
(2026) 02 MAD CK 1704

In the Madras High Court

Case No : Original Petition No. 334 Of 2021, Appeal No. 1727 Of 2021

M/S.Bharat Sanchar Nigam Limited

APPELLANT

Vs

Micro And Small Enterprises Facilitation Council Jaipur (Third)
And Others

RESPONDENT

Date of Decision : 06-02-2026

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 2(1)(e), 2(2), 2(2A), 2(7), 5, 9, 17, 20, 20(1), 20(2), 20(3), 23, 24, 25, 28, 31, 34, 34(2)(b)(ii), 37, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81

Micro, Small And Medium Enterprises Development Act, 2006 — Section 18, 18(2), 18(3), 18(4), 18(5), 19

Code Of Civil Procedure, 1908 — Section 13, 16, 17, 18, 19, 20, 21, 44A

Income Tax Act, 1961 — Section 147

Citation : (2026) 02 MAD CK 1704

Hon'ble Judges : N. Anand Venkatesh, J

Bench : Single Bench

Advocate : G.Sankaran, S.Gopinathan, Jeevan Hari

Final Decision : Disposed Of

Judgement

N. Anand Venkatesh, J

1. This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, (in short "the Act") against the award passed by the Micro and Small Enterprises Facilitation Council, Jaipur, dated 17.03.2020, made in Case No.RJ/02/S/00630 arising out of an agreement in Tender No. CGMP/CH1/MM/NIT-1/2014-15 dated 19.05.2014.

2.The 2nd respondent was the claimant before the 1st respondent Council. The petitioner floated a tender for supply of PLB pipes and accessories. The 2nd respondent participated in the said tender and was the L1 bidder. Advance purchase order was placed on the 2nd respondent and the 2nd respondent was expected to complete the supplies within a time frame. The time was extended twice, due to various reasons and the supplies was ultimately completed after

144 days against 57 days allotted by the petitioner. The petitioner chose to impose liquidated damages contemplated under Clause 16.2(a) of Section 5 Part A of the tender, for the delayed supplies, instead of resorting to forfeiture of performance security or termination of the contract for the default committed by the 2nd respondent.

3.The liquidated damages were deducted from the running bills. A notice dated 13.11.2018 was received from the 1st respondent Council, intimating the petitioner that the 2nd respondent has filed a petition to resolve the dispute regarding delayed payment and recovery of liquidated damages from the 2nd respondent. The 1st respondent Council, through award dated 17.03.2020, directed the petitioner to pay a total sum of Rs.1,94,34,486/- along with monthly compound interest of three times per month as per RBI current interest. Aggrieved by the same, the present petition has been filed by M/s.Bharat Sanchar Nigam Limited (BSNL).

4.When this petition came up for final hearing on 20.01.2026, this Court after hearing both sides, passed the following order:

"This Court heard Mr.G.Sankaran, learned Senior Counsel appearing on behalf of the petitioner and Mr.Jeevanhari, learned counsel appearing on behalf of the 2nd respondent.

2.In the case in hand, there is no dispute with regard to the fact that the award under challenge has been passed by the Micro and Small Enterprises Facilitation Council, Jaipur, Rajasthan. The 2nd respondent had invoked jurisdiction of the said Council on the ground that the 2nd respondent had supplied from Jaipur, Rajasthan. Even though the seat of arbitration has been agreed to be Chennai under the agreement, the 2nd respondent had a statutory right under the Micro, Small and Medium Enterprises Development [MSMED] Act, 2006 to invoke the jurisdiction of the 1st respondent Council. An award has also been passed by the 1st respondent on 17.03.2020.

3.This Court raised the issue of territorial jurisdiction to the learned Senior Counsel appearing on behalf of the petitioner on the ground that the award passed by the 1st respondent does not fall within the jurisdiction of this Court and therefore, the present petition itself is not maintainable.

4.In reply to the above submission, the learned Senior Counsel relied upon the order passed by the Apex Court in Civil Appeal No.4463 of 2025 dated 28.03.2025 where the same parties were agitating against a different award. The Apex Court while passing the order remitted the matter back to the Division Bench of this Court to decide the case on merits except the issue of territorial jurisdiction. It was therefore contended that the 2nd respondent had never questioned the territorial jurisdiction of this Court and the present case can be heard on merits.

