



\$~81

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3831/2026 and CM APPL. 18713/2026**

Date of decision: 25.03.2026

IN THE MATTER OF:

NITIN SETH

.....Petitioner

Through: Mr. Deepak Biswas, Mr. Mayank Rai,
Advocates.

versus

MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL,
DELHI AND ANR

.....Respondents

Through: Mr. Shashi Pratap Singh and Ms.
Shagun Sabharwal, Advocates.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G E M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

CM APPL. 18715/2026 (Condonation of delay)

1. For the reasons stated in the application, the same stands allowed. The delay of 17 days in filing the petition stands condoned.
2. The application stands disposed of.

CM APPL. 18714/2026 (for exemption)

1. Exemption allowed, subject to all just exceptions.



2. The application stands disposed of.

W.P.(C) 3831/2026 and CM APPL. 18713/2026

1. The instant petition seeks the setting aside of an arbitral award

“a. Allow the present Writ Petition and issue an appropriate writ, order or direction, including a writ in the nature of Certiorari, quashing and setting aside the Final Arbitral Award dated July 30, 2025 passed by the learned Sole Arbitrator, Mr. Robin R. David, in Arbitration Case No. DIAC/4249/07/22, as being without jurisdiction and contrary to law;

b. Issue an appropriate writ, order or direction quashing the reference dated May 13, 2022 made by the Micro and Small Enterprises Facilitation Council under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006, and all consequential proceedings arising therefrom, including the arbitral proceedings conducted under the aegis of the Delhi International Arbitration Centre;

c. Pass such other or further order(s) or direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. The petitioner seeks for setting aside of an Arbitral Award dated 30.07.2025 passed in Arb. Case No. DIAC/4249/07/22, on the grounds that the reference by the Facilitation Council under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006 (**‘MSME Act’**) was *ultra vires* the provisions of the Act.

3. It is the case of the petitioner that the dispute referred by the Facilitation Council pertained to a *works contract*, which falls outside the purview of the MSME Act. The submission, therefore, is that the Arbitral Award under challenge is wholly without jurisdiction.

4. The said argument could have been raised before the Arbitral Tribunal, and if such an opportunity was not available to the petitioner, it



can be made a ground under Section 34 of the Arbitration and Conciliation Act, 1996 (“**A&C Act**”), if the same is permissible. *Prima facie*, it appears that the argument of the petitioner, if at all, it is found to be meritorious, may, *inter alia*, be considered as a case of the award being beset with patent illegality. It be noted that the aforesaid is an explicit ground which a given petitioner could take to assail an award under Section 34 of the A&C Act.

5. Learned counsel, who appears on behalf of the respondents is right in placing reliance on a decision passed by this Court in the case of ***Executive Engineer and Others vs. Bholasingh Jaiprakash Construction Ltd. and Another***¹. It is also pointed out that almost similar arguments were raised in the said writ petition and in paragraph nos. 9 and 10 thereof, the Court has declined to interfere into the same.

6. For the sake of clarity, paragraph nos.9 and 10 of the said decision are extracted as under:-

“9. In the present case, the Petitioner comes within the definition of State under Article 12 of the Constitution of India. The Petitioner knew about the dispute. The Petitioner knew that the matter has been referred to the Arbitral Tribunal. There has been complete inaction on the part of the State to challenge the reference proceedings. In fact, the State chose not to participate in the proceedings. After the award was passed, the State chose not to challenge the same under Section 34 of the Arbitration Act on the same grounds which have been raised in the present Writ Petition. After failing to invoke the procedures under the Arbitration Act, it is now not open for the State to approach this Court by filing a Writ Petition under Article 226 of the Constitution of India. State is not a helpless litigant who is not aware of the law and, therefore, this Court does not find it expedient to interfere with the award under Article 226 of the Constitution of India on the issue of jurisdiction. Article 226 cannot be invoked by a litigant who has failed to avail of the remedies available under law. The State is not a helpless litigant in whose favour, the Court

¹ 2024 SCC OnLine Del 1080



should invoke the extraordinary remedy under Article 226 of the Constitution of India.

