

**IN THE HIGH COURT OF ORISSA AT CUTTACK****W.P.(C) No.20210 of 2025**

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

*Indian Oil Corporation Ltd.* .... *Petitioner(s)*

*-versus-*

*Adarsh Nobel Corporation Ltd.* .... *Opposite Party(s)*

*Advocates appeared in the case through Hybrid Mode:*

*For Petitioner (s)* : *Mr. Sunil J. Mathews, Adv.*

*-versus-*

*For Opp. Party(s)* : *Mr. S.S.Padhy, Adv.*

**CORAM:**

**DR. JUSTICE SANJEEB K PANIGRAHI**

**DATES OF HEARING:- 01.08.2025**

**DATE OF JUDGMENT:- 10.10.2025**

**Dr. Sanjeeb K Panigrahi, J.**

1. The present Writ Petition has been preferred against the orders dated 24.9.2024, 19.06.2025 and 14.07.2025 passed by the Learned Civil Judge (Senior Division) Commercial Court, Bhubaneswar in I.A. No. 1 of 2024 arising out of Execution Case No. 585 of 2023 wherein the Learned Civil Judge was pleased to dismiss the objections and supplementary objections filed by the Petitioner under Section 47 of the Code of Civil Procedure Code, 1908.



## **I. FACTUAL MATRIX OF THE CASE:**

2. The Petitioner was awarded the work of "Provision of Additional VR Tank at Paradip Refinery" to the Opposite Party vide Letter of Award (LOA) dated 29.11.2017 for a contract value of Rs.20,86,26,058.50/-, which was to be completed within a period of 18 months from the date of the LOA.
3. However, on 11.6.2018, the Opposite Party stopped work on the site. Despite multiple correspondence dated 29.6.2018, 23.7.2018 and 11.8.2018, work did not resume and thereafter it is alleged that the present Petitioner terminated the contract with the Opposite Party on 13.12.2018.
4. A work order was issued to another contractor on 9.4.2019 for completion of the balance work.
5. As the matter remained thus, the present Opposite Party obtained its registration as an MSME on 28.1.2021. The following year, on 12.8.2022, the Opposite Party filed MSEFC Case No. 56 of 2022 under Section 18 of the MSMED Act, 2006 seeking Rs.6,65,97,975/- towards principal amount and interest calculated up to 18.5.2022 for alleged illegal termination of the contract.
6. On 18.11.2022, the present Petitioner issued an email to block payments towards the Opposite Party on account of risk and cost recovery from the Opposite Party. The Opposite Party filed an interim application for staying the operation of the email dated 18.11.2022 before the MSEFC.



7. While the I.A. was pending, the new contractor completed the work and a letter regarding the recovery amount was issued by the Petitioner to the Opposite Party on 22.3.2023.
8. The operation of the email dated 18.11.2022 was stayed by the MSEFC on 2.5.2023. On 10.7.2023, MSEF Council passed the impugned final order directing the Petitioner - IOCL to pay a sum of Rs.2,43,14,318.00/- to the Opposite Party -ANCL along with future interest (compounded interest with monthly rests payable at the rate of 3 times of the bank rate as notified by the Reserve Bank of India from time to time). IOCL was further directed to release the bank guarantee and not to block vendor's account code and vendor purchase code.
9. On 20.12.2023, the Opposite Party filed Enforcement Petition being EXP. No. 585 of 2023 before the Senior Civil Judge, Commercial Court, Bhubaneswar seeking enforcement of the final award.
10. On 28.3.2024, the Petitioner filed an application under Section 34 of the Arbitration & Conciliation Act, 1996 challenging the award and final order dated 10.7.2023. However, the same was withdrawn on 21.10.2024. Thereafter, W.P.(C) No.30966 of 2024 was filed by the Petitioner before this Court on 27.11.2024 challenging the award and final order dated 10.7.2023. Vide judgment and order dated 20.9.2025, this Court was pleased to allow the Writ Petition and set aside the Award dated 10.7.2023, passed by the Facilitation Council, Cuttack in MSEFC Case No. 56 of 2022.



11. Now the facts leading up to the instant Petition has been laid down, this Court shall endeavour to summarise the contentions of the Parties and the broad grounds that have been raised.

## II. PETITIONER'S SUBMISSIONS:

12. The learned Counsel for the Petitioner contends that the conclusion arrived at by the learned Executing Court, to the effect that objections under Section 47 of the Code of Civil Procedure are not maintainable, is *ex facie* unsustainable in law. Without prejudice to the aforesaid contention, it is further submitted that, even assuming *arguendo* that such objections are not maintainable, the learned Executing Court was nonetheless under a legal obligation to examine *suo motu*, the question as to whether the purported award sought to be executed is, in fact, enforceable in law.

