(2024) 10 BOM CK 0015

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 6690 Of 2024

Mr Sarojkumar Ramchandra Gonjari		APPELLANT
	Vs	
State Of Maharashtra Through Its Chief Secretary		RESPONDENT

Date of Decision: Oct. 22, 2024

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Arbitration and Conciliation Act, 1996 - Section 25, 34, 65, 67, 76, 80, 81
- Micro Small and Medium Enterprises Development Act, 2006 - Section 18, 18(2), 18(3), 19

Hon'ble Judges: Arun R. Pedneker, J

Bench: Single Bench

Advocate: Prasad Sapte, Saurabh Kokane, N. D. Raje, Pawan K. Lakhotiya

Final Decision: Dismissed

Judgement

Arun R. Pedneker, J

1. By the present petition, the petitioner challenges the impugned order (award) dated 02.02.2024, in case No.MH/04/ard/00100 for being in violation

of the statutory law, for being patently illegal, invalid and against the principles of natural justice. The petitioner has invoked the jurisdiction of this court

to challenge the â€˜Awardâ€™, contending that the award is ex-facie illegal and does not constitute an award within the meaning of and as

contemplated under Section 18 of the Micro Small and Medium Enterprises Development Act, 2006 (for brevity â€œMSMED Actâ€) and, as such,

submits that without invoking the remedy of appeal as is available under Section 34 of the Arbitration Act, the petitioner has approached this court

invoking jurisdiction of this court under Articles 226 227 of the Constitution of India for quashing the said order as being patently illegal.

2. Facts as pleaded in the petition are briefly summarized as under:

A] The petitioner is a private limited company registered under the provisions of the Companies Act having itâ€™s registered office at Gut

No.1258/1259, Sanaswadi, Nagar Road, Pune.

B] The petitioner entered into a supplier agreement with respondent no.3 effective from 12.04.2019. The petitioner, also entered into separate

agreements i.e. duroshox supplier agreement and duroshox supplier quality agreement dated 07.05.2019 as reflected in e-mail dated 03.06.2019 and

22.10.2019 and other correspondence between the parties, which includes supply manual and other forms of binding contracts between the parties.

C] It is the contention of the petitioner that respondent no.3 was mandated to manufacture and supply the material, as specified in the agreement and

in the purchase orders raised by the petitioner. It is contended that the petitioner later on realized that the material supplied by respondent no.3 was

lacking in quality and faulty in nature and the same was duly communicated to respondent no.3 along with the demand of undertaking corrective

measures. The faulty nature of the material was also testified by various audits and tests conducted by the petitioner. It is further stated that after the

serious of communications regarding supply of the defective materials and acknowledgment of the respondent no.3 to the same, the petitioner through

communication in this regard rejected the materials supplied by respondent no.3. As respondent no.3 failed to remediate / replace defective supplies,

the petitioner was exposed to incur huge remediation costs, cost for replacement of materials, transportation cost and cost for packaging.

D] RespondentÂ no.3Â beingÂ aÂ mediumÂ andÂ smallÂ scale industry under Section 18 of the MSMED Act filed a claim i.e. application

No.UDYAM-HM-04-0017041/s/00002, thereby demanding an outstanding amount of Rs.4,53,87,615/- (Rupees Four Crore Fifty Three Lakhs Eighty

Seven Thousnad Six Hundred and Fifteen) and the interest of Rs.31,46,612/- (Rs. Thirty One Lakhs Fourty Six Thousand Six Hundred Twelve). It is

stated that the matter was taken up by the MSME Council on 11.04.2023, wherein the Roznama entry is reproduced is as under:

Petition , say

/ / , mutual ( ) .

