Case Citation: (2026) ibclaw.in 4879 HC
CNR:KLHC010447272026

2026:KER:62832

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

MONDAY, THE 17TH DAY OF AUGUST 2026 / 26TH SRAVANA, 1948

WA NO. 1234 OF 2026

AGAINST THE JUDGMENT DATED 05.06.2026 IN W.P.(C) NO.45554 OF 2025 OF HIGH COURT OF KERALA

APPELLANTS/PETITIONERS

1 CHARTER SCHOOL FOR EDUCATION & RESEARCH
18/431-A, VAYANASALA ROAD, PUKKATTUPADY,
MALAYIDAMTHURUTH P.O., ERNAKULAM DISTRICT,
PIN - 683561

2 SAPNU GEORGE, DIRECTOR
AGED 39 YEARS
CHARTER SCHOOL FOR EDUCATION AND RESEARCH,
18/431-A, VAYANASALA ROAD,
PUKKATTUPADY, EDATHALA P.O,
ERNAKULAM, PIN - 683561

BY ADVS.
SRI.M.P.MATHEWS
SHRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS
SRI.P.G.CHANDAPILLAI ABRAHAM
SRI.PAUL P. ABRAHAM
SHRI.ALEXANDER JOSEPH MARKOS
SHRI.JOHN VITHAYATHIL

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RESPONDENTS/RESPONDENTS:

1 REGIONAL MICRO AND SMALL ENTERPRISE FACILITATION COUNCIL
DISTRICT INDUSTRIES CENTRE,
THIRUVANANTHAPURAM-695 033,
WATER WORKS COMPOUND, VELLAYAMBALAM,
KERALA, INDIA REPRESENTED BY ITS GENERAL MANAGER,
DISTRICT INDUSTRIES CENTER THIRUVANANTHAPURAM

2 GEFAB FAÇADE SOLUTIONS P LTD
REGD. OFFICE TC 40/803(3) NORTH GATE,
SREEVARAHAM, TRIVANDRUM,
REPRESENTED BY ITS MANAGING DIRECTOR,
PIN - 685009

OTHER PRESENT:

BY ADV
SRI. AMAL DARSAN
SMT. NISHA BOSE, SR. GP

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 19.06.2026, THE COURT ON 17.08.2026 DELIVERED THE FOLLOWING:

JUDGMENT

Muralee Krishna S., J.

The petitioners in W.P.(C)No.45554 of 2025 filed this writ appeal under Section 5(i) of the Kerala High Court Act, 1958, challenging the judgment dated 05.06.2026 passed by the learned Single Judge in that writ petition.

2. W.P.(C)No.45554 of 2025 is filed by the appellants under Article 226 of the Constitution of India, seeking a writ of certiorari to quash Ext.P10 order dated 09.10.2025 of the 1st respondent, Regional Micro and Small Enterprise Facilitation Council, Thiruvananthapuram, and to declare that the work order issued to the 2nd respondent is a works contract and the 1st respondent has no jurisdiction to consider Ext.P1 claim petition filed by the 2nd respondent.

3. The 2nd appellant is the Executive Director of the 1st appellant Company incorporated under the Companies Act, 1956. The 2nd respondent company was engaged by the appellants to execute the work of supply and installation of aluminium joinery

works for their proposed International School at Malayidamthuruth, in Kizhakkambalam Panchayath of Ernakulam District. The true copy of the work order, along with the final price bill with quantities, is produced as Ext.P3 in the writ petition. When a dispute arose between the appellants-petitioners and the 2nd respondent in respect of the work of supply and installation of aluminium joinery works, the appellants-petitioners filed Ext.P6 suit as C.S.No.15 of 2024 before the Commercial Court, Perumbavoor, on 24.05.2024. In that suit, the defendants filed Ext.P7 written statement dated 14.08.2024 and the case was posted for hearing on issues.

