could not have been entertained. He further submitted that respondent was not registered under Section 8 at the time of transaction and thus, does not fall in the definition of category of "supplier" as defined under Section 2 (n). If it is so, provisions of MSMED Act are not attracted.

25. To the contrary, Mr. Sunil Mohan Goel, Senior Advocate, duly assisted by Mr. Vibhu Anshuman, Mr. Raman Jamalta and Mr. Vipul Sharda Advocates, submitted that though respondent No.1 registered itself with DIC on 22.12.2004 and started production on 30.4.2005 in terms of afore registration, but even otherwise, filing of EM-II registration within 180 days was not a mandatory requirement and as such, award does not suffer from any sort of infirmity or perversity. He submitted that purchase order relates to the period 2007, whereas MSMED Act came into existence in the year 2006. While referring to proviso to Section 8 of the Act, Mr. Goel, submitted that any person who before the commencement of the Act established a small scale industry and obtained a registration certificate, may at his discretion, shall within 180 days from the commencement of this Act, file the memorandum, in accordance with the provisions of this Act. While referring to Sub-Clause 4 of Section 8, Mr. Goel, submitted that the State Government shall, by notification, specify the authority with which a micro or small enterprise may file the memorandum. He submitted that on 1.8.2007, the Ministry of Micro, Small and Medium Enterprises Office of the Development Commissioner issued a notification clarifying that for micro and small enterprises and for medium enterprises rendering services there is no limitation of 180 days from 02.10.2006 for filing of the EM, rather it is voluntary for them and these enterprises can file EM anytime they decide to do. (Annexure R-4 available at Page282). In support of his afore submissions, Mr. Goel placed reliance upon judgment passed by the High Court of Allahabad, in FAO No. 1519 of 2017, titled as **Uttar Haryana Bijli Vitran Nigam Ltd. V. M/s P.M. Electronics Ltd.**

26. While responding to plea of the petitioner that its claims are barred by limitation, Mr. Goel submitted that Office of the Controller of Stores in the year June/July 2007 issued instructions to stop the payment against the Purchase Orders including those for which the material had already been supplied and delivered on the ground that materials were supplied at a much higher rate. He submitted that vigilance proceedings were initiated and later on a CBI

Enquiry was conducted into the matter and three cases were registered against the Respondent No.1, out of which two were at Chandigarh and one was in Delhi. However, vide order dated 07.01.2012, the CBI Court accepted the closure report filed by the CBI and closed the case. Though w.e.f. 5.11.2012 to 21.2.2014, various representations were issued by respondent No.1 to the petitioner, praying therein to release the payments, but no steps were taken in that regard, as a result thereof, respondent No.1 was compelled to file online complaint through CPGRAM on PM Portal on 5.5.2015. Respondent No. l issued a detailed reply on 02.09.2015 to the above-mentioned complaint, whereby for the first time, it denied the release of the payment citing the reason that appropriate action will be taken once investigation is brought to logical conclusion. He submitted that it is only after receipt of communication dated 2.9.2015, respondent No.1 could have made reference to the MSEFC under Section 18 of the MSMED Act. Lastly, Mr. Goel submitted that besides afore two grounds sought to be raised at the behest of the petitioner, no material worth credence has been placed on record to prove perversity, if any, in the impugned award. While referring to judgment dated 25.6.2025, passed by this Court in **CARBA No. 4 of 2025, titled as Union of India and Anr. V. M/s B S Ranbir and Company**, wherein this Court having taken note of various judgments rendered by the Hon'ble Apex Court has elaborately dealt with the scope in exercise of power under the Act to review the finding of an award, Mr. Goel, strenuously argued that present petition deserves outright dismissal.

27. Mr. Goel, submitted that jurisdiction conferred under Section 31 of the Act is fairly narrow and while exercising this power, this court does not sit in appeal over arbitral award and may interfere on merits on limited grounds provided under Section 34, Sub-Clause2 (b) (ii).

28. I have heard the learned counsel for the parties and carefully gone through the records.

29. Before ascertaining the correctness of rival claims/submissions made by the parties to the lis, this court finds it necessary to elaborate upon the scope of the Courts exercising jurisdiction under Section 34 to review the findings of an award passed by learned Arbitrator.

30. It is well settled that court while exercising power under Section 34 of the Act, does not sit in appeal over the arbitral award and may interfere on merits on the limited grounds provided under S.34(2)(b)(ii) i.e. if the award is against the public policy of India. In catena of judgments, Hon'ble Apex Court has held that as per legal position clarified through decision of Hon'ble Supreme Court prior to the amendments to the 1996 Act in 2015, a violation of Indian Public Policy, in turn, includes a violation of fundamental policy of Indian law, a violation of interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. It has been further held by the Hon'ble Apex Court that additionally, the concept of the "fundamental policy of Indian Law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice and Wednesbury reasonableness. 'Patent illegality' has been held to mean contravention of the substantive law of India, contravention of the 1996 Act and contravention of the terms of the contract.