ENGLISH TRANSLATION

Â â€œThe plaintiff has given the copy of the petition and other related documents to the defendant today, the defendant should submit their statement by

02.05.2023, after which further action will be taken, before that efforts should be made for the mutual settlement.â€

E] It is further stated that the petitioner in response to the claim had filed the details reply dated 02.05.2023 and a counter claim dated 02.05.2023 and

an application under Section 25 of the Arbitration and Conciliation Act, 1996 (for brevity â€œthe Arbitration Actâ€) for dismissal of the application

no.UDYAM-HM-04-0017041 / s / 00002 and / or case No.MH/04/ard/00100.

F] It is further stated that the matter was then taken up by the court, on 16.05.2023, wherein respondent no.3 was given time till 29.05.2023 to file

reply to the counter claim dated 02.05.2023 and application under Section 25 of the Arbitration Act. Respondent no.3 submitted itâ€™s reply to the

application under Section 25 dated 26.05.2023 and reply to the counter claim dated 26.05.2023.

G] It is further stated that on 07.07.2023, the petitioner via purshis made an application to respondent no.2 that no settlement being arrived between

the parties. Respondent No.2 under provisions of Section 18(3) of the Act ought to have referred the matter for arbitration in accordance with the

provisions of the Arbitration Act.

H] Thereafter, respondent no.2 passed final order dated 02.02.2024, ordering the petitioner to pay outstanding amount of Rs.4,53,87,615/- amongst

other directions.

a] The order dated 02.02.2024 is challenged in the present proceedings on various grounds. The learned counsel for the petitioner Mr. Prasad Sapte

along with Mr. Saurabh Kokane, instructed by YNZ Legal submits that, there was no notice regarding termination of conciliation proceedings and the

commencement of arbitration proceedings and that respondent no.2 has violated the provisions of Section 18(3) of the MSMED Act, which madates

that in case of failure of the conciliation proceedings, arbitration in accordance with the Arbitration Act must be conducted and also violated principles

of natural justice. It is stated that no arbitration proceedings at all were initiated and that respondent no.2 has illegally merged the conciliation and

arbitration proceedings to pass the impugned order.

b] It is further contended that the impugned order is in violation of Section 18(2) and (3) of the MSMED Act. As per Section 18(3) of the MSMED

Act, if conciliation is not successful, the said proceedings stands terminated and, thereafter, the Council is empowered to take up the dispute for

arbitration on itâ€™s own or refer the dispute to any other institution. The said section makes it clear that when the arbitration is initiated all the

provisions of the Arbitration Act will apply as if the arbitration was in pursuance of the arbitration agreement referred under Sub-Section 1 of Section

7 of the said Act.

c] The petitioner further submits that the impugned order is passed in violation of Sections 65, 67, 76 and 80 of the Arbitration Act. It is stated that the

respondent has not conducted the conciliation as contemplated under Section 65 to 81 of the Arbitration Act. It is stated that from the bare perusal of

the Roznama entry dated 11.04.2024, it is unclear as to whether the matter was referred to conciliation or not. The procedure adopted for conciliation,

if any, is also violative of Section 67 of the Arbitrtaion Act. It is stated that respondent no.2 on the very first date of appearance i.e. on 11.04.2023,

merely directed the petitioner and respondent no.3 to settle the matter amongst themselves before 02.05.2023 i.e. before that petitioner could even file

their written submissions.

d] The petitioner submits that from the above it is clear that respondent no.2 acted in grave violation of Section 67 of the Arbitration Act, which

mandates amongst other things that the conciliator shall be guided by principles of objectivity, fairness and justice. The procedure adopted for

conciliation, if any, is also violative of Section 76 of the Arbitration Act.

e] The impugned order passed is in violation of Sections 18 and 24 of the Arbitration Act. There was no communication or order issued by respondent

no.2 regarding termination of conciliation proceedings and the procedure as enumerated under Section 18 and 24 of the Arbitration Act was never

followed by respondent no.2, that allegedly conducted both conciliation and arbitration proceedings within a span of 3 hearings. The documents filed by

respondent no.3, in itâ€™s reply, were voluminous to be of approximately 900 pages.

