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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 27th March, 2026***

\+ ARB.P. 93/2026

INDIAN OIL CORPORATION LTD. .....Petitioner
Through: None.
versus

ADARSH NOBEL CORPORATION LTD. .....Respondent
Through: Mr. A.K. Thakur, Mr. Rishi Raj, Mr. Sujeet Kumar, Mr. Ningthem Oinam, Advocates (M:9810141402)

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J *(ORAL):*

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") seeking appointment of a sole arbitrator, for adjudication of disputes arising between the parties out of the Contract Agreement dated 06th January, 2018.

2. The facts, as culled out from the pleadings, are as follows:

I. The petitioner, being engaged in the activities of refining, production, etc., of natural gas and petrochemicals, had awarded the work of *"Provision of Additional VR Tank at Paradip Refinery"* to the respondent, *vide* Letter of Award dated 29th November, 2017 ("LOA"), which was to be completed within a period of 18 months from the date of the LOA.

II. The respondent, on 11th June, 2018, stopped the work on the site in question. Further, despite multiple notices dated 29th June, 2018, 23rd July, 2018 and 11th August, 2018 sent by the petitioner to the respondent, no visible action for resuming the work at the site in question was undertaken

by the respondent.

III. The petitioner issued a termination notice dated 13th December, 2018 to the respondent, thereby, terminating the awarded Contract Agreement in terms of the Clause 7 of the General Conditions of Contract ("GCC").

IV. The petitioner, to protect its interests and for recovery of the expenses, on account of the failure of the respondent to complete the awarded work, had sent a communication dated 22nd March, 2023, to the respondent. By way of the said communication, the petitioner claimed provisional liability of Rs. 4,88,06,932.83/-, against risk and expense recovery, from the respondent.

V. In response to the aforesaid communication, the respondent approached the Micro and Small Enterprises Facilitation Council ("MSEF Council"), Orissa at Cuttack, by way of the petition bearing *MSEFC Case No. 56/2022*, under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 ("MSMED Act").

VI. The MSEF Council passed an arbitral award dated 10th July, 2023, thereby, directing the petitioner to pay a sum of Rs. 2,43,14,318/- to the respondent, along with future interests.

VII. Subsequently, the respondent filed an enforcement petition bearing *EXP. No. 585/2023* before the Senior Civil Judge, Commercial Court, Bhubaneshwar, seeking enforcement of arbitral award dated 10th July, 2023, wherein, the Executing Court dismissed the objections filed by the petitioner, and proceeded to issue warrant of attachment *vide* order dated 14th July, 2025.

VIII. Being aggrieved by the arbitral award dated 10th July, 2023, the petitioner filed writ petitions being, *W.P.(C) 30966/2024* and *W.P.(C)*

20210/2025 before the Orissa High Court, whereby, the Orissa High Court by way of the judgments dated 20th September, 2025 and 10th October, 2025, respectively, set aside the arbitral award dated 10th July, 2023, on the ground of having been passed in lack of inherent jurisdiction.

IX. The petitioner invoked the Arbitration Clause, i.e., Clause 9 of the GCC, by sending a Notice dated 30th June, 2025, to the respondent.

X. Pursuant to the Notice dated 30th June, 2025, the respondent *vide* reply dated 27th July, 2025, refused the proposal of appointment of arbitrator, by relying upon the arbitral award dated 10th July, 2023, passed by MSEF Council in *MSEFC Case No. 56/2022*. Therefore, the present petition has been filed.

3. Learned counsel appearing for the respondent has handed over to this Court a copy of the judgment dated 12th February, 2026, passed by the Division Bench of the High Court of Orissa at Cuttack, in appeals being *W.A. No. 1677/2025* and *W.A. No. 1856/2025*, whereby, judgments dated 20th September, 2025 and 10th October, 2025, have been set aside.

4. This Court takes note of the submission made by learned counsel for the respondent that the respondent is a Micro, Small and Medium Enterprises ("MSME"), and was entitled to invoke the jurisdiction under the MSEF Council.

5. It is to be noted that upon the respondent approaching the MSEF Council, an arbitral award dated 10th July, 2023 came to be passed. The petitioner herein filed objections to the said award by filing a petition under Section 34 of the Arbitration Act, in the District Court of Orissa. Subsequently, the petitioner herein unconditionally withdrew the said challenge on 21st October, 2024.

6. It is to be noted that the present petition has been filed by the petitioner before this Court, seeking appointment of an arbitrator on the ground that the arbitral award dated 10th July, 2023, passed by the MSEF Council has been set aside by the Orissa High Court in *W.P.(C) 30966 of 2024* and *W.P. (C) No. 20210 of 2025, vide* judgments dated 20th September, 2025 and 10th October, 2025, respectively.

