

Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6888 OF 2024

M/s. Nilay Enterprise

A sole Proprietorship Firm,
Through its sole proprietor Mrs. Sharda Anand
Thorat having its place of business at 9/B, 302,
Arunodaya CHS LTD., Tilak Nagar,
Chembur, Mumbai 400 089.

...Petitioner

Versus

1. M/s. Omkar Publicity Promotions

A sole Proprietorship Firm,
Own, Run and Operated by Mr. Arun M.
Shelar, Sole Proprietor, having its place
of business at Shop No.64, Goldfilled
Plaza, Sion Bandra Link Road,
Dharavi, Mumbai 400 017.

2. Micro and Small Enterprises Facilitation

Council (MSEFC)-MMR Region, Mumbai
Office of the Joint Director of Industries
Mumbai Metropolitan Region – 702, 7th Floor,
Vikas Centre, Dr. C. Gidwani Marg,
Chambur (East), Mumbai- 400 074.

...Respondents

WITH
INTERIM APPLICATION NO. 3071 OF 2026
IN
WRIT PETITION NO. 6888 OF 2024

M/s. Omkar Publicity Promotions

A sole proprietorship owned by Mr. Arun
Shelar sole proprietor having its address at
Shop No. 64, Gold Field Plaza, Sion Bandra
Link Road, Dharavi, Mumbai – 400 017.

...Applicant

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IN THE MATTER BETWEEN

M/s. Nilay Enterprise

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...Respondents

Mr. Nikhil Jayakar with Mr. Ketan Dhavle, Ms. Urusah M. I. i/b
Dave & Co., for the Petitioner.

Mr. Arsh Mishra, for the Respondent No.1.

CORAM:

**SUMAN SHYAM &
ADVAIT M. SETHNA, JJ.**

RESERVED ON: 12th AUGUST, 2026.

PRONOUNCED ON: 18th August, 2026.

JUDGMENT : (Per *SUMAN SHYAM, J.*)

1. The facts of the case, as apparent from the material on record, in a nut-shell, are that the Writ Petitioner is a Sole

Proprietorship Firm engaged in the business of supplying bags, T-shirts, wallets etc. to reputed brands, such as, Lee Cooper, Killer, Lawman. The Respondent No.1 is in the business of manufacturing promotional goods, such as bags, wallets and other items. The Respondent No.1 had made supplies to the Petitioner, the last of such transaction being on 7th February 2019. However, some disputes had arisen as regards the quality of the products supplied by the Respondent No.1 resulting in with-holding/ delay in making payments. The Respondent No. 1 had applied for registration under the Micro, Small and Medium Enterprises Development Act, 2006 (“the MSMED Act of 2006” for short) on 11th February 2019 by submitting Udyog Aadhar Memorandum. On 19th August 2020, the Respondent No. 1 received its registration. After receiving the registration, the Respondent No 1 had submitted an application before the Respondent No 2, i.e., the Micro and Small Enterprises Facilitation Council (MSEFC) alleging delay in payment, claiming a sum of Rs 1,45,70,071/- (Rupees One Crore Forty Five lakhs Seventy Thousand and Seventy One) along with interest calculated thereon for a sum of Rs 76,79,356/- (Rupees Seventy Six Lakhs Seventy Nine Thousand Three Hundred and Fifty Six). Reference was made under Section 18(2) of the MSMED Act of 2006 for

Conciliation *vide* Petition No.1139 of 2020. However, the Conciliation process had failed as a result of which, the matter was taken up for Arbitration under Section 18(3) of the Act which process had culminated in the Award dated 30th June 2023, awarding a sum of Rs.1.45 Crores as principal amount and further sum of Rs. 76 lakhs, as interest component, in favour of the Respondent No.1. Assailing the Award dated 30th June, 2023, the Writ Petitioner has approached this Court by filing the instant Writ Petition.

2. The primary contention of the Petitioner is that the transaction between the Writ Petitioner and the Respondent No.1 having taken place prior to its registration under the MSMED Act of 2006, the Respondent No.2 did not have any authority or jurisdiction under the law to entertain the reference pertaining to such dispute since the provisions of the MSMED Act of 2006 cannot have any retrospective application. As such, the impugned Award is a nullity in the eyes of law.

