IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.08.2026

DELIVERED ON: 19.08.2026

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI

CRP No. 6542 of 2025 and CMP No.32321 of 2025

M/s.3F Industries Ltd.,
Represented by Jitendra Goenka, Director,
Aadhaarshila, No.36, C.P.Ramasamy Road,
Alwarpet, Chennai -600 018. ... Petitioner(s)

Vs

M/s.Mahalakshmi Trading Corporation,
Represented by its Managing Partner
Muthumanigandan, Near Royapuram
Bridge, George Town, 15/29, Thambu
Chetty Street, Chennai -600 001. ... Respondent(s)

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the impugned order dated 13.03.2025 (received on 17.11.2025) passed by the Micro and Small Enterprises Facilitation Council, Chennai Region, in the proceedings arising out of the reference made by the Respondent in MSEFC/CR/10/2022.

For Petitioner(s): Mr.Advaidh Nelakanttan R and
Mr.Pranav R.Menon
For M/s.ARK Law Associates

For Respondent(s): Mr.Aravind Subramanian
Senior Counsel
For Mr.S.Manoj
assisted by Mr.S.Naveen Kumar

ORDER

The revision petitioner challenges the order passed by Micro and Small Enterprises Facilitation Council, (MSEFC), Chennai Region in Proceedings No.MSEFC/CR/10/2022.

2. Though I had reserved orders on 06.08.2026 and the case was listed for being pronounced on 14.08.2026, late in the evening hours of 13.08.2026, the learned counsel for the respondent filed an additional typed set of documents, after serving an advance copy on the learned counsel for the revision petitioner. In view of the above, I *suo motu* reopened the revision for further arguments on 14.08.2026.

3.I have heard Mr.Advaidh Nelakanttan R for M/s.ARK Law Associates, counsel for the revision petitioner and Mr.Mr.Aravind Subramanian, learned Senior Counsel for Mr.S.Manoj, assisted by Mr.S.Naveen Kumar, counsel for the respondent.

4.The contentions of the learned counsel for the revision petitioner Mr.Advaidh Nelakanttan, are as follows:

5. The petitioner was approached by the respondent, offering to arrange term finance/re-finance facility from banks and non-banking financial institutions offering, their services from inception to disbursal of loans. The respondent vide E-mail dated 04.06.2020 had claimed commission of 2%, besides setting out the scope of the services of the respondent. According to Mr.Advaidh Nelakanttan, the petitioner never accepted the said offer of the respondent in the first place and there is no concluded contract between the parties.

6. Secondly, it is his submission that the respondent, based on the unilateral and unaccepted and unconcluded offer, approached the MSME Council and claimed a sum of 33,40,000/-(Rupees Thirty Three Lakhs Forty Thousand Only), based on an alleged Invoice dated 04.09.2021. Pointing out to the order dated 28.07.2022, Mr.Advaidh Nelakanttan would contend that the Council categorically found that the activity of the respondent, offered by way of service to the petitioner, did not come within the purview of MSME Council and the case was dismissed. However, to the utter shock of the petitioner, a meeting intimation was received from the Council on

07.02.2023, in and by which, the Council erroneously attempted to re-open the concluded proceedings. On 09.03.2023, the Council re-opened the matter and issued summons to both parties and thereafter, proceeded to pass the impugned order dated 13.03.2025, which is under challenge in the present revision petition.

7.Learned counsel for the petitioner states that MSME Council did not have the power to re-open the earlier proceedings which stood closed as early as on 28.07.2022. Relying on the decision of the Hon'ble Supreme Court in the case of ***Bajaj Auto Ltd v Ajanta Press in Civil Appeal No.6555 of 2022,*** dated ***13.09.2022,*** the learned counsel contended that the reopening itself is ultra vires the statute and hence, the subsequent impugned order passed on 13.03.2025 is without jurisdiction and *void ab initio.* He would also point out that the order dated 28.07.2022 was a considered order on merits and thus, it would fall within the scope of a speaking order in and by which, the Council clearly held that the activity of the respondent did not create any value addition and therefore, was outside the scope and purview of the Council.

