NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 67 of 2025

1 - M/s Jai Balaji Industries Ltd. Borai Industrial Growth Centre, P.O. Rasmada, Dist. Durg Chhattisgarh 491009.

... Petitioner(s)

Versus

1 - Garuda Ispat Private Limited Through Its Director, Having Its Registered Office At A 4/204, Kool Homes, Daldal Seoni, Mowa, Raipur - 492009.

... Respondent(s)

(Cause-title taken from Case Information System)

For Petitioner	:	Shri Sunil Otwani, Sr. Advocate along with Shri Ankit Pandey, Advocate.
For Respondent	:	Shri Sidharth Shukla, Advocate.

Hon'ble Shri Justice Ravindra Kumar Agrawal, J

Order Reserved on 19.03.2026

Order Delivered on 22.06.2026

1. The petitioner has filed the present writ petition under Article 227 of the Constitution of India, claiming the following reliefs:-

> "10.1 It is respectfully prayed to the Hon'ble Court that the record of the execution proceedings being Case No:- TD/82/2024 pending before the Learned IInd Additional District and Sessions Judge, Durg, Chhattisgarh be called for the perusal of this Hon'ble Court.
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> 10.2 It is respectfully prayed to the Hon'ble Court that the suitable writ/writ of certiorari/directions may kindly be issued for setting aside the order dated 07/01/2025 passed by the Learned IInd Additional District and Sessions Judge, Durg, Chhattisgarh in

Case No:- TD/82/2024 and it be further declared that the order dated 27/12/2022 cannot be termed as an award within the meaning of Arbitration and Conciliation Act 1996.

10.3 It is respectfully prayed to the Hon'ble Court that the suitable writ/writ of certiorari/directions/declaration may kindly be issued declaring the order dated 27/12/2022 null and void, void ab initio, and unenforceable and the pending execution proceedings being Case No:- TD/82/2024 be dismissed and quashed.

10.4 It is respectfully prayed to the Hon'ble Court that it be further declared that by failing to adhere to the mandatory statutory and procedural requirements, the MSME Council acted in contravention of the MSMED Act, the Arbitration and Conciliation Act, and established legal principles, rendering the order dated 27/12/2023 released on 24/05/2024 i.e. after lapse of 147 days as invalid, nullity, void-ab-initio, non-est, unsustainable & non-existent in the eyes of law, Corum-non-judice, without jurisdiction, illegal, non- executable and contrary to the provisions of law and thus the same cannot be enforced as a legal decree.

10.5 Any other further order(s) as deemed fit and necessary by this Hon'ble Court in the interest of justice."

2. It is the case of the petitioner that the petitioner is a company duly incorporated under the Companies Act, 1956, and continues to exist under the Companies Act, 2013. In the ordinary course of its business, it had placed several purchase orders upon the respondent during the year 2016 for the supply of steel materials. The purchase orders bearing Nos. EX-54, EX-57, EX-64, EX-67 and EX-76 were issued for different quantities of material. Subsequently, a dispute arose between the parties with regard to the quality of the material supplied and the payments claimed by the respondent. The material supplied against the Purchase Order No. EX-57 was defective and not in conformity with the agreed specifications and, therefore, the same was rejected.

Despite such rejection, the respondent included the value of the rejected material while calculating its outstanding dues and raised claims against the petitioner. On 02.03.2020, the respondent invoked the provisions of Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (in short “MSMED Act”) and filed a claim before the Micro and Small Enterprises Facilitation Council (in short “Council”) seeking recovery of an amount of Rs. 9,63,968/-. The said claim was registered as Application No. CG14B0010764/S/00002. The amount claimed by the respondent included the price of the material, which had already been rejected by the petitioner on account of alleged defects. Pursuant to registration of the claim, notices under Section 18(1) of the Act of 2006 were issued by the Council during March and June, 2020. When the matter was taken up by the Council on 14.09.2021, it raised a preliminary objection challenging the jurisdiction of the Council on the ground that the contractual arrangement between the parties provided that the courts at Kolkata alone would have exclusive jurisdiction to adjudicate disputes arising out of the transactions. Despite such objection, the Council proceeded with the matter and initiated conciliation proceedings under Section 18(2) of the Act on 12.10.2021.

3. It is also the pleading that during the conciliation proceedings, the matter was adjourned on various dates and on 26.10.2021, the case was fixed for passing of an ex parte order on 09.11.2021. However, no order came to be passed on the said date, and the matter remained pending. Thereafter, after a substantial lapse of time, a fresh notice dated 28.10.2022 was issued by the Facilitation Council, and the

matter was again listed for hearing. A copy of the respondent's rejoinder was supplied to it for the first time on 11.11.2022. Thereafter, the petitioner objected to the limitation, contending that the claim preferred by the respondent was barred by time. It is pleaded that on 27.12.2022, the respondent filed its reply to the petitioner's preliminary objections, and the Council specifically recorded that written submissions on the issue of limitation would be filed and thereafter the matter would be reserved for orders. Pursuant thereto, the petitioner filed its written arguments on 02.01.2023. According to the petitioner, once the Council had resolved to consider and decide the issue of limitation, no final adjudication could have been made without first deciding such objection and granting the petitioner an effective opportunity to address the matter.

4. Although the impugned order bears the date 27.12.2022, it was admittedly released only on 24.05.2023, after a delay of 147 days, without any explanation being furnished by the Council. No notice regarding the pronouncement of the order was ever issued, and no opportunity of hearing was granted before its release. It is further pleaded that after obtaining the complete record through an application under the Right to Information Act, the petitioner discovered that the respondent had knowledge of the passing and release of the order and had received a copy thereof immediately after its issuance on 25.05.2023. According to the petitioner, the records do not disclose how the respondent was informed about the release of the order or under what circumstances it received the order so promptly. Based on these circumstances, the petitioner alleges serious procedural

irregularities, lack of transparency in the conduct of the proceedings and even collusion between the respondent and the Facilitation Council. The order suffers from violation of the principles of natural justice, non-compliance with the mandatory procedure prescribed under Section 18 of the MSMED Act, 2006 and the provisions of the Arbitration and Conciliation Act, 1996, and is therefore void and unenforceable.