3.1. The appellants state that when the proceedings in the Commercial Court were progressing, the 2nd respondent filed Ext.P1 Claim Petition dated 28.09.2024 before the 1st respondent Council. The appellants entered appearance before the 1st respondent and filed Ext.P2 written statement dated 16.12.2024. Before the 1st respondent, the appellants had taken a stand that the claim petition filed under Section 17 and Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006

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('MSMED Act' for short) is not maintainable, since the 1st respondent has jurisdiction only in the matter of supply of goods and services and not with regard to a works contract. It was contended by the appellants that the work order issued to the 2nd respondent was essentially a works contract. The appellants have also filed Ext.P8 petition dated 30.12.2024 before the 1st respondent to hear the maintainability of Ext.P1 claim petition as a preliminary point. Thereafter, the appellants approached this Court by filing W.P.(C)No.14752 of 2025, seeking a direction for an early disposal of Ext.P8 application. As per Ext.P11 judgment dated 01.07.2025, this Court disposed of that writ petition, directing the 1st respondent Council to consider and dispose of Ext.P8 application, by passing a speaking order within two months from the date of receipt of a copy of that judgment. Pursuant to Ext.P11 judgment, the 1st respondent conducted a hearing and passed Ext.P10 impugned order dated 09.10.2025, finding that Ext.P1 claim petition filed by the 2nd respondent as maintainable before it. Being aggrieved, the appellants filed the present writ petition, invoking the extraordinary jurisdiction of this Court as

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mentioned above.

4. In the writ petition, the 2nd respondent filed a counter affidavit dated 06.01.2026, opposing the reliefs sought for. In the counter affidavit filed by the 2nd respondent, it is inter alia contended that the jurisdiction under the MSMED Act often involves mixed questions of law and fact, which are better suited for arbitral or appellate determination than an exercise under Article 226 of the Constitution of India. Under Section 16 of the Arbitration and Conciliation Act, 1996 (the 'Arbitration Act' for short), the Tribunal is empowered to rule on its own jurisdiction. An order finding that the Tribunal has jurisdiction is an interim order, which cannot be challenged independently in a writ petition, and it can be challenged only after the final award by invoking the provisions under Section 34 of the Arbitration Act. In the counter affidavit, a reference was made to the judgment of the Apex Court, in **India Glycols Ltd. v. Micro and Small Enterprises Facilitation Council [(2023) SCC OnLine SC 1852]**, to contend that a writ petition under Article 226/227 is not maintainable against an order or award of the Council, because

Section 18 of the MSMED Act provides a specialised statutory remedy. Essentially, the 2nd respondent in the counter affidavit contended that since Ext.P10 is an order passed by the 1st respondent Council about its jurisdiction to entertain Ext.P1 claim petition, the said order cannot be challenged in a writ petition under Article 226 of the Constitution of India, and the remedy available to the appellants is to wait till the final award and to challenge that order also in the original petition filed before the competent court by invoking the jurisdiction under Section 19 of the MSMED Act r/w Section 34 of the Arbitration Act.

5. After hearing the contentions of the parties, the learned Single Judge, by the impugned judgment dated 05.06.2026, dismissed the writ petition, holding that a writ petition under Article 226 of the Constitution of India is not maintainable when an equivalent and efficacious remedy is provided under Section 19 of the MSMED Act r/w Section 34 of the Arbitration Act, against Ext.P10 order of the 1st respondent. In the impugned judgment, the learned Single Judge made a reference to the judgment of the Apex Court in **India Glycols Ltd. [AIR**

2024 (SC) 285] and also a judgment of this Court in **Malabar Social Service and Sanitation v. Socio Economic Unit Foundation [2026 KHC OnLine 1642]**. Being aggrieved, the appellants filed the present writ appeal.

6. Heard Shri. Joseph Markoz, the learned Senior Counsel for the appellants, Smt. Nisha Bose, the learned Senior Government Pleader for the 1st respondent and Shri. Amal Dharsan, the learned counsel for the 2nd respondent.

