

**IN THE COURT OF JUDGE, COMMERCIAL COURT  
(DISTRICT JUDGE CADRE), COIMBATORE**

Present: **Thiru. K.Hariharan, M.L.,**  
Judge,  
Commercial Court (District Judge Cadre),  
Coimbatore

**Tuesday, the 24th Day of March, 2026**

**Arbo.O.P. No.19 of 2025**  
(CNR No.TNCB22-000090-2025)

**M/s. Flowserve India Controls Pvt. Ltd.,**

Rep. by its Authorized Signatory

Plot No.4, 1-A, Road No.8,

Export Promotion Indl Park,

Whitefield, Bangalore - 560 066.

... Petitioner / Respondent

*// Vs //*

**M/s. Surya Prakaas Foundry.**

Rep. by its Authorized Signatory,

No.73, SIDCO Industrial Estate,

Coimbatore - 641 021.

... Respondent / Claimant

This petition came up for final hearing before me on 12.03.2026 in the presence of **M/s. Ramani & Shankar, Advocates** for the Petitioner / Respondent and **Mr.T.V.Sureshkumar and Mr.Sivanesan, Advocates** for the respondent / claimant and upon perusing the records, hearing arguments on both sides and having stood over for consideration till this date, this Court passes the following:-

## ORDER

This Arbitration Original Petition has been filed by the petitioner under Section 34 (2) and Section 34 (2A) of the Arbitration and Conciliation Act, 1996 seeking to set aside the Arbitral Award dated **21.01.2025** passed by the MSE Facilitation Council, Coimbatore in MSEFC/CBER/168/2021.

**2. The petition averments which are found essential for disposal of the petition is that:-**

a) The petitioner is the Flowserve India Controls Pvt. Ltd., and is engaged in the business of producing industrial and environmental machinery. The respondent is the manufacturer and supplier of Castings Valves in accordance with the patterns supplied by the petitioner. An agreement of Assent and Usage and Management Agreement (AUM) have been entered between the petitioner and the respondent and thereby the respondent has agreed to supply the Castings as per the patterns provided by the petitioner company. On the basis of the same the purchase order has been issued by the petitioner to the respondent and as per the purchase orders the dispute between the parties has to be settled as per the laws of Singapore. The petitioner has faced the defects in the goods supplied by the respondent and hence the petitioner has raised the non conformity and debit notes on the respondent and the petitioner was entitled to set off against any outstanding amounts and submit that the respondent has committed multiple breaches in supplying the castings. Due to which the

petitioner has also ended its relationship with the respondent. In terms of termination clause the respondent is also obliged to return the patterns in good condition to the petitioner. On inspection the respondent has also damaged the patterns due to bad handling and storage and submit that there are more than 200 patterns which were never been returned to the petitioner by the respondent and these were the subject of discussion between the parties in several emails.

b) The respondent tried to drag the petitioner to the IBC proceedings and later the respondent has abandoned their said process. Morefully ignoring the applicable laws mentioned in the clause in AUM the respondent has invoked the provision of MSMED Act, the parties agreed to approach the Courts in Singapore and the laws of Singapore would be applicable for dispute resolution. Before the MSME Facilitation Council, the proceedings were initiated for conciliation and then moved to Arbitration and the petitioner had filed several records and multiple pleadings, counter statement, counterclaims, rejoinder and a challenge under Section 16 of the Arbitration and Conciliation Act . The petitioner also has filed the multiple emails transacted between the petitioner and the respondent and details of losses suffered by the petitioner etc as document No.5, 6, 7, 8, 9 and 10 before the MSEFC Council. The transaction is also taken place on the basis of the terms in the purchase order and submit that the laws applicable as per the contract is Singapore law and jurisdiction and state that MSMED Act provisions are inapplicable.

c) It is the submission of the petitioner that the list of unpaid invoices of respondent / claimant has provided were inaccurate and many of the listed invoices are already paid by this petitioner and for many others the petitioner had sent emails disputing the invoices and submit that the claimant was raising invoices against the petitioner weeks in advance from the date actually they shipped the goods and objecting the same by the petitioner, the claimant carried on with this practice for several occasions and submit that the date mentioned in the alleged pending invoices are to be incorrect and submit that there were also emails exchanged by both parties making it clear that payments were not made because of quality and other issues. Further, it is the submission of the petitioner that during the period between February 2021 to June 2021 692 patterns were collected in 3 batches and the same were inspected by the petitioner at their supplier sites after pattern movements and on inspection it was confirmed that the patterns were in poor condition and so the petitioner reworked at the cost of Rs.43.65 lakhs for 93 patterns and the balance 599 patterns had to be scrapped resulting in excess of Rs.2 crores losses to the petitioner.

d) Further, it is the contention of the petitioner that 226 patterns of the petitioner was lying with the respondent / claimant and while the petitioner had arranged the vehicle to collect the same, the claimant has refused and insisted that the payment is to be made by the petitioner and the cost of 226 number of patters is Rs.1.36 crores and submit that the damage and deterioration having

taken place on account of the claimant's carelessness and negligence in the first instance and the petitioner claimed that the respondent / claimant is liable to pay for this in its entirety and submit that on account of the failure of return of balance patterns, the petitioner was constrained to make new patterns including additional expenses and costs amounting to Rs.49.73 lakhs.

e) The petitioner submit that the delay and quality issues of castings supplied by claimant has led to huge damages / charges imposed by the petitioner's customer and some of castings supplied by claimant have failed at customer end during commission and hence the losses to petitioner due to LD charges and replacement cost of defective castings is around Rs.2.23 crores. Further the petitioner has claimed a sum of Rs.6,54,01,534/- under various heads as mentioned in the paragraph No.(ix) at page No.17 of the petition. The petitioner submit that the petitioner had also taken out a separate application under Section 16 of the Arbitration and Conciliation Act praying that the proceedings be referred to an independent Arbitrator to be appointed.

f) It is the submission of the petitioner that the MSE Facilitation Council initially conducted conciliation and subsequently conducted the Arbitration proceedings. The MSE Facilitation Council did not choose to refer the matter to an independent arbitrator. MSE Facilitation Council also did not facilitate conduct of a trial by examining oral and documentary evidence, nor permitted examination of witnesses and submit that for some of the hearings the

petitioner did not even receive proper notice of hearing and received a day's notice and so the petitioner was unable to attend and further submit that on perusal of impugned order which would reveal that the petitioner's representative and also the counsel was present for the hearing and the pleadings were cross referenced in oral submission and also that submission were made by the counsel for the petitioner and submit that the factum of oral arguments having been made highlighted in the pleadings and documents is cross referenced in the impugned award.