5. It is further pleaded that despite the aforesaid defects and irregularities, the respondent initiated execution proceedings on 28.03.2024 under Section 36 of the Arbitration and Conciliation Act, 1996, read with Order 21 Rule 11 of the Code of Civil Procedure before the Court of learned 2nd Additional District Judge, Durg, which were registered as Case No. TD/82/2024. Upon receipt of notice in the execution proceedings, the petitioner filed an application on 02.07.2024 seeking dismissal of the execution case on the ground that the order dated 27.12.2022 was not a valid arbitral award and, therefore, was incapable of execution. In the said application, the petitioner questioned the legality and enforceability of the order on several grounds, namely lack of jurisdiction of the Facilitation Council, non-compliance with the statutory procedure governing conciliation and arbitration, violation of principles of natural justice, failure to decide the objection regarding limitation, unexplained delay of 147 days in release of the order, alleged backdating of the award and procedural improprieties rendering the award contrary to public policy. The learned 2nd Additional District Judge, Durg, rejected the petitioner's objections and passed the impugned order dated 07.01.2025. Aggrieved by the

said order and the continuation of the execution proceedings, the petitioner has approached this Court by filing this writ petition.

6. The respondent filed its return and pleaded that the present writ petition has been filed challenging the order dated 07.01.2025 passed by the learned 2nd Additional District Judge, Durg in T.D. No. 82/2024, whereby the objections preferred by the petitioner against the execution proceedings were rejected. The dispute originated from various purchase orders issued by the petitioner during the year 2016 for the supply of iron and steel materials. Pursuant to the supplies made, certain amounts remained unpaid and, therefore, the respondent invoked the provisions of Section 18 of the MSMED Act, 2006 by filing Application No. CG/14/S/CGH/00283 before the Council, seeking recovery of the outstanding amount of Rs. 9,63,968/-. The respondent pleaded that the Facilitation Council thereafter undertook proceedings in accordance with Section 18 of the MSMED Act, 2006 and, upon completion of the statutory process, passed an award dated 27.12.2022, which was issued on 24.05.2023, directing the petitioner to pay a total sum of Rs. 28,05,929/-, comprising the principal outstanding amount of Rs. 9,63,968/- and interest amounting to Rs. 18,41,961/-, along with further interest in the event of non-payment within the stipulated period.

7. It is also the reply of the respondent that the petitioner had already challenged the aforesaid award by filing proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, before the Commercial Court, Durg, which were registered as MJC (Civil) No. 384 of 2023. However, according to the respondent, the petitioner failed to comply

with the mandatory requirement contained in Section 19 of the MSMED Act, 2006, requiring the deposit of 75% of the awarded amount as a precondition for entertaining a challenge to the award. Consequently, no stay on the operation or execution of the award was granted by the Commercial Court. Despite the pendency of the proceedings under Section 34 of the Act of 1996, the award continues to remain operative and enforceable in law. The respondent initiated execution proceedings under Section 36 of the Arbitration and Conciliation Act, 1996 by filing T.D. No. 82/2024 before the learned 2nd Additional District Judge, Durg, for the enforcement of the award. The petitioner deliberately suppressed from this Court the material fact regarding the pendency of MJC (Civil) No. 384 of 2023, challenging the award and the fact that no stay had been granted therein due to non-compliance with the mandatory pre-deposit requirement under Section 19 of the MSMED Act, 2006. On account of such suppression, this Court, while entertaining the present writ petition, passed an interim order dated 21.01.2025 staying the effect and operation of the award dated 27.12.2022, although the petitioner had sought only a stay of the order dated 07.01.2025 passed in the execution proceedings. It is submitted that the interim order was obtained without full disclosure of the relevant facts and, therefore, is liable to be vacated or modified.

8. The respondent's reply is also that the objections raised by the petitioner before the Executing Court were wholly misconceived and legally untenable. The application seeking dismissal of the execution proceedings did not disclose any statutory provision under which such relief could be claimed and, in substance, sought to challenge the

validity of the arbitral award itself. The questions relating to the legality, correctness, procedural validity, alleged irregularities, limitation, natural justice, jurisdiction of the Facilitation Council, or alleged nullity of the award can be examined only in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 and not in execution proceedings. The scope of inquiry in execution is extremely limited and extends only to cases where the decree or award is shown to be a complete nullity for want of inherent jurisdiction, and therefore, the writ petition is liable to be dismissed.

9. Learned counsel appearing for the petitioner would submit that the learned Executing Court has committed a manifest error of law in rejecting the petitioner's objections without examining the foundational issue as to whether the order dated 27.12.2022 passed by the Council constitutes a valid and enforceable arbitral award in the eyes of law. It is submitted that the Council failed to comply with the mandatory procedure prescribed under Sections 18(2) and 18(3) of the MSMED Act, 2006 and the corresponding provisions of the Arbitration and Conciliation Act, 1996. The conciliation proceedings are a mandatory precondition before commencement of arbitration proceedings, and the Council was required to conduct conciliation in accordance with Sections 65 to 81 of the Arbitration and Conciliation Act. It is argued that neither any valid conciliation proceedings were conducted nor was any formal termination of conciliation recorded before proceeding further. Reliance has been placed on the decision of the Hon'ble Supreme Court in ***Jharkhand Urja Vikas Nigam Ltd. v. State of Rajasthan***, (2021) 19 SCC 206, wherein it was held that conciliation

and arbitration are distinct stages and cannot be clubbed together and that an order passed without following the mandatory statutory procedure would be a nullity.