31. A similar view, as stated above, has been taken by this Court in **K. Sugumar** v. **Hindustan Petroleum Corporation Ltd**., (2020) 12 SCC 539 where it has been observed that the contours of the power of the Court under Section 34 of the Act are too well established to require any reiteration. Even a bare reading of Section 34 of the Act indicates the highly constricted power of the civil court to interfere with an arbitral award. The reason for this is obvious. When parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum. Interference will be justified only in cases of commission of misconduct by the arbitrator, which can find manifestation in different forms including exercise of legal perversity by the arbitrator. Hon'ble Apex Court held as follows:

> "2. The contours of the power of the Court under Section 34 of the Act are too well established to require any reiteration. Even a bare reading of Section 34 of the Act indicates the highly constricted power of the civil court to interfere with an arbitral award. The reason for this is obvious. When parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum. Interference will be justified only in cases of commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator."

32. In **Dyna Technologies Private Limited** Versus **Crompton Greaves Limited,** (2019) 20 Supreme Court Cases 1, Hon'ble Supreme Court in Para-24 has been pleased to hold as under:

> "24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial

wisdom behind opting for alternate dispute resolution would stand frustrated."

33. Similarly, in **Parsa Kente Collieries Limited** Versus **Rajasthan Rajya Vidyut Utpadan Nigam Limited**, (2019) 7 Supreme Court Cases 236, Hon'ble Supreme Court has reiterated that construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair minded or reasonable person could do. Hon'ble Court further held that a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Hon'ble Court has also held that an award based on little evidence or no evidence, which does not measure up the quality of trained legal mind would not be held to be invalid on this score.

34. Similarly, in **Dyna Technologies Private Limited** (supra), Hon'ble Supreme Court also held that the Court should not interfere with an award merely because an alternative view on facts and interpretation of contract exists and the Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.

35. The Hon'ble Apex Court in **Welspun Specialty Solutions Limited** v. **Oil and Natural Gas Company Limited**, (2022) 2 SCC 382, has held that the purpose of Section 34 is to strike a balance between Court's appellate powers and integrity of the arbitral process. While interpreting public policy of India in the aforesaid judgment, Hon'ble Apex Court held that it cannot be said that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. It has been held as under:

> "23. The limited grounds provided under Section 34 of the Act, has been interpreted by this Court on numerous occasions. In this case at hand, the challenge of award is based on the fact that the same is against the public policy and patent illegality. Public policy as a ground of challenge has always been met with certain scepticism. The phrase 'public policy' does not indicate 'a catch-all provision' to challenge awards before an appellate forum on infinite grounds. However, the ambit of the same is so diversly interpreted that in some cases, the purpose of limiting the Section 34jurisdiction is lost. This Court's jurisprudence also shows that Section 34(2)(b) has undergone a lot of churning and continue to evolve. The purpose of Section 34 is

to strike a balance between Court's appellate powers and integrity of the arbitral process.

24. The first case, which expounded on the scope of 'public policy' was Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644, which inter alia provided that a foreign award may not be enforced under the said Act, if the court dealing with the case is satisfied that the enforcement of the award will be contrary to the public policy. After elaborate discussion, the Court arrived at the conclusion that public policy comprehended in Section 7(1)(b)(ii) of the Foreign Awards (Recognition and Enforcement) Act, 1961 is the "public policy of India" and does not cover the public policy of any other country.

25.For giving meaning to the term "public policy", the Court observed thus:

> "66. Article V(2)(b) of the New York Convention of 1958 and Section 7(1)(b)(ii) of the Foreign Awards Act do not postulate refusal of recognition and enforcement of a foreign award on the ground that it is contrary to the law of the country of enforcement and the ground of challenge is confined to the recognition and enforcement being contrary to the public policy of the country in which the award is set to be enforced. There is nothing to indicate that the expression 'public policy' in Article V(2)(b) of the New York Convention and Section 7(1)(b)(ii) of the Foreign Awards Act is not used in the same sense in which it was used in Article I(c) of the Geneva Convention of 1927 and Section 7(1) of the Protocol and Convention Act of 1937. This would mean that 'public policy' in Section 7(1)(b)(ii)has been used in a narrower sense and in order to attract the bar of public policy the enforcement of the award must invoke something more than the violation of the law of India. Since the Foreign Awards Act is concerned with recognition and enforcement of foreign

> awards which are governed by the principles of private international law, the expression 'public policy' in Section 7(1)(b)(ii) of the Foreign Awards Act must necessarily be construed in the sense the doctrine of public policy is applied in the field of private international law. Applying the said criteria it must be held that the enforcement of a foreign award would be refused on the ground that it is contrary to public policy if such enforcement would be contrary to (i) fundamental policy of Indian law; or (ii) the interests of India; or (iii) justice or morality."

