2026:DHC:4413

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

***Date of decision: 13.05.2026***

\+ O.M.P. (COMM) 237/2026, I.A. 13336/2026 (Stay), I.A. 13337/2026 (exemption), I.A. 13338/2026 (Seeking permission to file pen drive containing photographs and video recordings), I.A. 13339/2026 (For impleadment) & I.A. 13340/2026 (Delay of 24 days in Re-filing the appeal)

M/S DEWAN AND SONS AND ORS ....Petitioners

Through: Mr. Gaurav Gaur, Mr. Nitin K Gupta, Mr. Punit Singla, Mr. Prasoon Kumar, Ms. Pranjal Vyas, Ms. Ayushi Arya, Ms. Samriddhi Tiwari, Mr. Sanchay Mehrotra and Mr. Parth Kansal, Advocates

versus

M/S HARSH INTERNATIONAL .....Respondent

Through: Mr. Nitin Mittal and Mr. Kailash Chander, Advocates

**CORAM:**
**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR**

**%** **JUDGMENT (Oral)**

1. The present Petition, filed under Section 34 of the **Arbitration and Conciliation Act, 1996**[1], seeks to challenge the **Arbitral Award dated 11.12.2025 read with the amended Award dated 09.02.2026**[2], passed by the learned Sole Arbitrator.

2. Since the learned counsel appearing on behalf of the Petitioners has raised only narrow and limited contentions in the present Petition,

[1] A&C Act
[2] Impugned Award



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and thus, with the consent of the parties, the present Petition has been taken up for final hearing and is being disposed of finally by this Court today.

***SUBMISSIONS OF BEHALF OF THE PARTIES:***

3. At the outset, learned counsel appearing on behalf of the Petitioners submits that the Impugned Award is *ex facie non-est* in the eyes of law inasmuch as Rule 4(x) of the **Delhi Micro and Small Enterprises Facilitation Council Rules, 2007**[3] contemplates that the **Delhi Micro and Small Enterprises Facilitation Council**[4] may either itself act as an Arbitrator for final settlement of the dispute or refer the matter to an institution for conducting arbitration in accordance with the provisions of the A&C Act.

4. Learned counsel for the Petitioners further contends that a conjoint reading of Rule 4(x) and Rule 4(xii) of the aforesaid Rules makes it abundantly clear that even where the dispute is referred to an institution for the purposes of arbitration, such institution is merely required to conduct the arbitral proceedings and submit its report to the Council within the stipulated time. The aforesaid Rules 4(x) and (xii) of the DMSEFC Rules are reproduced herein under for ready reference:

> "**Rule - 4. Procedure to be followed in the discharge of functions of the Council.**
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> ***
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> (x)When such conciliation does not lead to settlement of the dispute, the Council shall either itself act as an Arbitrator for final settlement of the dispute or refer it to an institute for such arbitration, in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The supplier or the buyer may, either in person or through his lawyer registered with any court, present his case before the Council or the institute during the arbitration

[3] DMSEFC Rules
[4] Council



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> proceedings The institute shall submit its report to the Council within such time as the Council may stipulate.
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> ***
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> (xii) The Council shall make an arbitral award in accordance with Section 31 of the Arbitration and Conciliation Act, 1996 and within the time specified in sub-section (5) of Section 18 of the Act. The award shall be stamped in accordance with the relevant law in force. Copies of the award shall be made available within seven days of filing of an application."

5. Learned counsel, in this light, submits that the statutory scheme of the DMSEFC Rules vests the ultimate authority to render and pronounce the arbitral award exclusively with the Council itself, in accordance with Section 31 of the A&C Act. Consequently, it is contended that the Impugned Award, having been rendered by the institution itself and not by the Council, is rendered wholly without authority of law and is therefore liable to be set aside.

6. In this regard, learned counsel for the Petitioners places reliance on the Judgement of the Punjab and Haryana High Court in ***Indian Oil Corporation Limited and Ors. vs. Haryana Micro and Small Enterprise Facilitation Council, Chandigarh and Ors.***[5], in particular Paragraph Nos. 104, 110, 111, 112, 114, 121 and 125 thereof, which read as follow:

> **"104.** It is the specific case of the respondents that the Facilitation Council has been itself passing the final award and the Arbitrator/facilitator/expert, as the case may be, are only entrusted to submit the report to the Council. The facilitator not being competent to pass an award, there proceedings are thus in accordance with the statute and there is no violation of the Statute.
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> **110.** Hence, an expression used has to be seen from the context of the statute, the object of the statute, the consequence of the expression and also as to whether the construction would further the object. The doctrine of workability mandates a constitutional court to harmoniously construct the provisions so as to make them workable and not to give rise to a roadblock.

[5] 2023 SCC OnLine P&H 1443

**111.** Applying the above tests, the suggestion of the petitioner that no external aid can be sought by the council, if conducting the arbitration itself, tends to fail the object of the statute, if accepted. The petitioners have failed to point out how the statutory objective would be defeated or any right would be prejudiced by seeking a report from an independent third party more so when none of the petitioners have alleged or suggested any bias, malice or prejudice. Besides, the act of the facilitation council in seeking a report is more in the nature of the completion of the procedural requirement while the substantive power to pass the award is retained by the Facilitation Council and the final award under section 18(3) of the Act of 2006 is passed by it. Barring a few awards, there is no award under challenge that has been authored by the Sole arbitrator. Hence, there is no reason for this court to assume that the awards are in fact being passed by the sole arbitrator(s) and not by the Council itself.

**112.** At the same time, in so far as the Institute of Arbitration, as stipulated in the Act of 2006 is concerned, so far there is no Arbitration institute that has been recognized or graded in the States of Punjab and Haryana. Hence, even though the act contemplates conduct of arbitration by such institute, however, in reality, the same are required to be conducted by the Council itself.

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**114.** The petitioners are rather swayed in their arguments more by the use of expression Arbitrator(s) in the appointment and also in section 18(3) of the Act of 2006. A mere use of such an expression cannot automatically bring in the rigors of the Arbitration and Conciliation Act, 1996. It is well settled that when there is a general reference in the Act in question to some earlier Act, but there is no specific mention of the provisions of the former Act, then it is a case of legislation by reference and even the amending laws of the former Act may become applicable. However, where the provisions of the Act are specifically referred to and incorporated in the latter statute, then those provisions alone are applicable. This is the principle of legislation by incorporation. Thus even though certain provisions of the Arbitration and Conciliation Act, 1996 may be applicable by reference, however, the reference should not result in defeating the object and purpose of the Act of 2006. The procedural provisions of the Act of 1996 are thus to come to the aid of the Act of 2006 and not over shadow the same to occupy the field despite the Act of 2006 being a special statute. Hence, notwithstanding the nomenclature used as Arbitrator/sole arbitrator, he continues to remain as a facilitator in view of the letter of engagement and cannot travel beyond the terms of his appointment.