3. According to the Petitioner, the issue raised in this Writ Petition is squarely covered by the decision of this Court rendered

in the case of **JSW Steel Ltd. vs. Kamlakar V. Salvi & Ors.**¹, wherein, it has been held by a Division Bench of this Court that the registration obtained under the MSMED Act of 2006 will only have prospective effect.

4. The Respondent No.1 has contested the Petitioner's case by taking the plea of maintainability of the Writ Petition on the ground of availability of alternative statutory remedy to the Petitioner to challenge the impugned Award.

5. Mr. Nikhil Jayakar, learned Counsel appearing for the Petitioner, has argued that the Award passed by the Respondent No.2 is wholly without jurisdiction and/or authority of law inasmuch as, the Respondent No.2 did not have the jurisdiction to entertain a reference/application pertaining to disputes which relate to transactions that took place prior to the registration of the MSME Unit under the MSMED Act of 2006.

6. According to Mr. Jaykar, the present case is not only covered by the decision of this Court in **JSW Steel Ltd. (Supra)** but also by the decisions rendered by the Hon'ble Supreme Court in **Silpi**

1 2021 SCC OnLine Bom 3113.

Industries & Ors. Vs. Kerala State Road Transport Corporation & Anr.² and Gujarat State Civil Supplies Corporation Ltd Vs. Mahakali Foods Pvt. Ltd. (Unit 2) & Anr.³

7. Contending that although, the decision in the case of **JSW Steel Ltd. (Supra)** is under challenge before the Hon'ble Supreme Court, yet, there is no stay order passed by the Supreme Court. Therefore, submits Mr. Jaykar, in view of the law laid down by the Supreme Court in the case of **Union Territory of Ladakh & Ors. vs. Jammu and Kashmir National Conference & Ors.,⁴** the decision in the case of **JSW Steel Ltd. (Supra)** would be binding on this Court.

8. Mr. Arsh Mishra learned Counsel appearing for the Respondent No.1, on the other hand, has argued that the Petitioner has a statutory remedy against the Award and, therefore, the Writ Petition would not be maintainable. Mr. Mishra has not disputed the submission of the Petitioner's Counsel to the effect that the present case would be covered by the decision in **JSW Steel Ltd. (Supra)** as well as the decisions in **Silpi Industries & Ors., (Supra)** **Gujarat State Civil Supplies Corporation Limited (Supra)**. The

2 (2021) 18 SCC 790.

3 (2023) 6 SCC 401.

4 (2024) 18 Supreme Court Cases 643

learned Counsel has, however, argued that in **NBCC (India) Limited vs. State of West Bengal & Ors.**,⁵ the decisions in **Silpi Industries & Ors.(Supra)** and **Gujarat State Civil Supplies Corporation Limited (Supra)** have been referred for re-consideration by a larger bench. Therefore, pending decision of the larger bench, hearing in this matter be deferred.

9. There is no controversy in this case about the fact that the transactions with regard to which the Respondent No.1 had raised its claims took place prior to the date of registration of the Respondent No.1 as an MSME Unit. The Respondent No 1 had received its registration under the Act of 2006 on 19th August, 2020. However, the transactions, giving rise to the dispute, admittedly took place prior to the date of registration. As per the law laid down in **JSW Steel Ltd. (Supra)** an MSME would not be entitled to the benefit under the Act of 2006 in respect of any transaction which took place prior to the date of registration as the MSME.

10. By taking note of the decision of the Division Bench of this Court in the case of **JSW Steel Ltd.(Supra)**, this Court had passed

5 (2025) 3 Supreme Court Cases 440

order dated 11th June, 2024, in the present proceeding, staying the execution of the impugned Award dated 30th June, 2023, by further observing that the present Writ Petition should await the outcome of the challenge laid to the judgment in **JSW Steel Ltd.** (*supra*) before the Supreme Court. The said SLP is still pending. However, the judgment rendered in **JSW Steel Ltd** has not been stayed by the Apex Court.

