



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-5403-2025 (O&M)
Reserved on: 18.03.2026
Pronounced on: 15.05.2026
Uploaded on: 15.05.2026

*Whether only the operative part of the judgment is pronounced
or whether the full judgment is pronounced: Full*

M/S PAHWA IMPEX PVT. LTD.

....Petitioner(s)

Versus

M/S KANUJ HOME TEXTILES EXIM

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Amit Jhanji, Senior Advocate with
Mr. Shashank Shekhar Sharma, Advocate,
for the petitioner.

Mr. Vikram Dhakla, Advocate and
Mr. Daman Dhir, Advocate,
for the respondent.

Mr. Udit Garg, Additional Advocate General, Haryana.

JASGURPREET SINGH PURI, J.

1. The present Civil Revision Petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 28.07.2025 (Annexure P-4) passed by the learned Additional District Judge, Karnal in Execution Petition bearing No.441 of 2020, whereby the objections filed by the petitioner to the execution petition have been dismissed, with a further prayer seeking dismissal of the aforesaid execution having been rendered inexecutable since the award sought to be executed has been passed by an incompetent authority and without jurisdiction.



2. The factual matrix leading to the filing of the present Civil Revision Petition seeking to invoke the supervisory jurisdiction of this Court under Article 227 of the Constitution of India is that the award was passed on 09.01.2020 vide Annexure P-1 by the learned Sole Arbitrator on the basis of a reference made to the learned Sole Arbitrator for arbitration by the Chairman, Haryana Micro and Small Enterprises Facilitation Council-cum-Director, Industries and Commerce, Haryana under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the 'MSMED Act, 2006'). The aforesaid award was passed after being contested by the petitioner-judgment debtor, who had fully participated in the arbitral proceedings.

3. After the award was passed on 09.01.2020, the petitioner-judgment debtor filed objections under Sections 34 of the Arbitration Act, 1996 before the learned Additional District Judge, Karnal. In the meantime, execution was also filed by the respondent-decree holder before the learned Additional District Judge, Karnal under Section 36 of the Arbitration Act, 1996 (hereinafter referred to as "the Arbitration Act, 1996") seeking execution of the aforesaid award for the claim of a total amount of Rs.84,21,272/- along with interest to which the petitioner had filed its objections on 18.09.2023 vide Annexure P-3. In this way, both the objections under Section 34 of the Arbitration Act, 1996 as well as the execution proceedings proceeded simultaneously.

4. As per the learned counsel for the respondent-decree holder, although the petitioner had filed objections under Section 34 of the Arbitration Act, 1996 but he did not deposit 75% of the awarded amount as mandated under Section 19 of the MSMED Act, 2006 and therefore, the



objections under Section 34 of the Arbitration Act, 1996 were adjourned from time to time and ultimately, on 25.07.2025, the petitioner-judgment debtor withdrew the objections under Section 34 of the Arbitration Act, 1996 vide Annexure P-5 by citing a technical defect pertaining to Notification issued by the Haryana Government dated 20.04.2007 and 09.11.2021.

5. After three days from the said withdrawal of the objections under Section 34 of the Arbitration Act, 1996 i.e. on 28.07.2025, since the execution under Section 36 of the Arbitration Act, 1996 was also pending and was being proceeded, the learned Additional District Judge by way of the impugned order dismissed the objections to the execution petition filed by the petitioner-judgment debtor and in this way, the said order has been now assailed by the petitioner-judgment debtor by way of filing the present Civil Revision Petition.

6. Learned Senior Counsel appearing on behalf of the petitioner submitted that even if the objections filed by the petitioner under Section 34 of the Arbitration Act, 1996 were withdrawn by the petitioner, still the objections of the petitioner in the execution petition were required to be allowed in view of the fact that the award sought to be executed itself was inexecutable having been passed by an incompetent authority and without jurisdiction. In this regard, he submitted that since the award itself was without jurisdiction not being passed by a competent authority, the same cannot be executed, even if the objections under Section 34 of the Arbitration Act, 1996 were withdrawn by the petitioner.

