IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No.1593 of 2016

Bihar State Power Holding Company Limited, a Company incorporated and registered under the Companies Act, 1956, having office at Vidyut Bhawan, Bailey Road, P.O. GPO, P.S. Kotwali, Town and District- Patna (Bihar), through its Legal Supervisor, Shri Manoj Kumar, son of Sri D.P. Chourasia, resident of Quarter No. D/18, New BSEB Colony, P.O. & P.S.-Shashtri Nagar, Town and District-Patna. (Bihar). ... ... Petitioner

Versus

1. The State of Jharkhand through the Deputy Director of Industries, having office at Directorate of Industries, Jharkhand Micro, Small Medium Enterprises Facilitation Council, Nepal House, Doranda, P.O. & P.S. Doranda, Town and District-Ranchi.
2. Jharkhand Urja Vikas Nigam Limited, through its Chairman-cum-Managing Director, having office at Dhurwa, P.O. & P.S. Dhurwa, Town and District-Ranchi.
3. M/s Gillooram Gauri Shankar, an unit of Anvil Investments Private Limited, through its Director having its administrative office at Sahid Ashram Road, Baidyanath, P.O. & P.S. Deoghar, District-Deoghar.

... ... Respondents

With
W.P.(C) No.1293 of 2018

Jharkhand Urja Vikas Nigam Limited, having its office at Engineering Building, H.E.C. Colony, P.O. & P.S. Dhurwa, District- Ranchi through its Law Officer Mithilesh Kumar, aged about 52 years, Son of R.B. Choudhary, Resident of Kusai Colony, P.O. & P.S.- Doranda, District- Ranchi, Jharkhand. ... ... Petitioner

Versus

1. The State of Jharkhand through the Deputy Director of Industries, having office at Directorate of Industries, Jharkhand Micro, Small Medium Enterprises Facilitation Council, Nepal House, Doranda, P.O. & P.S.- Doranda, Dist. Ranchi.
2. Bihar State Power Holding Company Ltd., having office at Vidyut Bhawan, Bailey Road, P.O.- GPO, P.S.- Kotwali, Dist.- Patna.
3. M/s Gillooram Gauri Shankar, a unit of Anvil Investments Private Limited, through its director, having its administrative office at Sahid Ashram Road, Baidyanath, P.O. & P.S. Deoghar, Dist. Deoghar.

... ... Respondents

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

[WP(C) No.1593/2016]

For the Petitioner : Mr. Manoj Tandon, Advocate
: Ms. Neha Bhardwaj, Advocate
: Mr. Ritwik Raj, Advocate
For the Respondent : Ms. Amrita Sinha, Advocate
: Ms. Shweta Suman, Advocate
: Ms. Pragunee Kashyap, Advocate

[WP(C) No.1293/2018]

For the Petitioner : Mr. Sachin Kumar, Advocate
For the Respondent : Mr. M.S. Mittal, Sr. Advocate
: Ms. Amrita Sinha, Advocate
: Ms. Shweta Suman, Advocate
: Ms. Pragunee Kashyap, Advocate

C.A.V. on 06.05.2026 **Pronounced on 24/06/2026**

1. Both the writ petitions have been heard together.

2. The writ petition being W.P.(C) No.1593 of 2016 is on behalf of Bihar State Power Holding Company Limited and W.P.(C) No.1293 of 2018 is on behalf of Jharkhand Urja Vikas Nigam Limited. The respondent M/s Gillooram Gauri

Shankar who was the petitioner before the MSME Council is respondent no.3 herein in both the writ petitions.

3. Since, the writ petitioners, in both the writ petitions, have questioned the Award passed by MSME Council contained in Memo No.304 dated 25.01.2016 therefore, both the instant petitions are being disposed of by this common order.

Prayer

4. In the writ petition being W.P.(C) No.1593 of 2016 the following prayer has been made:

> "1.(i) To quash/set aside the order contained in memo no. 304 dated 25.1.2016 issued under the pen and signature of Deputy Director of Industries, Directorate of Industries, Jharkhand Micro Small and Medium Enterprises Facilitation Council, whereby and whereunder, the petitioner has been directed to pay a sum of Rs. 26,92,957.00, as principal amount and interest to the respondent no.3.
>
> (ii) During the pendency of this writ petition, the operation of the impugned order dated 25.1.2016 (signed on 21.1.2016) may kindly be stayed.
>
> (iii) For any other appropriate relief/reliefs to which the petitioner is found to be entitled in the facts and circumstances of this case as also to do conscionable justice to the petitioner.
>
> (iv) For issuance of a writ of certiorari to quash and cancel the Review order dated 15.07.2016 passed by the Jharkhand Micro, Small and Medium Enterprises Facilitation Council in Case No. JHMSEFC-04/2013".

5. In W.P.(C) No. 1293 of 2018, the writ petitioner has made the following prayer:

> "1.(i) To quash/set aside the order contained in memo no. 304 dated 25.01.2016 (Annemure-3) issued under the pen and

signature of Deputy Director of Industries, Directorate of Industries, Jharkhand Micro, Small and Medium Enterprises Facilitation Council, whereby and whereunder, the petitioner has been directed to pay a sum of Rs. 2,48,748.00 as Principal amount and interest to be computed by Chartered Accountant to the respondent no.3.

ii. During the pendency of this writ petition, the operation of the impugned order dated 25.01.2016 (signed on 21.01.2016) may kindly be stayed.

iii. During the pendency of this writ petition, further proceeding of Civil Execution Case No. 214 of 2017| 219 of 2017 before the learned District and Sessions Judge, Patna for execution of the impugned order in which, the notice has been issued to the petitioner may kindly be stayed.

6. Thus, it is evident that the writ petitioners, in both the writ petitions, have challenged the Award passed by MSME Council contained in Memo No.304 dated 25.01.2016.