7. This Court, however, notes that the aforesaid judgments have been set aside by the Division Bench of the Orissa High Court at Cuttack in *W.A. No. 1677/2025* and *W.A. No. 1856/2025,* as being devoid of merit and it has further directed the Executing Court to proceed with the execution process, within an outer limit of six months. The relevant paragraphs of the judgment dated 12th February, 2026 of the Division Bench of the Orissa High Court, read as under:

> *"xxx xxx xxx*
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> ***4.*** *Having heard counsel for the parties and having perused the appeal papers, we are inclined to grant indulgence in the matter as under and for the following reasons:*
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> ***4.1.*** *Appellant was the contractor and his contract had been terminated eventually resulting into him filing MSEFC Case No.56/2022 u/s 18 of MSMED Act, 2006. Respondents having entered appearance through their counsel, had filed Written Statement wherein lack of jurisdiction over the subject matter, was not a plea. Battle lines came to be drawn on the basis of pleadings. Evidence was led and Award was made on 10.07.2023.* ***It is not in dispute that the Appellant happens to be an MSME entity. Had the plea of lack of subject matter jurisdiction been raised, the Appellant would have answered the same and that the Facilitation Council would have treated it in its accumulated expertise. This apart, whether the contract in question was a 'works contract' or otherwise is essentially a question of fact on which parties could lead evidence. That being the position, it was not open to the Respondents to contend that the Award was a nullity and therefore, that plea can be set up wherever the Award is sought to be executed.*** *The Apex Court decision in* ***A.V. Parayya Sastri v. Government of A.P.,*** *(2007) 4 SCC 221 could not come to the rescue of Respondents since it was a case of*

demonstrable fraud. At paragraphs-21 & 22, it is observed as under:

> *"21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:*
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> *"Fraud avoids all judicial acts, ecclesiastical or temporal."*
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> *22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order-by the first court or by the final court-has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings."*

It hardly needs to be stated that a decision is an authority for the proposition that is laid down in a given fact matrix, and not for all that which logically follows from what has been so laid down vide ***Lord Halsbury in Quinn v. Letham,*** *[1901] AC 495 (HL).*

4.2. Respondents had filed ARBP No.11/2024 u/s 34 of the A and C Act, 1996. Learned counsel appearing for the Respondents very fairly stated that the ground of lack of jurisdiction was not taken up in this challenge. Subsequently, they unconditionally withdrew the said challenge on 21.10.2024. Here too, they had not taken up the plea that the Award itself was a nullity and therefore, they were withdrawing the challenge. Nor had they sought liberty to take up plea of the kind before the Executing Court. *However, they resisted execution of the Award on the ground of lack of jurisdiction merely on the basis of a stray sentence in the pleadings of the Appellant, before the Facilitation Council. In the pleadings, it is averred "the respondents have utilized the supply and execution of work". That is not the way pleadings of parties should be construed. In fact, such a construction was not placed on the said sentence when the Respondents had filed their Written Statement or in their challenge to the Award u/s. 34 of the A and C Act, 1996. It was Aristotle who said 'one single swallow makes not the summer' in Nicomachean Ethics. The same applies to the case of Respondents.*

4.3. It hardly needs to be stated that where jurisdiction of a Court or Tribunal depends upon fact matrix, the party resisting the claim on the ground of lack of jurisdictional facts, has to plead it adequately and with fair degree of certainty. In the Written Statement filed by the

Respondents in the Arbitral Proceedings, not even a whisper is made in this regard. Jurisdiction is one thing and jurisdictional facts are another. To put it in other way, one can say that, absence of jurisdiction makes its exercise non-productive and therefore Award/order in such circumstance would be a nullity/non est. However, the question of absence of jurisdictional facts stands on a different footing. Such absence cannot be inferred by a litigant by his self-judgment, despite suffering an adverse order. The remedy provided by Special Law has to be invoked for invalidation of such order. Respondents in fact had invoked Sec. 34 of A and C Act 1996, rightly. Sub-Section 3 of this Section prescribes a specific period of limitation. The said challenge came to be unilaterally withdrawn without mentioning that the Award was a nullity. Has the ground of nullity been mentioned in the application for withdrawal of challenge, different considerations would have arisen. The Appellant had neither occasion nor opportunity to have his say on that aspect of the matter. Tribunal too did not have. The proposition that, where an Award is a nullity, its enforcement can be resisted even in collateral proceedings, is too broad to be accepted. It is not that nullity cannot be a ground for laying a challenge u/s 34, to the Award. *Even in cases wherein invalidity is plainly visible, the Apex Court has taken the view that challenge has to be mounted.*