13. It was further submitted that the purported award, in the facts of the present case, is a nullity in the eye of law and void *ab initio*, being rendered by an authority lacking inherent jurisdiction. The Micro and Small Enterprises Facilitation Council (MSMEFC) had no competence to adjudicate disputes arising out of the work contract dated 29.11.2017, nor could it have made any reference to arbitration thereunder. The said contract, being a composite and indivisible works contract for the design, engineering, and construction of one VR tank on a lump-sum, turnkey basis—including civil, electrical, instrumentation, and dyke wall components—constitutes a distinct category of contract fundamentally different from one for the supply of goods or for rendering of services. Consequently, such a contract does not fall within the ambit or contemplation of the Micro, Small



and Medium Enterprises Development Act, 2006, and any proceedings or award emanating therefrom are coram non iudice and legally unsustainable.

14. It was further strenuously contended that, in the facts of the present case, the MSME Facilitation Council, Cuttack, could not have assumed seisin of the dispute, the subject matter thereof being wholly extraneous to its statutory jurisdiction. The MSMEFC was afflicted with a patent lack of inherent jurisdiction, both *ratione materiae* and *ratione personae*—the former, inasmuch as the dispute arose out of a composite works contract, which stands outside the purview of the Micro, Small and Medium Enterprises Development Act, 2006; and the latter, in view of the fact that the registration of the Award Holder/Petitioner under the said enactment was obtained subsequent to the execution, and even beyond the termination, of the contract in question. Accordingly, the entire proceedings before the MSMEFC are vitiated by a fundamental jurisdictional infirmity, rendering the purported award void ab initio and a nullity in the eyes of law.

### III. OPPOSITE PARTY'S SUBMISSIONS:

15. Per contra, the Ld. Counsel for the Respondent, submits that the Opposite Party had been duly registered as a Small-Scale Enterprise (SSE) in the year 2015, and since the contract in question was executed and the supplies effected subsequent to such registration, the MSME Facilitation Council rightly assumed jurisdiction to entertain its claim. It is, therefore, contended that there exists no infirmity or lack of inherent jurisdiction in the proceedings before the Council, and that the present petition, being devoid of merit, is liable to be dismissed.



16. Furthermore, it is contended that this Court ought not to exercise its writ jurisdiction in a matter arising under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006. The execution petition in question has been instituted before the learned Commercial Court, Bhubaneswar, under Section 36 of the Arbitration and Conciliation Act, 1996 read with Section 10(3) of the Commercial Courts Act, 2015, and the impugned orders have emanated from various interlocutory applications filed by the Petitioner–Judgment Debtor in the said execution proceedings. In terms of Section 13(1) of the Commercial Courts Act, 2015, any person aggrieved by an order of a Commercial Court below the level of a District Judge has an efficacious statutory remedy of appeal before the Commercial Appellate Court, i.e., the Court of the learned District Judge, Khurda at Bhubaneswar. The Petitioners, however, have invoked the extraordinary writ jurisdiction of this Court without demonstrating the existence of any exceptional circumstances warranting such interference, despite the availability of an adequate alternative remedy. Accordingly, it is submitted that the present writ petition is not maintainable and is liable to be dismissed *in limine*.

#### IV. ISSUE FOR CONSIDERATION:

17. Having heard the parties and perused the materials available on record, this court here has identified the following solitary issue to be determined:

A. Whether the impugned orders passed by the Ld. Executing Court warrant any interference?



**V. ISSUE A: WHETHER THE IMPUGNED ORDERS PASSED BY THE LD. EXECUTING COURT WARRANT ANY INTERFERENCE?**

18. This Court has already in W.P.(C) No.30966 of 2024 thoroughly examined the legality and validity of the award sought to be executed in the present case. Certain aspects of this Court's discussion that are germane to the question emanating in the present matter will be touched upon for the sake of convenience in the course of the present judgment.

19. A perusal of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as "the MSMED Act") makes it manifest that the legislation was enacted with the avowed object of promoting, facilitating, and enhancing the competitiveness of micro, small, and medium enterprises, thereby ensuring their sustained growth and equitable participation in the economy. Section 2(m), read with clauses (g) and (h), defines the expressions "micro enterprise," "small enterprise," and "medium enterprise," respectively, by reference to the classification criteria laid down in Section 7 of the Act. Section 7 of the MSMED Act prescribes the parameters for such classification based on the extent of investment made by an enterprise in plant, machinery, or equipment, as may be notified from time to time by the Central Government. Section 8, in turn, sets out the procedural framework for registration, stipulating that any person intending to establish a micro, small, or medium enterprise shall file a memorandum with the competent authority as specified either by the Central Government or the State Government, as the case may be.



Further, Sub-section (2) of Section 8 empowers the Central Government, upon the recommendation of the Advisory Committee constituted under sub-section (2) of Section 7, to prescribe by notification the form, manner, and ancillary procedures for the filing of such memorandum. Under sub-section (3) of Section 8, a medium enterprise is mandated to file its memorandum before the authority notified by the Central Government, whereas sub-section (4) provides that micro and small enterprises shall file their respective memoranda before the authority notified by the State Government concerned. Thus, the process of registration under the MSMED Act is to be undertaken strictly in conformity with the procedural mechanism notified by the Central Government pursuant to the enabling mandate of Section 8.