10. Learned counsel for the petitioner would further submit that the learned Executing Court failed to appreciate that the proceedings before the MSME Council were fundamentally vitiated for non-compliance with the mandatory requirements contained in Sections 18(2) and 18(3) of the MSMED Act, 2006. It is submitted that under the statutory scheme, conciliation and arbitration are two distinct and independent stages. Arbitration can commence only after conciliation proceedings have failed and stand terminated in accordance with the law. In the present case, a perusal of the entire order-sheet proceedings of the Council does not reveal any order recording failure of conciliation nor any declaration terminating the conciliation proceedings. In the absence of such termination, the Council lacked jurisdiction to proceed further under Section 18(3) of the MSMED Act.

11. He would next submit that even assuming that conciliation had failed, the Council was thereafter required to initiate arbitration proceedings strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996. It is submitted that no notice regarding commencement of arbitration proceedings was issued, no separate arbitral proceedings were initiated, no statement of claim or defence was invited in terms of Section 23 of the Act of 1996, no issues were framed, no evidence was recorded and no opportunity was afforded to the parties to lead evidence or address arguments as contemplated under Sections 20, 23, 24 and 25 of the Arbitration and Conciliation

Act. Learned counsel submits that the entire process adopted by the Council reflects an impermissible blending of conciliation and arbitration proceedings, contrary to the statutory scheme. In support of the aforesaid submission, reliance has been placed upon the decisions rendered in ***Feedback Infra Private Limited v. Micro and Small Enterprises Facilitation Council*****,** Order dated 29.09.2023 by Madras High Court, in W.P. No. 25062 of 2023**,** ***Electrosteel Steel Limited v. Ispat Carrier Private Limited 2025 (7) SCC 773,*** and ***Unicon Engineers v. Jindal Steel & Power Ltd.***, decided on 26.07.2022 by Delhi High Court in OMP (ENF.)(COMM.) 140/2021, to contend that failure to follow the mandatory arbitral procedure renders the resultant award void and unenforceable.

12. Learned counsel for the petitioner would also argue that the impugned order dated 27.12.2022 is vitiated by serious procedural irregularities and violation of the principles of natural justice. It is submitted that although the matter was fixed on 27.12.2022 for consideration of the preliminary objections raised by the petitioner, particularly with regard to limitation and jurisdiction, the Council itself recorded that written arguments on the issue of limitation would be submitted and thereafter the matter would be reserved for orders. The petitioner accordingly filed its written submissions on 02.01.2023. However, without deciding the issue of limitation separately and without granting any effective opportunity of hearing in arbitration proceedings, the impugned order came to be passed. Learned counsel further submits that the order is purportedly dated 27.12.2022 but was released only on 24.05.2023 after an unexplained delay of 147 days. No notice of the

pronouncement of the award was issued to the petitioner, and no explanation for such extraordinary delay finds place in the record. Placing reliance upon ***Anil Rai v. State of Bihar***, (2001) 7 SCC 318, it is argued that such unexplained delay undermines the fairness of the adjudicatory process and creates serious doubt regarding the authenticity and legality of the decision-making process.

13. Learned counsel appearing for the petitioner would lastly submit that the learned Executing Court failed to appreciate that an order passed without jurisdiction and in complete disregard of mandatory statutory provisions is a nullity and can be questioned even at the stage of execution. It is argued that the Council acted without jurisdiction by bypassing the mandatory statutory framework governing conciliation and arbitration, and, therefore, the order dated 27.12.2022 is non est in the eyes of the law. It is also submitted that a decree or award which is a nullity cannot be executed, and the executing court was duty-bound to examine the issue of inherent lack of jurisdiction. Reliance has been placed upon ***Kiran Singh v. Chaman Paswan***, AIR 1954 SC 340, ***Jagmittar Sain Bhagat v. Director, Health Services***, (2013) 10 SCC 136, ***Chief Engineer, Hydel Project v. Ravinder Nath***, (2008) 2 SCC 350 and ***Gurnam Singh v. Gurbachan Kaur,*** 2017 (13) SCC 414, to submit that a jurisdictional defect strikes at the very root of the matter and may be raised at any stage, including execution proceedings. On these grounds, learned counsel submits that the impugned order dated 07.01.2025 passed by the learned Executing Court is unsustainable in law and deserves to be set aside.

14. Per contra, learned counsel appearing for the respondent opposes the submissions of the learned counsel of the petitioner and would submit that the entire challenge raised by the petitioner is misconceived and amounts to a collateral attack upon an arbitral award in execution proceedings, which is impermissible in law. It is submitted that the award dated 27.12.2022 passed by the Council has already been challenged by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 in MJC No. 384/2023 before the competent Commercial Court. However, the petitioner has admittedly failed to comply with the mandatory requirement of pre-deposit under Section 19 of the MSMED Act, 2006 and, therefore, has not obtained any order staying the operation or execution of the award. Learned counsel submits that once the award has become enforceable under Section 36 of the Arbitration and Conciliation Act, the executing court is bound to execute the same and cannot sit in appeal over the validity or correctness of the award. Reliance is placed upon ***Electrosteel Steel Ltd. v. Ispat Carrier Pvt. Ltd***. reported in (2024) 4 SCC 696, wherein the Hon'ble Supreme Court reiterated that the arbitral regime contemplates a limited challenge under Section 34 and does not permit parties to bypass the statutory mechanism by raising objections to the award in collateral proceedings.

