



petition being W.P.(C) No. 3649 of 2016 has been disposed of and the matter has been remanded to the Jharkhand Micro, Small and Medium Enterprises Facilitation Council, Ranchi (*hereinafter referred to as the "Facilitation Council"*) for adjudication of the claim relating to interest on delayed payment of bills raised by the writ petitioner.

2. In W.P.(C) No. 3649 of 2016, the following prayer had been made:

*"I. For issuance of an appropriate writ or a writ in the nature of certiorari for quashing the order dated 04.03.2016 (Annexure- 4) in Case No. JHMSEFC 2/2016 passed by the learned Jharkhand Micro, Small and Medium Enterprises Facilitation Council (JHMSEFC), Ranchi wherein the learned Jharkhand Micro, Small and Medium Enterprises Facilitation Council has dismissed the application made by the Petitioner to the Council under section 18 of the Micro Small and Medium Enterprises Development Act (MSMED Act) 2006, holding it as non-maintainable.*

*II. For issuance of an appropriate writ or a writ in the nature of declaration that under Section 15 to 18 of the Micro Small and Medium Enterprises Development Act (MSMED Act) 2006, the petitioner is entitled to make a reference to the Council, under Section 18(1) of the MSMED Act, to claim interest alone.*

*III. For issuance of an appropriate writ or a writ in the nature of mandamus to the respondents to make payment of interest amount to the petitioner on the principal amount of Rs. 3,80,05,000/- in terms of section 16 of the MSMED Act 2006."*

3. By an order dated 04<sup>th</sup> March 2016 which was impugned in the writ petition the Facilitation Council dismissed the application made by the writ petitioner under section 18 of the *Micro Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as "MSMED Act, 2006")*, holding it as non-maintainable by observing that a claim only on account of interest on delayed payment of bills is not maintainable.

4. **Foundational facts.**

I. On 07<sup>th</sup> August 2003, the writ petitioner was registered as a Small-Scale Industrial unit (SSI Unit) for manufacture of printing of books, magazines and stationeries. The writ petitioner participated in the tender process pursuant to the notice inviting tender issued by the appellants on 06<sup>th</sup> December 2012 for printing and supply of poster and work order was issued to the writ petitioner on 08<sup>th</sup> February 2013.

II. After completion of work, the bill was submitted by the writ petitioner but an amount of Rs.3,80,05,000/- remained unpaid. The writ petitioner made various representations to the appellants for payment of outstanding amount of Rs.3,80,05,000/- towards supplies made by the writ petitioner which was not paid and ultimately filed a Writ Petition being W.P.(C) No. 1702 of 2014 seeking a direction upon the appellants to make the payment of the outstanding dues.

- III. On 13<sup>th</sup> January 2015 the principal amount of Rs. 3,80,05,000/- was paid by the appellant no. 1 to the writ petitioner, but no payment was made on account of interest on delayed payment.
- IV. Under the aforesaid circumstances, the writ petitioner filed an interlocutory application being I.A. No. 6515 of 2015 in W.P.(C) No. 1702 of 2014 seeking withdrawal of the writ petition for availing the alternate remedy for recovery of outstanding interest.
- V. The order passed in W.P.(C) No. 1702 of 2014 is quoted as under:  
*“It is submitted by learned counsel for the petitioner that initially in this writ application, petitioner has prayed for payment of principal as well as the interest amount relating to contractual dues.  
 It is submitted that during the pendency of this writ application, principal amount has already been paid to the petitioner. It is further submitted that so far the interest is concerned, petitioner does not want to pursue this writ application because some alternative remedy is available to him.  
 Therefore, by filing I.A. No. 6515 of 2015, petitioner seeks permission to withdraw this writ application.  
 Accordingly, this writ application is permitted to be withdrawn.  
 I.A. No.6515 of 2015 stands disposed of.”*
- VI. Thus, the High Court vide its order dated 17<sup>th</sup> December 2015 passed in W.P.(C) No. 1702 of 2014 allowed the writ petitioner to withdraw the writ petition so as to avail the alternative remedy.
- VII. On 27<sup>th</sup> January 2016 the writ petitioner filed an application under section 18(1) of the MSMED Act, 2006, for recovery of the outstanding interest amount of Rs. 2,78,33,503/- against the appellants before the Facilitation Council. The said application was registered as Case No. JHMSEFC 02/2016.
- VIII. The proceedings before the Facilitation Council on various dates may usefully be extracted hereinafter below:  
*“1. The applicant has filed reference to this council on 27.01.2016 for realization of outstanding dues of Rs Zero plus interest of Rs 2,78,33,503.00.*

<i>IFC Meeting date</i>	<i>1<sup>st</sup> party</i>	<i>2<sup>nd</sup> party</i>	<i>REMARKS</i>
<i>09.02.16</i>	<i>P</i>	<i>A</i>	
<i>04.03.16</i>	<i>P</i>	<i>A</i>	

**Decision on 09.02.2016.** *The first party was present and was heard. The first party was informed that the case is not maintainable as principal outstanding is Zero. The Advocate of the 1<sup>st</sup> party has pleaded that the case is legally maintainable under section 15 of the MSMED Act 2006. In support of the claim the Decision of the High Court of Madras dated 24.11.2015 was submitted. The first party was informed to submit a copy of Agreement showing the liability of interest on delayed payment. The case was deferred to next meeting scheduled to be held on 4<sup>th</sup> March*

2016 on admission point.