Factual Matrix:

7. The brief facts of the case as per the pleading made in the writ petitions which requires to be enumerated herein, are as under:

The case of Respondent No. 3 before the Jharkhand Micro, Small and Medium Enterprises Facilitation Council (herein referred to as 'Council') inter alia was that on 15.11.2000, Jharkhand State was created by taking out with 22 districts from Bihar. After few months, Government of Jharkhand created Jharkhand State Electricity Board (now known as ‘Jharkhand Urja Vikas Nigam Limited').

In most of the purchase orders, out of 19 orders mentioned in the claim, supply was to be made by the

respondent no.3 in different districts of undivided Bihar. After creation of Jharkhand, some supply was made in the districts which are now in Jharkhand. The JSEB, the petitioner in W.P.(C) No.1293/2018 has made one payment of Rs. 29,79,783.34 on 18.01.2003. For the balance amount, JSEB is not entitled to make payment on the grounds that the payment should be made by the BSEB (now known as Bihar State Power Holding Company Limited).

It is further case of Respondent no.3 that BSEB is also not making payment on the plea that the payment should be made by JSEB. The respondent no.3, therefore, prayed for payment of bill amounting to Rs. 11,55,881.52. The respondent no.3 further claimed for refund of the penalty deducted from the bills, which is to the tune of Rs.57,70,570.18.

The respondent no.3 further claimed towards price variation amount of Rs. 39,84,120.93, as also certain ancillary interest, which is given in the application filed by the respondent no.3 dated 04.11.2006 to the council.

Upon notice, BSEB/Bihar State Power Holding Co. Ltd. appeared and filed a petition on 27.04.2015 before the council and claimed for dismissal of the claim of the respondent no.3 against BSEB on the ground that the alleged dues are related to the payment of the place/territory which

now falls within the territorial jurisdiction of Jharkhand State Electricity Board (now Jharkhand Urja Vikas Nigam Ltd.)

The JSEB came into existence w.e.f. 01.04.2001 and thereafter a sum of Rs. 29,79,783.34 have been paid by the JSEB to the applicant on 18.01.2003 as the applicant has admitted in his representation dated 04.11.2006.

The Bihar State Electricity Board (now known as Bihar State Power Holding Company Limited) by letter contained in memo no. 2400 dated 13.07.2005 has already intimated the JSEB to arrange for payment of the bills of the suppliers as the materials were supplied in the central stores at Ranchi, Dhanbad, Deoghar, Giridih, Dumka and Jamshedpur, which have now fallen under the territorial jurisdiction of Jharkhand State Electricity Board.

In this context, provisions have been made in Section 47 of the Bihar Reorganization Act, 2000, whereby the assets and liabilities shall pass on to the state where the undertaking is located. In the present case, therefore, JSEB has to consider the claim and take a decision in the matter in accordance with law.

It is the further case of the petitioner that in the impugned order contained in memo no. 304/ Ranchi dated 25.01.2016, following observations were made by the council:-

i. Initially, the petitioner has filed claim before the Industrial Facilitation Council, Director of Industries, Patna on 04.11.2006 and was transferred to this council vide IFC Bihar Letter no. 419 dated 16.03.2009 on the ground of territorial location of the claimant unit which is at Deoghar, Jharkhand. The claim was filed by the applicant before this council on 09.02.2013.

ii. 16 nos. of Purchase order during 13.06.1997 to 10.07.2000 was issued by erstwhile BSEB and before the bifurcation of the Jharkhand state on 15.11.2000 is payable by BSEB, Bihar in terms of the contract wherein paying authority is mentioned "Deputy Director Accounts (HQ), BSEB, Patna." The division of assets and liabilities in between both the States is governed by Bihar Re-Organization Act and is not relevant for this purpose.

iii. The remaining 3 nos. of purchase order were issued by BSEB after bifurcation of states and the supply pertains to Bihar State.

iv. The Applicant did not submit the copy of purchase order, break up of 5% or 10% of retention money towards bank guarantee separately against JSEB and BSEB.

It is stated that from bare perusal of the observation made in the impugned order contained in memo no. 304 dated 25.01.2016, it is evident that the purchase order at every instance was issued by erstwhile BSEB. Hence, claims prior to 15.11.2000 is payable by BSEB, Bihar in terms of the contract. Further, the remaining 3 nos. of purchase order were issued by BSEB after bifurcation of states and the supply pertains to Bihar State.

While determination of Principal outstanding, the council has taken into consideration the deductions from Suppliers bills towards the Bank Guarantee, penalties

imposed on the claimant and other deductions that has been made. In this context, it is stated that such deductions have been made by erstwhile BSEB and hence it shall be the sole liability of BSEB to pay any such amount as deducted or penalized by them.

Another writ petition being W.P.(C) No. 1593 of 2016 was filed Bihar State Power Holding Company Limited wherein vide order dated 30.01.2018, the Hon'ble Court has been pleased to stay the operation of the order dated 25.01.2016 passed by the Council in Case No. JHMSEFC-04/2013.

8. It would be evident from order dated 22.04.2026 and 29.04.2026 passed by this Court that Mr. M.S. Mittal, learned senior counsel appearing for the respondent no.3 has raised the preliminary issue of maintainability of the present writ petitions.

9. This Court has heard the learned counsel for the parties on the issue of preliminary issue of maintainability.

10. This Court has thought it proper to decide the issue of maintainability and depending upon its outcome, the issue on merit will be taken into consideration.

Submission on behalf of the Petitioners:

11. As per the writ petitioner, the MSME Council was not duly been formulated in terms of the statutory mandate as contained under Section 21 of the Micro, Small and Medium

Enterprises Development Act, 2006 (hereinafter to be referred to as the Act, 2006) which mandates that the Coram of the Council will be in between 3 to 5 whereas the Coram of the Council which has passed the Award is 8 in number. Hence, the Council comprising of 8 members since has passed the Award which is in the teeth of provision of Section 21 of the MSME Act, 2006 and, as such, the said Award is *void ab initio*.