20. A plain reading of Section 18 of the MSMED Act makes it evident that the language employed therein is clear, categorical, and unambiguous. The provision expressly uses the phrase “*any party to a dispute*”, and this expression cannot, by any permissible interpretative process, be transmuted into “*a supplier*”. To read the expression “any party to a dispute” as confined only to a “supplier” would require a convoluted interpretive exercise—beginning with Section 17, traversing through Sections 15 and 16, and culminating at Section 2(n) read with Section 8—to conclude that the term “any party” actually means “a registered supplier.” Such an exercise of interpretation, which substitutes the plain words of the statute with a meaning derived by reference to distant provisions, is impermissible in law. The well-settled *Golden Rule of Interpretation* mandates that the words of a statute must be



construed in their natural, ordinary, and popular sense, unless such a reading leads to absurdity or defeats the object of the legislation. [See *State of A.P. v. Linde (India) Ltd*<sup>1</sup>, *Grid Corporation of Orissa Ltd. v. Eastern Metals & Ferro Alloys*<sup>2</sup>. The legislative choice of the phrase “any party to a dispute” in Section 18 is deliberate and significant. It is a settled principle of statutory construction that the use of different expressions in proximate or successive provisions of the same enactment denotes a conscious legislative intent to convey different meanings.

21. Had Parliament intended to confine the scope of Section 18 only to “suppliers” or “buyers” (both of which are separately defined under the Act), it would have expressly employed those very terms. The Court cannot, under the guise of interpretation, substitute the legislative expression “any party” with “supplier,” thereby rewriting the statute and altering both the text and the scope of Section 18.
22. From a plain reading of Section 2(n), it is clear that the definition of a supplier is relatable only to a micro or a small enterprise and does not encompass a medium enterprise. Supplier not only means a micro or small enterprise, “which have filed a memorandum with the authority referred to under sub-section (1) of Section 8”, but also includes: (i) NSIC, (ii) SIDC, and (iii) company, cooperative society, trust or a body engaged in selling of goods produced by micro or small enterprise and rendered services which are produced by such enterprise. In other words, a supplier will also be an entity engaged in selling goods or

---

<sup>1</sup> (2007) 13 SCC 537;

<sup>2</sup> (2011) 11 SCC 334



rendering services, produced or provided by a micro or small enterprise. All such entities, irrespective of filing of the memorandum will be suppliers. Thus, the definition of a supplier encompasses not only those who have filed a memorandum, but also those who have not filed. The reason for keeping the definition is not difficult to imagine. This is still an unorganised industry, growing, evolving and many of them are at start-up levels. The reason for keeping the definition wide is supported by an Expert Committee's findings.

23. Section 8(1)(a) provides that, "*a micro or a small enterprise may, at his discretion*" and even a medium enterprise engaged in providing or rendering services, also "*may at his discretion*" file a memorandum with the authority as may be specified by the Government. This important feature of the statute recognising and vesting of the discretion has not been noticed. There is also a logical follow-up to this choice or discretion vested in the micro or small enterprise and the medium enterprise engaged in rendering services for filing a memorandum in sub-section (4) of Section 8 and also proviso (a) to Section 8(1). As the said sub-section (4) of Section 8 relates to micro or small enterprises, the State Government shall by notification, specify the authority with which such micro or small enterprise may file a memorandum. Considering the choice and discretion specifically provided to these enterprises, it becomes very clear that there is no mandatory prescription of filing a memorandum.

24. There are three clear features in the statutory regime. To start with, Section 18 of the Act does not use the expression "supplier", instead



employs the phrase, “any party to a dispute, may”. This Court has also noted that the definition of the expression “supplier” is not confined to a micro or a small enterprise which has filed a memorandum under Section 8(1) but also includes companies or other entities engaged in selling goods or rendering services by an enterprise. Thirdly, Section 8 grants a discretion to a micro or a small enterprise in filing a memorandum with the authority.

25. Further, it is noteworthy that a “micro” [Section 2(h)], “small” [Section 2(m)] or “medium enterprises” [Section 2(g)], formation and existence is simply on the basis of their investment as provided in Section 7 relating to classification of an Enterprise. They subsist without any formal “recognition”, “consent” or “registration”. The Act uses the expression filing of a “memorandum”. That is all. That too, at the discretion of the micro and small enterprises. The cumulative account of these four features is compelling and leads to a conclusion that an application by a micro or a small enterprise to the Facilitation Council under Section 18 cannot be rejected on the ground that the said enterprise has not registered itself in Section 8, much less that on the date of contract, it was not registered under Section 8.

26. This Court is of the considered view that the legislative architecture of the Micro, Small and Medium Enterprises Development Act, 2006, does not render registration under Section 8 a condition precedent for invoking the jurisdiction of the Facilitation Council under Section 18. The classification of enterprises under Section 7 is founded exclusively upon the quantum of investment in plant, machinery, or equipment, and the legal recognition of an entity as a micro or small enterprise



emanates from such statutory classification itself, rather than from the act of filing a memorandum. The deliberate employment of the phrase “*any party to a dispute*” in Section 18 is of interpretive significance and cannot be judicially substituted with the narrower term “*supplier*” without transgressing the plain text and legislative intent. To read into the provision a limitation not contemplated by the legislature would amount to judicial legislation and impermissible rewriting of the statute. Moreover, the discretionary tenor of registration envisaged under Section 8 reinforces this construction, clearly indicating that the protective and remedial framework of the MSMED Act is intended to encompass all micro and small enterprises, irrespective of whether they have formally filed a memorandum of registration.