g) It is the contention of the petitioner that a hearing was held before the MSME Council on 21.01.2025 and the factum of such a hearing being held came to the knowledge of petitioner only when the Award dated 21.01.2025 was served by RPAD dated 06.08.2025 which was received by the petitioner on 08.08.2025 and the petitioner did not have any notice for the hearing that was scheduled to be held on 21.01.2025 and submit that the Counsel for petitioner also did not have any notice of hearing. The normal practice that was followed by the MSME Council was merely to send an email giving the VC link for the scheduled hearing, but no such mail was received for any hearing on 21.01.2025. The petitioner further submit that without considering any of the defenses and counterclaim and without considering the documents and by setting the petitioner exparte, the MSME Facilitation Council has passed a non-reasoned award on 21.01.2025 in a single sentence and allowed the claim of the

respondent / claimant. Aggrieved over the said award dated 21.01.2025, the petitioner has preferred this petition on the following grounds.

**3. The sum and substance of Grounds of Challenge in the petition seeking for to set aside the Arbitral Award is as follows:-**

a) The Arbitration Award is patently illegal and perverse as the award is an ex parte award and submit that the Arbitration Award is a non speaking and non reasoned award. The Arbitrator has failed to consider and has ignored the pleadings and evidence on record and failed to adjudicate the materials grounds and the issues that were raised before the Tribunal. The paragraph No.25 of the Arbitral Award is extracted and it is the submission of the petitioner that except the passage in paragraph No.25 the award is mentioned to have passed without any reason for arriving the conclusion against the petitioner. It is mentioned that the Arbitrator had mentioned "detailed and critical examination" in paragraph No.25 of the Award and submit that the Arbitrator has not set out any details of the particulars that that the Tribunal has looked into and state that there is no reason attributed by the Tribunal for arriving at the conclusion. It is the submission that the Tribunal has not considered the counter filed by the petitioner. It is mentioned that the Award notes some of the oral arguments made by the counsel for the petitioner in multiple hearings but the oral submissions have not been brought on records and submit that there is no reasoning given in

the impugned award to reject the contention of the petitioner. It is mentioned that the counter claim filed by the petitioner was not taken into consideration and state that the MSEFC council has not rendered any findings on the same.

b) By referring to Section 31 (3) of the Act and by referring to the dictum laid down by the Hon'ble Supreme Court in ***Som Datt Builders Ltd v. State of Kerala, (2009) 10 SCC 259***, by referring to paragraph No.25 of the Award the petitioner has mentioned that the Award do not disclose any reasons and the petitioner has relied the several other judgments of Hon'ble Supreme Court and Hon'ble High Courts at paragraph No.B in the grounds of challenge. Further, by referring to the judgment in ***Ssangyong Engineering & Construction Co. Ltd. V. National Highways Authority of India, (2019) 15 SCC 131*** it is mentioned that the Tribunal has not given any findings on the contentious issues and submit that the Award has been passed straight away by considering the prayer made by the claimant and state that there is no findings and there is no reasoning given by the MSFC Council. It is mentioned that the Award is patently illegal and it is also passed in gross violation of the principle of natural justice by having the petitioner set exparte and by having proceeded to pass the Award in the absence of the petitioner and submit that the Award discloses that the petitioner was actively defending the claim and prosecuting the counterclaim. Apart from that the petitioner has also challenged the

jurisdiction of the Tribunal and state that the petitioner has also filed detailed counter statement and counterclaim and submit that there was an active defense made by the petitioner before the Arbitral Tribunal.

c) It is also the contention of the petitioner that the hearing notice have not been served on the petitioner and there were instances the VC link was not properly functioning and submit that the petitioner was not in a position to access to the virtual hearings. It is the submission of the petitioner that even on the date of setting aside the petitioner exparte, the petitioner had appeared through their counsel and submitted that the petitioner has not received the hearing notices on earlier occasions. Further it is mentioned that the petitioner has not received any notice for the hearing scheduled on 21.01.2025 and state that without notice the exparte hearing has taken place and submit that the interest of the petitioner has been irreparably prejudiced and the Exparte Award has been passed. It is submitted that the Council has acted illegally and committed patent illegally by acting contrary to the fundamental principles of Indian Law and have not adjudicated the counterclaim and perversely adjudicated the claim of the claimant and mentioned that the provision of Arbitration and Conciliation Act shall apply to the proceedings before the MSEFC Council and submit that as per Section 23 (2A) of the Arbitration and

Conciliation Act the respondent is entitled to file a counterclaim or set off with regard to the claims which is within the scope of the Arbitration agreement.

d) It is mentioned that the counterclaim related to the very same transactions have been preferred and it has been admitted by the the claimant in Form 3 issued under IBC by expressly stating that the payment to the linked prorata to the return of patterns. The defective supplies, LD, non compliance with terms of supply all are integral to the transaction and could not be segregated and adjudicated and submit that the award is patently illegal and suffers from perversity and submit that the Tribunal has not looked into the evidence or pleadings and have not passed reasoned award in relation to the stand of the petitioner and the petitioner is mentioned to have taken the stand that (i) there were defects in castings supplies, (ii) there were delays in deliveries leading to liquidated damages, (iii) invoices were raised without purchase order, (iv) invoices for replacement supplies were added to the claim that even for invoices where the payment was made and submit that the false claim have been made by the claimant before the Tribunal. It is submitted that the debit note also have been raised by the petitioner against the claimant and same remains undisputed.

e) It is submitted that the petitioner has suffered extensive losses and damages owing to multiple breaches that were committed by Surya Prakaas

Foundry / claimant including owing to poor and bad quality products, poor deliveries and the petitioner has received major customer complaints and submit that LD charges and Air fare back charges is also mentioned to have been suffered by the petitioner. It is mentioned that the Award has not specified about the counterclaim that the counterclaim is outside the jurisdiction of the Tribunal and further submit that there is no adjudication on the point of counterclaim and submit that the damages are liable to be paid by the claimant on account of non return of patterns, damage to patterns etc., and the same have not been taken note of the MSEFC Council / Arbitral Tribunal.

f) Further it is submitted that the Tribunal has not considered that the petitioner was not given a fair opportunity nor have allowed the trial to take place and without considering the documents and evidence on record and without fair trial the MSEFC Council has passed the Arbitral Award and the petitioner has sought for to set aside the Arbitral Award dated 21.01.2025. It is submitted by the petitioner that the petitioner has received the award only 08.08.2025 and submit that this petition to set aside the Arbitral Award have been filed by the petitioner within three months as provided under Section 34 (3) of the Arbitration and Conciliation Act and submit that the petition has been presented within the limitation period and sought for to allow this petition.