12. The learned counsel in order to substantiate the aforesaid settled position of law has relied upon the Judgment of this Court in the case of ***Jharkhand Bijli Vitran Nigam Limited vs Vexcel Upkram Pvt Ltd reported in 2022 SCC Online Jhar 1459***. It is submitted that against the said judgment SLP Diary No. 10530/2023 filed by the respondent Vexcel before the Hon'ble Apex Court has been dismissed vide order dated 10.04.2023.

13. The learned counsel for the petitioners has submitted that an award which is null and void can be challenged at any stage even in a collateral proceeding and there is no need to file an application u/s.34 of the Arbitration and Conciliation Act, 1996. The learned counsel for the petitioner in order to fortify this limb of argument has put his reliance upon the Judgment of the Hon'ble Supreme Court in the case of **Electrosteel Steel Limited vs Ispat Carrier Private Limited, reported in (2025) 7 SCC 773**.

14. The learned counsel for the petitioners has submitted that in view of the submissions made hereinabove, the award dated 25.01.2016 and review order dated 15.07.2016 both are fit to quashed and set aside being null and void

Submission on behalf of the Respondents:

15. Per contra, Mr. M.S. Mittal, learned senior counsel and Ms. Amrita Sinha, learned counsel, representing the respondents in both the writ petitions, have taken the ground that even accepting the fact that the constitution of Council was not as per the provision of Section 21 of the Act, 2006 and even accepting the jurisdictional error of the Council, the only forum available to the writ petitioners are Section 34 of the Arbitration and Conciliation Act, 1996.

16. It has been contended that the remedy is already available under the Arbitration and Conciliation Act, 1996 wherein all the issues including the issues of jurisdiction can be agitated, hence, the present writ petition is not maintainable.

17. It is submitted that the challenge to composition of Tribunal is well within the scope of Section 16 of the Arbitration Act, wherein a party can challenge as to whether the Arbitral Tribunal has been properly constituted. It is therefore submitted that the Petitioner has waived its right to challenge the constitution of the Arbitral Tribunal i.e., Facilitation Council. Hence Petitioner is not entitled to any

relief in the present Writ Application. The learned counsel for respondent no.3 has placed his reliance on the judgment rendered by the Hon'ble Apex Court in the case of ***Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Limited and Anr. [(2022) 1 SCC 75].***

18. The learned senior counsel for the respondent no. 3 has submitted that according to the Scheme of Arbitration Act, an Award has to be challenged under Section 34 of the Arbitration and Conciliation Act, 1996. Sub-Section 1 of Section 34 emphasizes that recourse to Court against an Arbitral Award may only by an application setting aside such Award in accordance to Sub-Section 2 (2) (3) and Sub-Section 2(a)(v) contemplates that Award can be challenged on the ground of composition of the Arbitral Tribunal as well. The learned senior counsel has placed his reliance upon the judgment rendered by the Hon'ble Apex Court in the case of ***India Glycols Ltd. Vs. MSEFC, Medchal – Malkajgiri and Ors., (2025) 5 SCC 780.***

Response of the learned counsel for the petitioners

19. In response to the aforesaid argument, learned counsel appearing for the writ petitioners has submitted that, so far as the contention regarding the availability of remedy under Section 34 of the Arbitration and Conciliation Act, 1996 is concerned, the same is not available in the facts and circumstances of the present case. It has been urged that

where the very constitution of the Council is not in pursuance of the statutory provision contained under Section 21 of the Act, 2006, such admitted fact obviates the necessity of relegating the writ petitioners to raise the issue of jurisdiction under Section 34 of the Arbitration and Conciliation Act. Learned counsel has further submitted that it is a settled position of law that even a right decision rendered by a wrong forum is no decision in the eye of law, as has been held by the Hon'ble Supreme Court in **Pandurang & Ors. v. State of Maharashtra [(1986) 4 SCC 436].** Accordingly, the objection as to the maintainability of the present petitions is not fit to be accepted.

Issues for consideration

20. On the basis of the aforesaid factual aspects, this Court is required to consider the following issues: —

(i) Whether the Award which has been passed by MSME Council is void ab initio due to the constitution of Coram of the Council being exceeding its number as mandated under the Act, 2006?

(ii) Whether the issue of jurisdiction which is evident from the face of the order needs to be raised at the stage of Section 34 of the Arbitration and Conciliation Act, 1996 or it can be entertained under Article 226 of the Constitution of India?

Analysis

21. Both the issues are being taken up together since both are interlinked with each other.

22. This Court, before considering the aforesaid issues, needs to refer herein that the object and intent of the Arbitration and Conciliation Act, 1996 is the expeditious disposal of the commercial disputes without consuming much time.

23. The Arbitration and Conciliation Act, 1996 is a self-contained Code having provisions to raise all the issues depending upon the terms and conditions of the contract. For the purpose of resolution of dispute, as per the condition of arbitration clause, if available in the contract, the application is to be filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator said to be in terms of the contract. If the contract reflects that it will be sole arbitrator, then the High Court exercising the power under Section 11(6) of the Arbitration and Conciliation Act, 1996 will appoint the sole arbitrator but if the contract reflects that the dispute is to be resolved by the Arbitration Tribunal, then while exercising the power conferred under Section 11(6) of the Arbitration and Conciliation Act, 1996, the Court will appoint the Arbitration Tribunal.

24. The Arbitrator while adjudicating the issue is supposed to consider each and every aspect of the matter including the issue of limitation and jurisdiction. After passing of the final Award, the same is to be challenged under Section 34 of the Arbitration and Conciliation Act, 1996 subject to availability of condition as contained therein, for ready reference, Section 34 of the Arbitration and Conciliation Act, 1996 is being referred herein :-

> **"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).
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> (2) An arbitral award may be set aside by the Court only if—
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> (a) the party making the application establishes on the basis of the record of the arbitral tribunal that—
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> (i) a party was under some incapacity, or
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> (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
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> (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
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> (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.