11. It appears that the interim order dated 11th June, 2024 passed in the present proceeding was assailed by the Respondent No.1 by filing Special Leave Petition (Civil) Diary No (s). 58678 of 2024. The said SLP was disposed of by the Hon'ble Supreme Court by order dated 21st February, 2025, *inter alia*, requiring the High Court to take up this Writ Petition and decide the issue at the earliest. It further appears that the order dated 21st February, 2025, was passed by the Hon'ble Supreme Court being conscious of the fact that the decision in the case of **JSW Steel Ltd.** is under challenge in a proceeding pending before the Supreme Court. The learned Counsel for both the sides have candidly submitted that the out-come of the present proceeding would depend on the out-come of the SLP pending against the decision in **JSW Steel Ltd.** (*Supra*).

As noted above, the learned Counsel for the Respondent No 1 has also requested for deferment of this proceeding on such ground. However, in view of the order dated 21st February, 2025, this Court would be under a bounden duty to proceed with the Writ Petition and pass final order therein notwithstanding the pendency of the SLP before the Supreme Court against the **JSW Steel Ltd.** matter.

12. In the case of **JSW Steel Ltd. (Supra)**, a Co-ordinate Bench of this Court, while dealing with the issue as to whether, registration obtained under the MSMED Act of 2006 can operate retrospectively covering transactions which took place before the registration of the Unit, had made the following observations in paragraph No. 34.4, which are reproduced herein-below for ready reference:-

“34.4. From the above, we find that Supreme Court has clarified that if any registration under the MSMED Act is obtained, the same will be prospective and would apply to supply of goods and services subsequent to registration but cannot operate retrospectively. According to the Supreme Court, any other interpretation of section 8 would lead to absurdity and confer unwarranted benefit in favour of a party not intended by legislation.

13. While considering the issue of maintainability of the Writ Petition assailing the Award passed by the Micro and Small Enterprises Facilitation Council, Konkan Region, Thane, in

somewhat identical fact situation, the Division Bench, in the case of

JSW Steel Ltd. (Supra) has further observed, as follows:-

“45. The above are jurisdictional facts which were absent before respondent No.2 could assume jurisdiction. In the absence of such jurisdictional facts, respondent No.2 could not have proceeded under section 18(3) of the MSMED Act and could not have passed the impugned order (award) dated 08.05.2015. As held by the Supreme Court in **Arun Kumar (Supra)**, in the absence of the jurisdictional facts, respondent No.2 had rendered itself *coram non judice*. Any order or award passed by an authority which is rendered *coram non judice* is a nullity and can certainly be interfered with by the High Court under Article 226 of the Constitution of India. Therefore, reverting back to our discussions made in paragraph 37 of this judgment, from an analysis of the judgments of the Supreme Court in **Patel Engineering (Supra)** and **Modern Industries (Supra)** the position becomes very clear. While the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India would not entertain any and every order passed by an Arbitral Tribunal, certainly the High Court would entertain an order or award passed by a statutory Arbitral Tribunal which is a nullity or when the Tribunal had rendered itself *coram non judice*.”

14. From the above, it is apparent that the Writ Petition filed by the Petitioner in **JSW Steel Ltd.** assailing the Award of the Facilitation Council, under identical fact situation, has been entertained by the Court by giving sufficient justification, which would be applicable in the facts of the present case as well.

15. Our attention has also been invited to two subsequent decisions of the Hon’ble Supreme Court dealing with the same issue. In the case of **Silpi Industries & Ors. (Supra)**, the Hon’ble Supreme Court, while dealing with an issue of similar nature, has

observed that, in order to seek benefit of the provisions of the MSMED Act of 2006, the seller would have to be registered under the provisions of the MSMED Act of 2006 as on the date of entering into the contract. Supplies made pursuant to a contract entered before the registration of the Unit under the provisions of the MSMED Act of 2006 would not be eligible to the benefit of an entity as contemplated under the MSMED Act of 2006. Having held as above, the following observations were made in para 44, which are reproduced herein-below for ready reference:-

“44. The appellant cannot become micro or small enterprise or supplier, to claim the benefits within the meaning of the MSMED Act, 2006,, by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods and services. If any registration is obtained, same will be prospective and applies for supply of goods and services subsequent to registration but cannot operate retrospectively. Any other interpretation of the provision would lead to absurdity and confer unwarranted benefit in favour of a party not intended by legislation.”