4. **The sum and substance of the Counter Statement averments filed by the Respondent / claimant which are found essential for disposal of the petition is that:-**

a) The respondent is manufacturer of Iron and Steel castings. At the request of the petitioner the respondent has supplied the various castings valves to the petitioner and raised the invoices. In spite of receiving the valves without any dispute regarding the quality or quantity the petitioner has refused to make the payment towards 57 invoices which were raised between the period from 31.10.2019 to 23.07.2021. Since the payments were not received, the respondent being a MSME approached the Micro Small Enterprise Facilitation Council (MSEFC Council) and the MSEFC Council has conducted the conciliation proceedings. The first Council meeting took place on 14.03.2022. Before the MSEFC council the petitioner has filed the counter statement along with counterclaim and filed its sur-rejoinder for the rejoinder filed by the respondent / claimant. However since the parties were unable to arrive at an amicable settlement in the conciliation, on 07.02.2023 the council has closed the conciliation proceedings and subsequently have commenced the Arbitration proceedings under the MSMED Act, 2006.

b) It is submitted that the Arbitration proceedings is an independent adjudicatory mechanism wherein which the parties are required to file their respective pleadings. According to which the claimant has filed the claim

statement and the petitioner herein has filed its statement of defense. The respondent has filed the statement of claim before the Tribunal on 24.03.2023 and submit that petitioner herein has failed to file its counter in-spite of various opportunities being granted. Though the petitioner was appeared for all the hearings before the Tribunal and the petitioner has not preferred to file their statement of of defense including counterclaim. Since the petitioner has failed to file the counter statement, the MSEFC council has decided the matter on merits after perusing all the documents placed by the respondent / claimant and submit that after hearing the parties the MSEFC council has passed the Award on 21.01.2025 wherein which the petitioner herein was directed to make the payment towards the outstanding dues to the tune of Rs.1,28,00,009/- along with interest with monthly rests at three times of the bank rate notified by the Reserve Bank of India (RBI).

c) It is the submission of the respondent that the Asset Usage and Management Agreement submitted as document No.3 by the petitioner and submit that the said agreement have not been executed by the parties and state that the respondent alone has affixed its signature and submit that other companies have not executed or consummated the agreement and state that the agreement has not come into existence. It is the submission of the petitioner that as per the purchase order, the payment will be made after 60 days from the date of approval of the invoices by the petitioner and the petitioner also has the right

to withhold the payment for confirming the goods, are mentioned as not valid and the respondent / claimant refers to Section 15 of MSMED Act and submit that the buyer is liable to make the payment towards the goods supplied shall not exceed 45 days from the date of acceptance or due acceptance. It is submitted that the petitioner has claimed that the payments are to be paid after the lapse of 60 days as mentioned by the petitioner does not hold any merits. It is submitted that the petitioner has raised several contention regarding the quality of the goods supplied by the respondent / claimant and alleged that the respondent has breached the terms of purchase order and submit that the said contentions were not raised by the petitioner by filing the counter before the MSEFC council and state that the same is re-agitated before this Court and submit that the petitioner could be strictly confined to the grounds laid down under Section 34 (2) of the Arbitration and Conciliation Act.

d) Regarding the contention of damages of patterns it is the reply of the respondent / claimant that the issues raised by the petitioner in connection to the return of patterns is not connected to the claim submitted by the respondent / claimant. It is also the submission of the respondent that the respondent had informed the petitioner to remove the patterns which were not used by the respondent for manufacturing purpose and state that the petitioner has not come forward to remove its patterns in the hands of the respondent. The respondent submit that the patterns were returned to the petitioner only after the clearance

provided by them and submit that without any proof to show that it was damaged the petitioner is raising their contention which the respondent is not legally liable to pay any damages. It is submitted that the demand notice under Section 8 of Insolvency and Bankruptcy Code, 2016 (IBC) was issued only for the purpose of initiating Corporate Insolvency Resolution Process against the petitioner and the same was not issued for the recovery of dues and submit that the same has no relevance to the present petition.

e) It is submitted that the petitioner have filed their counter statement and counterclaim only during the conciliation proceedings and not during the Arbitration proceeding before the MSEFC Council and submit that the conciliation proceedings and the Arbitration proceedings mentioned under the MSMED Act are distinct and they are independent and each governed by the separate procedures and state that the Conciliation fails the matter does not automatically continued on the basis of existing pleadings instead under Section 18(3) of MSMED Act a fresh and independent Arbitration commences as per the Arbitration and Conciliation Act and submit that the commencement of Arbitration after the failure of conciliation is treated as separate adjudicatory process which requires the parties to file fresh pleadings before the Arbitral Tribunal. Further it is mentioned that the pleadings submitted by the petitioner during the conciliation stage do not constitute the separate pleadings in Arbitration and it cannot be treated as such, conciliation is a non adjudicatory,

confidential and settlement driven process, whereas Arbitration is an adjudicatory and quasi judicial proceedings and submit that the Arbitration proceedings is entirely distinct from the earlier conciliation process and the parties has to file mandatorily the fresh pleadings including the statement of claim, statement of defense and counterclaim before the Arbitral Tribunal. Accordingly the respondent is mentioned to have filed the fresh claim statement before the Arbitral Tribunal and state that the petitioner herein have not filed the fresh counter / defense statement before the Arbitral Tribunal.