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.

(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.

(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."

25. The appeal against the order passed under Section 34 of the Act, 1996 is to be filed under Section 37 depending upon the availability of condition as referred therein, for ready reference, Section 37 of the Act, 1996 is being referred hereunder :-

> "**37. Appealable orders**.—(1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—
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> (a) refusing to refer the parties to arbitration under section 8;
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> (b) granting or refusing to grant any measure under section 9;
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> (c) setting aside or refusing to set aside an arbitral award under section 34.
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> (2) Appeal shall also lie to a court from an order of the arbitral tribunal—
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> (a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or
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> (b) granting or refusing to grant an interim measure under section 17.
>
> (3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or takeaway any right to appeal to the Supreme Court."

26. The aforesaid arrangement was available till enactment of Commercial Courts Act, 2015 wherein the forum has been provided after enactment of the Act, 2015 i.e., by filing appeal under Section 13(1A) which is for the basic purpose of expeditious disposal of the appeal.

27. The MSME Act, 2006 (Act 2006) has been enacted with the sole object to have the security in the mind of small entrepreneurs on the issue of the resolution of the commercial dispute by way of expeditious disposal.

28. The issue of dispute of the entrepreneurs who are being covered under the Act, 2006 is to be dealt with under the provision of Section 18 which is being referred herein :-

> "**18. Reference to Micro and Small Enterprises Facilitation Council**. — (1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.
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> (2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.
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> (3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section(1) of section 7 of that Act.
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> (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."

29. Section 18 (1) provides that in case of any dispute, the same is to be raised before the Council and the Council after getting the dispute on its own or by nominating a Conciliator is to resolve the dispute as per the provision made under Section 18(2).

30. The conciliation, if failed, then the Council is to adjudicate the dispute in view of the power conferred under Section 18(3) of the Act, 2006.

31. The provision of appeal has been provided under Section 19 of the Act, 2006 having the second proviso that the party aggrieved is to prefer appeal of an order passed under Section 18(3) of the Act, 2006 by the Council before the appellate forum subject to deposit of 75% of the decree/award amount, for ready reference Section 19 of the Act, 2006 is before referred herein: -

> "**19.Application for setting aside decree, award or order**.—No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent. of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

> Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose."

32. The Act, 2006, therefore, is also a self-contained Code but the Council before adjudicating the issue is to take help of the Arbitration and Conciliation Act, 1996, as would be evident from Section 18(2) wherein it has been mandated that the Council on its own or by appointing a Conciliator is to resolve the issue failing which the Council will adjudicate in view of the provision of Section 18(3).

33. It is, thus, evident that while resolving the dispute through conciliation mechanism, the provision of Arbitration and Conciliation Act, 1996 is to be invoked by the Council and in such situation, if the dispute is being resolved by the Conciliator, then the same will attain its finality but in case of non-resolution of the dispute by the Conciliator, the Council is to adjudicate by passing an Award. Such Award is to be passed by the Council.

34. The constitution of the Council has been provided under Section 21 of the Act, 2006 as per which the members of the Council is to be in between 3 to 5, for ready reference, Section 21 of the Act, 2006 is being referred herein :-

> **"21. Composition of Micro and Small Enterprises Facilitation Council**.—(1) The Micro and Small Enterprise Facilitation Council shall consist of not less than three but not more than five members to be appointed from amongst the following categories, namely:—
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> (i) Director of Industries, by whatever name called, or any other officer not below the rank of such Director, in the Department of the State Government having administrative control of the small scale industries or, as the case may be, micro, small and medium enterprises; and
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> (ii) one or more office-bearers or representatives of associations of micro or small industry or enterprises in the State; and
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> (iii) one or more representatives of banks and financial institutions lending to micro or small enterprises; or
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> (iv) one or more persons having special knowledge in the field of industry, finance, law, trade or commerce.
>
> (2) The person appointed under clause (i) of sub-section (1) shall be the Chairperson of the Micro and Small Enterprises Facilitation Council.
>
> (3) The composition of the Micro and Small Enterprises Facilitation Council, the manner of filling vacancies of its members and the procedure to be followed in the discharge of their functions by the members shall be such as may be prescribed by the State Government."

35. Section 21 of the MSMED Act is clear and unambiguous in its terms, when it says that the Micro and Small Enterprises Facilitation Council shall consist of not less than three but not more than five members, to be appointed amongst the categories detailed under that section. There is

no scope of any inclusion of more members in the Council as per Section 21 of the Act.

36. The factual aspect as available in the present case is that the dispute arose in between the parties and when the dispute has not been resolved, then the Council was approached and accordingly the impugned order dated 25.01.2016 has been passed.

37. The question which has been raised on behalf of the petitioners is that the Coram of Council is to be as per the provision of Section 21 of the Act, 2006, i.e., in between 3 to 5 but the number of members of the Council who have passed the said Award is 8 and, therefore, the Award has been questioned by giving a declaration to that effect before this Court that it is without jurisdiction being adjudicated by the Council not in consonance with the provision of Section 21 of the Act, 2006.

38. Per contra respondent no.3 has contended that there is no scope of challenge of the impugned Award on the ground that the constitution of the Council was in teeth of Section 21 of the MSMED Act and accordingly, the only remedy left to the petitioner was to challenge the Award before the Commercial Court, under Section 34 of the Arbitration Act and further the said issue has never been raised before the council, therefore the present writ petitions are not maintainable.