27. Moreover, in the present case the Opposite Party had filed its memorandum as a Small Scale enterprise on 13.12.2015. It was also holding a valid NSIC Government Purchase Enlistment Certificate on the date of entering into the contract. Therefore, the mere registration as MSME being after the date of the contract would have no bearing on the present matter. However, given the nature of the contract, could the Council have entertained the claim – remains to be discussed.

28. A central point of debate is the precise legal nature of “works contracts.” The term is frequently misinterpreted as being synonymous with construction contracts. However, statutory definitions reveal a broader scope. Under Section 2(119) of the Central Goods and Services Tax Act, 2017, a works contract encompasses agreements for building, fabrication, installation, repair, improvement,



or commissioning of movable and immovable property. The definition extends well beyond traditional construction arrangements. Courts have elaborated on this scope in several decisions. In *K. Raheja Development Corporation v. State of Karnataka*<sup>3</sup>, the Supreme Court examined the Karnataka Sales Tax Act, which contained a parallel definition. The Court clarified that the ambit of works contracts is “very wide” and cannot be restricted to conventional understanding. This interpretation was later reaffirmed in *Larsen & Toubro Ltd. v. State of Karnataka*<sup>4</sup>, cementing the composite nature of such contracts.

29. The Supreme Court, in *Kone Elevator India Pvt. Ltd. v. State of Tamil Nadu*<sup>5</sup>, delivered a landmark judgment on the legal character of works contracts. A Constitution Bench rejected the earlier “dominant nature test,” which had previously been applied to classify contracts based on their predominant purpose. Instead, the Court held that a works contract, once it satisfies statutory characteristics, retains its dual nature irrespective of additional obligations incorporated. Importantly, such contracts are indivisible in reality but deemed divisible by legal fiction into components of goods and services. This reasoning underscores that works contracts are *sui generis* and cannot be conflated with ordinary contracts for sale or service. The Court also emphasized examining the “substance over form” of agreements, highlighting that the true object of the contract is determinative. Thus,

---

<sup>3</sup> (2005) 5 SCC 162

<sup>4</sup> (2014) 1 SCC 708

<sup>5</sup> (2014) 7 SCC 1



works contracts occupy a unique position, distinct from ordinary procurement arrangements.

30. In *Kone Elevators* (supra), the Supreme Court observed that the main object of the transaction, the prevailing circumstances, and the customary practices of trade provide critical guidance. It stressed that works contracts inherently combine both goods and services, and even where goods predominate, the contract does not lose its character as a works contract. This dual nature complicates their treatment under statutes designed with binary classifications of buyers and sellers, such as the MSMED Act. Unlike pure sale transactions, works contracts defy simple categorization, creating friction with the structure of statutory arbitration under the MSMED Act. Consequently, while MSMEs benefit from preferential treatment in procurement policies, whether these benefits extend to disputes arising out of works contracts remains contentious.

31. The MSMED Act aims to facilitate growth of small enterprises through preferential procurement. Several government policies grant MSMEs priority in public tenders. However, a practical dilemma arises when such preferences result in award of works contracts. Can an MSME, after receiving such a contract, invoke the MSMED Act's dispute resolution framework? The Delhi High Court addressed this in *Shree Gee v. Union of India*<sup>6</sup>. In that case, Indian Oil Corporation had granted preference to an MSME bidder, but the Court held that the MSME Procurement Policy, 2012, did not apply to works contracts. The Court quashed the award of the contract, clarifying that MSME preferences

---

<sup>6</sup> 2015 SCC OnLine Del 12822



cannot override the statutory nature of works contracts. This judgment revealed a judicial hesitation to extend the MSMED Act's arbitration benefits to disputes involving composite contractual arrangements, setting the stage for further conflicting interpretations.

32. A similar stance was taken by the Allahabad High Court in *Rahul Singh v. Union of India*<sup>7</sup>. The Court categorically ruled that works contracts fall outside the ambit of the MSMED Act. The case concerned disputes where MSME suppliers attempted to claim benefits under Section 18 of the Act by categorizing works contracts as simple supply transactions. The Court rejected this approach, holding that the MSMED Act is designed to govern buyer-seller relationships of goods and services, not composite works contracts involving both. The Allahabad High Court's decision reinforced the principle that statutory arbitration under the MSMED Act is restricted and cannot extend to every form of commercial arrangement involving MSMEs. This judgment aligned with the earlier Delhi High Court ruling, thereby strengthening the judicial view that works contracts are misfits under the MSMED Act's dispute resolution scheme.

33. The most influential judgment on this question emerged from the Bombay High Court in *P.L. Adke v. Wardha Municipal Corporation*<sup>8</sup>. The dispute concerned an MSME contractor who alleged non-payment for work performed under a works contract and sought to invoke arbitration through the MSME Facilitation Council. The High Court, however, dismissed the appeal, relying on *Shree Gee* (supra) and *Rahul*

---

<sup>7</sup> 2017 SCC OnLine All 1714

<sup>8</sup> 2021 SCC OnLine Bom 5531



*Singh* (supra). It held that works contracts, being sui generis, cannot be equated to simple supply transactions and thus fall outside the purview of the MSMED Act. The Court relied on *Larsen & Toubro* (supra) and *Kone Elevators* (supra) to affirm the legal nature of such contracts.