15. Learned counsel would further submit that the objections sought to be raised by the petitioner relating to non-compliance with Section 18 of the MSMED Act, alleged procedural irregularities, violation of natural justice, non-termination of conciliation proceedings and alleged lack of jurisdiction of the Council are all matters touching upon the legality and

validity of the award itself and are issues which fall squarely within the domain of proceedings under Section 34 of the Arbitration and Conciliation Act. Referring to the case of ***Electrosteel Steel Ltd.*** (supra), learned counsel submits that the Hon'ble Supreme Court has emphasized that an executing court cannot go behind an award and undertake an examination of its correctness on facts or law. It is submitted that the distinction between an erroneous award and a void award must be strictly maintained and that objections concerning procedural compliance during arbitral proceedings are matters to be adjudicated by the court exercising jurisdiction under Section 34 and not by the executing court.

16. He would also submit that the petitioner has failed to demonstrate any patent lack of inherent jurisdiction in the Facilitation Council so as to render the award a nullity. The respondent is a registered MSME unit, and the reference under Section 18 of the MSMED Act was maintainable before the Facilitation Council. The Council entertained the claim, issued notices, afforded opportunities to the parties and ultimately passed its order. Whether the conciliation proceedings were properly concluded, whether a separate order terminating conciliation was required, or whether the procedure adopted by the Council strictly conformed to the provisions of the Arbitration and Conciliation Act are all questions which pertain to the validity of the award and not to the inherent jurisdiction of the forum. Even assuming such objections are available, they cannot be examined in execution proceedings.

17. It is lastly submitted that the learned Executing Court rightly rejected the petitioner's objections, as the same were nothing but an indirect

attempt to reopen and challenge the award on merits. Permitting such objections would defeat the legislative intent underlying the MSMED Act and the Arbitration and Conciliation Act, which provide a complete code for challenge and enforcement of arbitral awards. The petitioner, having already invoked the remedy under Section 34 and having failed to comply with the mandatory pre-deposit requirement under Section 19 of the MSMED Act, cannot be permitted to circumvent the statutory framework by questioning the award in execution proceedings. The impugned order dated 07.01.2025 passed by the learned 2nd Additional District Judge, Durg, suffers from no jurisdictional error warranting interference under Article 227 of the Constitution of India, and the writ petition deserves to be dismissed.

18. I have heard rival submissions of the learned counsel for the respective parties and gone through their pleadings and documents annexed with the petition.

19. A perusal of the record shows that the petitioner is not directly challenging the award in the present proceedings but is seeking to assail the order dated 07.01.2025 passed by the Executing Court, which rejected its objections. It is not in dispute that the petitioner has already availed the statutory remedy under Section 34 of the Arbitration and Conciliation Act, 1996, by questioning the award before the competent Commercial Court.

20. Before examining the challenge raised by the petitioner, it would be apposite to notice the statutory scheme contained in Section 18 of the MSMED Act, 2006. Section 18 enables a supplier to make a reference

to the Facilitation Council in respect of any amount due under Section 17 of the Act, which reads as follows:-

> **"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 ittoany 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."

21. Under Section 18(2) of the MSMED Act, 2006, the Council is required to conduct conciliation itself or seek the assistance of any institution providing alternate dispute resolution services. Section 18(3) provides that where conciliation initiated under sub-section (2) is unsuccessful and stands terminated without settlement, the Council shall either itself take up the dispute for arbitration or refer it to any institution providing arbitration services. Thereafter, the provisions of the Arbitration and Conciliation Act, 1996, become applicable to such arbitration

proceedings. Thus, the legislative intent is to provide a statutory mechanism for adjudication of disputes involving MSMEs through a combination of conciliation and arbitration.

22. The records placed before this Court reveal that though proceedings were initiated before the Facilitation Council under Section 18 of the MSMED Act, 2006, the order sheets do not disclose any order recording failure or termination of conciliation proceedings as contemplated under Section 18(3) of the Act read with Section 76 of the Arbitration and Conciliation Act, 1996. More importantly, even after the stage of conciliation, the records do not indicate the commencement of independent arbitration proceedings in accordance with the law. It is necessary here to notice the contents of the order sheets of the Facilitation Council from 14.09.2021 to 18.05.2023, which are as under:-

> **"**प्रकरण में दिनांक 14/09/2021 को उभय पक्ष उपस्थित हुए। अनावेदक द्वारा बताया गया कि आवेदक का आवेदन समय बाधित है इसलिए निरक्त किया जावे तथा आवेदक को जारी किये गये क्रय आदेश में ज्यूरिस्डिक्शन क्लास है जिसमे उभय पक्ष के मध्य उत्पन्न विवाद का निराकरण कलकत्ता वेस्ट बंगाल के न्यायालय द्वारा किया जावेगा। अतः आवेदक का आवेदन प्रचलन योग्य नहीं है। अनावेदक दारा इस संबंध में प्रारंभिक आपत्ति दिनांक 18/02/2021 प्रत्सुत किया गया है। विचारोपरांत काउंसिल द्वारा आवेदक को निर्देशित कया गया कि वह प्रारंभिक आपत्ति का तत्काल प्रत्युत्तर प्रस्तुत करें। प्रकरण दिनांक 12/10/2021 हेतु नियत किया गया।
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> प्रकरण में दिनांक 12/10/2021 को उभय पक्ष उपस्थित हुए। आवेदक की ओर से अनावेदक के आपत्तियों का जवाब प्रस्तुत किया गया। विचारोपरांत काउंसिल द्वारा प्रकरण में धारा 18(2) के तहत सुलह की कार्यवाही प्रारंभ की गई तथा उभय पक्ष को सुलह करने का अवसर दिया गया तथा प्रकरण दिनांक 26/10/2021 हेतु नियत किया गया।
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> प्रकरण में दिनांक 26/10/2021 को उभय पक्ष उपस्थित हुए। अनावेदक की ओर से बताया गया कि उन्हें मूलधन की राशि भुगतान की जाने हेतु कोई आपतति नहीं है। वह इस बबाया मूलधन राशि को छः किस्तों में देने को तैयार है। विचारोंपरोत काउंसिल द्वारा अनावेदक को लिखित कथन दिनांक 09/11/2021 तक प्रस्तुत करने की अंतिम अवसर दिया गया।