f) It is submitted that the petitioner herein has already taken Input Tax Credit (ITC) for the various invoices and during the Arbitral proceedings before the MSEFC Council, the petitioner was directed to submit the report on the ITC availment for the invoices. However, the petitioner have never submitted the statement and it was concluded by the Council that the petitioner has already availed ITC for all the invoices raised by the respondent. The mere fact that the petitioner has availed ITC for the invoices prove the genuineness of the said invoices and in addition to the above, the petitioner has admitted during the Arbitration proceedings that Rs.60,00,000/- was due and payable by them. It is mentioned that in paragraph No.16 of the Award it has been recorded that the counsel for the petitioner had appeared before the Arbitral Tribunal and challenged the jurisdiction of the MSEFC Council and also raised counterclaim of Rs.4.54 crores and requested to refer to an external Arbitration. From a bare

perusal of the said proceedings, it would be clear that the petitioner herein had never filed any written counter claim during the arbitration proceedings, but had merely raised oral arguments in their counter claim without any written pleadings and the same is evidenced by the document dated 22.10.2021 and submit that the Arbitration proceedings have been initiated only during the year 2023. Hence, the contentions of the Petitioner that the counter claim filed by it before the Tribunal was not adjudicated as false and baseless.

g) It is submitted that the castings supplied by the respondent were duly tested and approved by the petitioner. In event of any re-work being needed the respondent had duly complied with the request and has re-worked the castings and therefore the claim of the petitioner that the respondent has supplied defective products is not valid and submit that there is no express agreement between the parties which mandates the respondent to indemnify the losses suffered by the petitioner. It is the submission of the respondent that though the petitioner had filed the application under Section 16 of the Arbitration and Conciliation Act, 1996 praying for to refer to an Independent Arbitrator, by referring to Section 18(2) and (3) of the MSMED Act it is the submission of the respondent that the council is empowered to act as an Arbitrator for the dispute between the parties and its discretion of the Facilitation Council to either take up the dispute for Arbitration by itself or refer the matter to any other institution and submit that the petitioner has no inherent

right demanding that matter to be referred to an External Arbitration. It is the submission of the respondent that the petitioner has raised several baseless and frivolous allegations. It is submitted that the final hearing notice dated 21.01.2025 have been duly served on the both parties and submit that the respondent had diligently appeared before the MSEFC Council and submit that the allegation does not hold any merit.

h) It is submitted that the petitioner had failed to establish that the Award is affected by any of the grounds stipulated under Section 34 (2) of the Arbitration and Conciliation Act and further it is mentioned that the petitioner has alleged that the award is non speaking award and submit that the award has been passed by the MSEFC Council after due deliberation and regarding its finding after arriving at the Award. Further it is mentioned that the Award has been passed with proper reason and submit that the petitioner had challenged the award only on the flimsy and whimsical grounds. Further it is the submission of the respondent that though the petitioner has filed several documents before this Court, and those documents were not considered to have been filed by the petitioner before the MSEFC Council / Arbitral Tribunal and the respondent / claimant has sought for to dismiss the petition.

**5. Point for consideration:-**

1. Whether the Arbitrator had the jurisdiction to try the dispute?
2. Whether the petition has been filed within the limitation period?

3. Whether the Arbitrator has recorded the reasons to pass the Award?
4. Whether filing of separate statement of defence for Arbitral Proceedings is mandatory?
5. Whether the Award dated 21.01.2025 passed by the Arbitral Tribunal is liable to be set aside?

**Point No.1 : Jurisdiction:-**

6. The petitioner and the respondent has entered into the transactions on the basis of the agreement entered between them and in particular the parties have entered into an agreement of Assent Usage and Management Agreement (AUM). Subsequent to the said agreement the parties have also entered into the purchase order. The purchase order also carries the clause regarding the Jurisdiction of the Court. In particular at point No.9 of the purchase order in the caption of Governing Law reads as follows:-

*"All the purchase order and any Exhibits and / or attachments will be governed by the Law of Singapore. Further the parties agree that any litigation arising of the matters set forth in any Purchase Order will be litigated in the Courts of Singapore".*

7. Hence the question of point of jurisdiction was initially taken up for hearing, wherein which the counsels on both sides have referred to the judgment of Hon'ble Supreme Court in ***Harcharan Dass Gupta vs Union of India reported in 2025 SCC OnLine SC 1111*** and also relied on the judgment of Hon'ble High Court of Delhi in ***Geniemode Global Pvt Ltd vs Priyanka Impex Private Limited & Anr.***

8. The Hon'ble Supreme Court in ***Harcharan Dass Gupta*** has referred to the judgment of Hon'ble Supreme Court decided in Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd., reported in 2023 (6) SCC 401 wherein which the Hon'ble Supreme Court have held in paragraph No.9 as follows :-

*"A private agreement between the parties cannot obliterate the statutory provisions. Once the statutory mechanism under sub-section (1) of Section 18 is triggered by any party, it would override any other agreement independently entered into between the parties, in view of the non obstante clauses contained in sub-sections (1) and (4) of Section 18. The provisions of Sections 15 to 23 have also overriding effect as contemplated in Section 24 of the MSMED Act, 2006 when anything inconsistent is contained in any other law for the time being in force."*

9. By referring to the above dictum laid by the Hon'ble Supreme Court in the Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd., judgment, it was the submissions by the learned counsel on both sides that this Court would have the jurisdiction in respective of the agreement entered between the parties and submit that the MSEFC Council trying the proceedings and this Court entertaining the appeal under Section 34 of the Arbitration and Conciliation Act was within the jurisdiction of this Court. Hence, on the point of jurisdiction this Court has decided to proceed with this matter. Further, this Court has also verified that the supplier / respondent / claimant in the Arbitral proceedings before the MSEFC Council is having business in Coimbatore. Hence, being supplier the proceedings before MSEFC Council, in Coimbatore have been initiated. **Hence, this Court is of considered stand that this Court has jurisdiction to try the dispute involved in the present petition.**

**Point No.2 :- Limitation.**

10. This Court at first has verified, whether the petition under Section 34 of the Arbitration and Conciliation Act has been filed by the petitioner / respondent within the limitation period. It is the submission of the petitioner that though the award has been passed on **21.01.2025**, the petitioner is mentioned to have received the award only on 08.08.2025 and submit that as per Section 34 (3) of the Arbitration and Conciliation Act the petition under Section 34 (2) of

the Arbitration Act has to be filed within 90 days (within three months) from the date of receipt of the Arbitral Award and submit that the present petition has been filed within the limitation period. This petition has been filed before this Court on 24.09.2025 and it is not disputed that the award was received at any point earlier than 08.08.2025. Since this petition has been filed within 45 days from the date of receipt of Arbitral Award by the petitioner / respondent, **this Court is of considered stand that this petition has been filed within the limitation period as contemplated under Section 34(3) of the Arbitration and Conciliation Act.**

**11. Compliance Under Section 19 of MSMED Act:-** The petitioner who is the respondent before the Arbitral Tribunal has also deposited a sum of Rs.2,06,47,683/- before this Court, which is the 75% of the Award Amount and complied the provision under Section 19 of the MSMED Act prior to the filing of this petition. On the verification the statutory compliance have been carried out in the present petition proceedings as contemplated under Section 19 of MSMED Act.