34. Following *P.L. Adke* (supra), several High Courts have consistently refused to extend the MSMED Act's arbitration provisions to works contracts. The lack of a Supreme Court stay has given *Adke* (supra) authoritative value across jurisdictions. As a result, MSMEs engaged in composite contracts increasingly find themselves excluded from invoking Section 18 arbitration. This trend has narrowed the scope of disputes that Facilitation Councils may adjudicate, relegating MSMEs in works contracts to regular arbitration under the Arbitration and Conciliation Act, 1996. Although the final pronouncement of the Supreme Court in the *Adke* appeal is awaited, judicial consensus currently treats works contracts as incompatible with the MSMED Act. This prevailing interpretation underscores the judiciary's cautious approach in extending statutory benefits to categories of contracts not explicitly contemplated under the MSMED Act, even if such exclusion disadvantages small enterprises.

35. The Bombay High Court revisited this issue in *National Textile Corporation Ltd. v. Elixir Engineering Pvt. Ltd.*<sup>9</sup>. The dispute concerned contracts for design, fabrication, and commissioning of industrial piping systems. The MSME contractor approached the Facilitation Council, which passed an award partly in its favour. On

---

<sup>9</sup> 2023 SCC OnLine Bom 653



challenge under Section 34 of the Arbitration and Conciliation Act, the Court held that the Facilitation Council lacked jurisdiction since the underlying contracts were works contracts. Citing *P.L. Adke* (supra), the Court reasoned that arbitration initiated under the MSMED Act in such cases is a “stillborn exercise.” The award was declared void for want of jurisdiction. The Court emphasized that jurisdictional defects strike at the root of arbitral proceedings and cannot be cured, even considering the narrow grounds available for judicial interference post-2015 amendments. Thus, the award was set aside as patently illegal.

36. In *National Textile Corporation* (supra), the Bombay High Court elaborated that the Facilitation Council’s jurisdiction is statutory and limited. Works contracts, being distinct in nature, do not fall within this statutory jurisdiction. The Court distinguished between errors within jurisdiction and the absence of jurisdiction, noting that the latter renders proceedings void ab initio. This reasoning drew upon the Supreme Court’s decision in *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*<sup>10</sup>. The Court held that lack of jurisdiction constitutes a patent illegality, warranting judicial intervention. This reinforces the judicial consensus that statutory arbitration under the MSMED Act is confined to specific contractual relationships and cannot be extended to works contracts by interpretative expansion.

---

<sup>10</sup> (2019) 15 SCC 131



37. The Delhi High Court in *Tata Power Company Ltd. v. Genesis Engineering Company*<sup>11</sup>, was faced with competing claims of arbitration. Tata Power issued a notice invoking arbitration under Section 21 of the Arbitration and Conciliation Act, 1996, while the MSME contractor approached the Facilitation Council under the MSMED Act. The Court examined the underlying work orders, which involved composite works, and applied the precedents set in *P.L. Adke* (supra) and *National Textile Corporation* (supra). It concluded that disputes arising out of works contracts cannot be adjudicated by MSME Facilitation Councils. Consequently, the Court upheld the maintainability of a Section 11 petition and appointed a sole arbitrator under the Arbitration Act. This judgment affirmed that works contracts fall squarely outside the MSMED Act's purview, directing MSMEs to pursue conventional arbitration rather than statutory remedies.

38. In *Tata Power* (supra), the Delhi High Court observed that the legal position on works contracts has been consistently settled by multiple High Courts. The Court stressed that works contracts, regardless of their specific subject matter, are indivisible agreements involving both goods and services. As such, they do not create the seller-buyer relationship contemplated under the MSMED Act. The Court rejected the MSME's argument that participation in Facilitation Council proceedings by the respondent constituted acquiescence. Jurisdictional limits, the Court emphasized, cannot be conferred by consent or waiver. Ultimately, the Court allowed the Section 11 petition and

---

<sup>11</sup> 2023 SCC OnLine Del 2366



referred the dispute to arbitration under the general framework. This decision further entrenched the principle that while MSMEs enjoy statutory support under the MSMED Act, those benefits do not extend to works contracts, thereby creating a caveat for small enterprises entering such arrangements.

39. The jurisprudence emanating from the judicial pronouncements discussed hereinabove reveals a consistent and discernible thread of reasoning: *works contracts* do not fall within the statutory purview of the MSMED Act, 2006. This conclusion is anchored in a confluence of statutory interpretation, commercial realities, and legislative intent. Section 18 of the Act presupposes disputes arising out of the *supply of goods or rendering of services*—not those emanating from composite and indivisible agreements encompassing engineering, procurement, construction, and allied operational obligations. The Facilitation Councils were conceived as expeditious forums for the resolution of payment-related disputes of micro and small enterprises, and not as adjudicatory bodies empowered to oversee complex, performance-based, or continuing contractual relationships.