8. It is also the submission of the learned counsel for the petitioner that on the date of the alleged services rendered by the respondent, the respondent was not even an MSME Unit and the registration obtained by the respondent subsequently on 29.10.2020

cannot give retrospective effect, to enable the respondent to bring the claim of the services rendered in September 2020 before the Council. In this regard, the learned counsel placed reliance on the decision of ***Gujarat State Civil Supplies Corpn Ltd vs Mahakali Foods (P) Ltd,*** reported in ***(2023) 6 SCC 401; Vaishno Enterprises vs Defence Research & Development Organisation,*** reported in ***2022 SCC Online SC 355; MTNL vs Delhi International Arbitration Centre,*** reported in ***2024 SCC Online 687 and M/s Kothari Industrial Corporation Ltd vs M/s Surya Poly Bags in CRP No.2480 of 2022 dated 04.04.2024.***

9.Placing reliance on the above decisions, learned counsel for the petitioner states that the respondent cannot bring himself within the definition of "supplier" under Section 2(n) of MSME Act as he does not satisfy the statutory requirements on the date of the alleged transaction, Section 2(n) clearly confining a supplier to a Micro or Small Enterprise which has filed a Memorandum with the authority in terms of Section 8(1) of the Act. Without prejudice to his preliminary submissions on maintainability, the learned counsel for the petitioner would also attack the impugned order dated 13.03.2025, by contending that the Council clearly fell in error in not treating the respondent as Commission Agent which was evident from the terms and conditions stipulated by the respondent itself in the E-mail dated 04.06.2020. He would further state that admittedly it was M/s Siemens Financial Services Pvt Ltd which has arranged for the finance and not the respondent.

10.It is also the submission of the learned counsel for the petitioner that in terms of Section 18(3) of MSMED Act, in the event of there being a failure of conciliation proceedings, then recourse will have to be taken to arbitration proceedings. In the instant case, no arbitration proceedings have been initiated and on this limited ground alone, the revision petitioner is entitled to succeed. Learned counsel therefore prays for the revision being allowed.

11.Per contra, Mr.Aravind Subramanian, learned Senior counsel appearing for the respondent, would firstly contend that the petitioner has not challenged the reopening of the matter by the Council and has participated in the subsequent enquiry which resulted in the impugned order. He would therefore contend that it is not open to the petitioner to challenge the impugned order dated 13.03.2025 on the above grounds, without challenging the very reopening of the proceedings in the light of the earlier order dated 28.07.2022.

12.As regards the power of the MSME Council to reopen the proceedings, the learned Senior Counsel has relied on the decision of the Hon'ble Supreme Court in ***SREI Infrastructure Finance Limited vs Tuff Drilling Private Limited,*** reported in ***2018 (11) SCC 470*** and ***Grindlays Bank Ltd vs Central Government Industrial Tribunal and Others,*** reported in ***1980 (Supp) SCC 420.***

13.The learned Senior Counsel has also relied on the decision of the Hon'ble Supreme Court in ***NBCC (India) Limited Vs. State of West Bengal and others***, reported in ***2025 (3) SCC 440***, where the Hon'ble Supreme Court held that any party employed in Section 18 of the Act, need not be a "supplier" who has been registered under Section 8, even before execution of the contract and further, relying on the decisions of the Hon'ble Supreme Court in ***Silpi Industries, Vs Kerala SRTC***, reported in ***(2021) 18 SCC 790***, ***Gujarat State Civil Supplies Corporation Limited Vs. Mahakali Foods (P) Limited***, reported in ***(2023) 6 SCC 401***, ***Vaishno Enterprises Vs. Hamilton Medical AG***, reported in ***(2024) 12 SCC 214*** and ***Nitesh Estates Limited Vs. Outsourcing Xperts***, reported in ***(2024) 12 SCC 221,*** it has been held that, the above decisions which have been relied on by the learned counsel for the petitioner cannot be considered to be binding precedents on the issue that has arisen for consideration in *NBCC's case* and in order to ensure clarity and certainty about the applicable precedents on the subject, the

Hon'ble Supreme Court deemed it appropriate to refer the decision in *NBCC's case* to a Three Judge Bench. Admittedly, the Larger Bench has not been constituted and the issue has not been decided as on date. It is therefore the submission of Mr.Aravind Subramanian, learned Senior Counsel that the reliance placed in *Silpi Industries's case, Vaishno Enterprises, Nitesh Estates and Mahakali Foods's case* cannot be considered good law and binding precedents.