5.On a careful reading of the order passed by the Apex Court, it is seen that the

learned counsel for the 2nd respondent had agreed for the matter being heard by the Division Bench of this Court and on recording the said submission, the Apex Court held that the issue of territorial jurisdiction need not be considered by the Division Bench. This order cannot be taken as a precedent in this case.

6.The right of the petitioner to invoke the jurisdiction of the 1st respondent is sufficiently recognised by the Apex Court in the judgment in Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd., reported in (2023) 6 SCC 401 and in the later judgment in Harcharan Dass Gupta v. Union of India reported in (2025) SCC Online SC 1111. In such an event, if the award has been passed by the Council at Rajasthan, the same being challenged before this Court in a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, becomes questionable. Unless the petitioner pass muster on this issue, this Court will not go into the merits of the case.

7.The learned Senior Counsel for the petitioner seeks for sometime to make his submissions.

8.Post this petition under the caption 'part heard cases' on 28.01.2026."

5.In the light of the above preliminary objection raised on the jurisdiction of this Court to entertain this petition under Section 34 of the Act, this Court directed the learned Senior Counsel appearing for the petitioner to first address the question of jurisdiction and thereafter, to make his submission on merits.

6.Mr.G.Sankaran, learned Senior Counsel appearing for the petitioner relied upon the following judgments:

(a) Indian Oil Corporation Ltd. Vs. Fepl Engineering (P) Ltd. & Another reported in 2019 SCC OnLine Del 10265.

(b) Ircon International Limited Vs. Pioneer Fabricators Private Limited reported in 2023 SCC OnLine Del 1811.

(c) Gujarat State Civil Supplies Corporation Limited Vs Mahakali Foods Pvt. Ltd. Unit (2) & Others reported in (2023) 6 SCC 401.

(d) Bombay High Court Division Bench Judgment in Gammon Engineers and Contractors Pvt. Ltd. Vs. Rohit Sood (Arbitration Petition (ARBP) (L) No.28089 of 2022 decided on 16.10.2024).

(e) Gujarat High Court Division Bench Judgment in Uttar Gujarat VIJ Company Ltd. Vs. Gupta Power Infrastructure Limited (First Appeal No.1728 of 2022 decided on 24.12.2024).

(f)Harcharan Dass Gupta Vs. Union of India reported in 2025 SCC OnLine SC 1111.

(g)M/s.Larsen & Toubro Ltd., Chennai Vs. M/s.Jain Steels Industries, Punjab reported in CDJ 2025 MHC 4381.

7.The learned Senior Counsel submitted that the “seat” of arbitration would continue to be governed in terms of the arbitration agreement between the parties and that the same will not get dislodged, just because the 1st respondent Council had conducted the arbitration proceedings, in the light of the special provision contained under Section 18(5) of the Micro, Small and Medium Enterprises Development Act, 2006, (in short “MSMED Act”). Hence, it was contended that in the case in hand, the parties had specifically chosen the seat of arbitration at Chennai and therefore, the present petition filed under Section 34 of the Act is maintainable before this Court.

8.Insofar as the merits of the case is concerned, the learned Senior Counsel submitted that the petitioner was not given opportunity by the 1st respondent Council, in spite of repeated communications made by the petitioner and that the 1st respondent Council failed to adhere to the procedure under Sections 18(2) and 18(3) of the Act and therefore, the award passed by the 1st respondent Council has to be interfered by this Court. To substantiate this submission, the learned Senior Counsel relied upon the following judgments:

1. M/s.Ramesh Conductors P. Ltd. Vs. M&SE Facilitation Council reported in CDJ 2015 MHC 7954.
2. Apex Court Judgment in Jharkhand Urja Vikas Nigam Ltd. Vs. The State of Rajasthan & Others (Civil Appeal No.2899 of 2021 decided on 15.12.2021).
3. M/s.Super Steam Boilers Engineers Vs. MSE Facilitation Council, Coimbatore reported in CDJ 2022 MHC 5254.
4. M/s.Sri Valli Process Vs. MSE Facilitation Council, Chennai Region & Others reported in CDJ 2022 MHC 5271.
5. M/s.Raster Images Pvt. Ltd. Vs. MSE Facilitation Council, Coimbatore & Another reported in CDJ 2023 MHC 3824.
6. Funkskool (Ind) Ltd., Chennai Vs. MSE Facilitation Council and Another reported in CDJ 2023 MHC 5662.