39. In response, learned counsel for the petitioners has submitted that since the issue of jurisdiction strikes at the root of the matter, the Award is liable to be declared void *ab initio*. It has been urged that such a legal issue can appropriately be raised even at this stage. Furthermore, once the Award is void *ab initio*, recourse to Section 34 of the Arbitration and Conciliation Act, 1996 is not required, therefore the contention of respondent no.3 about the maintainability of the instant petition is not fit to be accepted.

40. At this juncture, it needs to refer herein that the Rule 4 of the Jharkhand Micro, Small & Medium Enterprises Facilitation Council Rules, 2007 was formulated in the year 2007 mandating therein that the Council shall consist of not less than five and not more than nine members. The said Rule, however, was challenged by filing a writ petition being W.P.C. No. 3699 of 2015 on the ground that the number of the members of the Council cannot exceed the number which has been mentioned under Section 21 of the Act, 2006 on the principle that the Rule cannot run contrary to the parent Act.

41. The Division Bench of this Court has passed an order dated 05.03.2020 in W.P.C. No. 3699 of 2015 has observed that Rule 4 of 2007 Rules was ultra-virus the MSMED Act, is not only the contention of the petitioner, rather it is well acknowledged even by the State Government, inasmuch as

the State Government realized its mistake and has repealed the 2007 Rules, bringing fresh 2017 Rules, bringing new Rule 4 therein, which is in consonance with Section 21 of the MSMED Act. For ready reference the relevant paragraphs of the said judgment are being quoted as under:

> "24. Having heard the learned counsels for the parties and upon going through the record, we find that Section 21 of the MSMED Act is clear and unambiguous in its terms, when it says that the Micro and Small Enterprises Facilitation Council shall consist of not less than three but not more than five members, to be appointed amongst the categories detailed under that section. There is no scope of any inclusion of more members in the Council as per Section 21 of the Act. Rule 4 of the 2007 Rules was in clear contravention of Section 21 of the MSMED Act, when it provided for the constitution of the Council with not less than five and not more than nine members in the Council, and in fact, pursuant to the said Rule, the Council was even constituted by the State Government with nine members. Clearly the constitution of the said Council was in accordance with Rule 4 of the 2007 Rules, whereas in clear contravention of Section 21 of the MSMED Act. In case, the petitioner is forced to challenge the impugned Award before the Commercial Court, under Section 34 of the Arbitration Act, the only answer that is likely to come from the Commercial Court is that the constitution of the Council was in accordance with the Rules, which was binding on the Commercial Court, and as there is no scope for the Commercial Court to entertain the appeal on the ground that Rule 4 of 2007 Rules was ultra-vires Section 21 of the Act. Accordingly, no effective and efficacious remedy was available to the petitioner before the Commercial Court. Indeed there is no alternative remedy to the petitioner to challenge the notices issued by the Council, as no appeal is provided against the notice issued by the Council, either under the MSMED Act, or under Section 37 of the Arbitration Act. In that view of the matter, we are of the considered view

that the arguments of the learned Additional Advocate General and the learned counsel for the private respondent that it was open for the petitioner to challenge the impugned Award before the Commercial Court, though such remedy is available, but it was not effective and efficacious in the sense that the Commercial Court could not look into the virus of the Rules.

26. In view of the settled law on the subject, we find that in spite of the specific provision of appeal under Section 34 of the Arbitration Act, these writ applications are quite maintainable, in view of the fact that the impugned Award / notices are challenged on the ground of competency of the Council, constitution of which is ultra-vires Section 21 of the MSMED Act. The fact that Rule 4 of 2017 Rules was ultra-virus the MSMED Act, is not only the contention of the petitioner, rather it is well acknowledged even by the State Government, inasmuch as the State Government realized its mistake and has repealed the 2007 Rules, bringing fresh 2017 Rules, bringing new Rule 4 therein, which is in consonance with Section 21 of the MSMED Act.

27. In that view of the matter, we are of the considered view that these writ applications of the petitioner cannot be thrown away on the ground of availability of the alternative remedy under Section 34 of the Arbitration Act, as the petitioner had no effective and efficacious remedy before the Commercial Court. Accordingly, the impugned Award communicated to the petitioners under Memo No. 1954 dated 20.07.2015, as contained in Annexure-11 to the W.P.C. No.3699 of 2015 and the notices dated 31.01.2017 and 15.03.2017, as contained in Annexures-1 and 2 in the other three writ applications, are hereby, quashed.

28. The liberty is given to the Council, constituted under the 2017 Rules, to issue fresh notices to the petitioner and also to adjudicate the matter afresh by passing a fresh Award in accordance with law. 29. All these writ applications are accordingly, allowed with the directions as above. The pending Interlocutory Application also stands disposed of.

42. It requires to refer herein that the another Division Bench of this Court has also passed an order in the case of ***L.P.A. No. 242 of 2022*** **(The Jharkhand Bijli Vitran Nigam Ltd Vs. Vexcel Upkram Private Limited)** on the same issue wherein the Award was passed by the Council comprising of 8 members and this Court has come to the conclusive finding holding the Award to be passed by the authority having no jurisdiction being contrary to its constitution in the teeth of Section 21 of the Act, 2006, for ready reference, the relevant paragraphs of the order passed by the Division Bench is being referred herein:-

> 11.--Thus, it is evident that where a Court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, non est and void ab initio. The defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the Court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a Court or an authority having no jurisdiction is a nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings.
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> 13.----Thus, it is evident that the provision of Section 21 of the Act, 2006 provides composition of the Council cannot be less than three or more than five members and if the Council has been constituted of members having less than three or more than five, it will be said to be contrary to the statutory provision and the thing which is contrary to the statutory provision will be said to suffer from a jurisdictional error.
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> 14. In the case in hand, order which was passed by the Council during the relevant time consists of eight members. However, the constitution of Council consisting of eight

members is contrary to the provision of Section 21 of the MSMED Act, 2006.