25.In **ONGC Ltd.** v. **Saw Pipes Ltd.,** (2003) 5 SCC 705, the scope of Section 34 was expanded to include patent illegality as a ground for challenging the award and held as under :

> "31. Therefore, in our view, the phrase 'public policy of India' used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest.

Such award/judgment/decision is likely to adversely affect the administration of justice.

Hence, in our view in addition to narrower meaning given to the term 'public policy' in Renusagar case [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] it is required to be held that the award could be set aside if it is patently illegal. The result would be—award could be set aside if it is contrary to:

(a) fundamental policy of Indian law; or

(b) the interest of India; or

(c) justice or morality, or

(d) in addition, if it is patently illegal.

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void.

(…)

74. In the result, it is held that:

(A)(1) The court can set aside the arbitral award under Section 34(2) of the Act if the party making the application furnishes proof that:

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration.

(2) The court may set aside the award:

(i)(a) if the composition of the Arbitral Tribunal was not in accordance with the agreement of the parties,

(b) failing such agreement, the composition of the Arbitral Tribunal was not in accordance with Part I of the Act,

(ii) if the arbitral procedure was not in accordance with:

(a) the agreement of the parties, or

(b) failing such agreement, the arbitral procedure was not in accordance with Part I of the Act. However, exception for setting aside the award on the ground of composition of Arbitral Tribunal or illegality of arbitral procedure is that the agreement should not be in conflict with the provisions of Part I of the Act from which parties cannot derogate.

(c) If the award passed by the Arbitral Tribunal is in contravention of the provisions of the Act or any other substantive law governing the parties or is against the terms of the contract.

(3) The award could be set aside if it is against the public policy of India, that is to say, if it is contrary to:

(a) fundamental policy of Indian law; or

(b) the interest of India; or

(c) justice or morality; or

(d) if it is patently illegal.

(4) It could be challenged:

(a) as provided under Section 13(5); and

(b) Section 16(6) of the Act."

36. Hon'ble Supreme Court in **UHL Power Company Limited** Versus **State of Himachal Pradesh**, (2022) 4 Supreme Court Cases 116, while reiterating the above mentioned legal position has reiterated that under Section 34 of the Act, the High Court cannot re-appreciate the findings returned by learned Arbitral Tribunal and take a different view in respect of interpretation of relevant clauses of the agreement governing the parties. Hon'ble Court has observed that the High Court cannot act as a Court of appeal and the powers conferred under Section 34 of the Act are fairly narrow. While placing reliance upon **MMTC Limited Versus Vedanta Limited**, (2019) 4 Supreme Court Cases 163, Hon'ble Apex Court has held that jurisdiction conferred upon court under S.34 is squarely narrow.

37. Reliance is also placed upon judgment dated 11.8.2023, passed by the Hon'ble Apex Court in **Civil Appeal No. 3798 of 2023** titled as **Larsen Air Conditioning and Refrigeration Company v. Union of India**, wherein it has been held that Section 34 the Act, permits the Court to interfere with an award sans the grounds of patent illegality i.e. illegality must go to the root of the matter and cannot be of a trivial nature. Relevant paras of the afore judgment reads as under:

> "15. The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality, i.e., that "illegality must go to the root of the matter and cannot be of a trivial nature"; and that the tribunal "must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground" [ref: Associate Builders (supra)]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34. It is important to notice that the old Act contained a provision (15. Power of court to modify award.—The court may by order modify or correct an award— (a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or (b) where the award is

imperfect in form, or contains any obvious error which can be amended without affecting such decision; or (c) where the award contains a clerical mistake or an error arising from an accidental slip or omission.) which enabled the court to modify an award. However, that power has been consciously omitted by Parliament, while enacting the Act of 1996. This means that the Parliamentary intent was to exclude power to modify an award, in any manner, to the court. This position has been iterated decisively by this Court in Project Director, National Highways No. 45E and 220 National Highways Authority of India v M. Hakeem (2021) 5 SCR 368.

42. It can therefore be said that this question has now been settled finally by at least 3 decisions [McDermott International Inc. v. Burn Standard Co. Ltd.13], [Kinnari Mullick v. Ghanshyam Das Damani14], [Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies (P) Ltd.15] of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the Uncitral Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in Redfern and Hunter on International Arbitration, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the "limited remedy" under Section 34 is coterminous with the "limited right", namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996."