f] The impugned order passed is in violation of Section 80 of the Arbitration Act. The impugned order is also in violation ofÂ Section 23 of the Act

and Rules 5(15) and 5(5) of the MSEF Rules, 2007.

g] AsÂ regardsÂ theÂ maintainabilityÂ of theÂ writ petition challenging the impugned order, the learned counsel for the petitioner has relied upon

the following Judgments:

(1) In the Supreme Court of India (2021) 19 SCC Jharkhand Urja Vikas Nigam Limited Vs. The State of Rajasthan and Ors.,

(2) In the High Court of Judicature at Madras 2023 MHC: 4408 M/s. Feedback Infra Pvt. Ltd. Vs. The Micro and Small Enterprises

Facilitation Council and Ors.,

(3) In the High Court of Judicature for Rajasthan Bench at Jaipur in D.B. Special Appeal Writ No.351/2021 Ajmer Vidyut Vitaran Nigam

Ltd. Vs. M/s. Anamika Conductors Ltd.,

(4) In the High Court of Judicature for Rajasthan Bench at Jaipur D.B. Special Appeal Writ No.732/2019 Suprerintending Engineer (Mm),

Ajmer, Vidyut Vitran Nigam Ltd., Vidyut Bhawan, Panchsheel Nagar, Makaewali Road, Ajmer Vs. Ms. Elektrolites (Power) Pvt. Ltd. and

Ors.,

(5) In the Supreme Court of India AIR 1999 SC 22, Whirlpool Corporation Vs, Registrar of Trade Marks, Mumbai and Ors.

3. Per contra, learned counsel appearing for respondent no.3, Mr. P. K. Lakhotiya, submits that there is statutory remedy of appeal available to

challenge the impugned order and that the present is not the case for invoking the writ jurisdiction of the court as the judgment is passed by the

authority constituted under the MSMED Act. The procedure followed is in conformity of principles of natural justice and that the parties are heard in

the matter. The replies and the documents are on record and the judgment is passed on merits. The award passed under Section 18 has to be only

challenged by invoking Section 34 of the Arbitration Act. The writ jurisdiction is invoked only to bypass the statutory deposit of 75% required to be

made under Section 19 of the MSMED Act.

4. The learned counsel for the respondent has also taken me through the impugned order and submits that the contentions of the petitioner are taken

into consideration. He submits that the brief facts of the case are that respondent no.3 supplied certain goods used in the manufacturing process i.e.

something similar to the plating material. The same is used by the petitioner on itâ€™s products and the products are exported to the USA. There is

some quality dispute raised by itâ€™s USA partner / purchaser and it is the contention of the petitioner, in view of the same, he has suffered loss and

he wants to recover the same from respondent no.3. The petitioner has not conducted quality control or has refused the goods submitted by

respondent no.3 and there are ledger entries i.e. the admission of dues of respondent no.3. Respondent no.3 has no contract with the USA supplier.

The petitioner has not returned the supplied goods. As such, the Tribunal on consideration of the material placed before it has rightly decided the

arbitration proceedings and passed an award. If the Award is erroneous on certain aspects, the same has to be challenged under Section 34 of the

Arbitration Act, as there is the statutory remedy available to the parties and that the writ jurisdiction has to be exercised only in case of exceptional

circumstances, where there is absolutely no resemblance of any arbitration proceedings even under the MSMED Act or the authority has acted

completely dehors the law and the award is no â€˜Awardâ€™ in the eyes of law. In the instant case, the body constituted under the Act has decided

the Arbitration proceedings. The parties were present before the authorities and they have filed their reply and, thereafter, the award is passed. Thus,

in the fact situation, the invocation of the writ jurisdiction is uncalled for and the petitioner should be left with the remedy of appeal under the MSMED

Act.