15. It requires to refer herein that under the parent Act rule was formulated in the year 2007, known as "Jharkhand Micro and Small Enterprises Facilitation Council Rules, 2007, wherein it was provided, as would be evident from Rule 4 (repeal rule) that the constitution of Council will not be less than five and not more than nine members.

Subsequent to the aforesaid rule, an amended rule has come in the year 2017 by which the provision as contained under Rule 4 about composition of the Council by making it strictly in terms of the provision of Section 21 of the Act, 2006, wherein it has been provided that maximum number of members in the Council shall not be more than five.

16. Issue regarding constitution of Council fell for consideration before Co-ordinate Bench of this Court wherein award passed by the Council was questioned. The Co-ordinate Division Bench of this Court in W.P. (C) No. 3699 of 2015 with analogous case vide order dated 05.03.2020 has held that constitution of coram of the Council being in the teeth of provision of Section 21 of the Act, 2006 to be invalid by taking into consideration the subsequent amendment by way of Rules, 2017.

17. Further, this Court while dealing with the aforesaid issue in ***L.P.A. No. 230 of 2019 [M/s Heavy Engineering Corporation Limited Vs. The State of Jharkhand & Ors]*** has dealt with the issue and interfered with the award mainly on the ground that such award was passed by a Council consisting of eight members, as would appear from paragraph 17 thereof, which reads as under:

"17.This Court, after considering the order passed by Coordinate Division Bench of this Court on the validity of the provision, more particularly regarding the Constitution of Coram of the Council which was held to be invalid being found to be in the teeth of Section 21 of the Act, 2006, so far it relates to Rules, 2007 is concerned, is of the view that the order passed by the Council is declared to be illegal since is

passed contrary to the parent Act, which provides a provision as under Section 21 of the Act, 2006 and the Rule of the year 2007, which has been held to be invalid. Admittedly, the State Government has amended the provision of Rules, 2007 by bringing the amended Rules, 2017 but the impugned order which is the subject matter of the lis herein has been passed during the period when the provision of Rules, 2007 was in vogue and that is the reason, Mr. Manoj Tandon, learned counsel for respondent no. 2 has taken an additional ground that the Constitution of Council which was consisting of eight members cannot be said to be invalid since was constituted in terms of provision of Rules, 2007. However, the Co-ordinate Division Bench of this Court has considered Rules, 2007 to be invalid more so in the meanwhile amended Rule, 2017 has come as also even the parent Act, 2006 under Section 21, the composition of Coram of Council has been provided but admittedly the constitution of Coram was not in terms of Section 21 of the Act, 2006 and even then it was in terms of Rules, 2007 but the constitution of Council in terms of provision of Section 21 of the Act, 2006 cannot be said to be in consonance with the statutory provision as contained under the Act, 2006 as per the provision made under Section 21 thereof. Therefore, according to our considered view, the constitution of Coram which admittedly was constituted of eight members cannot be said to be in terms of Section 21 of the Act, 2006 and as such the very constitution of Coram since it is in the teeth of Section 21 of the Act, 2006, cannot be said to be a proper constitution of Council, is held to be in the teeth of Section 21 of the Act, 2006.

Since the Hon'ble Apex Court in Balvant N. Viswamitra & Ors Vs. Yadav Sadashiv Mule (Dead) through LRs (supra) has held that where a Court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the Court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a Court or an authority having no jurisdiction is a nullity.

Therefore, according to our considered view the order passed by the Council is held to be nullity in the eyes of law."

18. However, another issue has been raised that in L.P.A. No. 230 of 2019 the State of Jharkhand was one of the respondents and as such there was a response of the State of Jharkhand regarding legality and propriety of the constitution of Council but in the given case the State of Jharkhand is not a party and hence the exact position of law i.e., the coram of the Facilitation Council cannot be adjudicated since the Facilitation Council has been constituted by the State of Jharkhand and as such it is only the State of Jharkhand which can give proper response regarding legality and propriety of the Council as to whether it is in consonance with the provision of Section 21 of the Act or not? 19. But we, after appreciating the aforesaid argument, are not at all impressed with the same reason being that the issue has already been decided by the Co-ordinate 18 Division Bench of this Court in W.P.(C) No. 3699 of 2015 wherein the validity of provision of Rules, 2007 was under challenge which contains a provision as under Rule 4 wherein provision has been made about the Coram of the constitution but the provision of Rule 2007 has been declared to be invalid having not been in consonance with the provision of Section 21 of the MSMED Act, 2006, as contained under paragraph 24 of the aforesaid judgment. Therefore, the moment the provision of Rule 2007 which contains a provision as under Rule 4 stipulates therein about the number of coram of facilitation council since has been declared to be invalid, therefore, it will be treated to be not in existence from the date when it has been promulgated. As such the implied meaning of the same will be that there is no provision of Rule 2007 which contains a provision as under Rule 4 stipulating therein about the number of coram of facilitation council. Therefore, in absence of any rule having not been formulated by the State of Jharkhand, the provision of Rule 21 of the MSME Act, 2006 will automatically be operative which provides the minimum as well as maximum number of coram of the facilitation council.

20. Even otherwise also if any law has been formulated and the aforesaid law if is in the teeth of the parent Act as in the given case, the law which is not in consonance with the parent Act is required to be ignored. However, such situation is not existing in the facts of the given case since herein provision of Rule 2007 containing therein the number of coram of constitution of facilitation council has already been declared invalid and as such any decision taken by the Facilitation Council, which is not in consonance with the provision Section 21 of the MSMED Act, 2006, will be said be invalid and void ab initio.

21. This Court, in view of the aforesaid discussion, is of the considered view that since the similar issue has already been decided by this Court and as such there is no reason to take different view and therefore the award which is impugned in this intra court appeal is required to be interfered with on the ground of jurisdictional error of the Facilitation Council.