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**121.** The expression "Arbitrator" as used in the Rules of 2007 which stands substituted by the expression "Experts" in Rule 6(12)

> of the Rules of 2021 thus remains a designation only for the defined object and purpose and does not confer authority to pass an award under the Arbitration and Conciliation Act, 1996. The role of the facilitator in the present case being restricted to submit a comprehensive report on the totality of claims, such person engaged/appointed thus has not been given the adjudicatory power to pass an award as per Section 18(5) of the Act of 2006. Rather Rule 4(19) mandated the Facilitation Council to pass the award. Similarly, Rule 6(11) of the Rules of 2021 also stipulate that the Council shall consider the arbitral finding/report/recommendations and thereafter pass the final award/order in the manner. Hence, the power and authority to pass the final award has always been vested with and is being exercised by the Facilitation Council itself. The initial confusion brought about by use of the expression Facilitator in the Rules of 2021 and such expression can be used as an external aid to interpretation of the erstwhile provision as well. The strenuous attempt made by petitioners to read the provisions of The Arbitration and Conciliation Act, 1996into the Act of 2006 and to contend that the same are inherently imbibed in the Act of 2006 is clearly a misadventure.
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> **125.** In view of the above, there is no prohibition in the engagement of an arbitrator/expert/facilitator, as the case may be, under the Act of 2006 or the Rules framed thereunder, for submission of a report to the Facilitation Council. The Arbitrator so appointed is however not competent to pass an enforceable award as no such power has been conferred upon him under the Rules or the statutory scheme and only the Council is competent to pass the final award. Since the arbitrator/expert/facilitator is only acting under the aegis of the Council, which is in fact the Arbitrator, the adjudication has to be done by it. If any such award has actually been passed by the Sole Arbitrator, the same is thus beyond the terms of engagement even as per the respondents themselves."

7. Further, as a second contention, learned counsel appearing on behalf of the Petitioners submits that at the time when the disputes are stated to have arisen between the parties, the Respondent had not obtained registration under the **Micro, Small and Medium Enterprises Development Act, 2006**[6], and that the MSME registration certificate was obtained only subsequently.

[6] MSMED Act

8. Learned counsel thus contends that, in the absence of a valid MSME registration, on the date of accrual of the cause of action, the Respondent could not have invoked the jurisdiction of the Council under Section 18 of the MSMED Act, even though the Respondent may have been registered under the MSMED Act at the stage when the disputes came to be referred for arbitration.

9. In order to substantiate the aforesaid contention, the learned counsel for the Petitioners again places reliance on ***Indian Oil Corporation Limited*** *(supra)*, particularly Paragraph No. 136 thereof. The same reads as follows:

> "**136.** So far as the issue No. 4 regarding the Facilitation Council having jurisdiction to entertain the dispute instituted before it which relate to the period prior to the registration of the claimant as a Micro, Small and Medium Enterprise under the Act of 2006 or the dispute having been brought before it in relation to the date of invoice/claim being after getting the registration is concerned, the said issues do not require any further examination. The Hon'ble Supreme Court has already laid down in the matter of Silpi Industries case (supra), as well as the judgments referred to above that date of registration as Micro, Small and Medium Enterprises is the cardinal date for assuming jurisdiction qua a dispute brought before the Council. The date of the invoice is thus inconsequential. If the supplier was not registered with the competent authority as a Micro, Small and Medium Enterprise on the date when the contract was entered into, merely because it was registered as on the date when invoice was raised, would not confer jurisdiction of the Facilitation Council to adjudicate the payment dispute under the Act of 2006."

10. Learned counsel for the Petitioners, in the backdrop of foregoing reliance, contends that the reference by the Council was therefore illegal and the Impugned Award rendered as a consequence thereof, is *non est* in the eyes of law and unsustainable.

11. Coming to the merits of the Impugned Award, learned counsel appearing on behalf of the Petitioners further submits that various communications and objections addressed by the Petitioners raising

the aforesaid issues were completely disregarded by the learned Arbitrator while rendering the Impugned Award. It is thus contended that the Impugned Award suffers from patent illegality and non-consideration of material objections going to the root of the matter, thereby warranting interference by this Court in exercise of its jurisdiction under Section 34 of the A&C Act.

12. Learned counsel for the Petitioners further draws the attention of this Court to Issue Nos. i, v, vi and viii, as framed and decided by the learned Arbitrator. The relevant portions of the Impugned Award are reproduced herein under for ready reference:

> "**24.** ….. This Arbitral tribunal has framed the following issues:
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> i. Whether the Claimant is entitiled to an award for a sum of Rs. 2,05,38,385/- or any part thereof;
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> ***
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> v. Whether any material supplied by Claimant to the Respondent were defective as claimed by the Respondent?
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> vi. Whether the Respondent had to pay Rs. 2,29,73,611/- (3,00,000 USD) or any other amount to Warmart Inc. USA on account of defective goods/materials supplied by the Claimant?
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> ***
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> viii. Whether the Respondent Nos. 2 to 4 are in any manner liable for the claims of the Claimant or any part thereof?
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> **40.** Without prejudice to its contention with regard to arbitrability of the claim and its contention that the claim was barred by limitation, the Respondents have refuted the claim on merits on the purported ground that the goods were defective.
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> **41.** The invoices are not disputed. Supply of goods covered by the invoices is also not disputed. Having regard to the defence of the Respondents to the claim of the Claimant, it is not necessary to discuss the entire evidence adduced on behalf of the parties.
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> **42.** The entire claim of the Claimant has been contested on the ground that goods supplied were not upto specification and were substandard. It is mainly contended that the Respondent sold the goods purchased from the Claimant to Walmart INC. of USA, hereinafter referred to as 'Walmart'. Walmart rejected the goods as defective. According to the Respondents, the Respondent No. 1 had to face loss of goodwill and business losses. The Respondent No. 1 had been forced to settle the claim of Walmart upon payment of Rs. 2,29,73,611/-.

**43.** According to the Respondent, the Claimant was made aware of rejection by Walmart of goods, which the Respondent No. 1 had purchased from the Claimant. It is further contended that the Claimant accepted that the goods were defective. Accordingly, the Claimant did not ask for further payment for over three years and also did not initiate proceedings till 14.11.2022.