9.Per contra, learned counsel for the respondent submitted that a petition under Section 34 of the Act is maintainable only before the Court within whose jurisdiction the subject matter of arbitration lies. This term has been interpreted by the Apex Court in Bharat Aluminium Company (BALCO) Vs Kaiser Aluminium Technical Services Inc. reported in (2012) 9 SCC 552 and it was held that the subject matter of arbitration would mean the Court which would have supervisory control over the arbitration proceedings. The arbitration proceedings took place in Rajasthan and the only Court which will have jurisdiction over the subject matter of arbitration, will be the Principal Civil Court of original jurisdiction at Rajasthan and not this Court. The learned counsel also relied upon the judgment of the Apex Court in Indus Mobile Distribution Private Limited Vs Datawind Innovations Private Limited and Others reported in (2017) 7 SCC 678.

10. Insofar as the merits of the case is concerned, it was submitted that the petitioner did not choose to appear before the 1st respondent Council and therefore, the 1st respondent Council had no other alternative, except to deal with the claim made by the 2nd respondent and passed the award.

11. This Court has carefully considered the submissions and the materials available on record.

12. Two issues arise for consideration in this petition and they are:

i. Whether this Court has the territorial jurisdiction to deal with the award passed by the 1st respondent Council; and ii. Whether the award passed by the 1st respondent Council is in consonance with Section 18 of the MSMED Act.

13. Insofar as the 1st issue is concerned, the crux of that issue has been captured in the order passed on 20.01.2026 and which has been extracted supra. In the case in hand, the 2nd respondent had made the supplies from Rajasthan. Therefore, in the light of the judgment of the Apex Court in Mahakali case referred supra, the private agreement between the parties cannot obliterate the statutory provisions and consequently, in the light of Section 18(4) of the MSMED Act, the 2nd respondent was entitled to raise the dispute before the 1st respondent Council and the 1st respondent Council will be entitled to act as the Arbitrator. There is no difficulty till this stage, in the light of the judgment of the Apex Court in Mahakali and Harcharan Dass Gupta cases referred supra.

14. The crucial issue is, as to whether the award passed by the 1st respondent Council can become the subject matter of challenge before this Court under Section 34 of the Act.

15. The learned counsel for the respondent by relying upon the judgment of the Apex Court in BALCO case referred supra, submitted that the subject matter of the arbitration was before the 1st respondent and therefore, only that Court which has a supervisory control over the arbitration proceedings, can entertain a petition under Section 34 of the Act. The relevant portion relied upon by the learned counsel for the respondent is extracted hereunder:

"96. Section 2(1)(e) of the Arbitration Act, 1996 reads as under:

"2. Definitions.—(1) In this Part, unless the context otherwise requires—

(a)-(d)

(e) 'Court' means the Principal Civil Court of Original Jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such Principal Civil Court, or any Court of Small Causes;"

We are of the opinion, the term "subject-matter of the arbitration" cannot be

confused with "subject-matter of the suit". The term "subject-matter" in Section 2(1)(e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20 which give recognition to party autonomy. Accepting the narrow construction as projected by the learned counsel for the appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the courts of Delhi being the courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the courts would have jurisdiction i.e. the court within whose jurisdiction the subject-matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution i.e. arbitration is located."

16. The learned counsel for the respondent also relied upon the judgment in Indus Mobile case referred supra and placed specific reliance upon the following paragraphs:

"16. It may be mentioned, in passing, that the Arbitration and Conciliation Act, 1996 has been amended in 2015 pursuant to a detailed Law Commission Report. The Law Commission specifically adverted to the difference between "seat" and "venue" as follows:

"40. The Supreme Court in BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] decided that Parts I and II of the Act are mutually exclusive of each other. The intention of Parliament that the Act is territorial in nature and Sections 9 and 34 will apply only when the seat of arbitration is in India. The seat is the "centre of gravity" of arbitration, and even where two foreign parties arbitrate in India, Part I would apply and, by virtue of Section 2(7), the award would be a "domestic award". The Supreme Court recognised the "seat" of arbitration to be the juridical seat; however, in line with international practice, it was observed that

the arbitral hearings may take place at a location other than the seat of arbitration. The distinction between "seat" and "venue" was, therefore, recognised. In such a scenario, only if the seat is determined to be India, Part I would be applicable. If the seat was foreign, Part I would be inapplicable. Even if Part I was expressly included 'it would only mean that the parties have contractually imported from the Arbitration Act, 1996, those provisions which are concerned with the internal conduct of their arbitration and which are not inconsistent with the mandatory provisions of the [foreign] Procedural law/Curial law.' The same cannot be used to confer jurisdiction on an Indian Court. However, the decision in BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] was expressly given prospective effect and applied to arbitration agreements executed after the date of the judgment.