प्रकरण में दिनांक 09/11/2021 को आवेदक उपस्थित तथा अनावेदक अनुपस्थित रहा। आवेदक को सुना गया तथा प्रकरण में एकपक्षीय आदेश जारी किये जाने का निर्णय लिया गया।

प्रकरण में दिनांक 11/11/2022 को उभय पक्ष उपस्थित हुए। सुनवाई के दौरान अनावेदक द्वारा बताया गया कि उन्हें आवेदक के रिजॉइंडर की प्रति प्राप्त नहीं हुए है। विचारोपरांत काउंसिल द्वारा निर्देशित किया गया कि अनावेदक को आवदेक के द्वारा प्रस्तुत रिजॉन्डर की प्रति उपलब्ध कराया जावे। प्रकरण अंतिम सुनवाई दिनांक 29/11/2022 हेतु नियत किया गया है।

प्रकरण में दिनांक 29/11/2022 को उभय पक्ष उपस्थित हुए। उभय पक्ष को सुना गया तथा प्रकरण सुनवाई दिनांक 14/12/2022 हेतु नियत किया गया।

प्रकरण में दिनांक 14/12/2022 को उभयपक्ष उपस्थित हुए। आवेदक के अधिवक्ता द्वारा वकालतनामा प्रस्तुत किया गया। अनावेदक द्वारा बताया गया कि आवेदक का आवेदन समय बाधित है तथा तीन साल से अधिक अवधि व्यतीत हो जाने के पश्चात आवदेन प्रस्तुत किया गया। विचारांपरांत काउंसिल द्वारा आवेदक को निर्देशित किया गया कि वह अनावेदक के आपत्ति का जवाब प्रस्तुत करें। विचारोपरांत काउॅसिल द्वारा प्रकरण दिनांक 27/12/2022 हेतु नियत किया गया।

प्रकरण में दिनांक 27/12/2022 को उभय पक्ष उपस्थित हुए। आवेदक की ओर से आवेदक द्वारा किये गये प्रारंभिक आपत्ति का जवाब प्रस्तुत किया गया, जिसकी प्रति अनावेदक को प्रदान की गई। विचारोपरांत काउंसिल द्वारा उभय पक्ष को निर्देशित किया गया कि में अपने–अपने लिखित कथन प्रस्तुत करें। तत्पश्चाात प्रकरण आदेशार्थ सुरक्षित रखा जावे। कृपया माननीय काउंसिल का निर्णय आदेश दिनांक 27/12/2022 काउंसिल के हस्ताक्षर हेतु सादर प्रस्तुत है।

सहा.लेखा अ.

हस्ताक्षरार्थ प्रस्तुत।

समिति की बैठक दिनांक 27/12/2022 मे लिये गये निर्णयअनुसार आदेश तैयार कर अनुमोदनार्थ/हस्ताक्षरार्थ प्रस्तुत।

संचालक महोदय

सही/–
हस्ताक्षर
18/05/2023''

23. There is no material to show the formal termination of the conciliation proceeding, issuance of notice commencing arbitration, filing of a statement of claim by the claimant, submission of a statement of defence by the opposite party, framing of points for determination, production of evidence, or conduct of hearings as contemplated under Sections 23, 24 and 25 of the Arbitration and Conciliation Act, 1996. The challenge raised by the petitioner, therefore, is not confined to the

correctness of the award but goes to the very legality of the process by which the purported award came to be rendered. It is apposite to quote Sections 23, 24 and 25 of the Arbitration and Conciliation Act, 1996, which reads as under:-

> "23. Statements of claim and defence.—(1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.
> (2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.
> 1[(2A) The respondent, in support of his case, may also submit a counterclaim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counterclaim or set-off falls within the scope of the arbitration agreement.]
> (3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.
> 1[(4) The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing of their appointment.]
> 24. Hearings and written proceedings.—(1) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials:
> Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held:
> [Provided further that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on day-to-day basis, and not grant any adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause.]
> (2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or other property.
> (3) All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or

> evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.
> 25. Default of a party.—Unless otherwise agreed by the parties, where, without showing sufficient cause,—
> (a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;
> (b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant 3[and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited].
> (c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it."

24. No doubt, Section 18(4) of the MSMED Act confers jurisdiction upon the Facilitation Council to entertain disputes between suppliers and buyers. However, the existence of jurisdiction and the lawful assumption of arbitral jurisdiction are two distinct concepts. While the Council undoubtedly possessed jurisdiction to entertain the reference, its authority to adjudicate the dispute as an arbitral tribunal could arise only upon satisfaction of the statutory conditions prescribed under Sections 18(2) and 18(3) of the MSMED Act. The Supreme Court in ***Jharkhand Urja Vikas Nigam Ltd.*** (supra) held that conciliation and arbitration are distinct stages and that arbitration can commence only after conciliation has failed. Therefore, compliance with the statutory transition from conciliation to arbitration is not a matter of mere procedure but a condition precedent for lawful exercise of arbitral jurisdiction. It has been held that:-

> "14. From a reading of Section 18(2) and 18(3) of the MSMED Act it is clear that the Council is obliged to conduct conciliation for which the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 would apply, as if the conciliation was initiated under Part III of the said Act. Under Section 18(3), when conciliation fails and stands terminated, the dispute between the

parties can be resolved by arbitration. The Council is empowered either to take up arbitration on its own or to refer the arbitration proceedings to any institution as specified in the said Section. It is open to the Council to arbitrate and pass an award, after following the procedure under the relevant provisions of the Arbitration and Conciliation Act, 1996, particularly Sections 20, 23, 24, 25.