5. Mr. Pawan K. Lakhotiya, learned counsel for respondent no.3 relied upon the following Judgments:

Â (1) Gujarat State Civil Supplies Corporation Limited Vs. Mahakali Foods Private Limited (Unit 2) and another, (2023) 6 SCC 401,

Â (2) Raj Kumar Shivhare Vs. Assistant Director Directorate of Enforcement and Anr., AIR 2010 SC 2239,

(3) M/s. Tirupati Steels Vs. Shubh Industrial Component and Anr., AIR 2022 SC 1939,

(4) Thansingh Nathmal Vs. The Superintendent of Taxes, Dhubri and others, AIR 1964 SC 1419.

6. Relevant provisions of The Micro, Small and Medium Enterprises Development Act, 2006, i.e. Sections 18 and 19 are quoted below for ready

reference:

â€œ18. Reference to Micro and Small Enterprises Facilitation Council

(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17,

make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either conduct mediation itself or refer the matter to any mediation service provider as

provided under the Mediation Act, 2023.

(3) The conduct of mediation under this section shall be as per the provisions of the Mediation Act, 2023.

(4) Where the mediation initiated under sub-section (3) 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 alternative 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.

Â (5) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre

providing alternative dispute resolution services shall have jurisdiction to act as an Arbitrator or mediator under this section in a dispute between the supplier

located within its jurisdiction and a buyer located anywhere in India.â€

â€œSection 19 - Application for setting aside decree, award or order

No application for setting aside any decree, award or other order made either by the Council itself or by any institution or center providing alternate dispute

resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it

seventy-five per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited

shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose.â€

7. Having considered the rival submissions, the issue that primarily arises for consideration before this court is, â€œwhether the jurisdiction of the High

Court under Article 226 / 227 of the Constitution of India can be invoked to set aside an â€˜Awardâ€™ passed under Section 18 of the MSMED Act,

as being ex-facie illegal and not being an â€˜Awardâ€™ in the eyes of law.â€

8. At the outset, I will deal with the Judgments relating to the jurisdiction of this court under Article 226 / 227 of the Constitution of India to interfere

with the award passed under Section 18(2) of the MSMED Act.

9. The 3 Judges Bench of the Honâ€™ble Supreme court in the case of M/s. India Glycols Limited and anr. Vs. Micro and Small Enterprises

Facilitation Council, Medchal â€" Makajgiri and Ors., dated 06.11.2023, passed in Civil Appeal No.7491 of 2023, has held at para 14 as under:

â€œ14 ...We cannot accept this submission for the simple reason that Section 18 of the MSMED Act 2006 provides for recourse to a statutory remedy for

challenging an award under the Act of 1996. However, 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.â€

The Honâ€™ble Supreme Court has held in above Judgment of M/s. India Glycols Limited and anr. Vs. Micro and Small Enterprises Facilitation

Council, Medchal â€" Makajgiri and Ors. that the Petition under Article 226 / Article 227 of the Constitution of India should not be entertained to

challenge the â€˜Awardâ€™ under Section 18 of the MSMED Act, as the Act provides for statutory remedy of challenging the award under Section

34 of the Arbitration Act. The petition under Article 226 / Article 227 should not be entertained in order to obviate compliance with the requirement of

pre-deposit under Section 19, and would defeat the object and purpose of the special enactment made by the Parliament.

10. The Constitution Bench of the Honâ€™ble Supreme Court in the case of SBP & Co. Vs. Patel Engineering Ltd. & Ors., (2005) 8 SCC 618, while

dealing with the nature of power of The Chief Justice under Section 11(6) of the Arbitration Act, whether is an administrative power or a judicial

power, with regard to the entertainment of the petition by the High Court under Article 226 or Article 227 of the Constitution of India, challenging the

appointment of the arbitrator by The Chief Justice, at para 45 and 46 has observed as under:

â€œ45. It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being

challenged under Article 226 or 227 of the Constitution of India. We see no warrant for such an approach. Section 37 makes certain orders of the arbitral

tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating his grievances against the award including any in-between orders that

might have been passed by the arbitral tribunal acting under Section 16 of the Act. The party aggrieved by any order of the arbitral tribunal, unless has a right of

appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The arbitral tribunal is after

all, the creature of a contract between the parties, the arbitration agreement, even though if the occasion arises, the Chief Justice may constitute it based on the

contract between the parties. But that would not alter the status of the arbitral tribunal. It will still be a forum chosen by the parties by agreement. We, therefore,

disapprove of the stand adopted by some of the High Courts that any order passed by the arbitral tribunal is capable of being corrected by the High Court under

Article 226 or 227 of the Constitution of India. Such an intervention by the High Courts is not permissible.