7. The learned Senior Counsel vehemently argued that, though by Ext.P11 judgment, this Court directed the 1st respondent to consider Ext.P8 application regarding the maintainability of Ext.P1 claim petition filed by the 2nd respondent, Ext.P10 impugned order passed by the 1st respondent is not a speaking order. The issue between the appellants and the 2nd respondent is based on the contract entered into between the parties for the supply and installation of aluminium joinery works for the proposed international school of the appellants. Whether the said contract was essentially for the supply of goods and services alone or it is a composite contract (works contract) is the

issue. Moreover, Ext.P10 order was passed prior to the commencement of the proceedings under Section 18 of the MSMED Act, and the Council entered into the stage of Section 18(4) of the MSMED Act, without satisfying Section 18(2) of the said Act. Ext.P10 is not a final award of the 1st respondent, and therefore the learned Single Judge erred in holding that the remedy available to the appellants is under Section 19 of the MSMED Act r/w Section 34 of the Arbitration Act. It is also pointed out by the learned Senior Counsel that in the judgment reported in **Tamil Nadu Cements Corporation Ltd. v. Micro and Small Enterprises Facilitation Council [(2025) 4 SCC 1]**, the Apex Court referred the issue of maintainability of a writ petition under Article 226 of the Constitution of India to a larger Bench of five Judges.

8. On the other hand, the learned counsel for the 2nd respondent argued that the procedure that has to be adopted by the 1st respondent for deciding a claim petition is as provided under the provisions of the Arbitration Act. By virtue of Section 16 of the Arbitration Act, the 1st respondent is empowered to rule on

its own jurisdiction. By pointing out Sub-Section (6) of Section 16 of the said Act, the learned counsel argued that a party aggrieved by an order of the Arbitral Tribunal, rejecting the plea of absence of jurisdiction to the Tribunal, shall wait till the final award to challenge that decision and therefore the appellants have to wait till the final award in Ext.P1 claim petition, to challenge Ext.P10 order. By relying on Section 19 of the MSMED Act r/w Section 34 of the Arbitration Act, the learned counsel argued that there is no illegality in the finding of the learned Single Judge, which warrants interference by exercising the appellate jurisdiction.

9. In reply, the learned Senior Counsel pointed out Section 24 of the MSMED Act, which says about the overriding effect of the Act, whereby the provisions of Sections 15 to 23 of the MSMED Act shall have the effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

10. The learned Senior Government Pleader addressed the arguments supporting the arguments of the learned counsel for the 2nd respondent.

11. The dispute between the appellants and the 2nd respondent is in pursuance of a contract entered into between the parties in respect of the supply and installation of aluminium joinery works for the proposed international school of the appellants. As far as the nature of the contract is concerned, when the appellants say that it is not a simple supply contract and it is a works contract and hence not amenable to the jurisdiction of the 1st respondent Council constituted under the MSMED Act, 2006, the 2nd respondent contends that it is a simple supply contract and hence amenable to the jurisdiction of the 1st respondent.

12. There is no dispute on the point that as per the provisions under the MSMED Act, the procedure to be adopted in respect of a claim petition filed before the 1st respondent Council is as provided under Section 18 of the MSMED Act. Section 18 of the MSMED Act reads thus;

> "**18. Reference to Micro and Small Enterprises Facilitation Council**—(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small

Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either conduct mediation itself or refer the matter to any mediation service provider as provided under the Mediation Act, 2023.

(3) The conduct of mediation under this section shall be as per the provisions of the Mediation Act, 2023.

(4) Where the mediation initiated under sub-section (3) 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.

(5) 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 mediator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(Underline supplied)

13. In the instant case, from the impugned judgment of the learned Single Judge, it can be gathered that the stage at

which Ext.P8 application filed by the appellants was considered by the 1st respondent, was taken note of by the learned Single Judge based on the materials placed on record and the submissions made at the Bar. From Ext.P10 impugned order of the 1st respondent as well as from the judgment of the learned Single Judge, it can be gathered that <u>Ext.P8 application was considered by the 1st respondent after the termination of mediation</u> initiated under Section 18(2) of the MSMED Act. Thereafter, Ext.P10 order has been passed by the 1st respondent, invoking the jurisdiction under Section 18(4) of the MSMED Act. Therefore, it cannot be said that Ext.P10 order of the 1st respondent is premature.

