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Whether only operative part of the judgment is pronounced or whether full judgment is pronounced : FULL.

APHC010437082026

[3584]

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WRIT APPEAL NO: 998 of 2026

Assurgen Pharma Private Limited ...Appellant

Vs.

Union of India and Others ...Respondent(s)

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CORAM : THE CHIEF JUSTICE LISA GILL
SRI JUSTICE CHALLA GUNARANJAN

DATE : 16th October 2026

Present:

Advocate for Appellant: MR.TAGORE YADAV YARAGORLA

Advocate(s) for Respondent(s): MR.D S SIVADARSHAN,
MR.T NIRANJAN, Deputy Solicitor General of India,
MR.BACHINA HANUMANTHA RAO (CENTRAL GOVT COUNSEL)

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JUDGMENT: (per Hon'ble Sri Justice Challa Gunaranjan)

This appeal challenges order, dated 11.02.2026, in W.P.No.32836 of 2025, whereby learned Single Judge allowed the writ petition by setting aside the impugned award passed by Andhra Pradesh Micro and Small

Enterprises Facilitation Council (for short, the "Council") and remanded the matter for fresh consideration.

2. 3rd respondent/writ petitioner issued work order/purchase order in favour of appellant for supply of pharmaceutical drugs. Appellant supplied the material during the period from June to August, 2021. As 3rd respondent failed to pay balance amount to the tune of ₹1,65,09,116/-, apart from interest, claim was preferred under Section 18(1) of the Micro, Small and Medium Enterprises Development Act, 2006 (for short "the Act"). Appellant, claiming to be an entity registered under the provisions of the Act, instituted claim for recovery of principal amount along with compounded interest in terms of Sections 15 and 16 of the Act. 2nd respondent-Council, having admitted the claim, undertook the exercise of conciliation in terms of Section 18(2), as the same could not fructify, the matter was taken up for adjudication by way of arbitration in terms of Section 18(3) of the Act. After giving due opportunity to appellant as well as 3rd respondent, and examining the evidence on record, impugned award, dated 20.07.2025, was passed directing 3rd respondent to pay a sum of Rs.1,65,09,116/- as principal amount and Rs.1,15,77,338/- towards interest, in total awarded Rs.2,80,86,454/-. 3rd respondent assailed the same by filing writ petition.

3. Before learned Single Judge, it was pleaded that appellant was not registered as an MSME as on the date of issuance of the purchase order;

thus, the provisions of the Act would not apply and confer jurisdiction on 2nd respondent-Council to pass the award. Further, it was also pleaded that, in view of delay in supplies and that too the material supplied even was found to be inferior in quality, withholding of amounts has justifiable reasons, however, 2nd respondent-Council did not consider the same and mechanically rejected the plea, which suffers from perversity.

4. Appellant, on the other hand, contended that it was initially registered under *Udyog* on 22.08.2017 and later, in 2022, got migrated and re-registered under *Udyam*, thus, all through, there was valid MSME registration, therefore, the award passed by 2nd respondent-Council does not suffer from any jurisdictional error. Insofar as the plea of delay and supply of inferior quality material, appellant pleaded that no such objection was ever raised either at the time of accepting the supplies or even later, and in the absence of any evidence to the contrary, 2nd respondent-Council rightly rejected the said plea, which cannot be found fault with. Appellant also pleaded that the writ petition itself was not maintainable in view of specific statutory remedy available under Section 34 of the Arbitration and Conciliation Act, 1996.

5. Learned Single Judge, after having considered the aforesaid submissions, opined that 2nd respondent-Council has not decided the jurisdictional issue in proper perspective, which rendered the impugned award a nullity. Further, it is also held that the impugned order, since does

not disclose any specific reason with regard to the plea of delay in supply as well as supply of inferior quality material, the award cannot sustain. Thus, the award was set aside, and the matter was remanded to 2nd respondent-Council for reconsideration.

6. Initially, when the appeal was listed for admission, the learned counsel, who appeared for 3rd respondent before the learned Single Judge, stated that though he had informed his client of filing of appeal and its listing, he had not been authorized to represent them in the present proceedings. When it was specifically put to learned counsel, whether his client aware of present appeal, it was informed that indeed he was asked not to represent them in ongoing proceedings. However, in order to give one more opportunity, the appeal was adjourned to 01.10.2026.