**Decision on 04.03.2016:** *The first party has appeared and was heard. The first party has submitted supplementary Affidavit claiming therein that the decision of Hon'ble Madras High Court will be binding over this Council and the case is maintainable in this Facilitation Council. The case was kept for order at admission point.*

**Decree/Award on 04.03.2016 under MSMED Act 2006**

*The question before the Council is whether the reference to Council for realization of only interest, principal outstanding being Zero is allowable u/s 17 of Micro and Small Enterprises Facilitation Council Act 2006 which reads as under: -*

*“17. Recovery of amount due- For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided u/s 16.*

*On perusal of the above provision the amount of interest is dependent on the amount of principal. The emphasis on words is amount with interest and not the amount or interest. So, the Council is of the considered view that in the given case where outstanding principal is Zero the claim only for interest is not maintainable and hence the case at admission point is rejected.”*

- IX. The writ petition being W.P.(C) No. 3649 of 2016 was filed challenging the said order dated 04<sup>th</sup> March 2016 passed by the Facilitation Council in Case No. JHMSEFC 02/2016.
- X. The learned writ Court vide its order dated 16<sup>th</sup> May 2019 passed in W.P.(C) No. 3649 of 2016 quashed the order impugned dated 04<sup>th</sup> March 2016 passed by the Facilitation Council and remitted the matter to the Facilitation Council for adjudication of the issue regarding the claim of the writ petitioner pertaining to interest. The learned writ Court directed for adjudication of the issue at an early date and preferably within a period of four months. Before the learned writ Court the appellants had contested the case on the maintainability of the writ petition.

**Submissions of the appellants**

5. The learned counsel for the appellants has submitted that the appellants had raised three ground touching upon the maintainability of the writ petition challenging the award passed by the Facilitation Council, but all the three grounds have not been properly considered by the learned writ Court and the award has been set aside and the matter has been remanded for fresh consideration. The following points have been raised: -

- a. Since there is statutory alternative remedy of appeal under section 19 of the MSMED Act, 2006 before the Commercial Court, the writ petition was not maintainable.
- b. The arbitral award impugned in the writ petition has been misconstrued by the learned writ Court not to be an arbitral award and otherwise also, such question of fact is to be examined by the Commercial Court.

- c. As per section 19 of MSMED Act, 2006, every order passed by Facilitation Council is appealable and the dispute raised by writ petitioner that since order impugned does not fall within the definition of award and the writ petition is maintainable, is wholly fallacious.
- d. Section 19 of MSMED Act, 2006 comprehends not only decree and award to be appealable but also “any order” passed by the Council as being statutory/Institutional Arbitrator.
- e. In arbitral jurisprudence, once the appeal is maintainable, the remedy of writ petition is rendered otiose. On this proposition, the learned counsel has relied upon the judgment passed by the Hon’ble Supreme Court in the case of “*SBP & Co. Vs. Patel Engineering Ltd. and another*” reported in (2005) 8 SCC 618, (paragraph 47) and “*Indian Farmers Fertilizer Cooperative Limited Vs. Bhadra Products*”, reported in (2018) 2 SCC 534.
- f. The judgement of “*Jharkhand Urja Vikas Nigam Limited v. State of Rajasthan and Others*” reported in 2021 SCC online SC 1257, relied upon by the respondent-writ petitioner was rendered in a different fact situation, wherein the award for payment was passed by the Facilitation Council without hearing the affected party, which is not the case herein.
- g. Even otherwise, the impugned judgment passed by the learned writ Court is not sustainable as it has gone into merit of the case, while remitting the matter to the Facilitation Council and nothing remains to be adjudicated by the Facilitation Council. On this point, reliance has been placed on the judgment passed by the Hon’ble Supreme Court in the case of “*Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement*”, reported in (2010) 4 SCC 772, to submit that when statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation.
- h. In similar fact and circumstances, this Hon'ble Court vide judgment dated 09<sup>th</sup> February 2023 passed in *L.P.A No. 400 of 2022 (M/s MECON Ltd. Vs. Jharkhand Micro and Small Scale Enterprises Facilitation Council and another)* (Paragraphs 25 & 29), has held that writ petition shall normally be not entertained if the aggrieved party has an alternative statutory remedy.

**Submissions of the Respondent no.1-writ petitioner**

6. The learned counsel for the respondent no. 1 - writ petitioner has submitted that the impugned order passed by the learned writ Court is a well-reasoned order dealing with all the points raised by the parties and the same does not call for any interference by this Court. The following points have been raised: -

- i. The Facilitation Council dismissed the petition filed for recovery

of outstanding interest amount of Rs. 2,78,33,503/- at the threshold as not maintainable solely on the ground that no application under section 18 of MSMED Act, 2006 is maintainable where the claim is only for interest and not for the principal amount. This was done without initiating conciliation proceedings as required under section 18(2) of the MSMED Act, 2006.