**44.** The Respondent has also contended that some goods were returned. These goods were covered by the following debit notes, which the Claimant has suppressed. The debit notes are as follows:

i. Debit Note No. 104 dated 06.02.2019 - Rs. 24,270/-
ii. Debit Note No. 87 dated 06.09.2019 - Rs. 5,33,430/-
iii. Debit Note No. 88 dated 06.09.2019 - Rs. 3,03,955/-
iv. Debit Note No. 89 dated 06.09.2019 - Rs. 6,39,751/-

**45.** Even assuming that some goods were returned and debit notes were issued, the total amount of those debit notes on which reliance has been placed by the Respondents adds to Rs. 15,01,406/- out of total claim of Rs. 2,05,39,385.82p. After giving credit to part payments received and credit notes on sales return, the Respondent No. 1 admittedly received goods amounting to Rs. 1,90,37,979.82p.

**46.** Mr. Mittal has strenuously argued that the debit notes referred to above have not been proved nor the return of the goods purportedly covered by the debit notes. However, as observed above, the Respondents have adduced the evidence of three witnesses, Mr. Surender Gandhi (RW-1), Mr. Vikas Aggarwal (RW-2) and Mr. Sanjay Singh (RW-3). RW-2 has given evidence with regard to the debit notes and this Arbitral Tribunal finds no reason to disbelieve the evidence of RW-2 which is also corroborated by RW-1.

**47.** The question is whether the Respondent No. 1 is liable to pay Rs. 1,90,37,979.82p to the Claimant. The stainless steel utensils/goods were admittedly accepted. RW-3, in cross-examination, in answer to Question 26 stated that when he checked the goods received from the Claimant, no defects were noticed.

**48.** The Respondent No. 3, Mr. Surender Gandhi (RW-1) adduced evidence by way of an affidavit. Instead of making statements only on facts, of which he had knowledge, he has made submissions inter alia as to maintainability of the claim and the liability of the Respondents. He has also made statements, which cannot be true to his knowledge. He has stated that MSME Registration Certificate is dated 14.12.2021 and has verified the affidavit as true and correct to his knowledge. It is doubtful how much credence can be given to such an affidavit.

**49.** Be that as it may, RW-1 has stated in a nutshell that the Respondent started to receive complaints regarding defective

pieces from Walmart and orders from Walmart were stopped. This adversely impacted the goodwill and reputation of the Respondent No. 1. The Claimant had to settle with Walmart by payment of Rs. 2,29,73,611/-. The Claimant had accepted the factum of substandard quality of goods. The Respondent had, therefore, stopped payment of the invoices of the Claimant due to complaints about the quality, which became visible after goods reached USA and were not visible at the time of delivery to the Respondent. Therefore, the Respondent is not liable to pay claims as raised by the Claimant.

**50.** In the instant case, the invoices clearly provided that the due date of payment was 15 days. It was the intention of the parties that the Respondent No. 1 would not accept delivery of goods that were defective. In any case, such goods should have been returned immediately, not later than 15 days, being the time for payment, failing which, interest would be chargeable.

**51.** In the instant case, the goods were admittedly never returned. They were accepted. They were further sold to Walmart. The Claimant had nothing to do with the transaction between the Respondents and Walmart. The Claimant was never given the opportunity to examine the goods. In any case, the Respondent No. 1 was bound to pay for goods which have been accepted. There is no cogent evidence as to whether the goods allegedly found defective by Walmart were at all supplied by the Claimant or even if supplied by the Claimant, the stage at which the goods developed the defects. There is no evidence of reasonable care at the time of transportation. There is nothing in writing from the Respondent to the Claimant till 03.02.2020 even though the last invoice is of August, 2019. All that has been relied upon by the Respondent is correspondence between Walmart and the Respondents with which the Claimant has nothing to do. In answer to Question 68 in cross-examination, RW-1 admitted that on the date of payment of 3 lac USD i.e. Rs. 2,29,73,611/- to Walmart, a sum of Rs. 1,90,70,167/- was due from the Respondent No. 1 to the Claimant. RW-1 stated that "We still accepted loss of the difference amount of Rs. 2,29,73,611/- and Rs. 1,90,70,167/-." In Question 69, RW-1 was asked whether he made any demand from the Claimant of the aforesaid amount. The answer was that the Claimant knew about the defect of the merchandise.

**52.** It is difficult to accept that there would be no demand in writing in respect of a claim in the region of Rs. 2 crores. It is well settled that sale of goods is governed by the Sale of Goods Act, as contended by Mr. Gupta. Under Section 15, where sale is by description, there is an implied condition that the goods shall correspond with the description. Subject to provisions of the Sale of Goods Act or of any other Act for the time being in force, there is no implied warranty or condition as to the quality or fitness

except in circumstances specified in sub-sections (1) to (4) of Section 16 of the Sale of Goods Act. None of the conditions of sub-sections (1) to (4) of Section 16 of the Sale of Goods Act are attracted. On the other hand, as observed above, the goods were not only accepted but further sold. Property in the goods passed to the Respondent under Section 19 of the Sale of Goods Act, when the goods were accepted. RW-3, the expert employee, deposed that he had checked the goods but no defects were noticed. RW-2 only spoke about accounts of the Respondent No. 1 and the preparation of debit notes. Except for his evidence with regard to the debit notes referred to above, his evidence is of no relevance to the claim in this arbitration. They pertain to internal accounting.

**53.** The transactions between the Respondent and Walmart were admittedly independent transactions between the Respondent and Walmart with which the Claimant had absolutely nothing to do. Once the Claimant supplied the goods to the Respondent, property in the goods passed from the Claimant to the Respondent and liability accrued to make payment for the goods sold.

**54.** The submission of the Respondent that the claim is hit by Section 19 inasmuch as the Claimant has failed to show any proof of demand or invoice amounts from the Respondent is misconceived. Section 19 does not contain any such mandate. On the other hand, it is the Respondent who has not given any notice of breach of warranty either express or implied. As the Claimant was not a party to the transactions between the Respondent and Walmart and the Respondent has not even proved that the goods sold to Walmart were in fact supplied by the Claimant to the Respondent, any payment made by the Respondent to Walmart is inconsequential. The payment has not been made upon intimation to or with approval of the Claimant. There may have been some inaccuracies in the evidence of Mr. Surender Goel, however, the inaccuracies in themselves do not establish supply of sub-standard goods by the Claimant to the Respondent. What is more important is that the goods were never returned. If the goods had been returned, the sale might have been tested by an expert. Furthermore, the goods might even have been sold and scrapped for the purpose of mitigation of losses/damages. This Arbitral Tribunal is of the view that the defence of the Respondent is only an afterthought. Having accepted the goods and even sold the goods to a third-party, the Respondent cannot turn around and contend that the goods were defective. The Claimant will thus be entitled to the price as claimed. Issue Nos. 1 & 5 are answered accordingly.

**55.** In paragraph 5 of the Statement of Defence, the Respondents have contended that all transactions were between the Claimant and the Respondent No. 1 and that there is no



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allegation or averment against the Respondent Nos. 2 to 4. As such, the Respondent Nos. 2 to 4 are not personally liable for the alleged claim of the Claimant.