22. It also requires to refer herein that the issue of jurisdiction of the Facilitation Council however was not agitated before the learned Single Judge and as such the said issue has not fell for consideration and in that view of the matter, the learned Single Judge has taken the ground to hold the writ petition not maintainable on the ground of statutory remedy available under law which cannot be said to suffer from patent illegality. But the issue of jurisdiction based upon the quorum-non-judis is the thrust of argument in the instant intra-court appeal, which we have already considered in L.P.A. No. 230 of 2019, based upon the judgment passed by Co-ordinate Division Bench in W.P. (C) No. 3699 of 2015 & Analogous Cases, this Court has got no option but to interfere with the impugned order. Accordingly, the instant intra-court appeal stands allowed."

43. It needs to refer herein that the order passed by the Division Bench of this Court on the point of jurisdiction of the MSME Council in the said ***L.P.A. No. 242 of 2022*** **(The Jharkhand Bijli Vitran Nigam Ltd Vs. Vexcel Upkram**

Private Limited) has been assailed before the Hon'ble Apex Court but vide order dated 10-04-2023 the same was dismissed as withdrawn.

44. Heavy reliance has been placed upon the aforesaid judgments passed by this Court by the learned counsel appearing for the writ petitioners.

45. While on the other hand, learned senior counsel appearing for the respondentnp.3, have relied upon the judgments for the purpose of strengthening the argument that the point of jurisdiction is one of the issues which can well be agitated before the forum under Section 34 of the Act, 1996. Reliance has been placed upon the judgment rendered by the Hon'ble Apex Court in the case of ***India Glycols Ltd. v. MSEFC(supra).***

46. The factual background of the said case is that on 28-10-2021, the Facilitation Council decreed the claim in the principal sum of Rs 40,29,862, on which interest with monthly rests at three times the bank rate prevailing as on the date of the award was granted under Section 16 from the appointed day till final payment.The award of the Facilitation Council was challenged in a petition under Articles 226/227 of the Constitution. By a judgment and order dated 14-9-2022 a Single Judge of the High Court of Telangana allowed the writ petition and set aside the award on the ground that the claim was barred by limitation.

47. In an appeal by the second respondent, the Division Bench by its judgment dated 21-3-2023, reversed the view of the Single Judge. The Division Bench has come to the conclusion that the writ petition instituted by the appellant was not maintainable in view of the specific remedies which are provided under the special statute. The High Court held that the appellant ought to have taken recourse to the remedy under Section 34 of the Arbitration and Conciliation Act, 1996 ("the 1996 Act") and having failed to do so, a writ petition could not be entertained.

48. The Hon'ble Apex Court while considering the scope of Section 18 and 19 of the Act 2006 has observed that in terms of Section 19, an application for setting aside an award of the Facilitation Council cannot be entertained by any court unless the appellant has deposited seventy-five per cent of the amount in terms of the award. In view of the provisions of Section 18(4), where the Facilitation Council proceeds to arbitrate upon a dispute, the provisions of the 1996 Act are to apply to the dispute as if it is in pursuance of an arbitration agreement under sub-section (1) of Section 7 of that Act. Hence, the remedy which is provided under Section 34 of the 1996 Act would govern an award of the Facilitation Council.

49. The applicability of the said judgment in the light of the argument that the issue of jurisdiction which is the subject matter of the present writ petitions can well be raised under Section 34 of the Act, 1996. There is no dispute upon the settled position of law that the Facilitation Council proceeds to arbitrate upon a dispute, the provisions of the 1996 Act are to apply to the dispute as if it is in pursuance of an arbitration agreement under sub-section (1) of Section 7 of that Act. Hence, the remedy which is provided under Section 34 of the 1996 Act would govern an award of the Facilitation Council.

50. In the instant case, the core issue is whether, if the Award passed by the Council is itself void *ab initio* owing to lack of jurisdiction, the jurisdiction of the High Court under Article 226 of the Constitution of India would nonetheless stand excluded merely on account of the availability of an alternative remedy under Section 34 of the Arbitration and Conciliation Act, 1996.

51. It is settled position of law that the power of the High Court under Article 226 of the Constitution of India to issue writs/directions is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation. However, the High Court under Articles 226 of the Constitution of India would interfere rarely in exceptional circumstances in the arbitral proceedings, when the order passed by the

Facilitation Council/Arbitral Tribunal is perverse and patently lacking in inherent jurisdiction and, when there is no semblance of "Award" as contemplated under Section 18 of the MSMED Act.

52. This Court is not in dispute that the issue of jurisdiction is based upon the mixed question of law and fact which is to be agitated under Section 34 of the Act, 1996 for the purpose of its adjudication by leading evidence under Section 34 of the Act, 1996.

53. But the question herein is that as to whether the constitution of forum if found to be not in consonance with the statutory mandate as provided under Section 21 of the Act, 2006, will it be said to be mixed question of law and fact involving the jurisdictional issue.

54. This Court is of the view that there is wide difference in between the mixed question of law and fact involving the jurisdictional issue and the constitution of the forum if the specific provision has been provided under the Act.

55. The constitution of Council whether it is to be in consonance with the Act 2006 is the main plank of the argument of the writ petitioners.

56. The law is well settled that the constitution of Council is to be as per the mandate of the statute. It has been mandated

under Section 21 of the Act, 2006 that the number of the members of the Council will be in between 3 to 5.

57. The State of Jharkhand although has exceeded its jurisdiction by constituting the Council comprising of 8 members which has been held to be in the teeth of Section 21 of the Act, 2006, meaning thereby, the statute which has been formulated by the State by constituting the Council comprising 8 members, has been held to be not in consonance with Section 21 of the Act, 2006. The order dated 17.11.2022 passed in L.P.A. No. 242 of 2022 also clarifies the situation that the coram of the Council must be in consonance with the statutory mandate.