7. To substantiate his arguments, the learned Senior Counsel submitted that as per the provisions of Section 18 of the MSMED Act, 2006, the Facilitation Council on receipt of a reference under sub-section (1) is



required to conduct conciliation either itself in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre for conducting conciliation and the provisions of Sections 65 to 81 of the Arbitration Act, 1996 shall apply to such a dispute as if the conciliation was initiated under Part III of that Act. Thereafter, in case the conciliation which was initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, then the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration Act, 1996 shall then apply to the disputes as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of that Act. He submitted that in this way, the first step which is to be taken by the Facilitation Council is to conduct conciliation proceedings and in case the conciliation proceedings fail, then the Council shall refer the dispute for arbitration to any institute or centre providing alternate dispute resolution services or the Council can itself take up the matter for arbitration. However, even if an Arbitrator is so appointed, then any award, if at all is passed by the said Arbitrator cannot be termed as an 'award' under the provisions of the Arbitration Act, 1996 because it is merely in the nature of a report, which is required to be sent back to the Facilitation Council for passing of the award. To further substantiate the aforesaid argument that even if in terms of sub-section 3 of Section 18 of the MSMED Act, 2006, the Facilitation Council refers the dispute to an Arbitrator, still the award passed by the Arbitrator shall not be an award but only a report. He relied upon a judgment of a Coordinate Bench of this Court



in *Indian Oil Corporation Limited vs. Haryana Micro and Small Enterprise Facilitation Council and another*, 2023 SCC OnLine P&H **1443** and while referring to the aforesaid judgment, he submitted that it was held that although there is no prohibition in engagement of an Arbitrator /Expert/Facilitator under the MSMED Act, 2006 or the Rules framed thereunder for submission of a report to the Facilitation Council but the Arbitrator so appointed is however not competent to pass an enforceable award as no such power is conferred upon him under the Rules or the statutory scheme and only the Council is competent to pass the final award because the Arbitrator /Expert/Facilitator acts only under the aegis of the Council and it is only the Council which is in fact the Arbitrator and adjudication has to be done by it and not by the Arbitrator/Expert/Facilitator. He further submitted that the reference was made by a Coordinate Bench of this Court to the Rules, namely, Haryana Micro and Small Enterprises Facilitation Council Rules, 2007, which were later on amended in the year 2021 and while referring to Rule 4 Clause 19, which provides that the Council shall make an arbitral award in accordance with Section 31 of the Arbitration Act, 1996. He submitted that in the present case, after the award was passed by the Sole Arbitrator, the same has not been ratified or thereafter passed by the Council and since it has been not been passed by the Council, it cannot be said to be an award in accordance with Section 31 of the Arbitration Act, 1996 as per the aforesaid Rule and hence is unenforceable in view of the judgment passed by a Coordinate Bench of this Court in *Indian Oil Corporation Limited's case (supra)*. He also referred to another judgment of Hon'ble Supreme Court in *Bhadra International (India) Pvt. Ltd. and others vs. Airports Authority of India*,



2026 SCC OnLine SC 7 to contend that a revision petition would lie when the award is not enforceable because a challenge to an Arbitrator's ineligibility could be raised at any stage because an award passed in such circumstances is *non-est* i.e. it carries no enforceability or recognition in law.

8. On the other hand, learned counsel for the respondent submitted that as per the provisions of Section 18 of the MSMED Act, 2006, when the conciliation efforts fail, then as per Section 18(3) of the MSMED Act, 2006, the Council is to refer the matter to any institution or centre for arbitration or keep it to itself for deciding and it is specifically so provided that once it is sent to any institute or centre providing alternate dispute resolution services for arbitration, then the provisions of the Arbitration Act, 1996 would apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of that Act. He submitted that in this way, once the conciliation proceedings conducted by the Facilitation Council had failed, the Council referred the matter to the Sole Arbitrator, who is a retired Additional District Judge, who conducted the proceedings, in which the petitioner participated and thereupon an award was passed vide Annexure P-1. Applying the provisions of sub-section (3) of Section 18 of the MSMED Act, 2006, the provisions of the Arbitration Act, 1996 were applicable on the aforesaid award and therefore, there was no requirement for sending it back to the Facilitation Council for ratification and passing of an award as projected by the learned Senior Counsel for the petitioner and therefore, the argument raised by the learned Senior Counsel for the petitioner is not sustainable.



9. Learned counsel for the respondent also submitted that the aforesaid judgment as relied upon by the learned Senior Counsel for the petitioner in ***Indian Oil Corporation Limited's case (supra)*** is distinguishable from the facts and circumstances of the present case particularly in view of the fact that in the present case, the petitioner had initially filed objections under Section 34 of the Arbitration Act, 1996 and later on withdrew the same and after having withdrawn the same, the present revision petition under Article 227 of the Constitution of India was not entertainable and therefore, the present petition is liable to be dismissed.