**56.** Admittedly, the Respondent Nos. 2 to 4 are partners of the Respondent No. 1. In his affidavit of evidence affirmed on 06.07.2024 and filed before this Tribunal, Mr. Surender Gandhi S/o Shri Somnath Gandhi, being the Respondent No. 3, has admitted that he is the partner of the Respondent No. 1. In the said affidavit, there is a certificate signed by Mr. Somnath Gandhi, Respondent No. 2 as partner of Respondent No. 1, authorizing Mr. Surender Gandhi, partner, to represent and act on behalf of the firm in these proceedings. It is also not denied that the Respondent No. 4 is a partner. The certificate of Mr. Somnath Gandhi authorizing Mr. Surender Gandhi to represent and act for and on behalf of the firm states that M/s Dewan and Sons is a partnership firm registered under the Partnership Act having its office at Fazalpur Delhi Road, Moradabad. Unlike a company incorporated under the Companies Act, where the shareholders are distinct entities, all the partners of the partnership are liable in case of a Partnership Firm. The Respondent Nos. 2 to 4, by virtue of being partners, are responsible for the acts of the Respondent No. 1. Issue No. 8 is answered accordingly in favour of the Claimant and against the Respondents.

**57.** Since the Claimant was in no way involved in the transactions between the Respondents and Walmart, it is not necessary for this Arbitral Tribunal to decide whether the Respondents have to pay a sum of 3 lac USD equivalent to Rs. 2,29,73,611/- to Walmart. Even assuming that the Respondents made such payment, such payment in itself does not entitle the Respondents to withhold the dues of the Claimant. Issue No. 6 is dealt with accordingly."

13. Learned counsel for the Petitioners thus submits that the invoices pertaining to the goods allegedly rejected by Walmart were never accepted in the eyes of law and, therefore, the findings returned by the learned Arbitrator to the effect that the goods stood accepted and that the liability to pay the invoice amounts had crystallized are contrary to the material placed on record.

14. Learned counsel for the Petitioners, in the backdrop of the aforesaid findings, submits that the learned Arbitrator failed to consider the specific contention raised on behalf of the Petitioners

with regard to non-acceptance of the invoices on account of the alleged defective nature of the goods supplied.

15. It is further submitted that the issue concerning payment of GST could only have arisen upon acceptance of the invoices and the underlying goods, whereas, according to the Petitioners, the goods in question stood rejected after complaints were received from Walmart in the USA.

16. It is thus contended that the Impugned Award suffers from patent illegality and perversity apparent on the face of the record, thereby warranting interference by this Court under Section 34 of the A&C Act.

*17.* ***Per contra,*** learned counsel appearing on behalf of the Respondent defends the Impugned Award and advanced submissions in support thereof, contending that the findings returned by the learned Arbitrator are based on proper appreciation of the material placed on record and do not warrant any interference by this Court in the exercise of its limited jurisdiction under Section 34 of the A&C Act.

***ANALYSIS:***

18. This Court has heard learned counsel for the parties and, with their able assistance, carefully perused the material available on record, including the pleadings, documents, and the judicial precedents relied upon and cited across the Bar.

19. At the outset, it is apposite to note that this Court is conscious of the limited scope of its jurisdiction while examining an objection petition under Section 34 of the A&C Act. The contours of judicial intervention in such proceedings have been authoritatively delineated

and settled by a consistent and evolving line of precedents of the Hon'ble Supreme Court.

20. In this regard, a three-Judge Bench of the Hon'ble Supreme Court, after an exhaustive consideration of a catena of earlier decisions, in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[7], while dealing with the grounds of conflict with the public policy of India and patent illegality, grounds which have also been urged in the present case, made certain pertinent observations, which are reproduced hereunder:

> *"**Relevant legal principles governing a challenge to an arbitral award***
> **30.** Before we delve into the issue/sub-issues culled out above, it would be useful to have a look at the relevant legal principles governing a challenge to an arbitral award. Recourse to a court against an arbitral award may be made through an application for setting aside such award in accordance with sub-sections (2), (2-A) and (3) of Section 34 of the 1996 Act. Sub-section (2) of Section 34 has two clauses, (*a*) and (*b*). Clause (*a*) has five sub-clauses which are not relevant to the issues raised before us. Insofar as clause (*b*) is concerned, it has two sub-clauses, namely, (*i*) and (*ii*). Sub-clause (*i*) of clause (*b*) is not relevant to the controversy in hand. Sub-clause (*ii*) of clause (*b*) provides that if the Court finds that the arbitral award is in conflict with the public policy of India, it may set aside the award.
> ***Public policy***
> **31.** "Public policy" is a concept not statutorily defined, though it has been used in statutes, rules, notification, etc. since long, and is also a part of common law. Section 23 of the Contract Act, 1872 uses the expression by stating that the consideration or object of an agreement is lawful, unless, inter alia, opposed to public policy. That is, a contract which is opposed to public policy is void.
> *****
> **35.** In ***Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644**, a three-Judge Bench of this Court observed that the doctrine of public policy is somewhat open—textured and flexible. By citing earlier decisions, it was observed that there are two conflicting positions which are referred to as the "narrow view" and the "broad view". According to the narrow

[7] (2025) 2 SCC 417



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view, courts cannot create new heads of public policy whereas the broad view countenances judicial law making in these areas. In the field of private international law, it was pointed out, courts refuse to apply a rule of foreign law or recognise a foreign judgment or a foreign arbitral award if it is found that the same is contrary to the public policy of the country in which it is sought to be invoked or enforced. However, it was clarified, a distinction is to be drawn while applying the rule of public policy between a matter governed by domestic law and a matter involving conflict of laws. It was observed that the application of the doctrine of public policy in the field of conflict of laws is more limited than that in the domestic law and the courts are slower to invoke public policy in cases involving a foreign element than when a purely municipal legal issue is involved. It was held that contravention of law alone will not attract the bar of public policy, and something more than contravention of law is required.

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**37.** What is clear from above is that for an award to be against public policy of India a mere infraction of the municipal laws of India is not enough. There must be, inter alia, infraction of fundamental policy of Indian law including a law meant to serve public interest or public good.

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**40.** In ***ONGC Ltd.* v. *Western Geco International Ltd.*, (2014) 9 SCC 263, paras 35, 38 & 39**, which also related to the period prior to the 2015 Amendment of Section 34(2)(*b*)(*ii*), a three-Judge Bench of this Court, after considering the decision in***ONGC Ltd.* v. *Saw Pipes Ltd.*, (2003) 5 SCC 705**, without exhaustively enumerating the purport of the expression "fundamental policy of Indian law", observed that it would include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. The Court thereafter illustratively referred to three fundamental juristic principles, namely:

(*a*) that in every determination that affects the rights of a citizen or leads to any civil consequences, the court or authority or quasi-judicial body must adopt a judicial approach, that is, it must act bona fide and deal with the subject in a fair, reasonable and objective manner and not actuated by any extraneous consideration;

(*b*) that while determining the rights and obligations of parties the court or Tribunal or authority must act in accordance with the principles of natural justice and must apply its mind to the attendant facts and circumstances while taking a view one way or the other; and

(*c*) that its decision must not be perverse or so irrational that no reasonable person would have arrived at the same.