14.Also referring to the additional typed set of papers, the learned Senior Counsel would state that there is clear documentary evidence to the effect that pursuant to the failure of the conciliation proceedings, the parties filed written submissions and the same have been considered on merits and thereafter alone, the award has been passed. He would therefore state that there is substantial compliance of the mandate under Section 18(3) of the Act.

15.Relying on ***India Glycols Limited and Another vs Micro and Small Enterprises Facilitation Council, Medchal – Malkajgiri and Others,*** reported in ***2025 (5) SCC 780,*** learned Senior Counsel would contend that in terms of MSME Development Act, 2006, an application for setting aside an Award of the facilitating Council cannot be entertained, unless the appellant deposits 75% of the amount in terms of the Award and without availing remedy under Section 34 of Arbitration and Conciliation Act, 1996, the aggrieved party cannot take recourse to filing of a writ petition or revision petition invoking Article 226 and 227 of the Constitution of India.

16.With regard to non-conformity of the provisions of Section 18(3), the learned Senior Counsel would contend that arbitration proceedings were duly conducted and there is no substance in the argument of the learned counsel for the petitioner, to the contrary.

17.In reply, Mr.Advaidh Nelakanttan R, learned counsel for the revision petitioner, taking me through the facts of ***NBCC's case***, would contend that the issue that arose before the Hon'ble Supreme Court was not purely a question of law, but mixed question of fact and law and in the said case, there were invoices which were not only before the registration certificate under MSME Act, but some of the invoices were after the registration. He would therefore state that it was only under such circumstances that the Hon'ble Supreme Court felt that the decisions in ***Silpi Industries, Mahakali Foods, Vaishno Enterprises*** and ***Nitesh Estates's cases*** cannot be binding precedents and better clarity is required. He would therefore state that the ratio in ***NBCC's case*** and reference to Larger Bench does not in any manner affect the fact of the present case, where admitted the alleged transaction in respect of which brokerage / commission is claimed was prior to the registration in favour of the respondent.

18.Mr.Advaidh Nelakanttan R, has also taken me through the additional typed set of papers filed by the learned counsel respondent on 13.08.2026, where also he points out that, as late as on 21.01.2025, the respondent themselves have admitted in their memo for clarification filed before the Facilitation Council that conciliation has failed and therefore, the Council will have to initiate arbitral proceedings and that the Arbitrator so appointed by the Council will have to enquire the parties and deal with the materials placed by both the parties and thereafter pass an award. He would therefore rebut the arguments of the learned Senior Counsel that pursuant to failure of conciliation proceedings, arbitration proceedings were, in fact, initiated and it is only thereafter that the impugned award came to be passed.

19.I have carefully considered the submissions advanced by the learned counsel for the petitioner as well as the learned Senior Counsel for the respondent.

20.Admittedly, the claim of the respondent before the Council was for recovery of money based on an alleged contract for payment of brokerage/commission. I am unable to see how such a claim can be maintained before MSME Council in the first place. The Act has been brought about with the laudable objects of facilitating promotion and development and enhancement of competitiveness of Micro, Small and Medium Enterprises and matters connected therewith and incidental thereto.

21. Section 2(n) defines “supplier” to mean a micro or small enterprise, which has filed a Memorandum with the authority referred in sub section (1) of Section 8. It is an inclusive definition. Section 8(1) requires any person who intends to establish a micro or small enterprise or medium enterprise, in provision or rendition of services or manufacture of production of goods pertaining to Industries specified in the I Schedule of Industries Development Regulation Act 1951 to file a Memorandum with the authorities specified by the State Government under sub section (4) of Section 8 or Central Government under sub section (3) of Section 8.