46. The object of minimizing judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be

approached under Article 227 of the Constitution of India or under Article 226 of the Constitution of India against every order made by the arbitral tribunal.

therefore, it is necessary to indicate that once the arbitration has commenced in the arbitral tribunal, parties have to wait until the award is pronounced unless,

of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage.â€

11. The Constitution Bench in the case ofÂ SBP & Co. (supra), has held that the interim orders of the arbitral tribunal cannot be corrected by the

High Court in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India and wait for final adjudication under Section 34 and 37 of

the Arbitration Act.

12. The 2 Judges Bench of the Honâ€™ble Supreme Court in the case of Jharkhand Urja Vikas Nigam Limited Vs. State of Rajasthan and others,

(2021) 19 SCC 206, dealt with an award under Section 18 of the MSMED Act, wherein the court concluded that the â€˜Awardâ€™ passed under the

MSMED Act was not an â€˜Awardâ€™ in the eyes of law and held that the petitioner need not challenge the â€˜Awardâ€™ under Section 34 of the

Arbitration Act and can invoke jurisdiction of the High Court under Article 227 and also under Article 226 of the Constitution of India, and, at paras

15, 16, 17 and 18, the Honâ€™ble Supreme Court has observed as under:

â€œ15. 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 Code of Civil Procedure 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.â€

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.â€

13. The Honâ€™ble Supreme Court in the case of Jharkhand Urja (surpa), held that if Facilitation Council has passed final order / Award while the

conciliation proceedings are in progress without undertaking the arbitration proceedings which were necessary to be undertaken under Section 18 of

the Act then the Award is ex-facie illegal and, accordingly, set aside the Award / order of the Facilitation Council and the matter was remanded back

for re-consideration to the arbitration tribunal / Facilitation Council. In the case of Jharkhand Urja (surpa), the Honâ€™ble Supreme Court was

considering proceeding arising out of writ jurisdiction of the High Court and not from Appeal under Section 34 and 37 of the Arbitration Act.

14. In the case of Jharkhand Urja (surpa), the appellant had not appeared in the proceeding for conciliation, and on the very first date fixed for

appearance, without concluding the conciliation proceedings, arbitral award was passed and, thus, the Honâ€™ble Supreme Court held that there was

no â€˜Arbitral Awardâ€™ in the eyes of law.

15. TheÂ Honâ€™bleÂ ApexÂ CourtÂ inÂ theÂ caseÂ ofÂB haven Construction Vs. Execution Engineer Sardar Sarovar Narmada

Nigam Limited and others, (2022) 1 SCC 75, while considering the power of this court to entertain petition under Article 226 and Article 227 of the

Constitution of India challenging an Arbitral Award under the Arbitration Act, at paras 11, 18 and 19, has observed as under:

â€œ11. Having heard both parties and perusing the material available on record, the question which needs to be answered is whether the arbitral process could

be interfered Under Article 226/227 of the Constitution, and under what circumstance?â€

â€œ18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a Constitutional right. In Nivedita Sharma v.