**41.** In ***Associate Builders* v. *DDA*, (2015) 3 SCC 49**, a two-Judge Bench of this Court, held that *audialterampartem* principle is undoubtedly a fundamental juristic principle in Indian law and is enshrined in Sections 18 and 34(2)(*a*)(*iii*) of the 1996 Act. In addition to the earlier recognised principles forming fundamental policy of Indian law, it was held that disregarding:

(*a*) orders of superior courts in India; and

(*b*) the binding effect of the judgment of a superior court would also be regarded as being contrary to the fundamental policy of Indian law.

Further, elaborating upon the third juristic principle (i.e. qua perversity), as laid down in ***ONGC Ltd.* v. *Western Geco International Ltd.*, (2014) 9 SCC 263**, it was observed that where:

(*i*) a finding is based on no evidence; or

(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse [***Associate Builders case*, (2015) 3 SCC 49, para 31**].

To this a caveat was added by observing that when a court applies the "public policy test" to an arbitration award, it does not act as a court of appeal and, consequently, errors of fact cannot be corrected; and 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. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score. Thus, once it is found that the arbitrator's approach is not arbitrary or capricious, it is to be taken as the last word on facts.

***The 2015 Amendment in Sections 34 and 48***

**42.** The aforementioned judicial pronouncements were all prior to the 2015 Amendment. Notably, prior to the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not used by the legislature in either Section 34(2)(*b*)(*ii*) or Section 48(2)(*b*). The pre-amended Section 34(2)(*b*)(*ii*) and its Explanation read:

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**44.** By the 2015 Amendment, in place of the old Explanation to Section 34(2)(*b*)(*ii*), *Explanations 1 and 2* were added to remove any doubt as to when an arbitral award is in conflict with the public policy of India.

**45.** At this stage, it would be pertinent to note that we are dealing with a case where the application under Section 34 of the 1996 Act was filed after the 2015 Amendment, therefore the

newly substituted/added Explanations would apply [***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

**46.** The 2015 Amendment adds two Explanations to each of the two sections, namely, Section 34(2)(*b*)(*ii*) and Section 48(2)(*b*), in place of the earlier Explanation. The significance of the newly inserted *Explanation 1* in both the sections is two-fold. First, it does away with the use of words : (*a*) "*without prejudice to the generality of sub-clause (ii)*" in the opening part of the pre-amended Explanation to Section 34(2)(b)(ii); and (b) "*without prejudice to the generality of clause (b) of this section*" in the opening part of the pre-amended Explanation to Section 48(2)(*b*); secondly, it limits the expanse of public policy of India to the three specified categories by using the words "*only if*". Whereas, *Explanation 2* lays down the standard for adjudging whether there is a contravention with the fundamental policy of Indian law by providing that a review on merits of the dispute shall not be done. This limits the scope of the enquiry on an application under either Section 34(2)(*b*)(*ii*) or Section 48(2)(*b*) of the 1996 Act.

**47.** The 2015 Amendment by inserting sub-section (2-A) in Section 34, carves out an additional ground for annulment of an arbitral award arising out of arbitrations other than international commercial arbitrations. Sub-section (2-A) provides that the Court may also set aside an award if that is vitiated by patent illegality appearing on the face of the award. This power of the Court is, however, circumscribed by the proviso, which states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

**48.** *Explanation 1* to Section 34(2)(*b*)(*ii*), specifies that an arbitral award is in conflict with the public policy of India, *only if*:

(*i*) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

(*ii*) it is in contravention with the fundamental policy of Indian law; or

(*iii*) it is in conflict with the most basic notions of morality or justice.

**49.** In the instant case, there is no allegation that the making of the award was induced or affected by fraud or corruption, or was in violation of Section 75 or Section 81. Therefore, we shall confine our exercise in assessing as to whether the arbitral award is in contravention with the fundamental policy of Indian law, and/or whether it conflicts with the most basic notions of morality or justice. Additionally, in the light of the provisions of sub-section (2-A) of Section 34, we shall examine whether there is any patent illegality on the face of the award.

**50.** Before undertaking the aforesaid exercise, it would be apposite to consider as to how the expressions:
(*a*) "in contravention with the fundamental policy of Indian law";
(*b*) "in conflict with the most basic notions of morality or justice"; and
(*c*) "patent illegality" have been construed.

***In contravention with the fundamental policy of Indian law***

**51.** As discussed above, till the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not found in the 1996 Act. Yet, in ***Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644**, in the context of enforcement of a foreign award, while construing the phrase "contrary to the public policy", this Court held that for a foreign award to be contrary to public policy mere contravention of law would not be enough rather it should be contrary to:
(*a*) the fundamental policy of Indian law; and/or
(*b*) the interest of India; and/or
(*c*) justice or morality.

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**55.** The legal position which emerges from the aforesaid discussion is that after "the 2015 Amendments" in Section 34(2)(*b*)(*ii*) and Section 48(2)(*b*) of the 1996 Act, the phrase "in conflict with the public policy of India" must be accorded a restricted meaning in terms of *Explanation 1*. The expression "in contravention with the fundamental policy of Indian law" by use of the word "fundamental" before the phrase "policy of Indian law" makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

**56.** Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:
(*a*) violation of the principles of natural justice;
(*b*) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and
(*c*) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.

However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in *Explanation 2* to Section 34(2)(*b*)(*ii*).

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***Patent illegality***

**65.** Sub-section (2-A) of Section 34 of the 1996 Act, which was inserted by the 2015 Amendment, provides that an arbitral award not arising out of international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is visited by patent illegality appearing on the face of the award. The proviso to sub-section (2-A) states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

**66.** In ***ONGC Ltd.* v. *Saw Pipes Ltd.*, (2003) 5 SCC 705**, while dealing with the phrase "public policy of India" as used in Section 34, this Court took the view that the concept of public policy connotes some matter which concerns public good and public interest. If the award, on the face of it, patently violates statutory provisions, it cannot be said to be in public interest. Thus, an award could also be set aside if it is patently illegal. It was, however, clarified that 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 public policy.

**67.** In ***Associate Builders* v. *DDA*, (2015) 3 SCC 49**, this Court held that an award would be patently illegal, if it is contrary to:

(*a*) substantive provisions of law of India;

(*b*) provisions of the 1996 Act; and

(*c*) terms of the contract [See also three-Judge Bench decision of this Court in ***State of Chhattisgarh* v. *SAL Udyog (P) Ltd.*, (2022) 2 SCC 275**].