40. Accordingly, the judicial consensus underscores that to extend the operation of the MSMED Act to such composite works contracts would be to stretch the statutory language beyond its legitimate contours. The demarcation thus delineated by the Courts preserves the equilibrium intended by the legislature—ensuring that micro and small enterprises remain protected in respect of straightforward supply or service transactions, while disputes arising from intricate works contracts are to be resolved in accordance with the contractual



dispute-resolution mechanisms, such as arbitration or civil proceedings. This interpretative boundary upholds Legis.

41. The scope of work mentioned in the Special Conditions of Contract Part II entered into by the present Parties is reproduced hereinbelow:

***“1.0 GENERAL***

*Design, Detailed Engineering, Supply, Transportation, Storage. Fabrication. Installation, radiography, inspection, pointing, testing. calibration, inducing all materials, equipment, appurtenances of VR storage tanks (203-TK-012) of 30000 KL nominal capacity at Paradip Refinery as per API-650 latest edition, specifications, scope of work and other related documents attached or referred to. This also includes design. engineering supply. fabrication. installation, painting, testing in all respect as per codes and Standards and Scope of work. Steam coil pipe fitting supply and erection, Civil works like execution of Tank Pad Foundation including soil investigation required for design purpose and all electrical works like, cathodic protection, earthing system comprising earth pits with earth electrodes, earth strips cable trays etc. as per codes and standard and scope of work (Part-A) Construction of Tank dyke area, Underground services (OWS/ CRWS), surface drainage of tank dyke, Barricading as per requirement. pipe supports/ platforms inside tank dyke and other civil works inside tank dyke (Part-B) are also covered in the tender.*

<i>Sr.</i>	<i>Description</i>	<i>Tag No.</i>	<i>No.</i>	<i>Type</i>
1	VR Storage Tank	203-TK-012	1 (One)	Fixed roof Tank

42. The definition of the word “Works” in the Tender Document is also mentioned as ‘Individually or collectively all engineering, materials,



equipments, services and documentation either expressly or by implication required under the terms of the Contract”.

43. Applying the tests as indicated in the judgments of the Supreme Court, this Court finds in the present case that the contracts in question were indeed works contracts. The details of the scope of works quoted hereinabove demonstrates beyond a shadow of doubt that the scope of the contract involved both goods and services and therefore, the contracts in question is a works contract. It is thus held that the provisions of the MSMED Act could not have been invoked by the Opposite Party. This resultantly shows that the initiation of the statutory arbitration under the provisions of the MSMED Act on the part of Opposite Party in the context of contracts in question before the Facilitation Council, was a stillborn exercise and that the Facilitation Council could not have exercised jurisdiction to conduct the arbitration proceedings. This renders the impugned awards without jurisdiction.

44. In *Balvant N. Viswamitra. v. Yadav Sadashiv Mule (dead) through Irs.*<sup>12</sup> The Apex Court held as follows:

*“14. Suffice it to say that recently a Bench of two Judges of this Court has considered the distinction between null and void decree and illegal decree in Rafique Bibi v. Sayed Waliuddin [(2004) 1 SCC 287]. One of us (R.C. Lahoti, J., as His Lordship then was), quoting with approval the law laid down in Vasudev Dhanjibhai Modi[(1970) 1 SCC 670 : (1971) 1 SCR 66] stated : (SCC pp. 291-92, paras 6-8)*

---

<sup>12</sup> (2004) 8 SCC 706



“6. What is ‘void’ has to be clearly understood. A decree can be said to be without jurisdiction, and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognisance of such a nullity based on want of jurisdiction, else the normal rule that an executing court cannot go behind the decree must prevail.

7. Two things must be clearly borne in mind. Firstly, ‘the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be “a nullity” and “void” but these terms have no absolute sense : their meaning is relative, depending upon the court’s willingness to grant relief in any particular situation. If this principle of illegal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra vires, rigidly applied, would produce unacceptable results.’ (Administrative Law, Wade and Forsyth, 8<sup>th</sup> Edn., 2000, p. 308.) Secondly, there is a distinction between mere administrative orders and the decrees of courts, especially a superior court. ‘The order of a superior court such as the High Court, must always be obeyed no matter what flaws it may be thought to contain. Thus a party who disobeys a High Court injunction is punishable for contempt of court even though it was granted in proceedings deemed to have been irrevocably abandoned owing to the expiry of a time-limit.’ (ibid., p. 312)

8. A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed in executable by the executing court; the remedy of a person



aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior court failing which he must obey the command of the decree. A decree passed by a court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings.”(emphasis is ours)

45. Accordingly, there is a difference between inherent lack of jurisdiction and the procedural impropriety. In the present case evidently by virtue of section 15, 16, 17 and 18 read with Section 2(b)(1), Explanation (i) and (ii), Facilitation Council clearly did not have jurisdiction in the subject matter in dispute and therefore the present case is a case of inherent lack of jurisdiction.