- ii. Since there were no conciliation proceedings, there could not have been any failure of conciliation and, therefore, no arbitration proceeding was started in terms of section 18(3) of the Jharkhand MSMED Act, 2006 by the Facilitation Council. Therefore, the order impugned in the writ petition was not an award. The learned counsel has relied upon the judgment passed by the Hon'ble Supreme Court in the case of *"Jharkhand Urja Vikas Nigam Limited v. State of Rajasthan and Others"* reported in *2021 SCC online SC 1257* to submit that when an order is passed without recourse to arbitration and in utter disregard to the provision of the Arbitration & Conciliation Act, 1996, section 34 of the said Act will not apply.
- iii. The petition for claim of interest alone was maintainable in view of the judgment in the case of *"Modern Industries v. Steel Authority of India Limited"* reported in *(2010) 5 SCC 44*. In the said judgement, it has been held that an application/ reference to Industry Facilitation Council under section 6 of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (repealed/superseded by the MSMED Act, 2006) for recovery of interest alone is maintainable. A similar view has been taken in the case of *"Shanti Conductors Private Limited Vs Assam State Electricity Board & Others"* reported in *(2019) 19 SCC 529*.

Therefore, it is submitted that the order dated 04<sup>th</sup> March 2016 passed by the Facilitation Council and impugned in the writ petition refusing to entertain the claim only on account of interest on delayed payment of bills has been rightly set-aside by the learned writ Court.

**Issues before this Court.**

7. Following issues arise for consideration by this Court: -

***A. Whether the learned writ Court was justified in entertaining the writ petition?***

***The answer to this issue will essentially depend upon the answer to the following point-***

***Whether the impugned order in the writ petition was an award so as to be amenable to challenge under section 34 of Arbitration & Conciliation Act, 1996?***

***B. Whether the petition claiming interest was maintainable before the Facilitation Council after withdrawal of the earlier writ petition filed by the writ petitioner being W.P.(C) No. 1702 of 2014, during the pendency of which only the principal amount was paid?***

***C. Whether a petition claiming only interest on delayed payment of bills was maintainable before the Facilitation Council constituted under MSMED Act, 2006?***

**Findings of this Court.**

8. The foundational facts have been recorded in paragraph 4 above.

9. The appellants issued work order to the writ petitioner vide letter dated 08<sup>th</sup> February 2013 for printing and supplying of posters, children's magazines and CCE report cards for children in elementary school from Class-I to Class-VIII in academic session 2012-13. On account of non-payment of bills, the writ petitioner filed a writ petition being W.P.(C) No. 1702 of 2014 and during its pendency received payment of only the principal amount of Rs. 3,80,05,000/- on 13<sup>th</sup> January 2015. The writ petitioner filed I.A. No. 6515 of 2015 in the pending writ petition seeking withdrawal of the case by making a submission that so far as the interest is concerned, the writ petitioner did not want to pursue the writ petition because some alternative remedy was available to the writ petitioner. The writ petition was permitted to be withdrawn vide order dated 17<sup>th</sup> December 2015.

10. Thereafter, the writ petitioner preferred an application before the Facilitation Council under section 18 of MSMED Act, 2006 on 27<sup>th</sup> January 2016 *only for payment of outstanding amount on account of interest*. On 04<sup>th</sup> March 2016 the Facilitation Council posted the matter for hearing on the point of admission after framing a question i.e. *whether the reference to Council for realization of only interest, principal outstanding being Zero, is allowable u/s 17 of Micro and Small Enterprises Facilitation Council Act, 2006*. The Facilitation Council held that the amount of interest is dependent on the amount of principal and when the outstanding principal amount was "Zero", claim for only interest was not maintainable and the case was rejected at the stage of admission.

11. The writ petitioner filed the writ petition challenging the order of the Facilitation Council refusing to entertain and admit the petition seeking

relief only on interest component and the learned writ Court remitted the matter to the Facilitation Council for adjudication on the issue regarding claim of the writ petitioner pertaining to interest.

**Issue no. A**

12. The learned counsel for the appellants raised serious objections regarding maintainability of the writ petition in this Appeal also primarily on the ground that the order impugned in the writ petition passed by the Facilitation Council was amenable to challenge in terms of section 34 of Arbitration and Conciliation Act, 1996 and writ remedy was not available to the writ petitioner.

13. This Court has also gone through the entire proceeding of the Facilitation Council and apparently the Facilitation Council was not satisfied with the maintainability of the application itself and the matter was posted on the point of admission. However, the petition was not admitted by holding that no claim can be filed only for interest when the principal amount was already paid. Admittedly, even notice was not issued by the Facilitation Council and the petition was dismissed at the threshold as not maintainable. Thus, the occasion for entering into conciliation process also did not arise. Once there was no conciliation, there was no occasion for the Facilitation Council to enter into arbitral proceedings and consequently, the order impugned in the writ petition refusing to admit the petition filed before the Facilitation Council cannot be said to be an award in the eyes of law.

14. In the judgment passed by the Hon'ble Supreme Court in the case of ***“Jharkhand Urja Vikas Nigam Limited v. State of Rajasthan and Others”*** reported in ***2021 SCC online SC 1257***, order/award was passed by the Facilitation Council of the State of Rajasthan under MSMED Act, 2006 without resorting to arbitral proceedings and such order/award was declared to be a nullity and not an award. It has been categorically held that when an order/award is passed by Facilitation Council without recourse to arbitration such an order having been passed in utter disregard to the provision of the Arbitration and Conciliation Act, 1996 and also MSMED Act, 2006 cannot be said to be an award in the eyes of law so as to attract applicability of section 34 of the Arbitration and Conciliation Act, 1996 to set aside the order/award. A part of the said judgment relevant for the purposes of the

present case is quoted as under:

“9. Only on the ground that even after receipt of summons the appellant has not appeared the Council has passed order/award on 06.08.2012. As per Section 18(3) of the MSMED Act, if conciliations is not successful, the said proceedings stand terminated and thereafter Council is empowered to take up the dispute for arbitration on its own or refer to any other institution. The said Section itself makes it clear that when the arbitration is initiated all the provisions of the Arbitration and Conciliation Act, 1996 will apply, as if arbitration was in pursuance of an arbitration agreement referred under sub-section (1) of Section 7 of the said Act.”