58. The same can be understood in the way that in a case where the Arbitrator is to be appointed it must be strictly in terms of the contract. If the contract provides that the Arbitrator will be the sole Arbitrator for adjudication then it will comprise of only one Arbitrator. But, if the contract provides that the adjudication is to be made by the Arbitration Tribunal comprising of three members, then it should comprise three members only, meaning thereby, the constitution of Arbitrator is also on the basis of terms and conditions of the contract is being agreed in between the parties at the time of entering into the contract.

59. Here, although it is not a case of contract, but, it is statutory mandate wherein there is no occasion of entering

into the contract, rather to facilitate the small entrepreneurs, the statutory mandate has been carved out for providing an adjudicatory mechanism for which the Council has been decided to be constituted as mandated.

60. The statue has also taken care that the Council will comprise the members in between 3 to 5. Therefore, the Council must comprise the members in between 3 to 5 and if it is exceeding then the very constitution of Council will be said to be in the teeth of law.

61. The judgment upon which reliance has been place by the respondent no.3 is in the context of the arbitration agreement and the law which has been laid down on the basis of the observation made therein in the said judgment, the jurisdictional issue is to be raised in the forum under Section 34 of the Act, 1996, therefore, the judgment upon which reliance has been placed by the Respondent No.3 is not applicable in the facts of the present case wherein the admitted position is that the coram of the Council is contrary to the provision of Section 21 of the Act, 2006.

62. This Court, therefore, is of the view that the constitution of Council itself is in the teeth of Section 21 of the Act, 2006 and the same has been taken into consideration by the Division Bench of this Court in its judgment dated 17/11/2022 passed in L.P.A. No. 242 of 2022, as such, by following the principle of judicial discipline, this Court is of

the considered view that since the Award communicated dated 25.01.2016 which has been passed by the MSME Council is without jurisdiction, as such the said award is void ab-initio therefore, the recourse of Section 34 of Arbitration Act is not required to be adhered to.

63. Further, it needs to refer herein that it is true that Article 226 of the Constitution of India being constitutional provision would not be subject to rigor of Act 2006 but for the application the Article 226 the circumstances should be there. Article 226 of the Indian Constitution grants the High Court broad jurisdiction to impose orders and writs on any individual or entity but before the court can grant a writ or issue an order, the party filing the petition must show that his rights are being illegally violated. The High Court's authority to grant writs is also subject to a number of limitations if the petitioner is entitled to pursue other equally effective alternative remedies. The High court consider a number of deliberations before using its extraordinary constitutional jurisdiction and the High Court may refuse to grant relief if there is a remedy available and send the party to the proper forum to seek relief but it is a self-imposed guideline rather than a jurisdictional one for considering writ petitions.

64. Therefore, even though there is an alternative remedy available, in extraordinary circumstances, a writ may be

issued. Thus, merely because a statutory provision has been made by the parliament by way of alternative forum, the same cannot be construed to abridge the power conferred to this Court under Article 226 of the Constitution of India in order to secure the basic structure of the Constitution.

65. There is no dispute about the position of law that appeal is required to be filed against an order passed by the Facilitation Council by resorting to the provisions of Section 18 as provided under Section 19 of MSMED Act, 2006. The writ petitioners, admittedly, have challenged the award without taking recourse of the statutory remedy available under law and has approached this Court by filing writ petition invoking jurisdiction of this Court conferred under Article 226 of the Constitution of India

66. There is no dispute as to the settled position of law that once the procedure contemplated under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006 is duly followed, the provisions of the Arbitration and Conciliation Act, 1996 would apply. However, in the present case, the jurisdiction of the Council which has passed the Award is not in conformity with the mandate of Section 21 of the Act, 2006. Consequently, the Award being void ab initio, the availability of an alternative remedy under Section 34 of the Arbitration and Conciliation Act does not arise.

67. Further, it is settled position of law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, especially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation, reference in this regard be made to the judgment rendered by Hon'ble Apex Court in the case of ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*** reported in ***(1998) 8 SCC 1.*** The relevant paragraph of the aforesaid judgment is being referred hereunder as :-

> "15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. ----------."

68. The Hon'ble Apex Court in **State of Tripura Vs. Manoranjan Chakraborty & Ors.**, reported in **(2001) 10 SCC 740**, has observed that that if gross injustice is done and it can be shown that for good reason the Court should interfere,

then notwithstanding the alternative remedy which may be available by way of an appeal, the Writ Court can in an appropriate case exercise its jurisdiction to do substantive justice, accordingly, in view of the fact that the constitution of the Council was itself ultra-vires of Section 21 of the MSMED Act, the alternative remedy cannot be taken as a bar for entertaining the present writ applications.

69. The petitioners have moved this Court directly under Article 226 of the Constitution of India, in view of the fact that the impugned Award is void ab initio, for the fact that it has been passed by a Council which was not competent to pass award since the same has not been constituted as per the mandate of the section 21 of Act 2006.

70. In view of the settled law on the subject, this Court find that in spite of the specific provision of appeal under Section 34 of the Arbitration Act, these writ applications are quite maintainable, in view of the fact that the impugned Award / notices are challenged on the ground of competency of the Council, constitution of which is ultra-vires of Section 21 of the MSMED Act.

71. Accordingly, the Award passed by MSME Council as contained in Memo No.304 dated 25.01.2016 is hereby quashed and set aside.

72. In consequent thereto the order of review dated 15.07.2016 is also hereby quashed and set aside.

73. Accordingly, the matter is remitted to the MSME Council for fresh consideration, with liberty to the parties to place all relevant materials before the Council, which shall decide the matter expeditiously in accordance with law.

74. The writ petitions stand disposed of.

75. Interlocutory application, if any, also stands disposed of.

(Sujit Narayan Prasad, J.)

Dated : 24/06/2026

*Birendra/-***A.F.R.**

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