**Point No.3, 4 & 5**

**12.** This Court has further went on to examine the merits of the petition as contemplated under Section 34 (2) of the Arbitration and Conciliation Act. Since it was the primary contention on the part of the petitioner / respondent that

the Award has been passed without any reason, this Court has also considered the said contention under Section 31(3) of the Arbitration and Conciliation Act. The prime contention of the petitioner is that the Award passed by the MSEFC Council / Arbitral Tribunal is without notice of hearing and also submit that the award passed by the MSEFC Council is illegal as the exparte award was passed by the Arbitrator. Morefully it is the submission of the petitioner that a non speaking award has been passed by the Arbitrator and also state that the Arbitrator has failed to consider the pleadings and evidence and the disputes between the parties in detail and further submit that no findings has been rendered by the Arbitrator on contentious issues and submit that the award is perverse and patently illegal.

**13.** Further by referring to paragraph No.24 and 25 of the Arbitral Award it was the submission of the petitioner that the Tribunal have noted about the Counter and have not given any reason for passing the Award and submit that though the MSEFC Council / Arbitrator have noted about the oral arguments placed by the petitioner / respondent, but the substance of the same has not been relied by the Tribunal while passing the Award. Further no findings have been rendered by the Tribunal on the Counter Claim. Further it was also the specific contention of the petitioner that the notice for the hearing on 21.01.2025 was not received by the petitioner and the MSEFC Council has

made the petitioner as Exparte for mere absence in one hearing. By reiterating the point that the counter claim was not at all considered by the Tribunal, it was the contention of the petitioner that the award has been passed without no reasons and submit that the award is patently illegal and sought for to set aside the Award dated 21.01.2025 passed by the MSEFC Council / Arbitral Tribunal.

**14.** It is the submission of the respondent / claimant that the first meeting was held by the MSEFC Council on 14.03.2022 for conciliation and by that time the present petitioner is mentioned to have filed the Counter along with the Counterclaim and subsequent to the completion of conciliation proceedings the Arbitration proceeding is commenced by the MSEFC Council / Arbitral Tribunal. It is the submission of the respondent / claimant that the Arbitration is an independent adjudication mechanism and submit that for which a separate pleadings has to be filed by the parties. Accordingly, a separate claim petition is mentioned to have been filed by the respondent / claimant on 24.03.2023 and submit that the petitioner / respondent has failed to file the counter before the Arbitral Tribunal.

**15.** Further it is also the submission of the respondent / claimant that the petitioner / respondent was regularly appearing before the Tribunal and since the Counter was not filed by the petitioner / respondent before the Tribunal, the dispute mentioned to have been decided on merits by the Arbitral Tribunal /

MSEFC Council and the Arbitral Award is mentioned to have been passed on 21.01.2025. It is the submission of the respondent / claimant that the counter was not filed by the petitioner / respondent before the Arbitral Tribunal and no defense has been raised by the petitioner / respondent before the Arbitral Tribunal. Further, it is mentioned that the counter and counterclaim were filed by the petitioner only during the Conciliation Proceedings and not in the Arbitral Proceedings. It is also the submission of the respondent / claimant that the claimant had filed the details of ITC Input credit availed by the petitioner / respondent and submit that the reason stated by the petitioner do not meet the provision on the grounds as set out under Section 34 (2) of the Arbitration and Conciliation Act. Further the respondent / claimant mentioned that the award has been passed after due deliberations and findings are mentioned to have been arrived by the MSEFC Council / Arbitrator and submit that the Award has been passed and sought for to dismiss the petition.

**16.** In support of their stand the learned counsel for the petitioner has relied on the following judgment of the Hon'ble Supreme Court and the Hon'ble High Courts:-

- i. Dyna Technologies Ltd., vs Crompton Greaves Ltd., [2019 (20) SCC 1]
- ii. Som Datt Builders Ltd., vs State of Kerala [2009 (10) SCC 259]

- iii. Associate Builders Vs. Delhi Development Authority [(2015) 3 SCC 49] (Patent Illegality)
- iv. Ssangyong Engineering and Construction Company Ltd., vs National Highways Authority of India, [2019 (15) SCC 131]
- v. Union of India Vs Royal Construction. [2001 SCC (online) Cal. 476]
- vi. Anand Brothers Private Limited Vs Union of India and Others [2014 (9) SCC 212]
- vii. National Highways Authority of India Vs Sri. P. Nagaraju, (2022 (15) SCC 1)
- viii. Amin Merchant Vs Bipin M. Gandhi and Another. (2004 SCC online Bombay 986)
- ix. Bharat Coking Coal Ltd. v. Annapurna Construction (2014 SCC 86)
- x. Mithalal B.Gurjar vs Union of India, (2015 SCC online Bombay 4919)
- xi. I-Pay Clearing Services Pvt. Ltd., vs ICICI Bank, [2022 (3) SCC 121)
- xii. Gujarat State Civil Supplies Corpn. vs. Mahakali Foods and another, (2023 (6) SCC 401)

- xiii. Silpi Industries and others vs Kerala State Road Transport Corporation and another, [2021 (8) SCC 790]
- xiv. PSA Sical Terminals Pvt. Ltd. Vs Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and Others. (2021 SCC Online SC 508).

**17.** Before going into the contentions raised by both sides, this Court would consider appropriate to answer to the disputable point as to whether the separate counter has to be filed by the petitioner / respondent before the MSEFC Council as claimed by respondent / claimant or the counter filed by the petitioner / respondent during the conciliation process itself would be sufficient for continuance of Arbitral Proceedings, is the point at first has to be considered by this Court. In this regard this Court would consider appropriate to refer the provision of the MSMED Act. For which this Court would consider appropriate to refer to the provision under Section 18(1), 18(2) and 18(3) of the MSMED Act.