“11. From a reading of Section 18 (2) and 18 (3) of the MSMED act it is clear that the Council is obliged to conduct conciliation for which the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 would apply, as if the conciliation was initiated under Part III of the said Act. Under Section 18(3), when conciliations fails and stands terminated, the dispute between the parties can be resolved by arbitration. The Council is empowered either to take up arbitration on its own or to refer the arbitration proceedings to any institution as specified in the said Section. It is open to the Council to arbitrate and pass an award, after following the procedure under the relevant provisions of the Arbitration and Conciliation Act, 1996, particularly Sections 20, 23, 24, 25.

**15. The order dated 06.08.2012 is a nullity and runs contrary not only to the provisions of MSMED Act but contrary to various mandatory provisions of Arbitration and Conciliation Act, 1996. The order dated 06.08.2012 is patently illegal. There is no arbitral award in the eye of law. It is true that under the scheme of the Arbitration and Conciliation Act, 1996 an arbitral award can only be questioned by way of application under Section 34 of the Arbitration and Conciliation Act, 1996. At the same time when an order is passed without recourse to arbitration and is utter disregard to the provisions of Arbitration and Conciliation Act, 1996, Section 34 of the said Act will not apply. We cannot reject this appeal only on the ground that appellant has not availed the remedy under Section 34 of the Arbitration and Conciliation Act, 1996...”**

**(emphasis supplied)**

15. In the aforesaid judgment passed by the Hon’ble Supreme Court, summons were issued by the Facilitation Council and the order/award was passed on the ground that even after receipt of summons the appellant did not appear. In the present case, even notices /summons were not issued to the appellants by the Facilitation Council and the order impugned in the writ petition was passed holding that application for only interest was not maintainable. While applying the ratio of the aforesaid judgment by the Hon’ble Supreme Court, the order impugned before the learned writ Court cannot be said to be an award in the eyes of law so as to hold that the order could have been challenged under section 34 of Arbitration and Conciliation Act, 1996.

16. The learned writ Court has also rejected the plea of applicability of section 34 of Arbitration and Conciliation Act, 1996 by holding that

jurisdiction conferred on the High Court under Article 226 of the Constitution of India is to be invoked in case of non-applicability of any alternative remedy. It has been observed that although the restriction is not absolute, but there are self-imposed restrictions upon the High Court not to entertain the writ petition, if alternative remedy is available. The learned writ Court, while rejecting the plea of alternative remedy, held as under:

“18. It is evident from the aforesaid provision that before resorting to the arbitration part, there would be a conciliation to be made under the provision of Arbitration and Conciliation Act, 1996 and in case of failure in conciliation, the question of adjudication will come. Admittedly, herein there is no conciliation proceeding as warranted under the provision of Section 18(3) of the Act, 2006 rather the undisputed fact is that the respondent nos.2 and 3 in course of pendency of the writ petition being W.P.(C) No.1702 of 2014 has released the admitted principal amount denying the claim of the interest, therefore, there is no conciliation as provided under the provision of Arbitration and Conciliation Act, 1996 in terms of the provision of Section 18(3) of the Act, 2006.

19. Section 34 of the Arbitration and Conciliation Act, 1996 stipulates that in case of any conciliation and if it fails, the matter would be referred before the Arbitrator by following the procedure under the provision of Arbitration and Conciliation Act, 1996 and in case of any award, if the parties are aggrieved with the arbitral award which would be assailed before the appellate Forum by invoking the jurisdiction under the provision of Section 34 of the Arbitration and Conciliation Act, 1996 but since there is no arbitral award under the provision of Arbitration and Conciliation Act, 1996, therefore, there is no question of preferring of an appeal under Section 34 of Arbitration and Conciliation Act, 1996.”

17. So far as the judgment relied upon by the appellants passed in the case of ***“Indian Farmers Fertilizer Cooperative Limited Vs. Bhadra Products”*** reported in ***(2018) 2 SCC 534*** is concerned, the learned writ Court has distinguished the same by observing that in the present case, since there was no conciliation proceedings as warranted under the provisions of section 18(3) of the MSMED Act, 2006 and, therefore, the judgment passed in the case of *Indian Farmers Fertilizer Cooperative Limited (Supra)* was not applicable as the same was dealing with the applicability of section 34 read with section 16 and 31(6) of the Arbitration Act of 1996.

18. In view of the aforesaid findings by this Court and also the reasons recorded by the learned writ Court regarding non applicability of section 34 of Arbitration and Conciliation Act, 1996 to the order impugned in the writ petition, the plea of availability of alternative remedy in terms of section 34 of Arbitration and Conciliation Act, 1996 is rejected. Thus, the argument of the learned counsel for the appellants that the order impugned in the writ

petition ought to have been challenged in a petition under section 34 of Arbitration and Conciliation Act, 1996 and, therefore, the writ petition was not maintainable is devoid of any merit and, hence rejected. Consequently, the writ petition challenging the order of the Facilitation Council is held maintainable and the writ petition was rightly entertained by the learned writ Court.