38. Similarly, in **Konkan Railway Corporation Ltd v. Chenab Bridge Project Undertaking, 2023 (9) SCC 85**, the Hon'ble Apex Court has held that jurisdiction of the Court under Section 37 of the Act is akin to that under Section 34 of the Act, as such, the courts ought not to interfere with arbitral award in a casual and cavalier manner. Most importantly, the Hon'ble Apex Court held that mere possibility of an alternative view on facts or interpretation of contract does not entitle Courts to reverse findings of the Arbitral Tribunal. Relevant paragraphs from the decision are as follows:-

> "19. Therefore, the scope of jurisdiction under Section 34 and Section 37 of the Act is not akin to normal appellate jurisdiction (UHL Power Company Ltd. v. State of Himachal Pradesh (2022) 2 SCC (Civ) 401, para 15. See also: Dyna Technologies Pvt Ltd v. Crompton Greaves Limited (2019) 20 SCC 1, para 24, 25). It is well-settled that courts ought not to interfere with the arbitral award in a casual and cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle courts to reverse the findings of the Arbitral Tribunal (Ssangyong Engineering. & Construction Company Ltd. v. National Highways Authority of India (NHAI) (2019) 15 SCC 131; Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., (2019) 7 SCC 236, para 11.1). In Dyna Technologies Private Limited v. Crompton Greaves Limited (2019) 20 SCC 1, this Court held:
>
> > "24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier

> manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.
>
> 25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.

XX XX XXX

25. The principle of interpretation of contracts adopted by the Division Bench of the High Court that when two constructions are possible, then courts must prefer the one which gives effect and voice to all clauses, does not have absolute application. The said interpretation is subject to the jurisdiction which a court is called upon to exercise. While exercising jurisdiction under Section 37 of the Act, the Court is concerned about the jurisdiction that the Section 34 Court exercised while considering the challenge to the Arbitral Award. The jurisdiction under Section 34 of the Act is exercised only to see if the Arbitral Tribunal's view is perverse or manifestly arbitrary.

Accordingly, the question of reinterpreting the contract on an alternative view does not arise. If this is the principle applicable to exercise of jurisdiction under Section 34 of the Act, a Division Bench exercising jurisdiction under Section 37 of the Act cannot reverse an Award, much less the decision of a Single Judge, on the ground that they have not given effect and voice to all clauses of the contract. This is where the Division Bench of the High Court committed an error, in re-interpreting a contractual clause while exercising jurisdiction under Section 37 of the Act. In any event, the decision in Radha Sundar Dutta (supra), relied on by the High Court was decided in 1959, and it pertains to proceedings arising under the Village Chaukidari Act, 1870 and Bengal Patni Taluks Regulation of 1819. Reliance on this judgment particularly for interfering with the concurrent interpretations of the contractual clause by the Arbitral Tribunal and Single Judge under Section 34 of the Act is not justified."

39. In **Bombay Slum Redevelopment Corporation Pvt. Ltd. Vs. Samir Barain Bhojwani (2024) 7 SCC 218**, the Hon'ble Apex Court reiterated that supervisory role of Courts is very restricted in dealing with appeals under Section 37 of the Act. Hon'ble Apex Court has further held that scope of interference in a petition under Section 34 of the Act is very narrow and jurisdiction under Section 37 of the Act is very narrower. Hon'ble Apex Court further held that since parties to the lis themselves chose to go before the Arbitral Tribunal instead of availing remedy before the traditional Civil Courts, Courts must be very conservative while dealing with arbitral awards and confine themselves to the grounds strictly available under Section 34 of the Act.

40. In **Reliance Infrastructure Ltd. vs. State of Goa (2024) 1 SCC 479**, Hon'ble Apex Court interpreting expression 'patent illegality' held that mere a mere illegality is not a patent illegality, rather to infer patent illegality, illegality must be apparent on the face of the award and not the one which is culled out by way of a long drawn analysis of pleadings and evidence. Relevant paragraphs of the afore judgment are being reproduced as under:

> "57. As noticed, arbitral award is not an ordinary adjudicatory order so as to be lightly interfered with by the Courts under Sections 34 or 37 of the Act of 1996 as if dealing with an appeal or revision against a decision of any subordinate Court. The expression "patent illegality" has been exposited by this Court in the cases referred hereinbefore. The significant aspect to be reiterated is that it is not a mere illegality which would call for interference, but it has to be "a patent illegality", which obviously signifies that it ought to be apparent on the face of the award and not the one which is culled out by way of a long-drawn analysis of the pleadings and evidence.
>
> 58. Of course, when the terms and conditions of the agreement governing the parties are completely ignored, the matter would be different and an award carrying such a shortcoming shall be directly hit by Section 28(3) of the Act, which enjoins upon an Arbitral Tribunal to decide in accordance with the terms of contract while taking into account the usage of trade applicable to the transaction. As said by this Court in Associate Builders vs. DDA9, if an Arbitrator construes the term of contract in a

> reasonable manner, the award cannot be set aside with reference to the deduction drawn from construction. The possibility of interference would arise only if the construction of the Arbitrator is such which could not be made by any fairminded and reasonable person.
>
> 95. The narrow scope of "patent illegality" cannot be breached by mere use of different expressions which nevertheless refer only to "error" and not to "patent illegality". We are impelled to reiterate what has been stated and underscored by this Court in Delhi Airport Metro Express (P) Ltd. Vs. DMRC10 that restraint is required to be shown while examining the validity of arbitral award by the Courts, else interference with the award after reassessing the factual aspects would be defeating the object of the Act of 1996. This is apart from the fact that such an approach would render several judicial pronouncements of this Court redundant if the arbitral awards are set aside by categorizing them as "perverse" or "patently illegal" without appreciating the contours of these expressions."