14. While coming to the power of the 1st respondent to decide its own jurisdiction to entertain a claim petition, it is relevant to note Section 16 of the Arbitration Act, which reads thus;

> "**16. Competence of arbitral tribunal to rule on its jurisdiction.**—(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,— (a) an arbitration clause which forms

part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral Tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral Tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral Tribunal shall decide on a plea referred to in subsection (2) or subsection (3) and, where the arbitral Tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) <u>A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with Section 34</u>."

(Underline supplied)

15. A plain reading of sub-section (6) of Section 16 of the

Arbitration Act would show that to challenge the order of the 1st respondent ruling on its own jurisdiction, under Section 16 of the Arbitration Act, the party has to wait till the final award has been passed by the 1st respondent. In this regard, it is relevant to note the judgment of the Apex Court in **Deep Industries v. Oil and Natural Gas Corporation Ltd. [(2020) 15 SCC 706]**, wherein on the question whether the High Court can interfere with an order passed by an Arbitrator under Sections 16 (2) and (3) of the Arbitration Act, under Article 227 of the Constitution of India, in paragraphs 16 and 17, the Apex Court held thus;

> "16. Most significant of all is the non obstante clause contained in S.5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. S.37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed (see S.37(2) of the Act).
>
> 17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Art.226/227 of the Constitution against orders passed in appeals under S.37, the entire arbitral process would be derailed and would not

come to fruition for many years. At the same time, we cannot forget that Art.227 is a constitutional provision which remains untouched by the non obstante clause of S.5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Art.227 against judgments allowing or dismissing first appeals under S.37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction".

(Underline supplied)

16. In **Deep Industries [(2020) 15 SCC 706]**, on the question whether an order rejecting the plea of absence of jurisdiction under Sub Sections 2 and 3 of Section 16 of the Arbitration Act is appealable or one has to wait till the final award, is also answered by the Apex Court as under;

"22. One other feature of this case is of some importance. As stated hereinabove, on 09.05.2018, a Section 16 application had been dismissed by the learned arbitrator in which substantially the same contention which found favour with the High Court was taken up. The drill of S.16 of the Act is that where a Section 16 application is dismissed, no appeal is provided and the challenge to the S.16 application being dismissed must await the passing of a final award at which stage it may be raised under Section 34. What the High Court has done in the present case is to invert this statutory scheme by going into exactly the same matter as was gone into by the arbitrator in the Section 16 application, and then decided that the two - year ban/ blacklisting was no part of the notice for arbitration issued on 02.11.2017, a finding which is directly contrary to the finding of the learned arbitrator dismissing the S.16 application. For this reason alone, the judgment under appeal needs to be set aside. Even otherwise, as has been correctly pointed out by Mr Rohatgi, the judgment under appeal goes into the merits of the case and states that the action of putting the Contractor and his Directors "on holiday" is not a consequence of the termination of the agreement. This is wholly incorrect as it is only because of the termination that the show - cause notice dated 18-10-2017 proposing to impose a two - year ban / blacklisting was sent. Even otherwise, entering into the general thicket of disputes between the parties does not behove a court exercising jurisdiction under Article 227, where only jurisdictional errors can be corrected. Therefore, to state that the ban order was passed under a General Contract Manual and not Clause 18 of the agreement, besides being incorrect, would also be incorrect for the reason that the General Contract Manual does not mean that such order was issued as an administrative order invoking the executive power, but was only as an order which emanated from the contract itself. Further to state that "serious disputes" as to jurisdiction seem to have cropped up is not the same thing as saying that the Arbitral Tribunal lacked inherent jurisdiction in going into and deciding the Section 17 application. In point of fact, the Arbitral Tribunal was well within its jurisdiction in referring to the contract and the ban order and then applying the law and finally issuing the stay order. Even if it be accepted that the principle laid down by Section 41(e) of the Specific Relief Act was infracted, in that damages could have been granted, as a result of which an injunction ought not to have been issued, is a mere error of law and not an error of jurisdiction, much less an error of inherent jurisdiction going to the root of the matter. Therefore, even otherwise, the High Court judgment cannot be sustained and is set aside.