46. This Court has already held time and again that access to High Courts by way of a writ petition under Article 226 of the Constitution of India, is not just a constitutional right but also a part of the basic structure. It is available to every citizen whenever there is a violation of their constitutional rights or even statutory rights. This is an inalienable right and the rule of availability of alternative remedy is not an omnibus rule of exclusion of the writ jurisdiction, but a principle applied by the High Courts as a form of judicial restraint and refrain in exercising the jurisdiction. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and the same is not limited by any provision of the Constitution and cannot be restricted or circumscribed by a statute. Reference may be made in this regard to *Whirlpool Corpn. v. Registrar, Trade Marks*<sup>13</sup>; *L. Chandra*

---

<sup>13</sup> (1998) 8 SCC 1



*Kumar v. Union of India*<sup>14</sup>; *S.N. Mukherjee v. Union of India*<sup>15</sup>  
and *Union of India v. Parashotam Dass*<sup>16</sup>.

47. It has been well-settled through a legion of judicial pronouncements of this Court that the writ courts, despite the availability of alternative remedies, may exercise writ jurisdiction at least in three contingencies — (i) where there is a violation of principles of natural justice or fundamental rights; (ii) where an order in a proceeding is wholly without jurisdiction; or (iii) where the vires of an Act is challenged.

48. In the present case, this Court has already come to the conclusion in W.P.(C) No. 30966 of 2024 that the award is passed by the Facilitation Council lacking inherent jurisdiction. The Supreme Court, in *India Glycols Ltd. v. Micro and Small Enterprises Facilitation Council*<sup>17</sup>, has held that a petition under Articles 226/227 of the Constitution of India ought not to be entertained to assail an “award” rendered under Section 18 of the MSMED Act, since the statute itself provides a specific remedy of challenge under Section 34 of the Arbitration and Conciliation Act. However, in the present case, having regard to Sections 15, 16, 17 and 18 read with Section 2(b)(i) and Explanations (i) and (ii), it is manifest that the Facilitation Council lacked jurisdiction over the subject matter in dispute. The issue, therefore, here is one of inherent lack of jurisdiction. As the award from which the Execution Proceeding arose is in itself set aside, the discussion on whether

---

<sup>14</sup> (1997) 3 SCC 261

<sup>15</sup> (1990) 4 SCC 594

<sup>16</sup> (2025) 5 SCC 786

<sup>17</sup> (2025) 5 SCC 780



objections under Section 47 CPC ought to have been entertained by the Ld. Executing Court becomes an academic exercise.

49. The Supreme Court has underscored that while the executing court has authority to decide all questions arising between the parties, its jurisdiction is confined to matters pertaining to the execution of the decree. An executing court cannot delve in the validity of a decree unless it lacks jurisdiction.
50. Courts must exercise caution and diligence when adjudicating objections under Section 47 of the CPC, 1908. The consequences of erroneously allowing or disallowing objections can have far-reaching implications for the parties involved and may undermine the integrity of the execution process. The limited scope of the executing court's jurisdiction under Section 47 of the CPC, 1908 requires a precise delineation of the issues that fall within its purview. Courts must ensure that objections pertain solely to matters concerning execution, discharge, or satisfaction of the decree and do not encroach upon substantive rights or legal issues beyond the decree's scope. Courts must also be mindful of the principle of finality of decrees when adjudicating objections under Section 47 of the CPC, 1908. Decrees represent the final determination of the rights and liabilities of the parties, and objections seeking to reopen issues already decided may undermine the principle of finality.
51. The phrase "*as if it were a decree of the Court*" occurring in Section 36 of the Act needs to be interpreted in light of the principles discussed above. The phrase "*as if it were*" is a construction used in language to



suggest a hypothetical scenario or condition, implying that something is being treated or considered in a manner akin to a particular situation, even if it is not actually the case. It is often employed to convey a comparison or analogy between two different states or circumstances. When used in legal or formal contexts, "as if it were" indicates that a particular statement or action is being treated as if it were true, even though it may not be factually accurate. This can be useful in scenarios where a hypothetical situation needs to be imagined or simulated for analytical or augmentative purposes. The phrase "as if it were" might be used to establish a legal fiction or presumption, where a certain condition or event is deemed to exist for the purpose of legal analysis, even if it does not actually exist in reality.

52. Under Section 36 of the Act, the phrase "*as if it were*" conveys the idea of treating the arbitral award in a manner analogous to a court decree, despite the fact that it is not actually a decree issued by a court. By employing this language, Section 36 of the Act establishes a legal fiction or presumption, whereby the arbitral award is deemed to possess certain characteristics and legal effects akin to those of a court decree. Essentially, it means that once the time limit for challenging the arbitral award has expired, the award is to be enforced through the same procedures and mechanisms as a court decree under the CPC, 1908. This includes the execution of the award through the court's enforcement powers, such as attachment of property, or other coercive measures. By equating the arbitral award with a court decree, "as if it were" one, Section 36 of the Act extends certain privileges and



protections afforded to court decrees to arbitral awards. For example, the arbitral award becomes immune from collateral attack or challenge on the grounds that could have been raised during the arbitration proceedings or in a subsequent application to set aside the arbitral award under Section 34 of the Act. By affording arbitral awards a status akin to court decrees for enforcement purposes, Section 36 of the Act encourages parties to arbitration agreements to abide by the arbitration process and accept the resulting awards as binding and enforceable.