41. In **S.V. Samudram vs. State of Karnataka (2024) 3 SCC 623**, the Hon'ble Apex Court has concluded that though jurisdiction of Court under Section 34 is fairly narrow and moreover, when it comes to jurisdiction under Section 37, it is all the more circumscribed. The relevant paras of the afore judgment read as under:-

> "46. It has been observed by this Court in MMTC Ltd. v. Vedanta Ltd. (2019) 4 SCC 163.
>
> > "14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an

> independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings." (Emphasis Supplied)

47. This view has been referred to with approval by a bench of three learned Judges in UHL Power Company Ltd v. State of Himachal Pradesh (2022) 4 SCC 116. In respect of Section 37, this court observed:-

> "16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed."

xx xx xx

49. We may also notice that the circumscribed nature of the exercise of power under Sections 34 and 37 i.e., interference with an arbitral award, is clearly demonstrated by legislative intent. The Arbitration Act of 1940 had a provision (Section 15) which allowed for a court to interfere in awards, however, under the current legislation, that provision has been omitted (Larsen Air Conditioning and Refrigeration Company v. Union of India and Ors. 2023 SCC OnLine 982 (2-Judge Bench).

50. The learned Single Judge, similar to the learned Civil Judge under Section 34, appears to have not concerned themselves with the contours of Section 37 of the A&C Act. The impugned judgment (S.V. Samudram v. State of Karnataka, 2017 SCC OnLine Kar 6559) reads like a judgment rendered by an

appellate court, for whom reexamination of merits is open to be taken as the course of action."

42. It is quite apparent from the aforesaid exposition of law laid down by the Hon'ble Apex Court that scope of interference by this Court while exercising power under Section 34 of the Act is very very limited. Courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists, rather courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Act.

43. Now being guided by aforesaid law on the subject, this Court shall make an attempt to ascertain the correctness of the claim put forth at the behest of the petitioner that award is vitiated by the patent illegality on the face of it or not?

44. In the case at hand, grounds as raised by the petitioner if read in their entirety, clearly suggest that neither specific ground with regard to award being against public policy nor of patent illegality, has been taken. Primarily, challenge has been laid to the award on the ground that reference was filed nine years after cause of action arose, as such, could not have been entertained and secondly, claims being hopelessly time barred could not have been accepted. In nutshell, case of the petitioner is that respondent No.1 filed its EM-2 before DIC on 10.3.2008 and was granted the said memorandum on 23.10.2008. As per petitioner, period of 180 days as mentioned in Section 8 (1) of MSMED Act was mandatory in nature and since the filing of EM-2 was beyond the period of 180 days, respondent No.1 cannot be termed as "supplier" within the meaning of the Section 2 (n) of the MSMED Act. Much stress has been placed upon Section 8 of the Act at the behest of the petitioner to state that any person, who intends to establish a medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951, having investment in plant and machinery for more than One Crore, but not exceeding Ten Crores, shall within 180 days from the commencement of this Act, file the memorandum, in accordance with the provisions of this Act. Since filing of EM-II was beyond the period of 180 days, it cannot be termed as "supplier" within the definition of Section 2 (n) of the Act.

45. Mr. V.B. Verma, learned Senior Panel counsel, further referred to Sections 15 to 18 of the MSMED Act, as have been reproduced herein above, to state that since respondent No.1 does not fall in the definition of "supplier" as provided under Section 2 (n) of the Act, he could not have made reference to Facilitation Council in terms of Section 18. He submitted that transaction between petitioner and respondent was not in the capacity of "buyer" and "supplier" because respondent did not execute tender in the capacity of "supplier". While referring to judgment passed by the Hon'ble Apex Court in **Silpi Industries** (supra), it came to be argued at the behest of the petitioner that the seller should have registered under the provisions of the Act as on the date of entering the contract. Section 18 cannot be invoked by an enterprise if it has not filed a memorandum under Section 8 of the Act before entering into a contract. Mr. Verma further submitted that registration prior to contract is a mandatory condition for invoking Section 18 and where there is no registration, Section 18 cannot be resorted to. He submitted that since learned Arbitrator ignored the aforesaid crucial aspect of the matter while passing impugned award, impugned award needs to be interfered with on the ground of patent illegality. Admittedly, in the case at hand, respondent No.1 registered itself with DIC on 22.12.2004 and started production from 30.4.2005 in terms of afore registration. Proviso to Section 8 of MSMED Act provides that any person who before the commencement of the Act established a small scale industry and obtained a registration certificate, may at his discretion, shall within 180 days from the commencement of this Act, file the memorandum in accordance with the provisions of this Act. Sub-Clause 4 of Section 8 states that the State Government shall, by notification, specify the authority with which a micro or small enterprise may file the memorandum. Though it is apparent from the aforesaid provision of law that if any person, who has established a small scale industry and obtained a registration certificate, may at his discretion, shall within 180 days from the commencement of the Act, file the memorandum in accordance with the provisions of this Act, but on 1.8.2007, the Ministry of Micro, Small and Medium Enterprises Office of the Development Commissioner issued a notification clarifying therein that for micro and small enterprises and for medium enterprises rendering services, there is no limitation of 180 days from 02.10.2006 for filing of the EM, rather it is voluntary for them and they can file EM anytime they decide to do.