15. There is a fundamental difference between conciliation and arbitration. In conciliation the conciliator assists the parties to arrive at an amicable settlement, in an impartial and independent manner. In arbitration, the Arbitral Tribunal/ arbitrator adjudicates the disputes between the parties. The claim has to be proved before the arbitrator, if necessary, by adducing evidence, even though the rules of the Civil Procedure Code or the Indian Evidence Act may not apply. Unless otherwise agreed, oral hearings are to be held.

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

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

18. The order dated 06.08.2012 is a nullity and runs contrary not only to the provisions of MSMED Act but contrary to various mandatory provisions of Arbitration and Conciliation Act, 1996. The order dated 06.08.2012 is patently illegal. There is no arbitral award in the eye of law. It is true that under the scheme of the Arbitration and Conciliation Act, 1996 an arbitral award can only be questioned by way of application under Section 34 of the Arbitration and Conciliation Act, 1996. At the same time when an order is passed without recourse to arbitration and in utter disregard to the provisions of Arbitration and Conciliation Act, 1996, Section 34 of the said Act will not apply. We cannot reject this appeal only on the ground that appellant has not availed the remedy under Section 34 of the Arbitration and Conciliation Act, 1996.”

25. The distinction between lack of jurisdiction and an alleged irregular exercise of jurisdiction has been reiterated by the Hon'ble Supreme Court in **Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd.**, 2023 (6) SCC 401, wherein it was held that Section 18 creates a special statutory mechanism conferring exclusive jurisdiction upon the Facilitation Council for adjudication of disputes involving MSMEs. It has been held that:-

> "47. The aforesaid legal position also dispels the arguments advanced on behalf of the counsel for the buyers that the Facilitation Council having acted as a Conciliator under Section 18(2) of the MSMED Act, 2006 itself cannot take up the dispute for arbitration and act as an Arbitrator. Though it is true that Section 80 of the Arbitration Act, 1996 contains a bar that the Conciliator shall not act as an Arbitrator in any arbitral proceedings in respect of a dispute that is subject of conciliation proceedings, the said bar stands superseded by the provisions contained in Section 18 read with Section 24 of the MSMED Act, 2006. As held earlier, the provisions contained in Chapter-V of the MSMED Act, 2006 have an effect overriding the provisions of the Arbitration Act, 1996. The provisions of Arbitration Act, 1996 would apply to the proceedings conducted by the Facilitation Council only after the process of conciliation initiated by the council under Section 18(2) fails and the council either itself takes up the dispute for arbitration or refers to it to any institute or centre for such arbitration as contemplated under Section 18(3) of the MSMED Act, 2006.
>
> 48. When the Facilitation Council or the institution or the centre acts as an Arbitrator, it shall have all powers to decide the disputes referred to it as if such arbitration was in pursuance of the arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996 and then all the trappings of the Arbitration Act, 1996 would apply to such arbitration. It is needless to say that such Facilitation Council/institution/centre acting as an arbitral tribunal would also be competent to rule on its own jurisdiction like any other arbitral tribunal appointed under the Arbitration Act, 1996 would have, as contemplated in Section 16 thereof.
>
> 77. The issues raised and the submissions made by the learned counsel appearing for the appellant with regard to the overriding effect of the MSMED Act, 2006 over the Arbitration Act, 1996 jurisdiction of Facilitation Council, the parties autonomy to enter into an agreement qua the statutory provisions, the issue of causus omissus etc. have been discussed and decided

hereinabove which need not be reiterated or repeated. Accordingly, it is held that the reference made to the Facilitation Council would be maintainable in spite of an independent arbitration agreement existing between the parties to whom the MSMED Act, 2006 is applicable, and such Council would be entitled to proceed under sub-section (2) of Section 18 of the MSMED Act, 2006 as also to act as an Arbitrator or to refer the disputes to the institution or Centre as contemplated under Section 18(3) of the MSMED Act, 2006. As held earlier, such Facilitation Council/Institute/Centre acting as an Arbitral Tribunal would have the jurisdiction to rule over on its own jurisdiction as per Section 16 of the Arbitration Act, 1996. In that view of the matter, the present appeal also deserves to be dismissed and is, accordingly, dismissed."

26. The Arbitration and Conciliation Act, 1996 itself provides a complete code for challenging an arbitral award. Section 34 specifically permits an aggrieved party to seek setting aside of an award on grounds including inability to present its case, violation of principles of natural justice, improper constitution of the arbitral tribunal, or non-compliance with the procedure agreed between the parties or prescribed by law. It is also necessary to notice here Section 34 of the Act of 1996, which is as under:-

"34. Application for setting aside arbitral award.—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).
(2) An arbitral award may be set aside by the Court only if—
(a) the party making the application 1[establishes on the basis of the record of the arbitral tribunal that]—
(i) a party was under some incapacity, or
(ii) the arbitration agreement is not valid under the law to which the parties have subjected it
or, failing any indication thereon, under the law for the time being in force; or
(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:
Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of

the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or
(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or
(b) the Court finds that—
(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
(ii) the arbitral award is in conflict with the public policy of India.
2[Explanation 1.—For the avoidance of any doubt, it is clarified that an 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.
Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]
3[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:
Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]
(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:
Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.
(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.
1[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.
(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from

> the date on which the notice referred to in sub-section (5) is served upon the other party.]"