41. While the decision in BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] is a step in the right direction and would drastically reduce judicial intervention in foreign arbitrations, the Commission feels that there are still a few areas that are likely to be problematic.

(i) Where the assets of a party are located in India, and there is a likelihood that that party will dissipate its assets in the near future, the other party will lack an efficacious remedy if the seat of the arbitration is abroad. The latter party will have two possible remedies, but neither will be efficacious. First, the latter party can obtain an interim order from a foreign court or the Arbitral Tribunal itself and file a civil suit to enforce the right created by the interim order. The interim order would not be enforceable directly by filing an execution petition as it would not qualify as a "judgment" or "decree" for the purposes of Sections 13 and 44-A of the Code of Civil Procedure (which provide a mechanism for enforcing foreign judgments). Secondly, in the event that the former party does not adhere to the terms of the foreign order, the latter party can initiate proceedings for contempt in the foreign Court and enforce the judgment of the foreign Court under Sections 13 and 44-A of the Code of Civil Procedure. Neither of these remedies is likely to provide a practical remedy to the party seeking to enforce the interim relief obtained by it.

That being the case, it is a distinct possibility that a foreign party would obtain an arbitral award in its favour only to realise that the entity against which it has to enforce the award has been stripped of its assets and has been converted into a shell company.

(ii) While the decision in BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] was made prospective to ensure that hotly negotiated bargains are not overturned overnight, it results in a situation where courts, despite knowing that the decision in Bhatia International [Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105] is no longer good law, are forced to apply it whenever they are faced with a case arising from an arbitration agreement executed pre-BALCO [BALCO v. Kaiser

Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] .

42. The above issues have been addressed by way of proposed amendments to Sections 2(2), 2(2-A), 20, 28 and 31."

17. In amendments to be made to the Act , the Law Commission recommended the following:

"Amendment of Section 20

12. In Section 20, delete the word "Place" and add the words "Seat and Venue" before the words "of arbitration".

(i) In sub-section (1), after the words "agree on the" delete the word "place" and add words "seat and venue".

(ii) In sub-section (3), after the words "meet at any" delete the word "place" and add word "venue".

[Note.—The departure from the existing phrase "place" of arbitration is proposed to make the wording of the Act consistent with the international usage of the concept of a "seat" of arbitration, to denote the legal home of the arbitration. The amendment further legislatively distinguishes between the "[legal] seat" from a "[mere] venue" of arbitration.]

Amendment of Section 31

17. In Section 31

(i) In sub -section (4), after the words "its date and the" delete the word "place" and add the word "seat".

18. The amended Act , does not , however , contain the aforesaid amendments , presumably because the BALCO [BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] judgment in no uncertain terms has referred to "place " as "juridical seat" for the purpose of Section 2(2) of the Act. It further made it clear that Sections 20(1) and 20(2) where the word "place" is used , refers to "juridical seat", whereas in Section 20(3), the word "place" is equivalent to "venue". This being the settled law, it was found unnecessary to expressly incorporate what the Constitution Bench of the Supreme Court has already done by way of construction of the Act.

19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction — that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of

Sections 16 to 21 of CPC be attracted. In arbitration law however, as has been held above, the moment "seat" is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties."