The Court clarified that if an award is contrary to the substantive provisions of law of India, in effect, it is in contravention of Section 28(1)(*a*) of the 1996 Act. Similarly, violating terms of the contract, in effect, is in contravention of Section 28(3) of the 1996 Act.

**68.** In ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131** this Court specifically dealt with the 2015 Amendment which inserted sub-section (2-A) in Section 34 of the 1996 Act. It was held that "patent illegality appearing on the face of the award" refers to such illegality as goes to the root of matter, but which does not amount to mere erroneous application of law. It was also clarified that what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to "public policy" or "public interest", cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality [See ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**]. Further, it was observed, reappreciation of evidence is not permissible under this category of challenge to an arbitral award [See ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

***Perversity as a ground of challenge***

**69.** Perversity as a ground for setting aside an arbitral award was recognised in***ONGC Ltd.* v. *Western Geco International Ltd.*, (2014) 9 SCC 263**. Therein it was observed that an arbitral decision must not be perverse or so irrational that no reasonable person would have arrived at the same. It was observed that if an award is perverse, it would be against the public policy of India.

**70.** In ***Associate Builders* v. *DDA*, (2015) 3 SCC 49** certain tests were laid down to determine whether a decision of an Arbitral Tribunal could be considered perverse. In this context, it was observed that where:

(*i*) a finding is based on no evidence; or

(*ii*) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(*iii*) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

However, by way of a note of caution, it was observed that when a court applies these tests it does not act as a court of appeal and, consequently, errors of fact cannot be corrected. Though, 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. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score.

**71.** In ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**, which dealt with the legal position post the 2015 Amendment in Section 34 of the 1996 Act, it was observed that a decision which is perverse, while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. It was pointed out that an award based on no evidence, or which ignores vital evidence, would be perverse and thus patently illegal. It was also observed that a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse [See ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

**72.** The tests laid down in ***Associate Builders* v. *DDA*, (2015) 3 SCC 49** to determine perversity were followed in ***SsangyongEngg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131** and later approved by a three-Judge Bench of this Court in ***Patel Engg. Ltd.* v. *North Eastern Electric Power Corpn. Ltd.*, (2020) 7 SCC 167**.

**73.** In a recent three-Judge Bench decision of this Court in ***DMRC Ltd.* v. *Delhi Airport Metro Express (P) Ltd.*, (2024) 6**

**SCC 357**, the ground of patent illegality/perversity was delineated in the following terms: (SCC p. 376, para 39)

> "*39.* In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. A finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of "patent illegality". An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within its jurisdiction or violating a fundamental principle of natural justice."

***Scope of interference with an arbitral award***

**74.** The aforesaid judicial precedents make it clear that while exercising power under Section 34 of the 1996 Act the Court does not sit in appeal over the arbitral award. Interference with an arbitral award is only on limited grounds as set out in Section 34 of the 1996 Act. A possible view by the arbitrator on facts is to be respected as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It is only when an arbitral award could be categorised as perverse, that on an error of fact an arbitral award may be set aside. Further, a mere erroneous application of the law or wrong appreciation of evidence by itself is not a ground to set aside an award as is clear from the provisions of sub-section (2-A) of Section 34 of the 1996 Act.

**75.** In ***Dyna Technologies (P) Ltd.* v. *Crompton Greaves Ltd.*, (2019) 20 SCC 1**, paras 27-43, a three-Judge Bench of this Court held that courts need to be cognizant of the fact that arbitral awards are not to be interfered with in a casual and cavalier manner, unless the court concludes that the perversity of the award goes to the root of the matter and there is no possibility of an alternative interpretation that may sustain the arbitral award. It was observed that jurisdiction under Section 34 cannot be equated with the normal appellate jurisdiction. Rather, the approach ought to be to respect the finality of the arbitral award as well as party's autonomy to get their dispute adjudicated by an alternative forum as provided under the law.

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***Scope of interference with the interpretation/construction of a contract accorded in an arbitral award***

**84.** An Arbitral Tribunal must decide in accordance with the terms of the contract. In a case where an Arbitral Tribunal passes an award against the terms of the contract, the award

would be patently illegal. However, an Arbitral Tribunal has jurisdiction to interpret a contract having regard to terms and conditions of the contract, conduct of the parties including correspondences exchanged, circumstances of the case and pleadings of the parties. If the conclusion of the arbitrator is based on a possible view of the matter, the Court should not interfere [See: ***SAIL* v. *Gupta Brother Steel Tubes Ltd.*, (2009) 10 SCC 63; *Pure Helium India (P) Ltd.* v. *ONGC*, (2003) 8 SCC 593; *McDermott International Inc.* v. *Burn Standard Co. Ltd.*, (2006) 11 SCC 181; *MMTC Ltd.* v. *Vedanta Ltd.*, (2019) 4 SCC 163**]. But where, on a full reading of the contract, the view of the Arbitral Tribunal on the terms of a contract is not a possible view, the award would be considered perverse and as such amenable to interference [*South* ***East Asia Marine Engg. & Constructions Ltd.* v. *Oil India Ltd.*, (2020) 5 SCC 164**].

***Whether unexpressed term can be read into a contract as an implied condition***

**85.** Ordinarily, terms of the contract are to be understood in the way the parties wanted and intended them to be. In agreements of arbitration, where party autonomy is the *grund norm*, how the parties worked out the agreement, is one of the indicators to decipher the intention, apart from the plain or grammatical meaning of the expressions used [***Balco* v. *Kaiser Aluminium Technical Services Inc.*, (2016) 4 SCC 126**].

**86.** However, reading an unexpressed term in an agreement would be justified on the basis that such a term was always and obviously intended by the parties thereto. An unexpressed term can be implied if, and only if, the court finds that the parties must have intended that term to form part of their contract. It is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them. Rather, it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, although tacit, forms part of the contract [***Adani Power (Mundra) Ltd.* v. *Gujarat ERC*, (2019) 19 SCC 9**].

**87.** But before an implied condition, not expressly found in the contract, is read into a contract, by invoking the business efficacy doctrine, it must satisfy the following five conditions:

(*a*) it must be reasonable and equitable;

(*b*) it must be necessary to give business efficacy to the contract, that is, a term will not be implied if the contract is effective without it;

(*c*) it must be obvious that "it goes without saying";

(*d*) it must be capable of clear expression;

(*e*) it must not contradict any terms of the contract [***Nabha Power Ltd.* v. *Punjab SPCL*, (2018) 11 SCC 508**, followed in ***Adani Power case*, (2019) 19 SCC 9**].