46. At this stage it would be apt to take note of document titled as "**Entrepreneurs Memorandum (Part-II) Data on MSME Sector**" published by the Development Commissioner (Micro, Small & Medium Enterprises) Ministry of Micro, Small & Medium Enterprises, wherein it has been written as under:

> PARA-2 "As per the provisions of the Act, MSMEs file Entrepreneurs Memorandum (Part-1) at District Industries Centres (DICs). After commencement of the project, the entrepreneur concerned files Entrepreneurs Memorandum (Part-II) / [EM-II]. Prior to enactment of the Micro, Small & Medium Enterprises Development Act, 2006 (MSMED Act, 2006) there was a system of registration by small scale industrial units to the DICs. Now, filing of EM-II is discretionary for micro, small and medium enterprise engaged in both manufacturing and services. However, it is mandatory for medium scale enterprise engaged in manufacture or production of goods pertaining to any industry specified in the First Schedule of the ID&R Act, 1951."

47. It is apparent from the aforesaid notification as well as MSMED Act that filing of the EM-II registration within a period of 180 days was not a mandatory requirement for respondent No.1, as such, the award does not suffer with any sort of infirmity or perversity on the afore count.

48. In Similar facts and circumstances, in **Uttar Haryana Bijli Vitran Nigam Ltd** (supra), held as under:

> "83. We have carefully analyzed the submissions urged by learned counsel for parties. It is an undisputed fact that Court below has relied upon the notification bearing No. 2/311123007-MSNE POL (PL) to arrive at conclusion that it is not mandatory for an Industrial undertaking to file its Industrial Entrepreneur's Memorandum. Since this was the only ground relied upon by Uttar Pradesh State Micro and Small Industrial Facilitation Council, Kanpur, the finding so recorded by Council was rightly set aside by Court below. In the absence of any such materials to establish that filing of Industrial Entrepreneur's Memorandum is mandatory, we uphold the finding recorded by the Court below."

49. There cannot be any quarrel with proposition of law laid down in **Silpi Industries** (supra) that seller should have registered under the provisions of the Act as on the date of entering the contract and Section 18 cannot be invoked by an enterprise if it has not filed a memorandum under Section 8 of the Act before entering into a contract. Admittedly, in the case at hand, respondent stood registered under the provisions of the act before placement of purchase orders by the buyer in the year 2007. Respondent registered itself with DIC on

22.12.2004 and started production on 30.4.2005. Though as per proviso to Section 8 of the Act, any person who before the commencement of the Act established a small scale industry and obtained a registration certificate, may at his discretion shall within 180 days from the commencement of this Act, file the memorandum, in accordance with the provisions of this Act, but Sub-Clause 4 of Section 8, clearly provides that the State Government shall, by notification, specify the authority with which a micro or small enterprise may file the memorandum. In the case at hand, on 1.8.2007, the Ministry of Micro, Small and Medium Enterprises Office of the Development Commissioner issued a notification clarifying therein that for micro, small and medium enterprises rendering services, there is no limitation of 180 days from 02.10.2006 for filing of the EM, rather it is voluntary for them and they can file EM anytime they decide to do. Ministry of Micro, Small and Medium Enterprises specifically in document called as Entrepreneurs Memorandum (Part-II) Data on MSME Sector, taking note of the provisions of the Act, clarified that though there was a system of registration by small scale industrial units to the DICs, but now filing of EM-II is discretionary for micro, small and medium enterprise engaged in both manufacturing and services, however, same is mandatory for medium scale enterprise engaged in manufacture or production of goods pertaining to any industry specified in the First Schedule of the ID&R Act, 1951.