17. This Court has to now deal with the judgments relied upon by the learned Senior Counsel appearing for the petitioner. The 1st judgment is the judgment of the Division Bench of the Delhi High Court in Indian Oil Corporation Limited case referred supra and the relevant portion is extracted hereunder:

"23. Undoubtedly, the MSME Act is a special legislation dealing with Micro, Small and Medium Enterprises and would have precedence over the general law. There are decisions of several Courts holding that the provisions of MSME Act would override the provisions of the Contract between the parties. However, we are not engaged with the said controversy and, in fact, we had made it clear to the learned counsel for the Appellant, during the course of arguments, that the questions relating to the jurisdiction of the MSME Council to act as an Arbitrator and other similar issues will not be examined by us, as the learned Single Judge has not considered any of those aspects and has decided the objection petition only on the ground of territorial jurisdiction. However, this does not mean that the jurisdiction clause agreed between the parties has to be given a go-by. The overriding effect of the MSME Act, cannot be construed to mean that the terms of the agreement between the parties have also been nullified. Thus, jurisdiction of the MSME Council which is decided on the basis of the location of the supplier, would only determine the 'VENUE', and not the 'SEAT' of arbitration. The 'SEAT' of arbitration would continue to be governed in terms of the arbitration agreement between the parties, which in the present case as per jurisdiction Clause No. 35 is New Delhi. As a result, in terms of the decision of the Supreme Court in Indus Mobile (supra), it would be the Courts at New Delhi that would have exclusive jurisdiction to entertain the petition under Section 34 of the Act."

In the above judgment, the Delhi High Court had also taken into consideration the judgment of the Apex Court in Indus Mobile and BALCO cases referred supra.

18. The next judgment is the judgment of the Division Bench of the Delhi High Court in Ircon International case and the relevant portions are extracted herein:

"2. The facts which led to the filing of the present appeal are as follows:

2.1... ..

2.8 To challenge the aforesaid award passed against the appellant, the appellant filed a petition under Section 19 of the MSMED Act read with Section 34 of the Act of 1996, bearing number OMP (Comm.) No. 1 of 2022, before the District Judge, Commercial Court, Shahdara, Karkardooma, Delhi.

2.9 Aggrieved by the impugned order dated 29-11-2022, passed in the aforesaid case, whereby the said petition was dismissed by the District Court on the ground of lack of territorial jurisdiction to entertain the petition, the appellant has

filed the instant FAO.

3.....

20. With respect, we are not in agreement with the view taken by the learned Single Judge, for the reasons stated by the learned Single Judge of the Bombay High Court in para 16 of the judgment, which we have reproduced above, which we reiterate in the following manner:

(i) Once the arbitral award is pronounced, and there is an exclusionary clause of jurisdiction agreed between the parties, thereby, agreeing upon the jurisdiction of only one court, in exclusion to others, the challenge initiated by the aggrieved party under the Act of 1996, even against an award passed by the Facilitation Council under the MSMED Act, will lie only before the court upon which the parties have agreed to place exclusive jurisdiction.

(ii) Similar is the conclusion of the Division Bench of this Court in Indian Oil Corpn. Ltd. case [Indian Oil Corpn. Ltd. v. FEPL Engg. (P) Ltd., 2019 SCC OnLine Del 8007] , to the effect that arbitration proceedings undertaken before the Facilitation Council under Section 18 of the MSMED Act, are undertaken at the "venue" where the Facilitation Council is located.

(iii) The place of the arbitration continues to be the place over which the court has exclusive jurisdiction, as agreed between the parties.

(iv) By operation of the provisions of the MSMED Act, only the procedure of constitution of the Arbitral Tribunal is obliterated in terms of the law laid down by the Supreme Court in Gujarat State Civil Supplies Corpn. Ltd. case [Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd., 2019 SCC OnLine Guj 4302] .

(v) The same does not eclipse the agreement between the parties of foisting exclusive jurisdiction on a particular court."

19. Even in the above judgment, the Division Bench had taken note of the judgment of the Apex Court in Indus Mobile, BALCO and Mahakali cases referred supra.

20. The Division Bench of the Bombay High Court has also taken a similar view in Gammon Engineers case referred supra. The relevant portions are extracted hereunder:

"2. Respondent is a Micro, Small and Medium Enterprises Unit ['MSME Unit'] and has supplied goods and rendered services to the Petitioner . As per the original agreement between the Petitioner and the Respondent, the Courts at Mumbai would have exclusive jurisdiction for resolving the disputes between them. Disputes arose between the Petitioner and the Respondent, and since the Respondent was a MSME Unit, a reference was made under Section 18 of the MSMED Act to decide the disputes between them. The Micro, Small and Medium Enterprises Facilitation Council ['Facilitation Council'] at Shimla , where the

Respondent was located, adjudicated the disputes between the parties, and an award was passed against the Petitioner. The Petitioner has challenged the said award under Section 34 of the Arbitration Act by applying to this Court. The Respondent has raised a preliminary objection on the maintainability of the application under Section 34 of the Arbitration Act on the ground that since the Facilitation Council at Shimla has adjudicated the disputes between the parties under Section 18(4) of the MSMED Act, the Court at Mumbai do not have the jurisdiction and Section 34 application ought to have been filed in the Court at Shimla.