**18.** In support of their stand the learned counsel for the respondent / claimant have relied on the judgment of Hon'ble Supreme Court in ***Jharkhand Urja Vikas Nigam Ltd., vs The state of Rajasthan and Ors***, and referred to paragraph No.11 of the judgment, which reads as follows:-

*"If the appellant had not submitted its reply at the conciliation stage, and failed to appear, the Facilitation council could, at best, have recorded the failure of conciliation and proceeded to initiate arbitration proceedings in accordance with the relevant provisions of the Arbitration and conciliation Act, 1996, to adjudicate the dispute and make an award. Proceedings for conciliation and arbitration cannot be clubbed."*

**19.** Further the learned counsel for the respondent / claimant also have relied on the judgment of Hon'ble Supreme Court in ***Silpi Industries Etc., vs Kerala State Road Transport Corporation and another***, and referred to paragraph No.20 of the judgment, which reads as follows:-

*"20. From a reading of Section 18(3) of the 2006 Act it is clear that when the conciliation initiated under sub-section (2) of Section 18 of the said Act is not successful, the Council shall either itself take up the dispute for arbitration or refer to any institution for arbitration. Further Section 18(3) of the said Act also makes it clear that the provisions of 1996 Act are made applicable as if there is an agreement between the parties under sub-section (1) of Section 7 of the*

*1996 Act. Section 23 of the 1996 Act deals with the statement of claim and defence. Section 23(2A), which gives a right to respondent to submit a counter claim or plead set-off with regard to claims within the scope of the arbitration agreement, is brought into Statute by Amending Act 3 of 2016. If we look at the Statement of Objects and Reasons of the Amending Act, same is also enacted to provide for speedy disposal of cases relating to arbitration with least court intervention. Clause 11 of the Bill, by which sub-section (2A) was proposed to be inserted, states that sub-section (2A) was intended to give an opportunity to the respondent, in support of his case, to submit counter-claim or a set-off if such counter- claim or set-off falls within the scope of arbitration agreement. When Section 18(3) makes it clear that in the event of failure by the Council under Section 18(2) if proceedings are initiated under Section 18(3) of the 1996 Act, the provisions of 1996 Act are not only made applicable but specific mention is made to the effect as if the arbitration was in pursuance to an arbitration agreement referred to in sub-section (1) of Section 7 of the 1996 Act. When there is a provision for*

*filing counter-claim and set-off which is expressly inserted in Section 23 of the 1996 Act, there is no reason for curtailing the right of the respondent for making counter-claim or set-off in proceedings before the Facilitation Council."*

**20.** By referring to the above extracted portion of judgment of Hon'ble Supreme Court, it is the submission of the respondent / claimant that the Conciliation Proceedings and the Arbitration Proceedings before the Arbitrator cannot be clubbed together and it is also the submission of the learned counsel for the respondent that the provision of the Arbitration and Conciliation Act shall apply and a separate pleadings ought to have been filed by the petitioner after the commencement of Arbitral proceedings, and subsequent to the completion of the conciliation proceedings and submit that since the counter was not filed before the Arbitrator / MSEFC Council, it is the contention of the learned counsel for the respondent that the petitioner has not filed any counter before the Arbitrator and submit that the petitioner remained undefended before the MSEFC Council in the Arbitral proceedings and state that there was no counter filed by the petitioner and submit that the Arbitrator has passed the Award on merits.

21. This Court has also relied on the judgment relied by the counsel for the respondent / claimant and this Court have agreed that a separate conciliation proceedings and an Arbitration proceedings have been contemplated under Section 18 (2) and 18 (3) of the MSEMED Act respectively and as per the judgment relied on by the learned counsel for the respondent, this Court is also of considered stand that the conciliation proceeding and the Arbitral proceeding cannot be clubbed together and this Court also agree that the provision of Arbitration and Conciliation Act shall also apply. But when it comes to Section 18(2) of MSMED Act, this Court would consider that the Act provides "***for any party to the dispute to make a reference to the Micro, Small and Medium Enterprises Council and upon receipt of the reference under Sub Section (1), the Council either itself conduct the conciliation and after the conciliation is completed, is not successful and stands terminated, the Council shall itself take up the dispute for Arbitration or referred to any Institution or Center providing alternative dispute resolution***". Now the procedure here under dispute is, whether a reference filed under Section 18(1) of MSMED Act would be sufficient for the proceedings under Section 18(2) and Section 18(3) of the MSMED Act (or) a separate reference has to be filed for proceedings under Section 18(2) and 18(3) of the MSMED Act respectively, was the fact considered by the Court.

**22.** As per Section 18(1) and 18(2) or 18(3) of the MSMED Act, the Act is silent about the filing of separate application for conciliation and separate applicable for Arbitration. But, the Act contemplates the parties to the disputes to make a reference before the MSEFC Council. So, once the reference is made before the MSEFC Council, the MSEFC Council continues the proceeding as a one proceedings, from the initiation of proceeding to till the completion of the proceedings. On perusal of Award, it is clear that the MSEFC Council have not taken two proceedings. The Award of MSEFC Council itself commences with the word, the present reference has been filed by the claimant before the council on 25.09.2021 under Section 18(1) of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 and morefully the number assigned for the proceeding is MSEFC/CBER/168/2021. Hence the one single reference have been taken into consideration by the MSEFC Council and for this one single reference initially the petition has been filed by the claimant / respondent and subsequent to the claim petition have been filed by the claimant, the counter have been filed by the petitioner / respondent. As contemplated under the Act, the reference was taken to conciliation by the MSEFC Council / Tribunal and when the Tribunal has concluded that the reference was not successful, the Tribunal has taken up the dispute for Arbitration.