27. The respondent has contended that all objections regarding non-compliance with statutory procedure can only be examined in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996. Ordinarily, such a proposition would merit acceptance. However, the present case stands on a different footing. The petitioner's grievance is not merely that certain procedural provisions were violated during arbitration. The grievance is that arbitration proceedings, in the eyes of the law, never commenced at all. Even assuming that conciliation proceedings had stood terminated, the record is completely silent regarding compliance with the mandatory requirements of Sections 23, 24 and 25 of the Arbitration and Conciliation Act, 1996. In the absence of pleadings, opportunity to adduce evidence, and conduct of arbitral proceedings in accordance with law, the resultant order cannot automatically acquire the status of an arbitral award merely because it is described as one.

28. The Hon'ble Supreme Court in ***Jharkhand Urja Vikas Nigam Ltd***. (supra) has emphasized that once conciliation fails, the Council must either itself act as an arbitral tribunal or refer the dispute for arbitration, whereupon the provisions of the Arbitration and Conciliation Act, 1996, become fully applicable. The record of the present case does not disclose compliance with the aforesaid statutory mandate. Significantly, the order sheets reveal that the matter was being heard on preliminary objections relating to limitation and jurisdiction and that written arguments were invited thereon. Thereafter, without any indication of the commencement of arbitration proceedings in accordance with law,

the impugned award came to be rendered. Such a course is inconsistent with the statutory framework governing arbitral adjudication.

29. This Court is unable to accept the contention that failure of conciliation can merely be inferred from the subsequent conduct of the Council. While the factum of failure of conciliation may, in a given case, be discernible from the record, such inference cannot dispense with the mandatory requirement of conducting arbitration in accordance with the Arbitration and Conciliation Act, 1996. Even if the Court were to assume that conciliation had validly terminated, there remains a complete absence of material demonstrating compliance with the statutory procedure governing arbitration. Consequently, the defect in the present case is not confined to the absence of a formal order terminating conciliation but extends to the very foundation of the arbitral process itself.

30. The respondent has contended that such objections could not have been examined by the executing court in view of the limited scope of execution proceedings and that the petitioner's remedy lies exclusively under Section 34 of the Arbitration and Conciliation Act, 1996. Undoubtedly, the Hon’ble Supreme Court in ***Electrosteel Steel Ltd****. (supra)* reiterated the settled principle that an executing court cannot go behind a decree or award and cannot adjudicate upon the correctness of the decision on merits. However, the same judgment also recognizes the equally settled distinction between an erroneous decree and a decree which is a nullity for want of inherent jurisdiction. In paragraphs 9, 14 and 67, the Hon’ble Supreme Court reiterated that

only a decree or award suffering from jurisdictional nullity can be questioned in execution proceedings, whereas all other objections are required to be agitated before the forum provided by law. Thus, the determinative question is not whether the award suffers from mere procedural irregularity, but whether the statutory preconditions for assumption of arbitral jurisdiction were ever satisfied. If the Council never acquired jurisdiction to enter upon arbitration in the absence of termination of conciliation, the resultant order would stand on a different footing from a merely erroneous award.

> "9. It appears that on lifting of the moratorium, Facilitation Council resumed arbitral proceedings. Appellant did not contest the arbitral proceedings. Ultimately, an award was passed on 06.07.2018. As per the award, the Facilitation Council directed the appellant to pay a sum of Rs.1,59,09,214.00 along with interest to the respondent in terms of Section 16 of the MSME Act.
>
> 14. Insofar the first question is concerned, High Court opined that the plea of nullity qua an arbitral award can be raised in an execution proceeding under Section 47 of the CPC. However, the scope of interference would be very narrow. As regards the second question, High Court rejected the contention of the appellant that since the award suffered from patent or inherent lack of jurisdiction and therefore was a nullity, it can be questioned at the stage of execution without challenging the award under Section 34 of the 1996 Act. High Court answered the third question by holding that the Facilitation Council did not lose its jurisdiction to procced and pronounce the arbitral award notwithstanding approval of the resolution plan by the NCLT under Section 31 of IBC. Reasoning given by the High Court is that the arbitral proceedings were initiated prior to the insolvency resolution date, kept suspended during the moratorium period and resumed after lifting of the moratorium; the approved resolution plan simply determined the claim of the respondent as nil. Accordingly, vide the impugned judgment and order High Court dismissed the petition filed by the appellant under Article 227 of the Constitution of India.
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> 67. High Court is correct in answering the first issue that a plea of nullity qua an arbitral award can be raised in a proceeding under Section 47 CPC but such a challenge would lie within a very narrow compass."

31. In the case of ***Electrosteel Steel Ltd.*** *(supra)* the Hon'ble Supreme Court further reiterated the settled distinction between an award that is merely erroneous and an award that is a nullity for want of jurisdiction. While an executing court cannot re-examine the correctness of an award on merits, an objection founded upon an inherent lack of jurisdiction remains available. In para 69 and 70 of the ***Electrosteel Steel Ltd.*** (supra), it has been held that:-

> "69. Section 47 CPC deals with questions to be determined by the court executing decree. As per sub- section (1), all questions arising between the parties to the suit in which the decree was passed and relating to the execution, discharge or satisfaction of the decree shall be determined by the court executing the decree and not by a separate suit. Execution of decrees and orders is provided for in Order XXI CPC. The law is well settled that at the stage of execution, an objection as to executability of the decree can be raised but such objection is limited to the ground of jurisdictional infirmity or voidness. The law laid down by this Court in Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman is that only a decree which is a nullity can be the subject matter of objection under Section 47 CPC and not one which is erroneous either in law or on facts. The aforesaid proposition of law continues to hold the field.
>
> 70. Objection to execution of an award under Section 47 CPC is not dependent or contingent upon filing a petition under Section 34 of the 1996 Act. High Court was not justified in taking the view that since the appellant did not file a petition under Section 34 of the 1996 Act, therefore, it was precluded from filing an application before the Executing Court to declare the award as void and hence non- executable."