Cellular Operators Association of India,(2011) 14 SCC 337, this Court referred to several judgments and held:

11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs

including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition Under Article 226 of the Constitution is a basic feature of

the Constitution and cannot be curtailed by parliamentary legislation - L. Chandra Kumar v. Union of India, (1997) 3 SCC 261. However, it is one thing to say

that in exercise of the power vested in it Under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action

taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different

thing to say that each and every petition filed Under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the

fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of

grievances, a writ petition should not be entertained ignoring the statutory dispensation.â€

â€œ19. In this context we may observe M/s. Deep Industries Limited v. Oil and Natural Gas Corporation Limited, wherein interplay of Section 5 of the

Arbitration Act and Article 227 of the Constitution was analyzed as under:

â€œ16. Most significant of all is the non-obstante Clause contained in Section 5 which states that notwithstanding anything contained in any other law, in

matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted

right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a

second appeal being filed. (See Section 37(2) of the Act)

17. This being the case, there is no doubt whatsoever that if petitions were to be filed Under Articles 226/227 of the Constitution against orders passed in

appeals Under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that

Article 227 is a constitutional provision which remains untouched by the non-obstante Clause of Section 5 of the Act. In these circumstances, what is important

to note is that though petitions can be filed Under Article 227 against judgments allowing or dismissing first appeals Under Section 37 of the Act, yet the High

Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us herein above so that

interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.â€

16. The Honâ€™ble Supreme Court in the case of Bhaven Construction (supra) relying upon the Constitution Bench Judgment of L. Chandra

Kumar, (1997) 3 SCC 261 has observed that the High Court power under Article 226 to issue writs / directions being the basic feature of the

Constitution cannot be curtailed by parliamentary legislation.

17. The Honâ€™ble Supreme Court inÂ Bhaven Construction (supra), by relying upon the Judgment of Deep Industries Limited Vs. Oil and Natural

Gas Corporation Limited and Ors., (2020) 15 SCC 706 has observed that there is there is no doubt whatsoever that if petitions were to be filed Under

Articles 226/227 of the Constitution against orders passed in appeals Under Section 37, the entire arbitral process would be derailed and would not

come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non-

obstante Clause of Section 5 of the Act.

18. Considering the above Judgments, i.e. {1} Jharkhand Urja (surpa), {2} Bhaven Construction (supra), {3} SBP & Co. (supra) and {4} M/s.

India Glycols Limited (supra), the law on the subject of entertainment the petition by the High Court under Article 226 / 227 of the Constitution of

India to challenge an â€˜Awardâ€™ or orders passed by the Facilitation Council / Arbitral Tribunal under the MSMED Act is summarized as under:

{1} The power of the High Court under Article 226 of the Constitution of India to issue writs / directions is a basic feature of the Constitution and cannot be curtailed

by parliamentary legislation L. Chandra Kumar Vs. Union of India, (1997) 3 SCC 261. However, the High Court under Articles 226 and 227 of the Constitution of India

would interfere rarely in exceptional circumstances in the arbitral proceedings, when the order passed by the Facilitation Council / Arbitral Tribunal is perverse and

patently lacking in inherent jurisdiction and, when there is no semblance of â€˜Awardâ€™ as contemplated under Section 18 of the MSMED Act.

{2} M/s. India Glycols Limited (supra), does not overrule Jharkhand Urja (surpa). M/s. India Glycols Limited (supra), should be construed as imposing a higher bar to

invoke jurisdiction of the High Court under Article 226 of the Constitution of India, as it is held that entertaining a petition under Articles 226 / 227 of the Constitution

of India, 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.

{3} When the â€˜Awardâ€™ is made by the Facilitation Council / Tribunal by exercising jurisdiction vested in it, however erroneous the â€˜Awardâ€™ may be, the

same has to be challenged only by invoking Section 34 of the Arbitration Act, and this court would not exercise jurisdiction under Articles 226 and 227 of the

Constitution of India, only to avoid the aggrieved party from the hardship of deposit of 75% of the award amount in terms of Section 19 of the MSMED Act.