***(emphasis supplied)***

21. The principal contention advanced on behalf of the Petitioners is that, in terms of Rules 4(x) and (xii) of the DMSEFC Rules, the learned Arbitrator could not have independently rendered the Impugned Award and was only required to submit a report to the Council, which alone was competent to render the final Award. In this regard, the learned counsel for the Petitioners has placed considerable reliance upon the judgment of the Punjab and Haryana High Court in ***Indian Oil Corporation Limited*** *(supra)*.

22. The aforesaid contention, unfortunately, fails to inspire the confidence of this Court and does not commend acceptance by this Court.

23. This Court has also carefully perused the aforesaid Judgement; the relevant Paragraphs whereof are reproduced hereinbefore.

24. Further, this Court has also perused the relevant provisions of the MSMED Act and the DMSEFC Rules.

25. At this juncture, this Court deems it apposite to advert to the scheme and scope of Section 18 of the MSMED Act, and in particular Section 18(3) thereof. The said provision expressly stipulates that where the conciliation proceedings initiated under Section 18(2) of the MSMED Act fail to culminate in a settlement between the parties, the Council is empowered either to itself undertake the arbitral process or to refer the dispute to any institution or centre providing alternate dispute resolution services for the purposes of arbitration.

26. The said provision further mandates that, upon such reference, the proceedings would thereafter be governed by the provisions of the A&C Act, as if the arbitration were pursuant to an arbitration agreement within the meaning of Section 7(1) of the A&C Act.

Section 18 of the MSMED Act is reproduced herein below for ready reference:

> "**18. Reference to Micro and Small Enterprises Facilitation Council.** -
> (*1*) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.
> (*2*) On receipt of a reference under sub-section (*1*), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.
> (*3*) Where the conciliation initiated under sub-section (*2*) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section(*1*) of section 7 of that Act.
> (*4*) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier
> located within its jurisdiction and a buyer located anywhere in India.
> (*5*) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference."
>
> ***(emphasis supplied)***

27. A conjoint and harmonious reading of Section 18(3) of the MSMED Act, along with the DMSEFC Rules framed thereunder, leaves no manner of doubt that the statutory framework itself contemplates two distinct and independent modes for adjudication of disputes after failure of conciliation proceedings, *namely*:

(i) The Council itself assuming the role of the arbitral tribunal and conducting the arbitration; or

(ii) The Council referring the dispute to an institution or centre providing alternate dispute resolution services for the purposes of conducting arbitration in accordance with law.

28. In the present case, it is an admitted and undisputed position that the disputes between the parties were referred by the Council to the **Delhi International Arbitration Centre**[8]. There is also no dispute that the said institution is an established arbitral institution providing alternate dispute resolution services and squarely falls within the ambit and meaning of an "*institution or centre providing alternate dispute resolution services*" as contemplated under Section 18(3) of the MSMED Act.

29. Once such a statutory reference is made by the Council to an arbitral institution under Section 18(3) of the MSMED Act, the arbitral proceedings necessarily thereafter proceed independently in accordance with the provisions, procedure, and statutory framework contemplated under the A&C Act. The arbitral institution, or the learned Arbitrator acting under its aegis, derives authority directly from the statutory reference contemplated under Section 18(3) of the MSMED Act, read with the provisions of the A&C Act. Consequently, the arbitral tribunal is fully competent and empowered to adjudicate the disputes and render an arbitral award in accordance with the law.

30. Significantly, neither the MSMED Act nor the provisions of the A&C Act envisage any intermediate or hybrid procedure whereby the arbitral institution merely renders a recommendatory report or opinion

[8] DIAC

to the Council for eventual approval, confirmation, or pronouncement of an award by the Council itself. No such statutory requirement, procedure, or supervisory mechanism can be culled out either from the language of Section 18(3) of the MSMED Act or from the scheme of the A&C Act.

31. The submission advanced on behalf of the Petitioners, to the effect that the learned Arbitrator was merely required to submit a report to the Council and lacked competence to independently render the Impugned Award, therefore runs contrary to the plain statutory scheme and the legislative intent underlying Section 18(3) of the MSMED Act.

32. If the interpretation sought to be advanced on behalf of the Petitioners were to be accepted, the same would effectively render redundant and unworkable the very statutory mechanism permitting reference of disputes to arbitral institutions under Section 18(3) of the MSMED Act. Such an interpretation would defeat the legislative object of enabling specialized arbitral institutions to independently undertake adjudicatory functions in disputes arising under the MSMED Act and would amount to reading into the statute a procedure which the legislature has consciously not provided.

33. Furthermore, it is a settled principle of statutory interpretation that subordinate legislation, including the DMSEFC Rules, cannot be interpreted in a manner that defeats, curtails, dilutes, or overrides the substantive statutory scheme embodied under the parent enactment. The Rules framed under the MSMED Act are necessarily subordinate to the provisions of the MSMED Act itself and must therefore receive a construction that advances and harmonizes with the legislative intent underlying Section 18(3) of the MSMED Act. Any interpretation of

the Rules which has the effect of rendering ineffective or nugatory the statutory power of the Council to refer disputes to arbitral institutions, or which curtails the authority of such institutions to render arbitral awards, cannot be sustained in law.

34. Viewed from the aforesaid perspective, this Court finds no merit whatsoever in the contention advanced on behalf of the Petitioners that the learned Arbitrator lacked competence to render the Impugned Award or was merely required to submit a report to the Council.

35. This Court also finds that the strenuous reliance placed by the Petitioners upon the judgment of the Punjab and Haryana High Court in ***Indian Oil Corporation Limited*** (*supra*) is misplaced in the facts of the present case. In the said matter, the controversy arose in the context of a panel of arbitrators/facilitators appointed by the State Government under the specific framework prevailing therein, where the Court was examining the nature and extent of authority exercisable by such facilitators under the applicable Rules.

36. However, in the present case, the disputes were not referred to any such panel of facilitators functioning under the direct administrative control of the Council. Rather, the disputes stood referred to DIAC, an independent arbitral institution, which thereafter conducted the arbitral proceedings in accordance with the provisions of the A&C Act and rendered the Impugned Award. The factual and statutory framework governing the present proceedings is therefore materially distinct from the one considered in ***Indian Oil Corporation Limited*** (*supra*).

37. In the aforesaid considered view of the matter, the first principal contention advanced on behalf of the Petitioners, namely that the

learned Arbitrator lacked the competence or jurisdiction to render the Impugned Award and was merely required to submit a report to the Council, is found to be wholly devoid of merit and is, accordingly, rejected.

38. The next contention advanced on behalf of the Petitioners pertains to the Respondent allegedly not being registered under the MSMED Act at the time when the disputes are stated to have arisen between the parties. In this regard, reliance has once again been placed upon the decision in ***Indian Oil Corporation Limited*** (*supra*) to contend that the benefit of the statutory mechanism under Section 18 of the MSMED Act could not have been invoked in the absence of registration under the MSMED Act at the relevant point in time.