22.Admittedly, in the present case, the respondent’s Udyam registration was given only on 29.10.2020. However, the claim before the MSME Council was based on an alleged contract by way of e-mail dated 04.06.2020. Therefore, on the date of alleged contract for brokerage/commission on 04.06.2020, the respondent was not even duly registered, to fall within the definition of “supplier” under section 2(n) of the Act.

23.In ***NBCC's case***, the Hon'ble Supreme Court while referring the matter to a Larger Bench, has clearly held that the issues that arose in ***Silpi Industries*** and ***Mahakali Foods*** were very different from the issue that has arisen for consideration in ***NBCC's case*** and only for the purposes of clarity and legal certainty that the Hon'ble Supreme Court has referred the matter to the Hon'ble Chief Justice of India, for constitution of a Larger Bench for an authoritative pronouncement. The issue that arose for consideration before the Hon'ble Supreme Court in ***NBCC's case*** was whether the MSME is entitled to make a reference to the facilitation council for dispute resolution under Section 18 when it is not registered under Section 8 of the Act, at the time of execution of the contract with the buyer. Therefore, the Hon'ble Supreme Court, having found the factual matrix to be entirely different and only for the purposes of clarity, held that decisions in ***Silpi Industries*** and ***Mahakali Foods*** would not be binding precedents insofar as the issue that arose for consideration in ***NBCC's case***. In other words, the Hon'ble Supreme Court has not held the decisions in ***Silpi Industries*** and ***Mahakali Foods*** to be bad in law.

24.Insofar as the power of the Council to reopen and review the earlier order dated 28.07.2022, as rightly pointed out by the learned Senior Counsel for the respondent, when the order reopening the earlier proceedings that stood concluded on 28.07.2022 has not been challenged by the revision petitioner, I am unable to entertain the said arguments in the present revision petition. In fact, the petitioner voluntarily participated in the proceedings, after the enquiry was reopened. No exception was taken by the petitioner, contending that the proceedings were already finally decided and therefore, it could not be reopened. The petitioner was not estopped from challenging the reopening of the earlier proceedings, which admittedly has not been done in the present case. The Hon'ble Supreme Court in ***Grindlays Bank Limited Vs. Central Government Industrial Tribunal and others***, reported in ***1980 (Supp) SCC 420***, held that the Tribunal does not become *functus officio* and can entertain an application for setting aside its ex-parte award, since Tribunals have ancillary and incidental powers. Similarly in ***SREI Infrastructure's case*** also, the Hon'ble Supreme Court held that an Arbitral Tribunal, despite termination of proceedings, has jurisdiction to consider an application for recall of the order of termination of the proceedings on sufficient reasons being shown. Though in both these cases, it was the case of an ex-parte order/award being passed the Apex Court has held that the Tribunals have the power to recall their orders if sufficient cause is shown. As already discussed, when the petitioner has accepted the said order to recall the earlier order dated 28.07.2022 and has not challenged the same, I am unable to countenance the arguments of the learned counsel for the petitioner in this regard to hold that the impugned proceedings to be null and void.

25.It is the specific contention of the petitioner that despite failure of conciliation proceedings, the mandate of Sub section 3 of Section 18 has not been adhered to, by reference of the dispute for Arbitration. It is in this regard learned counsel for the petitioner relied on the decision of ***M/s Kothari Industrial Corporation Ltd vs M/s Surya Poly Bags (CRP No.2480 of 2022),*** where this Court held that when there is failure to comply with the requirements of Section 18 of the Act, then, a revision under Article 227 of the Constitution of India can be maintained. In fact, this Court relied on the ratio laid down by the Hon'ble Supreme Court in the case of ***M/s Deep Industries Limited vs ONGC,*** reported in ***2020 15 SCC 706.*** Though it has been vehemently contended and argued by the learned Senior Counsel for the respondent that Arbitration has been duly commenced and thereafter alone, the impugned order came to be passed, I am unable to see any merit in such contentions. There is nothing on record evidencing that arbitration proceedings were even initiated.