19. **The issue no. A is accordingly decided against the appellants and in favour of the respondent-writ petitioner.**

**Issue no. B**

20. Before the learned writ Court, the appellants had, inter alia, raised a point in connection with this issue by submitting that this Court had allowed the writ petitioner to withdraw the earlier writ petition being W.P.(C) No. 1702 of 2014 by disposing off the interlocutory application being I.A. No. 6515 of 2015 seeking withdrawal of the writ petition. The claim before the Facilitation Council was not maintainable as no liberty was granted by this Court while disposing off the earlier writ petition to move the Facilitation Council for remaining claim, if any, and consequently, the contention of the writ petitioner that they had approached the Facilitation Council in pursuance to the liberty granted by this Court in the earlier writ petition was factually not correct.

21. On the other hand, the specific case of the writ petitioner was that so far as the question of liberty granted or not by this Court in the earlier writ petition being W.P.(C) No. 1702 of 2014 was concerned, the same could be gathered from the averments made in the interlocutory application being I.A. No. 6505 of 2015 pursuant to which the writ petition was allowed to be withdrawn. It suggests that liberty was granted to agitate the claim before the alternative forum for adjudication of the remaining claim.

22. The learned writ Court considered the aforesaid point vide paragraph nos. 11 to 15 of the impugned order and the point raised by the appellants regarding no liberty at the time of withdrawal of the earlier writ petition to move the Facilitation Council has been rejected as under:

“14. It is evident from the aforesaid order that this Court has considered the averments made in the interlocutory application wherein, specific prayer has been made with the pleading that since the principal amount has already been paid by denying the claim of interest, therefore, he wants to withdraw the writ petition with a liberty to file application before the Council, alternative Forum and keeping the fact into consideration, the writ petition has been

permitted to be withdrawn by disposing of the interlocutory application being I.A.No.6515 of 2015.

15. It is not in dispute rather it is a settled position of law that if any litigation has been filed by a party and if there is a simplicitor withdrawal, the second litigation for the same issue is not permissible unless the leave could be granted in the earlier litigation and keeping that legal position into consideration, this Court is examining the issue as has been raised by the learned counsel for the parties.

The question of liberty is to be seen from the pleading and pleading here is a averment made in the interlocutory application being I.A. No. 6515 of 2015 and therefrom it is evident that since the admitted amount has been paid in favour of the petitioner but the interest amount has been denied so the liberty to withdraw the writ petition with a liberty to approach before the alternative Forum has been made and this Court since has disposed of the interlocutory application being I.A. No. 6515 of 2015 by allowing the petitioner to withdraw the writ petition it will be said to be a liberty at the time of withdrawal of the writ petition.

The matter would have been different if there could have been any interlocutory application and the writ petition would not have been withdrawn on the oral submission but the fact herein as would be evident from the material available on record of W.P.(C) No. 1702 of 2014, wherein the record of the interlocutory application being I.A. No. 6515 of 2015, is available.”

23. This Court is of the considered view that the learned writ Court has rightly rejected the aforesaid objection raised by the appellants on the point of maintainability of the petition filed by the writ petition before the Facilitation Council in view of the fact that the earlier writ petition was withdrawn by filing interlocutory application giving reasons for withdrawal i.e to avail the remedy before the alternative Forum. Admittedly neither any payment was made by the appellants on account of interest on delayed payment nor any adjudication was made by the writ Court on the point of entitle of interest on delayed payment.

24. Thus, the argument of the appellants that the claim for payment of interest was not maintainable before the Facilitation Council after withdrawal of the earlier writ petition is devoid of any merits, hence rejected.

25. **The issue no.B is accordingly decided against the appellants and in favour of the respondent-writ petitioner.**

26. On the point of maintainability of the petition before the Facilitation Council, it was also argued before the learned writ Court that section 16 of the MSMED Act, 2006 will not be applicable as there was no condition stipulated in the agreement with respect to the claim of interest and once the parties had agreed and entered into a contract, the terms of the contract would be binding upon them and they cannot deviate therefrom. This

principle would apply on the rate of interest also.

27. The point raised by the appellants regarding non-applicability of section 16 of the MSMED Act, 2006 was also rejected by the learned writ Court. The learned writ Court, after going through the provisions of section 16 of MSMED Act 2006, found that the said provision stipulates regarding question of determination of interest and the said provision was having non-obstante clause and therefore, even if there is no condition stipulated in the agreement, the claim for interest would be there. Thereafter, the learned writ Court observed that the issue was not being decided by this Court leaving it open to be decided by the Facilitation Council. The aforesaid observation of the learned writ Court with regards to applicability of the rate of interest as per section 16 of MSMED Act, 2006 even if there is no condition stipulated in the inter-se agreement between the parties does not call for any interference by this Court. However, it is relevant to refer to a recent judgment passed by the Hon'ble Supreme Court in the case of ***"Gujarat State Civil Supplies Corporation Limited Vs. Mahakali Foods Private Limited and another"*** reported in ***(2023) 6 SCC 401*** where the Hon'ble Supreme Court examined the scheme of the MSMED Act, 2006 and recorded the salient features in paragraph no. 40 as under: -

“40. Having regard to the purpose, intention and objects as also the scheme of the MSMED Act, 2006 and having regard to the unambiguous expressions used in Chapter V thereof, following salient features emerge:

40.1. Chapter V is “party-specific”, inasmuch as the party i.e. the “buyer” and the “supplier” as defined in Sections 2(d) and 2(n), respectively are covered under the said Chapter.