49. In our view, none of the decisions relied upon by the Respondents has laid down that the application under Section 34 of the Arbitration Act to challenge an award passed under Section 18 of the MSMED Act would lie before the Court where the supplier is located or where the Facilitation Council has passed an award when there exists an exclusive jurisdiction clause conferring jurisdiction to a particular Court by the parties.

50. In view of the above, we answer the question raised for our consideration by holding that the jurisdiction of the Court to hear the application under Section 34 of the Arbitration Act to challenge the award passed under Section of the MSMED Act would be governed by the agreement between the parties which has conferred exclusive jurisdiction to a particular Court, which in the instant case is Courts in Mumbai.”

In the above judgment, the Bombay High Court has taken into consideration the judgment of the Delhi High Court and also the judgment of the Apex Court in Mahakali case referred supra.

21. Closer home, there is a judgment of the learned Single Judge of this Court in the case of M/s. Larsen & Toubro Ltd. referred supra. The learned Single Judge has held as follows:

“16. A preliminary objection has been raised by the respondent that this Court lacks territorial jurisdiction to decide this petition filed under Section 34 of the Act by contending that since the arbitral award has been passed in Punjab, the petitioner ought to have filed this petition before Punjab Courts. This preliminary objection raised by the respondent has to be rejected by this Court for the following reasons:

MSMED Act only provides for a mechanism to protect MSME -s, particularly, through arbitration initiated under Section 18 of the MSMED Act. In the instant case, the impugned arbitral award has been passed under the MSMED Act in Punjab. The jurisdiction clause mentioned in the purchase orders, which have to be read in conjunction with the original agreement, namely, LOI dated 10.09.2016, takes precedence, once the arbitral award is passed under the MSMED Act. The arbitration venue under the MSMED Act, which, in the instant case, is at Punjab, is treated only as convenience for the supplier, namely, the respondent herein, and post award challenges must follow the jurisdiction

clause contained in the original contract (LOI). Therefore, challenge initiated by the petitioner aggrieved by the order passed by the Council will lie only before the Court upon which the parties agreed to place exclusive jurisdiction. In the case on hand, as seen from the terms and conditions of the purchase orders, which have to be read in conjunction with the original agreement, namely, LOI dated 10.09.2016, the jurisdiction is vested exclusively with the Courts at Chennai. The Bombay High Court, in its decision rendered in the case of Gammon Engineers (cited supra), relied upon by the learned counsel for the petitioner, has also taken the same view. Hence, the respondent cannot contend that this Court lacks territorial jurisdiction to decide this petition under Section 34 of the Act."

22. The ratio decidendi that can be deduced from the above judgments are:

i. The overriding effect of MSMED Act cannot be construed to mean that the terms of the agreement between the parties will be nullified.

ii. The interpretation given by the Apex Court in Mahakali and Harcharan Dass Gupta cases referred supra, on the scope and ambit of Section 18 of MSMED Act, merely reiterates the overriding effect on the procedure for constitution of the Arbitral Tribunal, by tracing the jurisdiction from the place where the supply was made by the party.

iii. The provisions of Section 18 and 19 of MSMED Act does not provide to determine which Court would have jurisdiction for entertaining an application for setting aside the award under Section 34 of the Act. Hence, post award, only the provisions under the Act, will come into play.

iv. If the parties have chosen exclusive jurisdiction as per the agreement, the same will revive, post the award and the same will determine the jurisdiction of the Court, where the petition has to be filed under Section 34 of the Act, challenging the award. v. Arbitration proceedings undertaken before the Facilitation Council under Section 18 of the MSMED Act, can at the best, taken to be the venue where the Facilitation Council is located and the seat agreed between the parties, will not get shifted to the venue where the arbitration proceedings are conducted, in the light of the special overriding provision available under the MSMED Act. The place of arbitration continues to be the place for which the Court has exclusive jurisdiction, as agreed between the parties.

vi. By operation of the provisions of the MSMED Act and in the light of the judgment of the Apex Court in Mahakali and Harcharan Dass Gupta cases referred supra, the constitution of the Arbitral Tribunal is obliterated, but the same does not eclipse the agreement between the parties agreeing to the exclusive jurisdiction, post award.