7. Despite being aware of pendency of the proceedings, none appeared for 3rd respondent, thus, we heard Mr.Tagore Yadav Yaragorla, learned counsel for appellant; and Mr.T.Niranjan, Deputy Solicitor General of India, and Mr.Kotturi Nikhil Kumar, learned counsel, representing Mr.Bachina Hanumantha Rao, Central Government Counsel, appearing for respondents 1 and 2 and reserved the appeal for judgment.

8. Learned counsel for appellant contended that learned Single Judge erred in entertaining the writ petition when there was an efficacious alternative remedy of invoking Section 34 of the Arbitration and Conciliation Act, 1996, to challenge the impugned award. He further

contended that Section 19 of the Act clearly envisages that unless deposit of 75% of the award amount is made before the Facilitation Council, even an application for setting aside the award cannot be entertained, thus, merely to avoid such pre-deposit, 3rd respondent chose to file writ petition, which is clearly not maintainable. Further, learned counsel for appellant also contended that appellant, at the very first instance along with claim, pleaded and relied on *Udyam* registration bearing No. AP-10-0013339 and *Udyog Aadhaar* No. AP10C0009784, duly recognizing it as an MSME under the provisions of the Act, thus, having regard to the same, 2nd respondent Council, after formulating specific issue regarding jurisdiction, rendered finding, thus, the award does not suffer from any jurisdictional error. Even with regard to the merits of the matter, it is contended that 2nd respondent Council, after analyzing the evidence on record, has passed award directing 3rd respondent to pay the principal along with interest. Therefore, the award cannot be said to have been passed in violation of principles of natural justice. In support of said submissions, he placed reliance on the judgment of Hon'ble Apex Court in **India Glycols Ltd. v. Micro and Small Enterprises Facilitation Council, Medchal-Malkajgiri**[1]. Thus, he urged for setting aside the order under challenge.

[1] (2025) 5 SCC 780

9. We have given our anxious consideration to the submissions made above and perused the record.

10. The pleaded case of appellant before 2nd respondent Council was that it was duly holding *Udyam* registration as well as *Udyog Aadhaar*, entitling it to initiate claim under Section 18(1) of the Act. The impugned award, while narrating the facts of the case, clearly records aforesaid plea. Even before the learned Single Judge, appellant had produced the *Udyog Aadhaar* registered on 22.08.2017 and the subsequent migration to *Udyam* registration. The 3rd respondent, by way of written statement, raised preliminary objection that appellant did not have valid MSME registration at the time of issuing purchase orders and supply thereof. Therefore, specific issue was framed as to whether 2nd respondent Council had jurisdiction to adjudicate the claim. Answering the issue, 2nd respondent Council held that appellant was having valid registration to claim protection under the Act, thus, it had jurisdiction to adjudicate the claim. Therefore, the jurisdictional aspect was duly considered, and a specific finding was rendered in that regard. Therefore, we are of the view that the learned Single Judge was not justified in holding that the jurisdictional point was not properly considered, thus rendering the impugned award a nullity. Even if the material placed on record required to be re-appreciated to cull out whether appellant was duly registered to claim the benefit of the Act, nothing prevented the 3rd respondent from

availing statutory remedy under Section 34 of the Arbitration and Conciliation Act, 1996, rather than invoking the jurisdiction of Writ Court.

11. In **India Glycols Limited**[1], Hon'ble Apex Court has succinctly laid down that any award passed under Section 18(3) of the Act will have to be challenged by resorting to remedy provided under Section 34 of the Arbitration and Conciliation Act, 1996, and that too after complying with the requirement of pre-deposit of 75% of the award in terms of Section 19 of the Act. Paragraphs 9 and 10 of the said judgment, which are useful for present purpose, are extracted as under:

> "**9.** 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.
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> **10.** However, there is a super added condition which is imposed by Section 19 of the 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. 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 1996 Act to challenge the award which it failed to pursue."

12. Insofar as the finding of learned Single Judge that the award does not disclose any specific reason for rejecting the plea of 3rd respondent that there was delay and even supply was of inferior quality material, thus, disentitling the appellant to claim the amount as awarded, we are of the view that the merits or otherwise of the award definitely cannot be examined and re-appreciated in exercise of writ jurisdiction, in view of the ratio laid down by the Hon'ble Apex Court in the judgment referred to supra.

13. In view of our above observations, writ appeal is allowed by setting aside the impugned order passed by the learned Single Judge. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

LISA GILL, CJ **CHALLA GUNARANJAN, J**

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