(Underline supplied)

17. In **Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd. [(2022) 1 SCC 75]**, the Apex Court in the Special Leave Petition filed against the judgment of the Gujarat High Court in a letter patent appeal, wherein the question of maintainability of a writ petition under Article 226 and Article 227 of the Constitution of India, challenging the order of the sole Arbitrator ruling on it’s own jurisdiction under Section 16

of the Arbitration Act, held thus;

> "17. In any case, the hierarchy in our legal framework mandates that a legislative enactment cannot curtail a Constitutional right. In Nivedita Sharma v. Cellular Operators Association of India, 2011 (14) SCC 337, this Court referred to several judgments and held:
>
> > "11. We have considered the respective arguments/ submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Art.226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation - L. Chandra Kumar v. Union of India, 1997 (3) SCC 261. However, it is one thing to say that in exercise of the power vested in it under Art.226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasijudicial body/authority, and it is an altogether different thing to say that each and every petition filed under Art.226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear 'bad faith' shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient".

(Underline supplied)

18. In an original petition filed under Article 227 of the Constitution of India, challenging the order of a sole Arbitrator under Section 16 of the Arbitration Act, ruling that he has jurisdiction to adjudicate the claim petition, a learned Single Judge of this Court in **Mujeeb Rahman v. Haseena. V [2022(4) KHC 473]**, by referring to the judgment of the Apex Court in **Deep Industries [(2020) 15 SCC 706]**, held thus;

"7. Section 16 (5) of the Act provides that if the Arbitrator accepts the plea under Section 16 (2) or (3) of the Act, he needs to pass an award; if not, he has to continue with the proceeding. A party aggrieved by an award passed by the Arbitrator accepting a plea under Section 16 (2) or (3) of the Act has a right to challenge the award under Section 34 of the Act and challenge the order passed under Section 16 (2) or (3) by filing an appeal under Section 37 (2) (a) of the Act.

But a person whose plea is rejected under Section 16 (2) and (3) of the Act must wait until the final award is passed to challenge the Arbitrator's jurisdiction".

(Underline supplied)

19. In **Mujeeb Rahman [2022(4) KHC 473]**, on an appreciation of the scheme of the Act, the pleadings and materials on record and ratio decidendi in Deep Industries Ltd. and Bhavan Construction (supra), the learned Single Judge of this Court found that there was no ground of exceptional rarity in the original petition, warranting interference by this Court under Art.227 of the Constitution of India.

20. The Delhi High Court in **Kelvin Air Conditioning and Ventilation System Pvt. Ltd v. Triumph Reality Pvt. Ltd [2024 KHC Online 5428]**, on the question when the High Court can interfere under Article 227 of the Constitution of India on the orders of the Arbitral Tribunals, held thus;

"9. This Court is conscious of the fact that the petitioner has invoked jurisdiction of this Court by filing a petition under Art.227 of Constitution of India. Judicial inference in such type of matters has to be minimal and recourse to Art.227 of the Constitution of India has to be under exceptional circumstances when it is shown that such order is absolutely perverse.

10. Reference be made to IDFC First Bank Limited v. Hitachi MGRM Net Limited, 2023 (3) HCC (Del) 660 whereby Co - ordinate Bench of this Court has enumerated certain circumstances wherein such type of petition can be entertained. Though, in that case, the challenge was in context of dismissal of application filed under S.16 of Arbitration and Conciliation Act but the observations are equally important in the present context. Relevant portion of aforesaid judgment reads as under: -

> '24. While there is no doubt that a remedy under Article 226 and Article 227 are available against the orders passed by the Arbitral Tribunal, such challenges are not to be entertained in each and every case and the court has to be 'extremely circumspect'.
>
> 25. Recently, in Surender Kumar Singhal v. Arun Kumar Bhalotia [Surender Kumar Singhal v. Arun Kumar Bhalotia, 2021 SCC OnLine Del 3708], this Court, after considering all the decisions, of the Supreme Court [Deep Industries Ltd. v. ONGC Ltd., (2020) 15 SCC 706; Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75 : (2022) 1 SCC (Civ) 374; Punjab State Power Corpn. Ltd. v. EMTA Coal Ltd., (2020) 17 SCC 93 : (2021) 4 SCC (Civ) 341; Virtual Perception OPC (P) Ltd. v. Panasonic India (P) Ltd., 2022 SCC OnLine Del. 566 and Ambience Projects & Infrastructure (P) Ltd. v. Neeraj Bindal, 2021 SCC OnLine Del. 4023] has laid down circumstances in which such petitions ought to be

entertained. The relevant portion of the said judgment reads as under:

'24. A perusal of the abovementioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Article 226/227 in challenges to orders by an Arbitral Tribunal including orders passed under Section 16 of the Act:

(i) An Arbitral Tribunal is a tribunal against which a petition under Article 226/227 would be maintainable.

(ii) The non obstante clause in S.5 of the Act does not apply in respect of exercise of powers under Article 227 which is a constitutional provision.

(iii) <u>For interference under Article 226/227, there have to be 'exceptional circumstances'</u>.

(iv) Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere.

(v) Interference is permissible only if the order is completely perverse, i.e. that the perversity must stare in the face.

(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process.

(vii) Excessive judicial interference in the arbitral process is not encouraged.

(viii) It is prudent not to exercise jurisdiction under Article 226/227.

(ix) <u>The power should be exercised in 'exceptional rarity' or if there is 'bad faith' which is shown</u>.

(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided.'

26. A perusal of the above would show that it is only under exceptional circumstances or when there is bad faith or perversity that writ petitions ought to be entertained.'"

(Underline supplied)

21. As far as the remedy against an order passed by the Arbitrator accepting the plea referred to in Sub section (2) and (3) of Section 16 is concerned, it is also relevant to note Section 37 (2) (a) of the Arbitration Act, which provides an appellate remedy to a Court authorised by law to hear the appeals. The principle that can be discernible from the provisions under Section 16 and Section 37 of the Arbitration Act and the judgments referred to supra is that a party aggrieved by an order passed by the Arbitrator accepting a plea under Section 16 (2) or (3) of the Act has a right to challenge that order by filing an appeal under Section 37 (2) (a) of the Act. <u>But a person whose plea is rejected under Section 16 (2) and (3) of the Act must wait until the final award is passed to challenge the Arbitrator's jurisdiction, unless he or she makes out a ground of exceptional rarity</u> in the original

petition, warranting interference by this Court under Article 226 or 227 of the Constitution of India.

22. The next question to be considered is the overriding effect of Section 24 of the MSMED Act. As pointed out by the learned Senior Counsel for the appellants, Section 24 of the MSMED Act states that the provisions under Sections 15 to 23 of the MSMED Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

23. At this juncture, it is relevant to extract Section 19 of the MSMED Act, which reads thus;

> "**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) <u>has deposited with it seventy-five per cent</u> of the amount in terms of the decree, award or, as the case may be, the other order <u>in the manner directed by such court</u>:
> 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."

(Underline supplied)

24. The reading of Section 19 of the MSMED Act would show that the said Section covers not only a decree and award, but it includes other orders made either by the Council itself or by any other institution or centre providing alternate dispute resolution services to which a reference is made by the Council. However, it is also clear from Section 19 that no Court shall entertain an application to set aside the decree, award or the order as the case may be 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 the order under challenge.

25. In **India Glycols Ltd. [AIR 2024 (SC) 285]**, on the issue of depositing 75% amount in terms of the award for filing an application under Section 19 of the MSMED Act and the maintainability of the writ petition under Article 226 or the Original Petition under Article 227 of the Constitution of India, the Apex

Court held thus:

> "10. 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 Act of 1996 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. <u>Hence, the remedy which is provided under Section 34 of the Act of 1996 would govern an award of the Facilitation Council. However, there is a super added condition which is imposed by Section 19 of MSMED Act 2006 to the effect that an application for setting aside an award can be entertained only upon the appellant depositing with the Council seventy - five per cent of the amount in terms of the award</u>. Section 19 has been introduced as a measure of security for enterprises for whom a special provision is made in the MSMED Act by Parliament. In view of the provisions of Section 18(4), the appellant had a remedy under Section 34 of the Act of 1996 to challenge the award which it failed to pursue.
>
> xxxx xxxx xxxx
>
> 12. The appellant failed to avail of the remedy under Section 34. If it were to do so, it would have been required to deposit seventy - five per cent of the decretal amount. <u>This obligation under the statute was sought to be obviated</u>

by taking recourse to the jurisdiction under Art.226/227 of the Constitution. This was clearly impermissible."