23. Having captured the ratio from the above judgments, this Court will deal with the issue raised by the learned counsel for the respondent, by relying upon the judgment in BALCO and Indus Mobile cases referred supra. To start with, these

two judgments were also taken into consideration by the Delhi High Court and the Bombay High Court, while arriving at the above ratio. I am also bound by the judgment passed by the Co-ordinate Bench in M/s.Larsen & Toubro Limited case referred supra. Hence, the only question to be considered is, as to whether the ground raised by the learned counsel for the 2nd respondent will require re-consideration of the judgment in M/s.Larsen & Toubro Limited case referred supra and consequently, must be referred to a Division Bench.

24.The pith and substance of the ground raised by the learned counsel for the 2nd respondent is that a petition under Section 34 of the Act can be filed before the Court and the term "Court" has been defined under Section 2(1)(e) of the Act and which states that the Court would mean the Court of Principal Civil Court of original jurisdiction having jurisdiction to decide the questions forming "the subject matter of arbitration". According to the learned counsel for the 2nd respondent, the subject matter of arbitration is the award passed by the 1st respondent Council and therefore, only the Principal Civil Court of original jurisdiction at Rajasthan can entertain the petition under Section 34 of the Act.

25.The relevant portion relied upon by the learned counsel for the 2nd respondent in BALCO case has been referred supra.

26.The Courts should guard against the danger of mechanical application of an observation made by the Apex Court, without ascertaining the context in which it was made. Useful reference can be made to the judgment of the Apex Court in CIT Vs. Sun Engineering Works (P) Ltd. reported in (1992) 4 SCC

363 and the relevant portion is extracted hereunder:

"39. The principle laid down by this Court in Jagan Mohan Rao case [(1969) 2 SCC 389 : (1970) 75 ITR 373] therefore , is only to the extent that once an assessment is validly reopened by issuance of notice under Section 22(2) of the 1922 Act (corresponding to Section 148 of the Act) the previous under-assessment is set aside and the ITO has the jurisdiction and duty to levy tax on the entire income that had escaped assessment during the previous year. What is set aside is, thus, only the previous under-assessment and not the original assessment proceedings. An order made in relation to the escaped turnover does not effect the operative force of the original assessment, particularly if it has acquired finality, and the original order retains both its character and identity. It is only in cases of "under-assessment " based on clauses (a) to (d) of Explanation I to Section 147, that the assessment of tax due has to be recomputed on the entire taxable income. The judgment in Jagan Mohan Rao case [(1969) 2 SCC 389 : (1970) 75 ITR 373] therefore, cannot be read to imply as laying down that in the reassessment proceedings validly initiated , the assessee can seek reopening of the whole assessment and claim credit in respect of items finally concluded in the original assessment . The assessee cannot claim recomputation of the income or redoing of an assessment and be allowed a claim which he either failed to make or which was otherwise rejected at the time of

original assessment which has since acquired finality. Of course, in the reassessment proceedings it is open to an assessee to show that the income alleged to have escaped assessment has in truth and in fact not escaped assessment but that the same had been shown under some inappropriate head in the original return, but to read the judgment in Jagan Mohan Rao case [(1969) 2 SCC 389 : (1970) 75 ITR 373] as if laying down that reassessment wipes out the original assessment and that reassessment is not only confined to "escaped assessment" or "under assessment" but to the entire assessment for the year and start the assessment proceedings de novo giving right to an assessee to re-agitate matters which he had lost during the original assessment proceeding, which had acquired finality, is not only erroneous but also against the phraseology of Section 147 of the Act and the object of reassessment proceedings. Such an interpretation would be reading that judgment totally out of context in which the questions arose for decision in that case. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings. In *Madhav Rao Scindia v. Union of India* [(1971) 1 SCC 85 : (1971) 3 SCR 9] this Court cautioned:

"It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment."

27. The Apex Court cautioned that the judgment must be read as a whole and the observations made from the judgment have to be considered, in the light of the questions involved in the case in which it is rendered and while applying the decision to a later case, the Courts must carefully try to ascertain the true principle laid down by the decision of the Court and not pick out words or sentences from the judgment, divorced from the context of the question under consideration. In short, the ratio or the obiter dicta will turn on facts. Even a small change or variation in facts, will make the judgment inapplicable to the given facts of the case.