40.2. A specific provision is made fastening a liability on the buyer to make payment of the dues to the supplier in respect of the goods supplied or services rendered to the buyer, as also a liability to pay compound interest at three times of the bank rate notified by the Reserve Bank, if the buyer fails to make payment within the prescribed time-limit. The said liability to pay compound interest is irrespective of any agreement between the parties or of any law for the time being in force.

40.3. A dedicated statutory forum i.e. Micro and Small Enterprises Facilitation Council is provided to enable any party to a dispute with regard to any amount due under Section 17, to make reference to such Council.

40.4. A specific procedure has been prescribed to be followed by the Facilitation Council after the reference is made to it by any party to the dispute.

40.5. The Facilitation Council or the centres providing alternative dispute resolution services have been conferred with the jurisdiction to act as an arbitrator or conciliator under Section 18(4), notwithstanding anything contained in any law for the time being in force, in a dispute between the suppliers located within its jurisdiction.

40.6. The provisions of the Arbitration Act, 1996 have been made applicable to the dispute only after the conciliation initiated under sub-section (2) does not succeed and stands terminated without any settlement

between the parties.

40.7. Sub-section (1) and sub-section (4) of Section 18 starting with non obstante clauses have an effect overriding the other laws for the time being in force.

40.8. As per Section 24, the provisions of Sections 15 to 23 have an effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

**Issue no. C**

28. It is the case of the appellants that an application under section 18 (1) of the MSMED Act, 2006, for recovery of only interest amount and not the principal amount, is not maintainable. This submission is being disputed by the respondent-writ petitioner by submitting that the provisions of the MSMED Act, 2006, specifically section 15 to section 18, categorically provide that an application for recovery of only the interest amount is also very much maintainable in law. For this, the respondent-writ petitioner has relied upon the judgment passed by the Hon’ble Supreme Court in the case of “*Modern Industries v. Steel Authority of India Limited*” reported in (2010) 5 SCC 44 and also “*Shanti Conductors Private Limited Vs Assam State Electricity Board & Others*” reported in (2019) 19 SCC 529 which were decided in the context of the earlier Act namely, *Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (repealed/superseded by the MSMED Act, 2006)* .

29. **Section 18 (1)** of MSMED Act, 2006 provides that 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.

**Section 17** provides that the buyer shall be liable to pay the amount with interest thereon as provided under Section 16.

**Section 16** provides that where any buyer fails to make payment of the amount as required under section 15 to the supplier, the buyer shall be liable to pay compound interest with monthly rests on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

**Section 15** provides that where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or,

where there is no agreement in this behalf, before the appointed day and in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

The term ‘**appointed day**’ has been defined as the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier. The term ‘acceptance’ and ‘deemed acceptance’ have also been defined.

30. Therefore, the buyer has a liability to pay the principal amount and the interest amount as well in terms of the MSMED Act, 2006 and liability to pay crystallizes in terms of the timelines provided in the Act itself and both principal and interest are recoverable by filing a petition under section 18 of the MSMED Act, 2006.

31. Thus, section 17 of the MSMED Act, 2006 provides that the buyer shall be liable to pay the amount with interest, as provided in section 16, to the supplier for the goods supplied. Accordingly, as per section 17, the buyer is under the statutory duty to pay the principal amount as well as the interest amount to the supplier. Further, section 18(1) of the MSMED Act, 2006 provides that any party to a dispute with regard to any amount due under section 17, which would include interest, may make an application/reference to the Micro and Small Enterprises Facilitation Council.

32. This Court is of the considered view that a supplier can maintain an application, under section 18 (1), before the Micro and Small Enterprises Facilitation Council for recovery of only interest amount, which is an amount due under section 17 even if the principal amount has been paid, though belatedly. The liability to pay crystallizes on default in timely payment of principal amount followed by consequence of payment of interest. The liability of payment of interest under the MSMED Act, 2006 is not erased merely by payment of principal amount on a date beyond the stipulated time frame to pay under the MSMED Act, 2006. The words or expression "*with regard to any amount due under section 17*" used in section 18 (1) enable a supplier to recover only interest also from the buyer when principal amount is paid belatedly.

33. Upon a plain reading of the provisions of MSMED Act, 2006 even where the principal amount has already been paid, the claimant party can make a reference under section 18 (1) of the Act to claim interest alone, as section 18 (1) clearly provides that any party to a dispute may, with regard to “any amount due under section 17”, make a reference to the Facilitation Council. The MSMED Act, 2006 is a beneficial legislation with an object to promote and develop micro, small and/or medium enterprises and the aforesaid interpretation regarding a reference for the interest component alone would be in consonance with the object of the Act.

34. The Hon'ble Supreme Court in the case of “*Modern Industries v. Steel Authority of India Limited*” reported in (2010) 5 SCC 44, while deciding the issue whether an application/ reference to Industry Facilitation Council under section 6 of the *Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993* for recovery of interest alone was maintainable or not, held that an application for recovery of only interest was also maintainable. The relevant part of the said judgment of Hon'ble Supreme Court is reproduced herein below for ready reference:

“45. It is true that word "together" ordinarily means conjointly or simultaneously but this ordinary meaning put upon the said word may not be apt in the context of Section 6. Can it be said that the action contemplated in Section 6 by way of suit or other legal proceeding under sub-section (1) or by making reference to IFC under sub-section (2) is maintainable only if it is for recovery of principal sum along with interest as per Sections 4 and 5 and not for interest alone? The answer has to be in negative.