(Underline supplied)

26. In **Tamil Nadu Cements Corporation Ltd. [(2025) SCC Online SC 127],** the Apex Court referred the questions raised in that appeal to a larger Bench of five Judges, noting the conflicting decisions on the point, while considering the issue whether a writ petition under Article 226 of the Constitution of India would be maintainable against an order passed by the Micro and Small Enterprises Facilitation Council in exercise of the power under Section 18 of the MSMED Act. Paragraph 19 of that judgment reads thus:

"19. In the light of the aforesaid decisions, we deem it appropriate to refer the following questions raised in the present appeal to a larger Bench of five Judges, namely:
(i) Whether the ratio in ***M/s India Glycols Limited*** (supra) that a writ petition could never be entertained against any order/award of the MSEFC, completely bars or prohibits maintainability of the writ petition before the High Court?
(ii) If the bar/prohibition is not absolute, when and under what circumstances will the principle/restriction of adequate alternative remedy not apply?
(iii) Whether the members of MSEFC who undertake

conciliation proceedings, upon failure, can themselves act as arbitrators of the arbitral tribunal in terms of Section 18 of the MSMED Act read with Section 80 of the A&C Act?

The first and second question will subsume the question of when and in what situation a writ petition can be entertained against an order/award passed by MSEFC acting as an arbitral tribunal or conciliator".

27. In **Union Territory of Ladakh v. Jammu & Kashmir National Conference [2023 (6) KLT SN 11],** with respect to the divergent views of the Coordinate Benches, and the reference made to the larger Bench doubting the correctness of the judgment of a coordinate Bench, the Apex Court held thus;

"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. <u>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</u>

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** (See Paragraphs 27 and 28 in the report on this point). The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it."

(Underline supplied)

28. In **Malabar Social Service and Sanitation [2026 KHC OnLine 1642]**, the Division Bench of this Court, wherein both of us are parties, considered the maintainability of a writ petition under Article 226 of the Constitution of India against a decision of the 1st respondent Council, by referring to the aforementioned judgments of the Apex Court, and held thus;

"40. As noted above, in India Glycols Ltd. [AIR 2024 SC 285], while the Apex Court held that when a remedy is provided under Section 19 of the MSMED Act r/w Section 34 of the Arbitration Act, a party to the litigation cannot obviate the requirement to deposit 75% of the decretal amount by recourse to the jurisdiction under Article 226/227 of the Constitution of India, in Tamil Nadu Cements

Corporation Ltd [(2025) SCC Online SC 127], the Apex Court doubted the ratio in India Glycols Ltd. [AIR 2024 SC 285] and referred the matter to a larger Bench. As held in Jammu & Kashmir National Conference [2023 (6) KLT SN 11], it is trite that it is not open to a High Court to refuse to follow a judgment in India Glycols Ltd. [AIR 2024 SC 285] for the reason that the ratio therein has been doubted by a later coordinate Bench and referred it to the larger Bench; ofcourse the High Courts will do so with careful regard to the facts and circumstances of the case before it.

41. It is trite that when an equivalent and efficacious remedy is provided by providing a special forum for dispute resolution, in a special statute, the jurisdiction under Article 226 of the Constitution of India or Article 227 of the Constitution of India cannot be invoked by a party to the litigation to circumvent the special remedy provided in the special statute. As noted above, Section 19 of the MSMED Act provides a complete remedy against an award passed by the Facilitation Council under Section 18 of the said Act. Since the award is passed under the provisions of the Arbitration Act, 1996, the 1st respondent herein has a remedy under Section 19 of the MSMED Act r/w Section 34 of the Arbitration Act, 1996, against Ext.P6 award of the Facilitation Council before the forum. We arrive at the said conclusion not only based on the judgment of the Apex Court in India Glycols Ltd. [AIR 2024 SC 285], in view of Jammu & Kashmir National Conference [2023 (6) KLT SN

11], but also on the analysis of the facts of the instant case".