10. Learned counsel for the respondent also submitted that when the petitioner withdrew the objections under Section 34 of the Arbitration Act, 1996, the basic reason for withdrawal was that the petitioner did not deposit 75% of the awarded amount as mandated under Section 19 of the MSMED Act, 2006, although it was so submitted before the Court that the withdrawal was being made in view of the Notification issued by the Haryana Government dated 20.04.2007 and 09.11.2021, citing a technical defect. He submitted that once the petitioner did not deposit 75% of the awarded amount as mandated under Section 19 of the MSMED Act, 2006, then it cannot be permitted to circumvent the provisions of law and after withdrawing the objections under Section 34 of the Act, the petitioner cannot be allowed to file the present revision petition invoking the extraordinary power of this Court under Article 227 of the Constitution of India. In this regard, he referred to a judgment passed by a three-Judge Bench of the Hon'ble Supreme Court in ***M/s India Glycols Limited and another vs. Micro and Small Enterprises Facilitation Council, Medchal-Malkajgiri and others, 2023 SCC OnLine SC 1852***. He further submitted



that in the impugned order, the objection raised by the petitioner pertaining to the enforceability of the award was also rejected by making reference to another judgment of Hon'ble Supreme Court in ***M/s Tamil Nadu Cements Corporation Limited vs. Micro and Small Enterprises Facilitation Council, 2025 SCC OnLine 127***, wherein the issue with regard to as to whether the MSME Facilitation Council can itself act as an Arbitrator or not in terms of Section 18 of the MSMED Act, 2006 has been referred to a Larger Bench of five Judges.

11. He further submitted that the judgment relied upon by the learned Senior Counsel for the petitioner passed by a Coordinate Bench of this Court in ***Indian Oil Corporation Limited's case (supra)*** was rendered in the year 2023, whereas, subsequently, in the year 2025 i.e. on 22.01.2025, the Hon'ble Supreme Court while dealing with the issue in ***M/s Tamil Nadu Cements Corporation Limited's case (supra)***, referred the issue to a Larger Bench of Five Judges and therefore, the reliance made by the learned Senior Counsel for the petitionerr on aforesaid judgment in ***Indian Oil Corporation Limited's case (supra)*** is not sustainable.

12. Learned counsel for the respondent also submitted that as per Section 80 of the Arbitration Act, 1996, it is provided that the Conciliator shall not act as an Arbitrator and the applicability of Section 80 on the issue as to whether the Facilitation Council can act as an Arbitrator or not was also referred to the Larger Bench by way of the aforesaid judgment and therefore, the present petition is liable to be dismissed.

13. I have heard the learned counsel for the parties.



14. The present revision petition gives rise to the following issues for consideration:-

- (i) Whether the impugned order 28.07.2025 (Annexure P-4) passed by the learned Additional District Judge, Karnal, whereby the objections referred by the petitioner in the execution proceedings have been dismissed, is liable to be set aside on the ground that the award under execution is inexecutable having been rendered by an authority lacking inherent jurisdiction.
- (ii) Whether upon withdrawal of objections under Section 34 of the Arbitration Act, 1996, revision petition under Article 227 of the Constitution of India challenging the said award and the execution proceedings is entertainable or not.

15. Before proceeding further, it is important to refer to the relevant provisions. Section 18 of the MSMED Act, 2006, is reproduced as under:-

“18. Reference to Micro and Small Enterprises Facilitation Council.—(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such



a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section(1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.”

16. Section 80 of the Arbitration Act, 1996 is also reproduced as under:-

“80. Role of conciliator in other proceedings.—Unless otherwise agreed by the parties,—

(a) the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings;

(b) the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.”



17. In the present case, after the Facilitation Council initiated the proceedings under Section 18 of the MSMED Act, 2006 for conciliation purposes, the same failed and the dispute was referred to a Sole Arbitrator, who is a retired Additional District Judge. The learned Sole Arbitrator passed an award vide Annexure P-1 dated 09.01.2020. The petitioner assailed the aforesaid award in the year 2021 by filing objections under Section 34 of the Arbitration Act, 1996 but after about four years i.e. on 25.07.2025, it withdrew the objections. The aforesaid order (Annexure P-5) by which the petitioner withdrew the objections is reproduced as under:-

*“Statement of counsel for petitioner record, wherein he stated that in view of the Haryana Govt. Notification dated 20.04.2007 and 09.11.2021, due to technical defect, he withdraws the instant petition with liberty to take legal recourse. In view of this, the present petition is hereby **dismissed as withdrawn**. File be consigned to records, after due compliance.”*

18. Since simultaneously execution proceedings were pending under Section 36 of the Arbitration Act, 1996 before the learned Additional District Judge, wherein the petitioner had filed its objections on merits, the objections to the execution petition were dismissed by way of the impugned order after three days of withdrawal of the objections under Section 34 of the Arbitration Act, 1996 i.e. on 28.07.2025. With regard to the merits of the case, the learned Additional District Judge in the impugned order so observed that the Court cannot go beyond the award passed by the Sole Arbitrator and it cannot be said that the impugned award dated 09.01.2020 is inexecutable and passed without jurisdiction. The objections which were filed by the petitioner in the execution petition have also been attached



along with the present petition as Annexure P-3, which are elaborate and detailed objections. A perusal of these objections would show that all the objections are pertaining to grounds taken on the merits of the award and not on jurisdiction and in fact, the petitioner while filing the objections in the execution petition has so stated that the award is perverse and patently illegal and is liable to be set aside under Section 34 (2A) and 34(2)(b) (ii) of the Arbitration Act, 1996 and later on withdrew the same on the ground of technical defect. Therefore, on this issue the learned Executing Court rightly observed that it cannot go beyond the award itself and the same is executable.