26.Admittedly, conciliation has failed. On such failure, the only recourse available to the respondent was to request the MSME Council to either take up the

Arbitration by the Council itself or refer the matter to any other Institution or Centre, providing Alternative Dispute Resolution, for conducting arbitration. Section 18(3) mandates that the provisions of the Arbitration and Conciliation Act, 1996 would apply to such dispute, as if the Arbitration was in pursuance of the Arbitration Agreement referred to in subsection (1) of Section 7 of the Arbitration and Conciliation Act, 1996.

27.In fact, as rightly pointed out by the learned counsel for the petitioner even in the re-joinder filed by the respondent before the MSME Council, as late as on 23.11.2023 in the concluding paragraph, the respondent has stated as follows:-

> " *24. Accordingly, I pray this Hon'ble Council to conduct Conciliation Proceedings based on evidences already submitted and produced, if not arrived at a solution between the parties. I pray this Hon'ble Council to conduct Arbitration proceedings within the Council or appoint an Arbitrator on my petition as per the provisions of the procedure contemplated under Sections 20.23, 24 and 25 of the Arbitration and Conciliation Act, 1996, if not resolved by this Hon'ble Council and thus render justice."*

28.As rightly pointed out by Mr.Advaidh Nelakanttan R, learned counsel for the revision petitioner, not only in the rejoinder discussed herein above, but even lapse of after two years, namely in the memo for clarification filed by the respondent on 21.01.2025 at paragraph No.3 to 5, the respondent has, in no uncertain terms, admitted that arbitration proceedings have not been initiated. For easy reference, the said paragraph Nos.3 to 5 are reproduced hereunder:

> *"3.The petitioner respectfully state that, as per the legal provisions, in case the 'conciliation' fails, the Council has to proceed with "Arbitral proceedings" where this Council itself may act either as "Arbitral Tribunal" or may appoint an "Arbitrator" from within or outside expert or institution providing ADRI as per Section 18(3) of MSMED Act, 2006.*
>
> *4.(a) Further submits that, the dispute is assigned to arbitrator, only the provisions of the Arbitration and Conciliation Act, 1996 (as amended) will be applicable by which the Arbitrator has to enquiry the parties and deal with the materials placed by both parties etc and therefter pass an Award.*
>
> *(b) But, in the case on hand, no arbitrator was appointed and documentary evidence including electronic and digital were not marked and no party adduces oral evidence.*
>
> *5.Therefore, it is respectfully prayed that this Hon'ble Council may invoke Section 18(3) of MSMED Act, 2006, by which an Arbitrator may be appointed to conduct further proceedings and thus render justice."*

29.Despite filing a voluminous additional typed set of papers, none of the documents that are relied on in the said typed set indicate initiation of arbitration proceedings, filing of a claim statement, statement of defense and further proceedings under the Arbitration and Conciliation Act. Therefore, there is no merit in the submissions made on behalf of the respondent that consequent to the failure of the conciliation proceedings, as mandated under Section 18(3) of the MSMED Act, arbitration proceedings have been conducted and the same has culminated in the impugned award.

30.In the light of the above, it is clear that there has been no initiation of arbitration proceedings as required under Section 18(3) of the Act. In such circumstances, the impugned order, without adhering to the provisions of the Arbitration and Conciliation Act, 1996, commencing from a reference to arbitration and thereafter, calling upon the parties to file their claim and defence statements and further contemplating an enquiry/trial before passing an Award has admittedly not been done in the instant case. Therefore, the impugned order dated 13.03.2025 self styled as an Award has no legs to stand and is liable to be set aside.