39. A conjoint reading of Section 2(n) of the MSMED Act, which defines the expression "*supplier*", being the central category of entities for whose benefit the statutory mechanism under Sections 15 to 19 of the MSMED Act has been enacted, together with Section 8 of the MSMED Act, particularly sub-section (1) thereof, demonstrates that the legislative framework principally envisages the filing of a memorandum by enterprises, especially micro and small enterprises, in the manner prescribed thereunder.

40. The scheme and structure of the MSMED Act clearly indicate that, for the purpose of availing the statutory benefits, protections and remedies contemplated under Sections 15 to 19 of the MSMED Act, particularly in relation to micro and small enterprises, the filing of the memorandum under Section 8 constitutes the material and relevant statutory requirement. The provisions of the MSMED Act do not contemplate any separate, additional or independent requirement of

"*registration*" in the strict or technical sense sought to be canvassed by the Petitioners.

41. A plain and meaningful reading of Section 2(n) of the MSMED Act makes it evident that a "*supplier*" means a micro or small enterprise that has filed a memorandum with the authority referred to under Section 8(1) of the MSMED Act. Correspondingly, Section 8 merely prescribes the statutory mechanism and procedure for filing such a memorandum and does not impose any further condition of certification, approval or formal registration as a prerequisite for recognition as a "*supplier*" under the MSMED Act.

42. Therefore, in the considered opinion of this Court, once the memorandum contemplated under Section 8 is filed, particularly by a micro or small enterprise, such enterprise becomes entitled to invoke and avail the statutory benefits provided under Sections 15 to 19 of the MSMED Act. The legislative scheme does not support the contention advanced by the Petitioners that a separate registration certificate, independent certification process, or any additional formality beyond the filing of the memorandum is mandatory either for claiming the status of a "*supplier*" under the MSMED Act or for availing the benefits contemplated under Chapter V of the Act, especially those contained in Sections 15 to 19 thereof. Sections 2(n) and 8 of the MSMED Act are reproduced hereunder for ready reference:

> "**2.** ….
> (n) "**supplier**" means 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);

(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;

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**8. Memorandum of micro, small and medium enterprises**.-

(1) Any person who intends to establish, —

(*a*) a micro or small enterprise, may, at his discretion; or

(*b*) a medium enterprise engaged in providing or rendering of services may, at his discretion; or

(*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):

Provided that any person who, before the commencement of this Act, established,-

(*a*) a small scale industry and obtained a registration certificate, may, at his discretion; and

(*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).”

***(emphasis supplied)***

43. Learned counsel appearing on behalf of the Petitioners has been unable to point out any specific provision under the MSMED Act which mandates that, apart from the filing of the memorandum contemplated under Section 8, a micro or small enterprise must additionally obtain any separate certificate of registration or fulfil any further statutory formality before it can be regarded as a "*supplier*" within the meaning of Section 2(n) of the MSMED Act. In the absence of any such statutory prescription, the interpretation sought to be advanced by the Petitioners cannot be accepted, particularly when the language employed under Sections 2(n) and 8 is clear, unambiguous and self-contained.

44. In any event, the objections sought to be raised by the Petitioners would necessarily require an examination of disputed factual aspects, including the status of the Respondent enterprise, the nature and character of the commercial transactions entered into between the parties, and the stage at which the memorandum under Section 8 of the MSMED Act came to be filed. Such issues fall squarely within the domain of factual adjudication undertaken by the learned Arbitrator.

45. The learned Arbitrator has already considered and dealt with the said objections while adjudicating the disputes between the parties, particularly in Paragraph Nos. 28 to 30 of the Impugned Award. This Court, while exercising its limited jurisdiction under Section 34 of the A&C Act, cannot reappreciate the evidence or undertake a fresh examination of such factual determinations.

46. The same position would equally govern the subsequent contention advanced on behalf of the Petitioners regarding the alleged non-consideration by the learned Arbitrator of the communications exchanged between the parties concerning the purported defective nature of the goods supplied, as well as the ancillary dispute relating to payment of GST, as the learned counsel for the Petitioners advanced before this Court.

47. The submissions sought to be urged by the Petitioners, on these aspects, in essence, pertain to the appreciation and interpretation of the evidentiary material forming part of the arbitral record and do not disclose any patent illegality or jurisdictional infirmity apparent on the face of the Impugned Award.

48. A perusal of the Impugned Award demonstrates that the learned Arbitrator has extensively examined the rival pleadings and submissions advanced by the parties as well as the documentary material placed on record, before arriving at the findings recorded therein. The relevant portions of the Impugned Award, extracted in the preceding part of this judgment, clearly indicate due consideration of the correspondence exchanged between the parties, the conduct of the parties during the subsistence of the transactions, and the surrounding factual circumstances relevant for adjudication of the disputes.

49. The findings returned by the learned Arbitrator, particularly with regard to the acceptance of the goods supplied, the absence of any contemporaneous or timely rejection thereof, the lack of immediate protest concerning the alleged defects, and the conclusion that the transactions between the Respondent and Walmart were independent and distinct from the contractual obligations *inter se* the parties herein, are all findings founded upon appreciation of evidence

and material available on record. Such findings fall squarely within the domain of factual adjudication entrusted to the learned Arbitrator.

50. Merely because another interpretation of the evidence may also be possible, or because the Petitioners seek to place a different construction upon the material on record, would not constitute a valid ground for interference under Section 34 of the A&C Act.

*51*. It is well settled that the jurisdiction exercised by this Court under Section 34 of the A&C Act is supervisory and not appellate in nature. This Court does not sit in appeal over the findings rendered by the learned Arbitrator, nor can it reassess or reappreciate the evidentiary record as though exercising appellate jurisdiction. Interference with an arbitral award is permissible only within the limited contours statutorily recognized under Section 34 of the A&C Act, namely where the award is shown to suffer from patent illegality appearing on the face of the award, perversity going to the root of the matter, or conflict with the fundamental policy of Indian law. In the absence of any such infirmity having been demonstrated by the Petitioners, no ground for interference with the Impugned Award is made out.

***DECISION:***

52. In view of the foregoing discussion, and having regard to the facts and circumstances of the present case, this Court does not find the Impugned Award to suffer from any patent illegality, perversity, jurisdictional error, or any other infirmity warranting interference within the limited scope of jurisdiction under Section 34 of the A&C Act.

53. Consequently, no ground for setting aside the Impugned Award is made out and, accordingly, the present Petition stands dismissed.

54. The present Petition, along with pending Application(s), if any, is disposed of in the aforesaid terms.

55. No Order as to Costs.

**HARISH VAIDYANATHAN SHANKAR, J.**

**MAY 13, 2026/rk/DJ**