32. This Court also finds considerable significance in the subsequent decision of the Supreme Court in ***Tamil Nadu Cements Corporation Limited Vs. Micro and Small Enterprises Facilitation Council & Another, 2025(4)SCC1***. In paragraph 49 thereof, the Hon'ble Supreme Court noticed an apparent conflict between *Jharkhand Urja Vikas Nigam Ltd.(supra)* and *Gujarat State Civil Supplies Corporation Ltd. (supra)* on the question whether a writ petition would be maintainable

against an award passed by the Facilitation Council and referred the issue for consideration by a larger Bench. However, the Hon'ble Supreme Court did not express any doubt regarding the proposition laid down in *Jharkhand Urja Vikas Nigam Ltd.* concerning the mandatory applicability of Sections 18(2) and 18(3) of the MSMED Act and the requirement that arbitration proceedings must conform to the Arbitration and Conciliation Act, 1996. Therefore, while the broader issue concerning maintainability of a writ petition against an MSME award may presently await authoritative determination by a larger Bench, there is no conflict in the legal position that the statutory procedure governing transition from conciliation to arbitration must be strictly complied with.

33. In the present case, the objection is not directed against the findings recorded by the Facilitation Council but against the very assumption of arbitral jurisdiction without compliance with the mandatory statutory requirements. Such an objection falls within the recognized exception relating to jurisdictional nullity.

34. The same principle has consistently been recognized by the Supreme Court in ***Kiran Singh v. Chaman Paswan***, AIR 1954 SC 340, wherein it was held that a decree passed without jurisdiction is a nullity and its invalidity can be set up whenever and wherever it is sought to be enforced. Similar principles were reiterated in ***Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman,*** 1970 (1) SCC 670, and ***Jagmittar Sain Bhagat v. Director, Health Services***,2013 (10) SCC 136, wherein it was held that a decree suffering from an inherent lack of jurisdiction can be challenged even in collateral proceedings and at the

stage of execution. Therefore, where the challenge is directed not against the merits of the award but against the very existence of jurisdiction in the authority which purportedly rendered the award, the objection is legally permissible.

35. In the present case, the petitioner is not seeking re-appreciation of the findings recorded by the Facilitation Council on the dispute between the parties. The challenge is founded on the plea that the Council never acquired arbitral jurisdiction inasmuch as conciliation proceedings were never terminated in accordance with Section 18(2) of the MSMED Act, 2006, no separate arbitration proceedings were initiated under Section 18(3), and the mandatory provisions of the Arbitration and Conciliation Act, 1996 were not followed. If such allegations are ultimately found to be correct, the consequence would be that the order dated 27.12.2022 is not merely an erroneous award but an order passed without jurisdiction and therefore a nullity. In that eventuality, the objection would fall within the exception recognized in *Electrosteel Steel Ltd. (supra).* Consequently, the present petition under Article 227 of the Constitution, directed against the order of the Executing Court refusing to examine such a jurisdictional objection, cannot be held to be not maintainable merely because proceedings under Section 34 of the Arbitration and Conciliation Act are also pending between the parties.

36. Having considered the material available on record, this Court is of the view that the present case does not involve a mere procedural irregularity occurring during arbitral proceedings. Rather, the records fail to disclose that arbitration proceedings, as contemplated under

Section 18(3) of the MSMED Act, read with the Arbitration and Conciliation Act, 1996, were ever conducted. The absence of any discernible arbitral procedure, including filing of pleadings, opportunity of evidence and hearing in accordance with law, strikes at the root of the matter and raises a serious issue regarding the very existence of a legally enforceable arbitral award.

37. Consequently, this Court is satisfied that the proceedings culminating in the award dated 27.12.2022 suffer from a fundamental jurisdictional infirmity inasmuch as the mandatory statutory requirements governing the transition from conciliation to arbitration under Section 18 of the MSMED Act, 2006, and the procedure prescribed under the Arbitration and Conciliation Act, 1996 have not been shown to have been complied with. As a result, the award dated 27.12.2022 cannot be sustained in law. Since the execution proceedings are founded entirely upon the said award, the consequential order dated 07.01.2025, passed by the learned 2nd Additional District Judge, Durg in T.D. No. 82/2024 also cannot survive. Accordingly, the award dated 27.12.2022 passed by the Micro and Small Enterprises Facilitation Council as well as the order dated 07.01.2025 passed by the Executing Court are hereby **set aside**. The matter is remitted to the Micro and Small Enterprises Facilitation Council for reconsideration afresh from the stage contemplated under Section 18 of the MSMED Act, 2006 and for proceeding thereafter strictly in accordance with the provisions of the MSMED Act, 2006 and the Arbitration and Conciliation Act, 1996, after affording adequate opportunity of hearing to all concerned parties.

38. It is clarified that this Court, while exercising supervisory jurisdiction under Article 227 of the Constitution of India, has not expressed any opinion on the merits of the rival claims of the parties, and all contentions available to them in law are left open to be urged before the Facilitation Council.

39. The writ petition is accordingly **allowed**. No order as to costs.

Sd/-
(Ravindra Kumar Agrawal)
Judge

inder

Head Note

Compliance with the statutory transition from conciliation to arbitration is not a matter of mere procedure, but a condition precedent for lawful exercise of arbitral jurisdiction invoking the provisions under Section 23 of the Arbitration and Conciliation Act, 1996.