31.As rightly held by this Court in ***M/s Kothari Industrial Corporation Ltd vs M/s Surya Poly Bags (CRP No.2480 of 2022),*** when there is a flagrant violation of the mandate of Section 18(3), the aggrieved party need not be driven to prefer an appeal requiring 75% of the amount awarded to be pre-deposited. This Court can very well interfere under Article 227 of Constitution of India as held by the Hon'ble Supreme Court in ***M/s Deep Industries Limited vs ONGC,*** reported in ***2020 15 SCC 706.***

32.Even though strong reliance has been placed on the decision of the Hon'ble Supreme Court ***in India Glycols Limited and another vs Micro and Small Enterprises Facilitation and Others,*** reported in ***(2025) 5 SCC 780;*** the Hon'ble Supreme Court in ***The Tamil Nadu Cements Corporation Limited vs Micro and Small Enterprises Facilitation Council and another,*** reported in ***2025 INSC 91,*** has doubted the ratio laid down in ***India Glycols Limited's case*** and the matter has been referred for constitution of a Larger Bench. However, as held by the Hon'ble Supreme Court in ***M/s.Deep Industries's case***, the power of High Court under Article 227 is unbridled and can be exercised in appropriate cases where this Court finds it absolutely necessary and warranting interference.

33. Therefore, on an overall consideration of the facts and circumstances of the present case, even though the Hon'ble Supreme Court in ***NBCC's case***, has referred the matter to the Hon'ble Chief Justice of India for constitution of a Three Judge Bench for an authoritative pronouncement, as already discussed herein above, it is only with regard to the issue that has arisen for consideration before the Hon'ble Supreme Court in peculiar facts of ***NBCC's case*** and the Hon'ble Supreme Court finding that the decisions in ***Silpi Industries*** and ***Mahakali Foods*** may not adequately answer the issue that had arisen for consideration in ***NBCC's case*** and for such limited purposes held that they may not be binding precedents. I do not see how the argument of the learned Senior Counsel that the ratio in ***Silpi Industries*** and ***Mahakali Foods*** have been over turned can be accepted by this Court.

34. Similarly, even though the Hon'ble Supreme Court in ***India Glycols Limited's case,*** has held that writ petition challenging an award of the MSME Facilitation Council can be challenged only under the provisions of the Arbitration and Conciliation Act, 1996 and not by way of writ petition, invoking jurisdiction under Article 226-227 of the Constitution of India, that was a case where an award has been passed by the Facilitation Council, following the provisions of the Arbitration and Conciliation Act, thereby complying with mandate of Section 18(3) of the MSMED Act.

Therefore, when I have already found that no arbitration proceedings have been initiated, pursuant to failure of conciliation proceedings which position has been candidly admitted by the respondents themselves not only in 2023, but again in January 2025 and nothing is brought on record to evidence initiation of arbitration proceedings at least thereafter, I do not see how the ratio in ***India Glycols Limited's case*** can be applied, notwithstanding the fact that the very ratio in ***India Glycols Limited's case*** has been doubted in ***Tamil Nadu Cements Corporation Limited's case***, as referred herein above. For all the foregoing reasons, I am inclined to set aside the impugned order dated 13.03.2025. However, at the same time, the respondent cannot be left high and dry, without any remedy.

35.Admittedly, the claim of the respondent being a claim for money, based on commission/brokerage for alleged services rendered, it shall always be open to the respondent to institute a civil suit, making out a case for such claim. No doubt, as rightly pointed out by the learned Senior Counsel for the respondent, in view of the proceedings before the Council and thereafter before this Court in the present revision petition, limitation period may have lapsed. I am therefore inclined to invoke Section 14 of the Limitation Act to enable the respondent to file a suit, so that a window is left open to the respondent to adjudicate his claims before the competent civil court.

36.For the foregoing reasons, the Civil Revision Petition is allowed and the impugned order dated 13.03.2025 passed by the Micro and Small Enterprises Facilitation Council, Chennai Region, is set aside. However, liberty is given to the respondent to file a civil suit before the competent Civil Court within a period of three months from the date of receipt of a copy of this order. The said suit, if filed within the said period, shall be entertained without putting limitation against the respondent and the said suit shall be disposed of on merits and in accordance with law in due course. No costs. Consequently, connected miscellaneous petition is closed.

19.08.2026

sr/ata

Index: yes/no

Neutral Citation: yes/no

Speaking Order/Non-speaking Order

To

The Micro and Small Enterprises Facilitation Council,
Chennai Region.

P.B.BALAJI.,J

sr/ata

Pre-Delivery Order in
CRP No. 6542 of 2025

19.08.2026