(Underline supplied)

29. The issue considered by the Apex Court in **India Glycols Ltd. [AIR 2024 SC 285]**, and this Court in **Malabar Social Service and Sanitation [2026 KHC OnLine 1642]**, was the maintainability of a writ petition under Article 226 of the Constitution of India against the final award passed by the 1st respondent Council. But the issue in the present case is the order passed by the 1st respondent Council under section 16 of the Arbitration Act. From the provisions under the MSMED Act and from the judgments of the Apex Court in **India Glycols Ltd. [AIR 2024 (SC) 285]**, as well as of this Court in **Malabar Social Service and Sanitation [2026 KHC OnLine 1642]**, it is clear that no challenge under Section 19 of the MSMED Act read with Section 34 of the Arbitration Act can be entertained by the Court unless 75% of the decretal amount has been deposited. <u>Only the manner of deposit can be directed by the court hearing the application</u>. Therefore, even if Section 19 of the MSMED Act covers an order of the Arbitral Tribunal, it is the nature of that order

qualifies it to be challenged under Section 19 of the MSMED Act read with Section 34 of the Arbitration Act. For example, if the Council makes any interim order to pay any amount to the claimant, then it is an order qualified to be challenged as provided under Section 19 of the MSMED Act read with Section 34 of the Arbitration Act, by depositing 75% of that amount. But, if the order passed by the Council is of the nature not pertaining to monetary relief, such as the decision on the jurisdiction of the Tribunal, as in the present case, then the remedy open to the aggrieved is as that provided against the order under Section 16 of the Arbitration Act.

30. Since, Ext.P10 order under challenge in the present writ petition is one passed under Section 16 of the Arbitration Act, as stated in paragraph 21 of this judgment, <u>to challenge the Arbitrator's jurisdiction, the appellants must wait until the final award is passed, unless he or she makes out a ground of exceptional rarity, warranting interference by this Court under Article 226 of the Constitution of India</u>. Though the learned Senior Counsel for the appellants argued that Ext.P10 order is bereft of

reasoning, the perusal of Ext.P10 order of the 1st respondent shows otherwise. The 1st respondent Council has considered the rival contentions of the parties on merits and arrived at a finding against the appellants. Merely for the reason that the reasoning given by the 1st respondent Council in Ext.P10 order is not to the satisfaction of the appellants, it cannot be heard to contend that the impugned order of the 1st respondent is bereft of any reasoning.

31. Though the learned Single Judge dismissed the writ petition on the ground of maintainability, from the impugned judgment, we notice that the learned Single Judge found that there is no merits in the contention of the appellants that Ext.P10 is bereft of reasoning. On perusal of Ext.P10 order, we also found that the said order was passed on merits by the 1st respondent, and therefore, <u>it cannot be said that it is a case of exceptional rarity</u>. Moreover, the dispute between the parties regarding the maintainability of the claim before the 1st respondent depends on the nature of the contract entered into between the appellants and the 2nd respondent, i.e., whether the said contract was for the

supply of goods and services alone or it is a composite contract (works contract). The answer to this dispute is essentially a question of facts which cannot be decided in a writ petition filed under Article 226 of the Constitution of India. Therefore, even if we disagree with the general proposition in the impugned judgment of the learned Single Judge about the availability of an alternative remedy under Section 19 of the MSMED Act read with Section 34 of the Arbitration Act against an order of the Arbitral Tribunal under Section 16 of the Arbitration Act, ruling on it's own jurisdiction whereby the claim of lack of jurisdiction was rejected as incorrect, we find no sufficient ground to interfere with the impugned judgment of dismissal of the writ petition, for the reasons stated in this judgment.

In the result, this writ appeal stands dismissed.

Sd/-
ANIL K. NARENDRAN, JUDGE

Sd/-
MURALEE KRISHNA S., JUDGE

MSA