28. In the judgments in *BALCO* and *Indus Mobile* cases referred supra, the Apex Court was dealing with the scope of Section 2(1)(e) of the Act. These judgments did not encounter a situation, where a special enactment was involved and a special provision was created to benefit the supplier, who can institute arbitration

proceedings in the Facilitation Council available in the place of supply. Hence, the ratio in the above judgments, cannot be mechanically applied to the facts of the present case.

29.As held by the Delhi High Court, Bombay High Court and the learned Single Judge of this Court, the arbitration clause as agreed by the parties, would be superseded by Section 18(4) of the MSMED Act and it will confine itself only to those arbitration proceedings and it will come to an end, once the award is passed by the Facilitation Council. Post award, the exclusive jurisdiction conferred in the agreement by the parties, which is also termed as the seat will revive and that will determine within which jurisdiction the petition under Section 34 of the Act has to be filed. Hence, I am in complete agreement with the above ratio.

30.Ex consequenti, I hold that this Court has the jurisdiction to entertain the petition under Section 34 of the Act. The 1st issue is answered accordingly.

31.Insofar as the 2nd issue is concerned, this Court has to see, if the 1st respondent has followed the mandate provided under Section 18 of the MSMED Act. What was claimed by the 2nd respondent was, the amount that was retained by the petitioner towards liquidated damages for the delay in supplies. On going through the award, it is seen that the award has been passed ex parte on the ground that there was no representation for the petitioner.

32.It is seen from the records that the petitioner was repeatedly informing the 1st respondent Council, right from 05.03.2020 onwards, that they are not properly receiving the communication from the 1st respondent Council on time and on certain occasions, the communication was received after the hearing date. Therefore, the petitioner was requesting for an advance notice to enable the petitioner to attend the proceedings. Three communications are available in this regard made on 05.03.2020, 07.03.2020 and 21.03.2020. When the communication was made on 21.03.2020, the petitioner was not even aware that the 1st respondent Council had already passed an award on 17.03.2020. Thus, sufficient opportunity was not given to the petitioner by serving advance notice and hence, there is violation of Section 18 of the MSMED Act.

33.Insofar as the procedure adopted by the 1st respondent Council, it is in violation of the mandate of Section 18 of the MSMED Act. Useful reference can be made to the judgment in Raster Images Pvt. Ltd. case referred supra and the relevant portion is extracted hereunder:

"10.A plain reading of Section 18 of MSMED Act shows that the Council is obliged to conduct conciliation as mandated under Section 18(2) and 18(3) of the Act for which Sections 65 to 81 of the Arbitration and Conciliation Act , 1996 will apply and it will be construed as if the conciliation was initiated under Part III of the 1996 Act . When the conciliation fails under Section 18(3), the dispute between the parties must thereafter be resolved by arbitration. At that juncture , the Council is empowered either to take up arbitration on its own or to refer the

arbitration proceedings to any other institution as specified in the very same provision. If the Council decides to conduct the arbitration, it has to enquire the parties and deal with the materials placed before them and thereafter, pass an Award. It goes without saying that while undertaking this exercise, the relevant provisions under the Arbitration and Conciliation Act, 1996 will apply and the procedure contemplated under Section 20, 23, 24 and 25 must be followed.”

34.All the other judgments relied upon by the learned Senior Counsel appearing for the petitioner are to the same effect and it has been repeatedly held that the Council is obliged to conduct conciliation as mandated under Section 18(2) of the MSMED Act and only when the conciliation fails, under Section 18(3) of the MSMED Act, the dispute between the parties should be resolved by arbitration either by the Council on its own or by referring the arbitration proceedings to any other institution.

35.In the case in hand, there is not even an indication that conciliation proceedings were conducted. Nothing to that effect is recorded in the award. Therefore, the 1st respondent Council proceeding further with the arbitration proceedings clearly stands vitiated. As a result, the same is liable to be interfered by this Court under Section 34(2)(b)(ii) of the Act.

36.In the result, the award passed in Case No.RJ/02/S/00630 dated 17.03.2020 by the 1st respondent, is hereby set aside. Considering the facts, there will be no order as to costs. Connected application is closed.