**23.** Further, in the discussion at paragraph No.13 of the Award the MSEFC Council has recorded the failure note of the conciliation and has

recorded that the conciliation proceeding is closed. Subsequent to the conciliation proceedings were closed on 13.03.2023 the MSEFC Council has taken the proceedings for Arbitration as mentioned in paragraph No.14 of the Award. This Court would consider appropriate to extract the paragraph No.14, 15 and 16 of the Award for better discussion as follows:-

*"14. In the Council meeting held on 13.03.2023 through Video Conference, the Petitioner was present and represented by Ms. Naveena and the Respondent was present and represented by Tmt. Sadhana. The Petitioner requested time for filing fresh statement of claim. Hence, the Council adjourned the Case.*

*15. In the Council meeting held on 06.04.2023 through Video Conference, the Petitioner was present and represented by Ms. Naveena and the Respondent was present and represented by Ms.Surya, Advocate. The Respondent stated that they have not received the fresh claim statement. The Council instructed the Petitioner to send the fresh Statement of claim to the Respondent and instructed the Respondent to file counter statement and adjourned the case.*

*16. In the Council meeting held on 02.05.2023 through Video Conference, the Petitioner was present and represented by Thiru.Durairaj, Advocate, and the Respondent was present and represented by Ms. Sadhana, Advocate. Respondent filed a preliminary objection by challenging the jurisdiction of the Council. Also raised a counter claim of Rs.4,54,00,000/- and requested to refer to an external arbitration. Further, stated that customer had levied LD to the extent of 2.23 crores for the delay caused by the Petitioner. Petitioner argued that counter claim can be made only to the related supply. Petitioner sought time to file reply to the objection of the Respondent. Hence, the Council adjourned the case."*

**24.** In the above extracted portion of paragraph No.14, 15 and 16 of the Award, the claimant / respondent has claimed for filing of separate statement of claim and the petitioner as respondent in Arbitral proceedings has stated that they have not received the fresh claim statement and the Council has directed to send the fresh statement of claim. Further the Council has also instructed the claimant / respondent to file the counter statement and adjourned the proceedings for the hearing on 06.04.2023 and subsequently the proceeding was

taken on 02.05.2023. On 02.05.2023 the petitioner / respondent has filed the preliminary objection by challenging the Jurisdiction of the Council and further the MSEFC Council has observed that the petitioner / respondent has raised a counterclaim of Rs.4,54,00,000/- and the petitioner / respondent has submitted to refer the proceedings before the MSEFC Council to an external Arbitrator and further stated that the customer has levied LD to the extent of 2.23 Crores for the delay caused by the claimant / respondent and the claimant has argued that the counterclaim can be made only to the related supplies and the claimant has sought time to file reply for the objection of the petitioner / respondent and hence the MSEFC Council adjourned the proceedings.

25. Subsequently the proceeding was taken on 16.03.2023, 07.07.2023, 09.08.2023 and on 20.10.2023 and on these hearing the dispute was mainly went on related to the jurisdiction of the Arbitral Tribunal / MSEFC Council to decide the dispute and at paragraph No.18 of the Award the MSEFC Council have concluded that the proceeding before the Council was maintainable. In paragraph No.20 of the Award the Council has observed as follows:-

*"In the Council meeting held on 20.10.2023 through Video Conferencing, only the petitioner was present and represented by Mr.S.Durairaj Counsel and the Respondent was absent. The Petitioner sought one week time to file his*

*written arguments. Hence, the Council has decided to give one more opportunity for the Petitioner to file his Written Arguments and adjourned the case for next hearing."*

**26.** Wherein, the petitioner has sought time for one week to file the written arguments and hence the Council has decided to give one more opportunity for the respondent to file their written arguments and adjourned the proceedings for next hearing. On 18.07.2024 the Council had instructed the respondent to file their written arguments within 15 days and adjourned the proceedings to 21.01.2025. On 21.01.2025 the Council has recorded that the petitioner has submitted the written arguments and recorded the absence of the respondent and the Council has observed that the Council has decided to pass Order based on the records and merits of the case. From the above the Council has not recorded nor insisted the petitioner / respondent to file the separate counter statement for the Arbitral proceedings, after the termination of conciliation proceedings.

**27.** Morefully from the above observation of MSEFC Council and also by going through the provision under Section 18(1), (2) and (3), one single reference was taken up by the MSEFC Council and for the one reference initially the claim petition has been filed by the respondent / claimant and on the

basis of which the Conciliation proceedings was initiated and prior to the initiation of conciliation proceedings for this reference, a counter has been filed by the petitioner / respondent. At no point, the MSEFC Council has recorded that the the petitioner / respondent was set exparte. Since it was the contention of the learned counsel for respondent that as per the Arbitration and Conciliation Act, the conciliation and Arbitration proceedings has to be treated as separate proceedings. But, as per **Section 80 of the Arbitration and Conciliation Act** - the person who was acted as Conciliator cannot be appointed as Arbitrator in the Arbitral proceedings. Whereas this proceeding before the MSEFC Council is based only on the MSMED Act. The MSMED Act provides the MSEFC Council to enable the parties to go in for reference under Section 18(1) of the MSEMED Act and the said reference is taken as a Conciliation and once the conciliation is failed, the same is taken as Arbitration. Hence this Court is of considered stand that one reference is made before the MSEFC Council as contemplated under Section 18(1) of MSEMED Act, there is no specific provision provided under Section 18(2) and Section 18(3) to file a separate reference for conciliation and a separate reference for Arbitration.

**28.** Hence this Court is of considered stand that one single reference itself is sufficient to complete the entire proceedings under Section 18(1), 18(2) and 18(3) of the MSMED Act. Hence this Court is of considered stand that no

separate counter is necessary and morefully the Arbitrator / MSEFC Council has authority to decide on the procedures to be followed during the Arbitral Proceedings and they have not insisted the petitioner / respondent to file a separate Counter. Hence this Court is of considered stand that the counter once filed by the petitioner / respondent in the Arbitral proceedings should be treated as sufficient for the completion of entire proceedings.

**29.** Further the Arbitrator in the Award has observed in paragraph No.16 that, the claimant has sought time to reply to to the objection of the petitioner / respondent and subsequently the separate counter was not insisted by the MSEFC Council and morefully the MSEFC Council have not set the petitioner / respondent Exparte and the MSEFC Council have not recorded the failure of the petitioner / respondent to file the counter statement in any portion of the award. Hence, this Court is of considered stand that on the first hand, when coming to the contention raised by the respondent / claimant that the petitioner / respondent has not filed the counter or counterclaim before the MSEFC Council, in the considered view of the Court cannot be tenable in the line of Section 18(1), 18(2) and Sec. 18 (3) of the MSMED Act.