46. We approve the view of the Gauhati High Court in Assam SEB that word "together" in Section 6(1) would mean "along with" or "as well as". Seen thus, the action under Section 6(2) could be maintained for recovery of principal amount and interest or only for interest where liability is admitted or has been disputed in respect of goods supplied or services rendered.”

35. In a three Judge Bench judgment passed in the case of “*Shanti Conductors Private Limited Vs Assam State Electricity Board & Others*” reported in (2019) 19 SCC 529, the Hon'ble Supreme Court has confirmed the ratio laid down in the case of *Modern Industries (Supra)* that an application for recovery of mere interest is also maintainable. The relevant part of the said judgment is quoted as under:

“89. The question as to whether the suit filed only for interest is maintainable has been considered in detail by this Court. In para 17, the following has been laid down in Purbanchal Cables (SCCp.474)

“17. The decision of the Full Bench of the Gauhati High Court which has been approved by this Court in Modern Industries is impugned before us in one of the appeals. Since a Division Bench of this Court has already approved the dictum of the Full Bench of the High Court with regard to the maintainability of a suit only for interest, that question is no longer res integra. Therefore, the suppliers may file a suit only for a higher rate of interest on delayed payments made by the buyer from the commencement of the Act.”

90. Section 6 of the 1993 Act provides that-

“the amount due from the buyer, together with amount of interest calculated in accordance with provisions of Sections 4 and 5, shall be recoverable.”

Section 6 uses the expression-

"together with the amount of interest with the amount due from the buyer".

The interpretation put by the learned counsel for the Board is that proceeding for recovery of interest can be undertaken only when any amount is due. He submits that amount due used in Section 6 is principal amount. In the event we accept the interpretation put by the counsel for the Board, then buyer will very easily get away from payment of interest only after making payment of principal amount. This interpretation shall defeat the very purposes of the 1993 Act. It is well settled that the provisions of the Act have to be interpreted in the manner so as to advance the object of the act. We thus fully approve the view taken by this Court in Purbanchal Cables that the suit by the supplier for recovery of only interest is maintainable.....”

36. The *Interest on Delayed Payments in Small Scale and Ancillary Industrial Undertakings Act, 1993* has been repealed vide the MSMED Act, 2006 but most of the provisions of the said 1993 Act have been suitably incorporated in the MSMED Act, 2006. This would be apparent from the following comparative chart of the two enactments: -

<p align="center"><b>The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993</b> (32 of 1993) [2<sup>nd</sup> April, 1993]</p>	<p align="center"><b>Micro, Small and Medium Enterprises Development Act, 2006 (ACT NO. 27 OF 2006)</b> [16<sup>th</sup> June, 2006]</p>
<p><b>Section 2(b).</b> "Appointed day" means the day following immediately after the expiry of the period of thirty days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier;</p> <p><b>Explanation-</b> For the purposes of this clause-</p> <p>(i) "<b>the day of acceptance</b>" means, -</p> <p>(a) the day of the actual delivery of goods or the rendering of services; or</p> <p>(b) where any objection is made in writing by the buyer regarding, acceptance of goods or services within thirty days from the day of the delivery, of goods or the rendering of services, the day on which</p>	<p><b>Section 2(b).</b> “Appointed day” means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.</p> <p><b>Explanation.</b> —For the purposes of this clause, —</p> <p>(i) “<b>the day of acceptance</b>” means, —</p> <p>(a) the day of the actual delivery of goods or the rendering of services; or</p> <p>(b) where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection</p>

<p>such objection is removed by the supplier;</p> <p>(ii) <b>"the day of deemed acceptance"</b> means, where no objection is made in writing by the buyer regarding acceptance of goods or services within thirty days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services;</p>	<p>is removed by the supplier;</p> <p>(ii) <b>"the day of deemed acceptance"</b> means, where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services;</p>
<p><b>Section 2(c) "buyer"</b> means whoever buys any goods or receives any services from a supplier for consideration;</p>	<p><b>Section 2(d). "buyer"</b> means whoever buys any goods or receives any services from a supplier for consideration;</p>
<p><b>Section 2 (f) "supplier"</b> means an ancillary industrial undertaking or a small scale industrial undertaking holding a permanent registration certificate issued by the Directorate of Industries of a State or [Union territory and includes,-</p> <p>(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956)];</p> <p>(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956).</p>	<p><b>Section 2(n). "supplier"</b> means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes —</p> <p>(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);</p> <p>(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956);</p> <p>(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;</p>
<p><b>Section 3. Liability of buyer to make payment-</b></p> <p>Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:</p> <p>Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed one hundred and</p>	<p><b>Section 15. Liability of buyer to make payment-</b></p> <p>Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:</p> <p>Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed</p>