10. No ground has been raised in the present Writ Petition on the merits of the case as to whether the Respondent No.1 is entitled to the amount claimed or not. Keeping in mind the objectives of the MSMED Act and also keeping in view the complete inaction on the part of the State to approach this Court during the pendency of the arbitration or taking recourse to the proceedings under Section 34 and 37 of the Arbitration Act after the Award was passed, this Court is not inclined to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India to interfere with the award passed by the Arbitral Tribunal.

7. The order passed by the Single Judge was assailed in ***Executive Engineer and Others vs. Bholasingh Jaiprakash Construction Ltd. and Another***² wherein it was held as under:

“6. Recently, in LPA 91/2024, this Court has refused to interfere with the judgment passed by the learned Single Judge in similar circumstances. This Court, while dismissing the appeal, relied upon the judgment of the Supreme Court in Civil Appeal No. 7491/2023, titled as M/s India Glycols limited and Anr. v. Micro and Small Enterprises Facilitation Council, Medchal Malkajgiri and Ors., wherein it was held that petitions filed under Article 226/227 of the Constitution of India ought not to be entertained in view of Section 18 of the MSMED Act, which provides for recourse to statutory remedy for challenging the Award under Section 34 of the Act. The Supreme Court in the said case has observed that entertaining of petitions under Article 226/227 of the Constitution, in order to obviate compliance with the requirement of pre-deposit under Section 19 of the Act, would defeat the object and purpose of special enactment which has been legislated upon by Parliament.”

8. This Court as well in the case of ***M/s Jindal Habitat Solutions Pvt. Ltd. v. Micro and Small Enterprises Facilitation Council and Ors.***³ has held as under:-

² LPA No.318/2024.

³ 2026:DHC:1881



“9. In view of the aforesaid legal position, the Court finds that there is no substance in the instant writ petition. Even otherwise, the jurisdiction under Article 226 of the Constitution of India to interdict the arbitration proceedings is to be exercised sparingly and only in exceptional circumstances.

10. The aforesaid position is settled by the Supreme Court in **Bhaven Construction Vs Executive Engineer, Sardar Sarovar Narmada Nigam Ltd. & Anr.**,⁴ wherein it has been held that the Arbitration and Conciliation Act, 1996 is a self-contained and comprehensive code providing for a complete mechanism for redressal of grievances arising out of arbitral proceedings. It has further been held that the High Courts, in exercise of their jurisdiction under Articles 226 and 227 of the Constitution of India, ought not to interfere with the arbitral process except in rare and exceptional circumstances, such as where there is a patent lack of jurisdiction, manifest bad faith, or where no efficacious alternative remedy is available. The Supreme Court has emphasized the principle of minimal judicial interference, observing that all objections, including those relating to jurisdiction, are required to be raised before the Arbitral Tribunal and thereafter in accordance with the statutory remedies provided under the Act.

11. In view of the aforesaid, this Court is of the considered view that no ground is made out warranting interference in the present matter, and it does not find it appropriate to interdict the arbitral proceedings. However, liberty is granted to the petitioner to agitate all issues pertaining to, inter alia, jurisdiction of the arbitral tribunal at a subsequent and appropriate stage.”

9. Further this Court in **Groson Engineers v. M/s Rajiv Aggarwal & Anr.**,⁵ has noted the following with respect to challenges made to interlocutory orders of the Arbitral Tribunal:

“Even otherwise, the jurisdiction of this Court under Article 227 of the Constitution of India against an interlocutory order passed by the Arbitral Tribunal ought to be minimal. It is only orders which evince, on their face, palpable illegality or a nonapplication of mind, which are required to be interfered with. It must not be lost sight of, that arbitration is a private adjudicatory system, chosen by the parties themselves. Words, must not be minced, parties voluntarily chose the method of arbitration to opt out of the

⁴ (2022) 1 SCC 75.

⁵ W.P.(C) 17470/2025, Order Dt. 27.01.2026



conventional court mechanism; the traditional litigation-mechanism ought not to be brought back, by entertaining, casually, writs against interlocutory orders passed by the Arbitral Tribunal.”

10. A writ Court under Articles 226 and 227 of the Constitution of India, ought not to interfere with the arbitral process except in rare and exceptional circumstances. For all the aforesaid reasons, the Court does not find it appropriate to interfere into the impugned orders. The instant petition is, therefore, dismissed.

11. All rights and contentions of the parties are left open.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

MARCH 25, 2026

Nc