4.4. *The Apex Court in* ***State of Punjab v. Gurdev Singh****, AIR 1992 SC 111, has observed as under:*

> *"…the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or Court. In Smith v. East. Elloe Rural District Council, [1956] AC 736 at 769 Lord Redcliffe observed:*
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> > *"An order even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its fore- head. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."*
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> *Apropos to this principle, Prof. Wade states: "the principle must be equally true even where the 'brand' of invalidity' is plainly visible; for their also the order can effectively be resisted in law only by obtaining the deci-sion of the Court (See: Administrative Law 6th Ed. p. 352). Prof. Wade sums up these principles:*

> *"The truth of the matter is that 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 hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another."...*

The above observations should be a complete answer to the question of jurisdiction raised by learned counsel appearing for the Respondents.

4.5. ***The conduct of the Respondents who happen to be an entity under Article 12 of the Constitution of India falls short of fairness standards obtaining in the realm of Public Law, to say the least. It did not take up the plea of lack of jurisdiction in the Arbitration proceedings before the Facilitation Council nor before the Commercial Court when Award was challenged u/s. 34 of the A and C Act, 1996. Nor did they tell the said Court whilst withdrawing the said challenge.*** *Added, they had not sought for liberty at the hands of the Commercial Court, to take up such a plea in the Execution Proceedings. Article 12 entity has to conduct itself as a model litigant vide* ***Dilbagh Rai Jarry v. Union of India****, AIR 1974 SC 130. It cannot play the nefarious game of hide & seek in the legal battles.* ***The culpable conduct of Respondents in delaying the payment under the Award is calculated to defraud the Appellant who has secured a just result at the hands of statutory arbitral authority. The culpable conduct disentitles them to go scathe-free. They were not entitled to any relief at the hands of learned Single Judge in writ jurisdiction.***

4.6. *The above aspects have not been considered by the Writ Court while examining the claim of Respondents, who happened to be petitioners before the learned Single Judge. That has occasioned enormous injustice to the Appellant. Thus, the impugned orders suffer from errors apparent on their face warranting interference in these appeals for setting the injustice at naught.*

4.7. *The other contention of learned panel counsel appearing for Respondents that the impugned order is made by the Single judge only u/a 227 as distinguished from Art. 226 of the Constitution of India and therefore, intra-court appeal is incompetent, does not merit acceptance. The subject Writ Petitions were filed by invoking both the Articles. The very impugned orders on their forehead mention both*

these Articles. Even the subject matter of the dispute by its very nature attracts Art. 226. The finding of Executing Court that the Award does not require any stamping under the provisions of the Indian Stamp Act, 1899 is not demonstrated to be wrong. Which provision of the said Act makes Award of the kind to be stamped, is not particularized.

In the above circumstances, these appeals succeed; the impugned orders of the learned Single Judge are set at naught; Respondents' W.P.(C) No. 30966/2024 & W.P.(C) No. 20210/2025 being devoid of merits are dismissed with a cost of Rs.50,000/- (Rupees Fifty Thousand) only to be remitted to the Appellants within eight weeks. The Executing Court shall accomplish the execution process within an outer limit of six months vide Periyammal v. V. Rajamani, 2025 INSC 329.*"*

(Emphasis Supplied)

8. Thus, it is clear that as far as arbitral award dated 10th July, 2023, passed by the MSEF Council is concerned, the same has attained finality.

9. At this stage, it would be apposite to refer to the judgment of this Court in the case of ***Idemia Syscom India Private Limited Versus Conjoinix Total Solutions Private Limited, 2025 SCC OnLine Del 1023***, wherein, this Court while dealing with a petition filed under Section 11 of the Arbitration Act, delved into the purpose of Arbitration Act as well as of the MSMED Act, and had held that the MSMED Act, being specific law, prevails over the general law, i.e., Arbitration Act. Thus, it was held as follows:

"xxx xxx xxx

11. MSMED Act has been enacted for the facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto. Section 17 of the MSMED Act provides for the recovery of dues of the supplier from the buyer for goods supplied or services rendered. Section 18 (1) of the MSMED Act contains a non-obstante clause and provides that for any amount due under Section 17, any party to the dispute may make a reference to the Micro and Small Enterprises Facilitation Council. Thereafter, the facilitation council would either conduct conciliation itself or refer the matter

for conciliation to any institution or centre providing alternate dispute resolution services. Only upon failure of such conciliation proceedings, arbitration proceedings are initiated, either by itself or by reference to any institution.