16. In another subsequent decision rendered in the case of **Gujarat State Civil Supplies Corporation Limited** (Supra), similar view was expressed by the Supreme Court on the above issue. The observations made in paragraph 52.6 are relevant for this case and therefore, are been quoted herein-below:-

“52.6 A party who was not the “supplier” as per the definition contained in Section 2(n) of the MSMED Act, 2006 on the date

of entering into contract cannot seek any benefit as the “supplier” under the MSMED Act, 2006. If any registration is obtained subsequently the same would have an effect prospectively and would apply to the supply of goods and rendering services subsequent to the registration.”

17. From a careful analysis of the *ratio* laid down in the aforementioned decisions, it is clear that a MSME Unit would not be entitled to the benefits of the provisions of the MSMED Act of 2006 pertaining to transactions that took place prior to the date on which the Unit had obtained registration under the Act. If that be so, in the facts of the present case, as noted above, the Respondent No.1, in our view, could have invoked the provisions of MSMED Act of 2006 by making an application to the Respondent No.2 with regard to claims which were admittedly based on transactions which took place on date/dates, which were prior to the registration of the Unit as the MSME Unit under the MSMED Act of 2006. We are, therefore, of the un-hesitant opinion that impugned Award dated 30th of June 2023 is without jurisdiction and hence, a nullity in the eyes of law. The same is accordingly declared so.

18. In so far as the decision in the case of **NBCC (India) Limited vs. State of West Bengal & Ors.**⁶ is concerned, it is correct that a Division Bench of the Supreme Court has taken a somewhat

6 (2025) 3 Supreme Court Cases 440

contrary view on certain issues dealt with in those previous decisions and the matter has been referred to the larger Bench. From an examination of the judgment in the case of **NBCC (India) Limited (Supra)**, we find that the question of applicability of the MSMED Act of 2006 to transaction which took place prior to the registration of the MSME unit was also an issue there-in. In **NBBC (India) Limited (Supra)**, the Supreme Court has observed that the decisions in **Silpi Industries & Ors.(Supra)** and **Gujarat State Civil Supplies Corporation Limited (Supra)** as well as two other decision in **Vaishno Enterprise**⁷ and **Nitesh Estate**⁸ dealing with the same issue, cannot be considered to be binding precedents. The matter has, therefore, been referred to the larger bench on account of the compelling need to ensure clarity and certainty about applicable principles on the subject. It was, however, observed in paragraph 3 that the issues involved in **Silpi Industries & Ors.(Supra)** and **Gujarat State Civil Supplies Corporation Limited (Supra)** were very different from the issues that have arisen in **NBBC (India) Limited. (Supra)**. We also find that although, the Division Bench in **NBBC (India) Limited (Supra)**, has doubted the correctness of the law laid

7 (2024) 12 SCC 214.

8 (2024) 12 SCC 221.

down in **Silpi Industries & Ors.(Supra)** and **Gujarat State Civil Supplies Corporation Limited (Supra)** rendered earlier by the Benches of equal strength, yet, those decisions have not been over-ruled nor is there any stay order pertaining to the decision of this Court in **JSW Steel Limited(Supra)**.

19. The above circumstances give rise to a pertinent question as to whether, in view of the observations made in **NBBC (India) Limited (Supra)**, the decisions in the case of **Silpi Enterprises (Supra)**, **Gujarat State Civil Supplies Corporation Limited (Supra)** can have any relevant bearing in the present case. The above issue, in our considered opinion, would stand resolved in the light of the observations made in paragraph 35 in the case of **Union Territory of Ladakh (Supra)**, which are re-produced here-under :-

“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength

of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in *National Insurance Company Limited v Pranay Sethi*, (2017) 16 SCC 680. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.”

20. In view of the observations made in **Union Territory of Ladakh (Supra)**, as noted above, we are of the view that the decision in **Silpi Enterprises (Supra)**, **Gujarat State Civil Supplies Corporation Limited (Supra)** as well as in **JSW Steel Limited (Supra)** still holds the field and therefore, this court would be bound by those decisions.

21. In the result, this Writ Petition must succeed and the same is hereby allowed in terms of prayer clauses 24 (a) (i) & (ii).

22. In view of disposal of the Writ Petition, Interim Application No. 3071 of 2026 also stands disposed of.

23. Parties to bear their own cost.

(ADVAIT M. SETHNA, J.)

(SUMAN SHYAM, J.)