<p>twenty days from the day of acceptance or the day of deemed acceptance.</p>	<p>acceptance.</p>
<p><b>Section 4. Date from which and rate at which interest is payable-</b></p> <p>Where any buyer fails to make payment of the amount to the supplier, as required under section 3, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay interest to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at one and a half time of Prime Lending Rate charged by the State Bank of India.</p> <p>Explanation .-For the purposes of this section, "Prime Lending Rate" means the Prime Lending Rate of the State Bank of India which is available to the best borrowers of the bank.</p> <p><b>Section 5. Liability of buyer to pay compound interest—</b></p> <p>Notwithstanding anything contained in any agreement between a supplier and a buyer or in any law for the time being in force, the buyer shall be liable to pay compound interest (with monthly rests) at the rate mentioned in Section 4 on the amount due to the supplier.</p>	<p><b>Section 16. Date from which and rate at which interest is payable-</b></p> <p>Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.</p>
<p><b>Section 6. Recovery of amount due-</b></p> <p>(1) The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of Sections 4 and 5, shall be recoverable by the supplier from the buyer by way of a suit or other proceeding under any law for the time being in force.</p>	<p><b>Section 17. Recovery of amount due-</b></p> <p>For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under Section 16.</p>
<p><b>Section 6(2).</b> Notwithstanding anything contained in sub-section (1), any party to a dispute may make a reference to the Industry Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in that sub-section and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall</p>	<p><b>Section 18. Reference to Micro and small Enterprises Facilitation Council-</b></p> <p>(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.</p>

<p>apply to such dispute as if the arbitration or conciliation were pursuant to an arbitration agreement referred to in sub-section (1) of Section 7 of that Act.</p>	<p>(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.</p> <p>(3) Where the conciliation initiated under sub-section (2) 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.</p> <p>(4) 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 Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.</p> <p>(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.</p>
<p><b>Section 8. Requirement to specify unpaid amount with interest in the annual statement of accounts-</b></p> <p>Where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall specify the amount together with the interest in his annual statement of accounts as remains unpaid to any supplier at the end of each accounting year.</p>	<p><b>Section 22. Requirement to specify unpaid amount with interest in the annual statement of accounts-</b></p> <p>Where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts, namely:-</p>

	<p>(i) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;</p> <p>(ii) the amount of interest paid by the buyer in terms of section 16, along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;</p> <p>(iii) the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this Act;</p> <p>(iv) the amount of interest accrued and remaining unpaid at the end of each accounting year; and</p> <p>(v) the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under section 23.</p>
<p><b>Section 10. Overriding effect-</b></p> <p>The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.</p>	<p><b>Section 24. Overriding effect—</b></p> <p>The provisions of Sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.</p>

37. Upon a comparison of section 6 of the 1993 Act with section 18(1) of the MSMED Act, 2006, it is apparent that they are *pari materia*.

38. Thus, not only upon interpretation of the provisions of MSMED Act, 2006 but also on the basis of the judgements in “*Modern Industries v. Steel Authority of India Limited*” reported in (2010) 5 SCC 44 and “*Shanti Conductors Private Limited Vs Assam State Electricity Board & Others*” reported in (2019) 19 SCC 529 which deal with a *pari materia* provision under the Act of 1993, this Court is of the considered view that a petition for claim of only interest, principal amount having been paid, would be maintainable before the Facilitation Council and upon filing of such an application the Facilitation Council is under a duty to deal with the same

step by step as per the mandate of section 18 of MSMED Act, 2006 as explained by the Hon'ble Supreme Court in "*Jharkhand Urja Vikas Nigam Limited v. State of Rajasthan and Others*" reported in *2021 SCC online SC 1257* and the scheme of the Act as explained in "*Gujarat State Civil Supplies Corporation Limited Vs. Mahakali Foods Private Limited and another*" reported in *(2023) 6 SCC 401*.

39. The learned writ Court has held that the question was that the *amount with interest* or *the amount* or *interest* needs an adjudication and therefore, the Facilitation Council, in not adjudicating and rejecting the claim at admission stage failed in discharging the statutory duty and committed jurisdictional error. The learned writ Court held that the order impugned required interference under Article 226 of the Constitution of India. Consequently, the impugned order in the writ petition dated 04<sup>th</sup> March 2016 passed by the Facilitation Council was quashed and the matter was remitted to the Facilitation Council for adjudication on the issue regarding the claim of the writ petitioner pertaining to interest.

40. This Court finds no illegality with the aforesaid findings and reasons assigned by the learned writ Court holding that the Facilitation Council has failed in discharging the statutory duty and committed jurisdictional error in not entertaining the petition filed by the writ petitioner claiming only interest on delayed payment.

41. **Issue no. C is accordingly decided against the appellants and in favour of the respondent- writ petitioner.**

42. However, this Court finds that the learned writ Court, while remitting the matter to the Facilitation Council, has directed the Facilitation Council to adjudicate on the issue regarding claim of the writ petitioner pertaining to interest. The said direction of the learned writ Court calls for modification in view of the fact that the stage of adjudication would come only after the conciliation fails. Accordingly, the case before the Facilitation Council is required to be restored so that the Facilitation Council shall proceed in accordance with law.

43. Consequently, Case No. JHMSEFC 02/2016 is restored to the original file of the Facilitation Council which shall proceed with the matter step by step in terms of section 18 of the MSMED Act, 2006 as indicated by the Hon'ble Supreme Court in the case of *Jharkhand Urja Vikas Nigam Limited (Supra)*.

44. This Letters Patent Appeal is accordingly disposed of, in the aforesaid terms.

**(Shree Chandrashekhar, J.)**

I Agree.

**(Shree Chandrashekhar, J.)**

**(Anubha Rawat Choudhary, J.)**

Pankaj/-