**30.** The next limb of contention on the part of the petitioner / respondent that the MSEFC Council has not recorded any reasons in passing the Award. In this regard this Court would find it appropriate to refer to the Arbitral

Award and the MSEFC Council has recorded the reasons in paragraph No.25 to pass the Award and to arrive at the conclusion. Further in paragraph No.24 of the Award the entire invoices listed by the petitioner alone has been listed by the MSEFC Council in the Award. Hence, this Court would find it appropriate to refer and extract the paragraph No.25 of the Arbitral Award which reads as follows:-

*"25. The Council observed that upon giving sufficient opportunity the Respondent failed to represent their case and didn't come forward to file their written arguments. The Council conducted a joint session on 28.07.2022 for reconciliation, but they have failed to agree upon to the terms of conciliation between them. Hence, conciliation was failed and the conciliation proceedings were closed. The Council has decided to serve Arbitration notice to both the parties and initiated Arbitration Proceedings on 13.03.2023. During the Arbitration proceedings the Petitioner filed their written arguments and made their detailed oral arguments. Based on a detailed and critical examination of the claims made by the Petitioner along with available materials on record and on merits of the case, the Council has considered and comes to the conclusion that the*

*Respondent is liable to pay to the Petitioner the principal amount of Rs.1,28,00,009/- (Rupees One Crore Twenty Eight Lakh and Nine only) along with the compound interest with monthly rests at three times the Bank rate notified by the RBI in accordance with Sections 15 & 16 of the MSMED Act, 2006."*

**31.** Further as per **Section 31(3) of the Arbitration and Conciliation Act**, the Arbitral Award shall state the reasons. When coming into the paragraph No.25 of the Award as extracted above, the MSEFC Council has recorded the reasons to pass the award only by observing that "**on a detailed and critical examination of the claims made by the Petitioner along with available materials on record and on merits of the case, the Council has considered and comes to the conclusion that the Respondent is liable to pay to the Petitioner the principal amount of Rs.1,28,00,009/- (Rupees One Crore Twenty Eight Lakh and Nine only) along with the compound interest"**. Except this word based on a detailed and critical examinations of the claims made by the petitioner, the MSEFC Council has not recorded the reason as contemplated under Section 31(3) of the Arbitration and Conciliation Act.

**32.** This Court would also consider appropriate to refer to the judgment of Hon'ble Supreme Court **in Associate Builders Vs. Delhi Development**

**Authority** in paragraph No.42 the Hon'ble Supreme Court have held as follows:-

“42. In the 1996 Act, this principle is substituted by the “patent illegality” principle which, in turn, contains three subheads:

42.1 (a) A contravention of the substantive law of India would result in the death knell of an arbitral award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is really a contravention of Section 28(1)(a) of the Act, which reads as under:

“28. Rules applicable to substance of dispute.

—(1) Where the place of arbitration is situated in India—

(a) in an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;”

42.2 (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality — for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside.

42.3 (c) Equally, the third subhead of patent illegality is really a contravention of Section 28(3) of the Arbitration Act,.....”

**33.** Further, this Court would also find it appropriate to refer to the Judgment of Hon’ble Supreme Court decided in ***OPG POWER GENERATION PRIVATE LIMITED V. ENEXIO POWER COOLING SOLUTIONS INDIA PVT. LTD., reported in 2024 INSC 711*** as follows:-

*“71.3. We find ourselves in agreement with the view taken in Dyna Technologies (supra), as extracted above. Therefore, in our view, for the purposes of addressing an application to set aside an arbitral award on the ground of improper or inadequate reasons, or lack of reasons, awards can broadly be placed in three categories:*

- (1) where no reasons are recorded, or the reasons recorded are unintelligible;
- (2) where reasons are improper, that is, they reveal a flaw in the decision-making process; and
- (3) where reasons appear inadequate.

71.4. Awards falling in category (1) are vulnerable as they would be in conflict with the provisions of Section 31(3) of **the 1996 Act**. Therefore, such awards are liable to be set aside under Section 34, unless (a) the parties have agreed that no reasons are to be given, or (b) the award is an arbitral award on agreed terms under Section 30.

71.5. Awards falling in category (2) are amenable to a challenge on ground of impropriety or perversity, strictly in accordance with the grounds set out in **Section 34 of the 1996 Act**.

71.6. Awards falling in category (3) require to be dealt with care. In a challenge to such award, before taking a decision the Court must take into consideration the nature of the issues arising between the parties in the arbitral

*proceedings and the degree of reasoning required to address them. The Court must thereafter carefully peruse the award, and the documents referred to therein. If reasons are intelligible and adequate on a fair-reading of the award and, in appropriate cases, implicit in the documents referred to therein, the award is not to be set aside for inadequacy of reasons. ....”*

**34.** From the dictum laid by the Hon’ble Supreme Court in the above extracted passages it is clear that an Award must state reasons. When the award records no reasons it falls within vulnerable category as per the Section 31(3) of the Arbitration and Conciliation Act and the Award is liable to be set aside under Section 34 of the Act. In the present proceedings this Court would consider that the Arbitrator has recorded no reasons and the Award is not a consent award. Hence this Court would consider that the award is patently illegal as per the judgment of in Associate Builders case.

**35.** Morefully the Counter also has been filed the petitioner / respondent as observed in the above referred paragraphs earlier and the points raised by the petitioner / respondent also has not been taken to consideration by the MSEFC Council. Further the Counterclaim has been sought for by the petitioner / respondent and regarding the counterclaim also no findings have

been rendered by the MSEFC Council. Since there is no reasons recorded by the MSEFC Council / Arbitral Tribunal as contemplated under Section 31(3) of the Arbitration and Conciliation Act, this Court would consider that the Award is liable to be set aside on the ground that the Award has not recorded the reason for passing the Award.

**36.** In the result *the petition is allowed* and thereby the Award passed by the MSE Facilitation Council, Coimbatore in MSEFC/CBER/168/2021 dated **21.01.2025** is hereby set aside. No Costs.

Dictated to the Steno-Typist, directly computerized by him, Corrected and Pronounced by me, on the **24th day of March 2026**.

Judge,  
Commercial Court,  
(District Judge Cadre)  
Coimbatore

**List of Witnesses and Documents:- Nil**

Judge,  
Commercial Court,  
(District Judge Cadre)  
Coimbatore