19. Now, coming to the facts of the instant case on the perusal of the impugned order it could be seen that the the petitionerâ€™s claim is noted, so

also, claim of the respondent is noted and the observations of the council are recorded. The council on consideration of the claim has observed that the

matter was taken up for arbitration after conciliation failed between the parties and, accordingly, perused record submitted by both the parties. Without

going to the merits of the claim of the petitioner or of the respondent for ready reference I have noted below para 13 of the impugned â€˜Awardâ€™,

wherein it is observed as under:

â€œ13. The council has gone through the documents placed on record by petitioner and verified them through the claim raised. The claim filed and documents

in support of the claim leads us to conclude that petitioner has proved the claim, whereas the respondent has not filed on record to show batch wise details and

related invoice showing rejection of goods during the transactions and that no debit notes were raised to prove timely action which would justify the counter

claim lodged by the respondent, whereas the respondent has admitted by way of ledger confirmation letter dated 23.04.2022 for payment towards Petitioner of

Rs.4,53,69,913/- and, thereupon, the final order is passed.

20. Perusal of Roznama dated 21.07.2023 of the Facilitation Council would prima facie indicate that the matter is heard and fixed for Judgment.

Roznama dated 21.07.2023 is reproduced below:

○○

â€œ , . /

(Award) .â€

English Translation:

Â â€œ Both parties were present. Heard both the parties. It was unanimously decided that the following final order (Award) should be passed by the

Honâ€™ble President on the merits of the documents and evidence filed by the parties.â€

21. It would be useful to refer the Pursis filed by the petitioner, on 27.07.2023, before the Facilitation Council, relevant paras are quoted below:

â€œ6. On July 21st , 2023, the mater was listed before the esteemed Micro and Small Enterprise Facilitation Council (MSEFC), located in Aurangabad,

wherein a comprehensive briefing of the matter was provided to the Council. The Respondent further submitted that both the parties have completed the

pleadings with the voluminous documents of around 1350 pages which includes contractual documents, orders, invoices, delivery of materials, Lab Test reports,

reports quatifting defects in supply, several email communications, whats App communications, audit reports, minutes of meetings etc.,.

7. The Respondent also submitted the Council that the subject matter is highlighly technical in nature and involves several triable issues and to ascertain the

claims and positions of each party, the Council can only adjudicate the matter after comprehensive examination of documents, leading evidences and cross

examination of witnesses and decide the matter on merits.

8. Hence, in accordance with the provisions outlined in section 18(3) of the MSME Act, the Facilitation Council shall refer the present matter to the Arbitration

Tribunal and adhere to the prescribed Arbitration procedure as stipulated under the Arbitration and Conciliation Act of 1996 which, encompasses the

following stages:

a. Admission and Denials

b. Framing of Issues

c. Presenting Evidences

d. Cross-Examination of Witnesses

e. Arguments &

f. Final Order â€

22. Unlike the case of Jharkhand Urja (supra), in the instant case, parties are heard by the Facilitation Council / Tribunal. However, I cannot go into

the issue whether sufficient opportunity was given to the petitioner to lead evidence or whether the tribunal could have passed the impugned

â€˜Awardâ€™ based on admission made by way of ledger confirmation. The impugned â€˜Awardâ€™ is passed under Section 18 of the MSMED

Act. Detail discussion of the award is avoided so as not to prejudice the case of the parties before the court where the award may be challenged. The

aggrieved party may challenge the award before the court under Section 34 of the Arbitration Act. In view of the Judgment of the M/s. India Glycols

Limited (supra), this court would not exercise the writ jurisdiction to obviate the requirement of deposit as contemplated under Section 19 of the

MSMED Act.

23. All the grounds raised in the present petition can be taken up before the court under Section 34 of the Arbitration Act. All contentions are left

open. The observations made in this petition is limited for the purpose of deciding this petition and should not be taken into consideration for any

purpose by the court if award is challenged under Section 34 of the Arbitration Act. The petitioner is left with the remedy as available in law.

24. In view of the same, the Writ Petition stands dismissed with liberty being reserved to the petitioner to pursue the remedy as available in law.