12. While the A&C Act is the general law governing the field of arbitration, MSMED Act governs a very specific nature of disputes concerning MSME's and it sets out a statutory mechanism for the payment of interest on delayed payments. MSMED Act being the specific law, and A&C Act being the general law, the specific law would prevail over the general law. Even otherwise. MSMED Act has been enacted subsequent to the A&C Act and the legislature is presumed to have been aware about the existence of A&C Act when the act was enacted. Sub-sections (1) and (4) of Section 18 contain non obstante clauses which have the effect of overriding any other law for the time being in force. Section 24 of the Act states that 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. Thus, the legislative intent is clear that MSMED Act would have an overriding effect on the provisions of A&C Act. The provisions of MSMED Act would become ineffective if, by way of an independent arbitration agreement between the parties, the process mandated in Section 18 of the MSMED Act is sidestepped. *Moreover, the fact that the petitioner has approached the Court under Section 11 of the A&C Act first would be of no help to him as the MSMED Act does not does not carve out any such exception to the non-obstante clause.*

13. *Reference in this regard may be made to the* ***decision of Supreme Court in Silpi Industries v. Kerala SRTC, (2021) 18 SCC 790*** *wherein it was held as under:—*

> *"39.* ***Thus, it is clear that out of the two legislations, the provisions of the MSMED Act will prevail, especially when it has overriding provision under Section 24 thereof. Thus, we hold that the MSMED Act, being a special statute, will have an overriding effect vis-à-vis the Arbitration and Conciliation Act, 1996, which is a general Act. Even if there is an agreement between the parties for resolution of disputes by arbitration, if a seller is covered by Micro, Small and Medium Enterprises Development Act, 2006, the seller can certainly approach the competent authority to make its claim. If any agreement between the parties is there, same is to be ignored in view of the statutory obligations and mechanism provided under the 2006 Act…****"*

14. *It is also deemed apposite to refer to the* ***decision of the Supreme Court in Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods***

(P) Ltd., (2023) 6 SCC 401*, wherein the Court, while affirming the decision in Silpi Industries (Supra), held as under:—*

> *"42.* ***Thus, the Arbitration Act, 1996 in general governs the law of Arbitration and Conciliation, whereas the MSMED Act, 2006 governs specific nature of disputes arising between specific categories of persons, to be resolved by following a specific process through a specific forum. Ergo, the MSMED Act, 2006 being a special law and the Arbitration Act, 1996 being a general law, the provisions of the MSMED Act would have precedence over or prevail over the Arbitration Act, 1996. In Silpi Industries case [Silpi Industries v. Kerala SRTC, (2021) 18 SCC 790] also, this Court had observed while considering the issue with regard to the maintainability and counter-claim in arbitration proceedings initiated as per Section 18(3) of the MSMED Act, 2006 that the MSMED Act, 2006 being a special legislation to protect MSMEs by setting out a statutory mechanism for the payment of interest on delayed payments, the said Act would override the provisions of the Arbitration Act, 1996 which is a general legislation. Even if the Arbitration Act, 1996 is treated as a special law, then also the MSMED Act, 2006 having been enacted subsequently in point of time i.e. in 2006, it would have an overriding effect, more particularly in view of Section 24 of the MSMED Act, 2006 which specifically gives an effect to the provisions of Sections 15 to 23 of the Act over any other law for the time being in force, which would also include the Arbitration Act, 1996.***
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> *xxx*
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> *44.* ***The submissions made on behalf of the counsel for the buyers that a conscious omission of the word "agreement" in sub-section (1) of Section 18, which otherwise finds mention in Section 16 of the MSMED Act, 2006 implies that the arbitration agreement independently entered into between the parties as contemplated under Section 7 of the Arbitration Act, 1996 was not intended to be superseded by the provisions contained under Section 18 of the MSMED Act, 2006 also cannot be accepted. A private agreement between the parties cannot obliterate the statutory provisions. Once the statutory mechanism under sub-section (1) of Section 18 is triggered by any party, it would override any other agreement independently entered into between the parties, in view of the non obstante clauses contained in sub-sections (1) and (4) of Section 18. The provisions of Sections 15 to 23 have also overriding effect as contemplated in Section 24 of the MSMED Act, 2006 when anything inconsistent is contained in any other law for the time being in force. It cannot be gainsaid that while interpreting a statute, if two interpretations are possible, the one***

which enhances the object of the Act should be preferred than the one which would frustrate the object of the Act. If submission made by the learned counsel for the buyers that the party to a dispute covered under the MSMED Act, 2006 cannot avail the remedy available under Section 18(1) of the MSMED Act, 2006 when an independent arbitration agreement between the parties exists is accepted, the very purpose of enacting the MSMED Act, 2006 would get frustrated.