50. Close scrutiny of award laid challenge in the instant proceedings, clearly reveals that learned Arbitrator having taken note of the provisions contained in the Act as well as afore clarification issued by the Ministry of Micro, Small and Medium Enterprises, has proceeded to hold that for micro, small and medium enterprises rendering service, there is no limitation of 180 days from 2.10.2006 for filing EM.

51. Scheme of Chapter 5 of MSMED Act if perused in its entirety, clearly suggests that specific mechanism has been provided for the recovery of delayed payments to micro and small enterprises by the buyer from the time, the appointed day, or as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

52. Though there is no dispute that provision of Special Act would prevail upon the General Law, but Hon'ble Apex Court in **Silpi Industries** (supra) has categorically held that provision of Limitation Act, 1963, would apply to MSME Facilitation Proceedings and as such, this Court need not to go into the aforesaid aspect of the matter. Admittedly, purchase order, in the case at hand, pertains to year 2007, whereas respondent initiated proceedings before Facilitation Council in the year 2016 i.e. after nine years of placement of purchase orders. Documents adduced on record before this court as well as learned Arbitrator clearly reveal that the Office of the Controller of

Stores, in the month of June/July 2007 issued instructions to stop the payment against the purchase orders including those for which the material had already been supplied and delivered on the ground that material was supplied at much higher rate. At the first instance, vigilance proceedings were initiated, but subsequently, matter was handed over to CBI for investigation, which after having conducted investigation, filed closure report in the learned CBI Court. Vide order dated 7.1.2012, court accepted the closure report filed by the CBI and closed the case. It stands duly proved on record that w.e.f. 5.11.2012 to 21.2.2014, respondent No.1 repeatedly requested the petitioner to release the payments, but in vain, as a result thereof, respondent No.1 was compelled to file online complaint through CPGRAM on PM Portal on 5.5.2015. In response to aforesaid complaint, petitioner issued a detailed reply on 02.09.2015, thereby denying the release of the payment on the ground that appropriate action will be taken once investigation is brought to logical conclusion. Though CBI had already filed closure report and no further proceedings were ever taken in the superior court of law but yet, payments were not released and as such, respondent No.1 had no option but to approach Facilitation Council.

53. Though Mr. Verma, attempted to argue that respondent ought to have made reference to the Facilitation Council in the year 2007, when after expiry of 45 days from the date of demand, no payment was made, but once it is not in dispute that in the month of

June/July 2007, vigilance wing of petitioner department itself issued instructions to stop the payment against the purchase orders and investigation remained pending with CBI till passing of order dated 7.1.2012 by the learned CBI Court, there was no occasion, if any, for the respondents to raise any claim during the aforesaid period. Once CBI Court exonerated respondent No.1, it started approaching the petitioner to make the payment. Though on every occasions petitioner assured that payment would be released, however, on 2.9.2015, for the first time denied any liability and stated that it is not fit case for releasing the payment. With the issuance of communication dated 2.9.2015, fresh cause of action came to be accrued in favour of the petitioner to initiate arbitration proceedings.

54. Facilitation Council has statutory power under Sub Section 3 of Section 18, where the conciliation is not successful, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre. Since conciliation was unsuccessful, Facilitation Council appointed Arbitrator for resolving the dispute/reference under Section 18 of the Act. Question of limitation in the present case does not arise as respondent adduced on record communication dated 3.12.2015, addressed to the claimant industry under the signature of Mr. Vinay Srivastava, Dy. CMM/HQ alongwith copy of letter dated 2.9.2015, when for the first time, the claimant i.e. respondent No.1 was informed about the fact that railway administration does not find it a fit case for release of the payment/withdrawal of the cancellation of purchase order involved, giving claimant a right to apply for arbitration under Section 21 of the Arbitration and Conciliation Act 1996 as well as Article 137 “under Part II” i.e. other application of the Schedule of the Limitation Act 1963 and ultimately claimant filed the reference under Section 18 (1) of the MSMED Act on 1.10.2016, within a period of one year from the date right to apply for arbitration accrued i.e. 3.12.2015.

55. Though having regard to the nature of dispute, this Court need not to go into the question of fraud, if any, committed by the respondent in connivance with the officials of the railway i.e. petitioner, but if evidence led on record by the respective parties is read in its entirety, it clearly reveals that CBI was unable to find that respondent supplied the material to the petitioner in terms of purchase order on exorbitant rates in connivance with the railway officials. Matter was firstly taken for inquiries by the N.R. Vigilance Department and the payment of due amount of claimant was ordered to be withheld till the time matter is not cleared by the afore Vigilance Department. Record also reveals that in the meanwhile, matter was reported to CBI, as a result thereof, as many as 4 RC (Regular cases) were registered during the period 2009 an 2010 qua allegations regarding corruption in purchase matter. The complaints had their origin to a preventive check carried out by the Vigilance Branch of

Northern Railways in the purchase cases. Though in depth investigation was carried out by Vigilance Branch of Northern Railways as well as CBI, however nothing was found against the respondent as well as railway officials and as such, CBI Court filed last closure report on 30.9.2011, which was ultimately accepted by Special Judge (PC Act) CBI-2 New Delhi on 7.1.2012, wherein it specifically came to be stated that there is no evidence of criminal conspiracy and misuse of official position.