53. In *India Oil Corporation Ltd. and Anr. v. Commercial Court and Anr.*<sup>18</sup> Allahabad High Court held that an arbitral award is not a decree and objections under Section 47 of the CPC, 1908 would not be maintainable against an arbitral award. Relevant paragraphs have been extracted herein:

*"46. Again the very same issue of filing of objection under Section 47 of CPC came before this Court in the matter of Bharat Pumps and Compressors Ltd. (supra) and Court following the ratio of law laid down by this Court in the matter of Larsen & Tubro Limited (Supra) has held as follows:--*

*"22. The Arbitration Act, 1940 is self-contained, complete code and section 17 thereof is in pari-materia with section 36 of the Arbitration & Conciliation Act, 1996. Section 20 thereof, provides for challenging the appointment of an Arbitrator. The revisionist never challenged appointment of the Arbitrator under section 20 thereof. Sections 30/33 and 37 of the Arbitration Act, 1940, read with Article 119 of the Limitation Act, give provision for an application to be filed within 30 days of notice of award; however, no*

---

<sup>18</sup> 2023 SCC OnLine All 809



*such application within the said period was filed by the revisionist.*

*23. The arbitration award by way of friction is executed as decree, but it is not a decree as defined under section 2(2) of CPC and therefore, the objection under section 47 of CPC, which was filed only in execution of decree (as defined under section 2(2) CPC), is not maintainable in the proceedings seeking execution of award."*

*47. This Court has again taken view that arbitral award is not a decree under Section 2(2) of CPC, therefore, objection filed under Section 47 of CPC is not maintainable.*

*48. To conclude this point on the basis of undisputed fact, objection under Section 47 of CPC filed against the arbitral award is not maintainable as the same is not a decree under Section 2(2) of CPC. Further, arbitral award can be executed invoking Section 36 of New Act, 1996 alongwith the provisions of CPC in the same manner as if it is decree of the Court."*

**54.** Although it is the vehement contention of the learned counsel for the petitioner that having regard to Section 36 of the Act of 1996 the award passed under the provisions of the Act of 1996 is to be treated as a decree and Section 47 of the CPC could be invoked, it is relevant to note that having regard to Section 36(1) of the Act of 1996, the award passed under the provisions of the said Act is required to be construed as a decree only for the purpose of enforcement of the same and it is not open to the petitioner to invoke Section 47 of the CPC before the executing Court.

**55.** The objections available under Section 47 of the Code of Civil Procedure, 1908 will therefore not be available under Section 36 of the



Act since an arbitral award is not in reality a decree of the court but is merely treated as one for the limited purpose of enforcement. The key distinction between court decrees and arbitral awards lies in their origin and nature. Court decrees are orders or judgments issued by a court of law, following adversarial proceedings and adjudication by a judge. They carry the imprimatur of the State and are enforceable as such through the coercive powers of the Court. In contrast, arbitral awards are decisions rendered by private arbitrators chosen by the parties to a dispute, pursuant to an arbitration agreement. They arise from contractual agreements between the parties and are not issued by a court of law. While they may have the same legal effect as court decrees once enforced, they are fundamentally different in origin and nature.

56. Allowing objections under Section 47 of the CPC, 1908 to be raised against arbitral awards would undermine the finality and binding nature of arbitration awards. It would subject arbitral awards to same procedural complexities and delays associated with court proceedings, defeating the purpose of choosing arbitration as an alternative dispute resolution mechanism.

57. Accordingly, this Court is of the opinion that the objections which were sought to be raised by the Petitioners under Section 47 of the CPC, 1908 before the Ld. Civil Judge, Bhubaneswar are not maintainable.

58. However, keeping in mind that the jurisdiction of an executing court under Section 47 of the CPC, 1908 is limited to matters pertaining to execution of the decree, validity of a decree cannot be looked into by



the executing court unless the decree suffers from inherent lack of jurisdiction – the Ld. Executing Court has erred in not considering whether the award dated 10.7.2023 was vitiated for having been passed by the Facilitation Council, Cuttack in MSEFC Case No. 56 of 2022 without jurisdiction.

59. Since this Court has specifically found that the provisions of the MSMED Act could not have been invoked in the facts and circumstances of the case, the impugned award is rendered without jurisdiction and hence, liable to be set aside on that ground alone. In such light of the matter, this Court finds it to be an appropriate matter to exercise its writ jurisdiction.

#### **VI. CONCLUSION:**

60. In view of the foregoing discussion, the Writ Petition stands allowed. Consequently, as the award dated 10.07.2023 passed by the Facilitation Council, Cuttack in MSEFC Case No.56 of 2022 is hereby set aside, the Execution Case No.585 of 2023 is rendered infructuous. The parties, however, shall be at liberty to seek such remedies as may be available to them in accordance with law.

61. Interim order, if any, passed earlier stands vacated.

**(Dr. Sanjeeb K Panigrahi)**  
**Judge**

*Orissa High Court, Cuttack,  
Dated 10<sup>th</sup> Oct., 2025.*