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52. The upshot of the above is that:

52.1. Chapter V of the MSMED Act, 2006 would override the provisions of the Arbitration Act, 1996.

52.2. No party to a dispute with regard to any amount due under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Micro and Small Enterprises Facilitation Council, though an independent arbitration agreement exists between the parties.

52.4. The proceedings before the Facilitation Council/institute/centre acting as an arbitrator/Arbitral Tribunal under Section 18(3) of the MSMED Act, 2006 would be governed by the Arbitration Act, 1996.

52.5. The Facilitation Council/institute/centre acting as an Arbitral Tribunal by virtue of Section 18(3) of the MSMED Act, 2006 would be competent to rule on its own jurisdiction as also the other issues in view of Section 16 of the Arbitration Act, 1996."

xxx xxx xxx"

(Emphasis Supplied)

10. Further, reference may also be made to the judgment passed by the Supreme Court in the case of ***K.V. George Versus Secretary to Government, Water and Power Department, Trivandrum and Another, (1989) 4 SCC 595***, wherein, the Supreme Court has held that principles of *res judicata* shall also apply to the proceedings held under the Arbitration Act. The relevant paragraphs, in this regard, are reproduced as follows:

"xxx xxx xxx

16. With regard to the submission as to the applicability of the principles of res judicata as provided in Section 11 of the Code of

Civil Procedure to arbitration case, it is to be noted that Section 41 of the Arbitration Act provides that the provisions of the Code of Civil Procedure will apply to the arbitration proceedings. The provisions of res judicata are based on the principles that there shall be no multiplicity of proceedings and there shall be finality of proceedings. This is applicable to the arbitration proceedings as well. *It is convenient to refer to the decision in Daryao v. State of U.P. [AIR 1961 SC 1457 : (1962) 1 SCR 574,582-83] wherein it has been held that the principles of res judicata will apply even to proceedings under Articles 32 and 226 of the Constitution of India. It has been observed that:*

> *"Now, the rule of res judicata as indicated in Section 11 of the Code of Civil Procedure has no doubt some technical aspects, for instance the rule of constructive res judicata may be said to be technical; but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of the general rule of res judicata they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Article 32."*

17. *In Satish Kumar v. Surinder Kumar [AIR 1970 SC 833 : (1969) 2 SCR 244 quoting from an unreported judgment in Uttam Singh Dugal & Co. v. Union of India, Civil Appeal No. 162 of 1962, dated 11-10-1962 (SC)] it has been observed that:*

> *"**The true legal position in regard to the effect of an award is not in dispute. It is well settled that as a general rule, all claims which are the subject-matter of a reference to arbitration merge in the award which is pronounced in the proceedings before the arbitrator and that after an award has been pronounced, the rights and liabilities of the parties in respect of the said claims can be determined only on the basis of the said award. After an award is pronounced, no action can be started on the original claim which had been the subject-matter of the reference.... This conclusion, according to the learned Judge, is based upon the elementary principle that, as between the parties and their privies, an award is entitled to that respect which is due to judgment of a court of last resort. Therefore, if the award which has been pronounced between the parties has in fact, or can, in law, be deemed to have dealt***

> ***with the present dispute, the second reference would be incompetent. This position also has not been and cannot be seriously disputed***.*"*
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> ***18. Considering the above observations of this Court in the aforesaid cases we hold that the principle of res judicata or for that the principles of constructive res judicata apply to arbitration proceedings and as such the award made in the second arbitration proceeding being Arbitration Case No. 276 of 1980 cannot be sustained and is therefore, set aside****. The High Court has rightly allowed the FMA No. 304 of 1982 holding that the appellant contractor was precluded from seeking the second reference. No other points have been raised before us by the appellant.*
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> *xxx xxx xxx"*
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> *(Emphasis Supplied)*

11. Therefore, as a sequitur to the aforesaid, this Court is of the view that once there is a valid arbitration award passed after following the due process by the MSEF Council, second invocation of the arbitration on the same dispute by the petitioner, would not be maintainable.

12. Thus, no merit is found in the present petition. The same is accordingly dismissed.

MINI PUSHKARNA, J

MARCH 27, 2026/au