56. Since till filing of the closure report, investigation against the respondent No.1 as well as other railway official was in progress, there was otherwise no occasion for the respondent to file reference petition before MSEFC under Section 18 of the MSMED Act. Immediately after filing of the closure report, respondent No.1 approached the petitioner for release of amount but no reply to the same was given, as a result thereof, petitioner filed online complaint on 5.5.2015 on PM Portal for stoppage of payment. In response to aforesaid complaint, respondent No.1 for the first time gave detailed reply on 2.9.2015, thereby refuting the claim of the petitioner. Since on 2.9.2015, for the first time, petitioner refused to release the payments, cause of action accrued to the respondent for initiating proceedings under MSMED Act.

57. Moreover, careful perusal of reply dated 2.9.2015, submitted by respondent nowhere suggests that petitioner refused to release the payment on the ground of limitation, rather it came to be stated at the behest of the petitioner that appropriate action will be taken once investigation is brought to the logical conclusion, meaning thereby,, prayer made by respondent No.1 for release of payment is/was still under consideration. Since prior to issuance of aforesaid communication dated 2.9.2015, no communication was ever exchanged *inter se* petitioner and respondent with regard to release of payment, especially wherein, petitioner proceeded to reject the claim of respondent No.1 on the ground of limitation, there was no occasion, if any, for respondent No.1 to make reference to initiate proceedings under MSMED Act prior to receipt of reply dated 2.9.2015. By sending communication dated 2.9.2015, petitioner itself acknowledged the existence of the claim as subsequently came to be put forth by the petitioner in the proceedings initiated under MSMED Act. Since after closure of CBI proceedings, matter with regard to release of payment remained pending with the petitioner, for want of legal advises as well as clearances given by the higher authorities and ultimately it vide communication dated 2.9.2015 refused to release the payment that too by stating that appropriate action will be taken once investigation is brought to logical conclusion, this court does not see any reason to find any fault with the finding returned by learned Arbitrator in the award in as much as it proceeded to hold the claim put forth by respondent No.1 are not barred by limitation.

58. Even otherwise, once respondent No.1 initiated proceedings under the Act, the petitioner took a decision for unilateral appointment of the Arbitrator by the Railways to decide the quantum of payment, which shows that petitioner was treating the denial dated 2.9.2015 as cutoff date for initiating the proceedings.

59. It is a matter of record that respondent No.1 vide letter dated 1.10.2016 filed petition under Section 18(1) of the MSMED Act and Rule 4(6) of Himachal Pradesh Micro and Small Enterprise Facilitation Council Rules, for due payment against the purchase orders placed by section of Store Head Quarters through limited tender during March/May 2007, whereas petitioner took a decision for appointment of Arbitrator by the railways to decide the quantum of payment from the level of SMM/sig to the level of PCMM Northern Railway on 29.12.2017, which means that till 29.12.2017, no decision was taken for referring the dispute to an Arbitrator for arbitration proceedings, therefore, under no circumstances, it can be said that claim petition dated 1.10.2016 filed by the claimant is barred by law of limitation as has been argued/urged on behalf of petitioner by Mr. Vir Bahadur Verma, learned Senior Panel Counsel.

60. Having scanned the award laid challenge in the instant proceedings vis-à-vis various claims put forth by the respective parties, this Court sees no reason to interfere in the same, especially when nothing has been adduced on record by the petitioner to demonstrate that amount awarded qua the claims is/was outside the ambit of purchase order. Mr. Verma, also failed to demonstrate that how award passed by the learned Arbitrator is in contravention of Section 34 of the Act and as such, award being strictly in conformity with substantive law in force deserves to be upheld. Needless to say, an arbitral award is not liable to be interfered with only on the ground that award is illegal or erroneous in law that too upon reappraisal of the evidence adduced before the learned Arbitrator, meaning thereby, award which may not be reasonable or is non-speaking to some extent cannot be ordinarily interfered with by the courts.

61. In the instant case, save and except, grounds as have been dealt with hereinabove, no grounds have been raised. Otherwise also, careful perusal of impugned award reveals that grounds raised in the present case have been elaborately dealt with by the learned Arbitrator while passing impugned award. Since learned Arbitrator has dealt with each and every aspect of the matter very meticulously, there appears to be no justification for this Court to interfere with the impugned award.

62. Consequently, in view of the detailed discussion made herein above and law taken into consideration, this Court finds no merit in the present case and as such, same is dismissed being devoid of any merit.

November 20, 2025 **(Sandeep Sharma),**
(manjit) **Judge**