19. The primary argument raised by the learned Senior Counsel for the petitioner that even if the nomenclature used in Annexure P-1 is an 'award' but the same is not executable because the Sole Arbitrator was required to refer the matter back to the Facilitation Council for passing of the award was based upon the judgment passed by a Coordinate Bench of this Court in ***Indian Oil Corporation Limited's case (supra)*** wherein it was observed that such award was not enforceable because it had to be reverted back to the Facilitation Council. The relevant portion of the aforesaid judgment in ***Indian Oil Corporation Limited's case (supra)*** is reproduced as under:-

"125. In view of the above, there is no prohibition in the engagement of an arbitrator/ expert/ facilitator, as the case may be, under the Act of 2006 or the Rules framed thereunder, for submission of a report to the Facilitation Council. The Arbitrator so appointed is however not competent to pass an enforceable award as no such power has been conferred upon him under the Rules or the statutory scheme and only the Council is competent to pass



the final award. Since the arbitrator/expert/facilitator is only acting under the aegis of the Council, which is in fact the Arbitrator, the adjudication has to be done by it. If any such award has actually been passed by the Sole Arbitrator, the same is thus beyond the terms of engagement even as per the respondents themselves.

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178(xiv) The petitions noticed above and where the award has been passed by the Arbitrator/Expert/Facilitator engaged by the Facilitation Council in exercise of the powers conferred under Section 26 of the Act of 2006 cannot be held to be an enforceable award. The same can at best be construed only as a report for consideration by the Facilitation Council to pass the final award after granting an opportunity of hearing to the respective parties. Such awards as may have been passed by the Sole Arbitrator are thus set aside, along with all consequential proceedings, at this stage, and are declared to be only a report for consideration by the Facilitation Council.”

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20. The Coordinate Bench in the aforesaid judgment had relied upon the Haryana Micro and Small Enterprises Facilitation Council Rules, 2007, wherein as per Rule 4(19), it has been provided that the Council shall make an arbitral award in accordance with Section 31 of the Arbitration and Conciliation Act, 1996. The aforesaid Rule is reproduced as under:-

“4(19)- The Council shall make an arbitral award in accordance with section 31 of the Arbitration and Conciliation Act 1996, (26 of 1996) and within the time specified in sub-section (5) of section 18 of the Act. The award shall be stamped in accordance with the relevant law in force. Copies of the award shall be made available within seven days of filing of an application.”



21. The aforesaid Rules were later on amended in the year 2021 in which similar provision was incorporated under Rule 7 but since the award was made in year 2020, the Rules of 2007 were relied upon. In the aforesaid judgment, although it was held that no award can be passed by any Arbitrator/Expert/Facilitator and the matter has to be referred back to the Facilitation Council but the aforesaid judgement was decided on 01.08.2023, whereas later on in the year 2025 i.e. on 22.01.2025, Hon'ble Supreme Court while dealing with the issue in ***M/s Tamil Nadu Cements Corporation Limited's case (supra)*** referred the issue to a Larger Bench of five Judges.

22. The learned Additional District Judge in the impugned order also dealt with this argument raised by the petitioner with regard to the enforceability of the award and referred to the judgment passed by Hon'ble Supreme Court in ***M/s Tamil Nadu Cements Corporation Limited's case (supra)***, wherein the issue involved has been referred for constitution of a Larger Bench and therefore, dismissed the objections filed by the petitioner.

23. The issue as to whether the award under execution is executable or not cannot be gone into by this Court at this stage because of the pending reference in ***M/s Tamil Nadu Cements Corporation Limited's case (supra)***, wherein the aforesaid issue raised by the petitioner with regard to enforceability of the award is pending and the learned Additional District Judge has rightly dealt with the aforesaid argument raised by the petitioner. Therefore, this Court does not find any ground to interfere with or set aside the impugned order dated 28.07.2025 (Annexure P-4). The relevant portion of the aforesaid judgment is reproduced as under:-

“19. In the light of the aforesaid decisions, we deem it appropriate to refer the following questions raised in the present appeal to a larger Bench of five Judges, namely:



(i) Whether the ratio in M/s India Glycols Limited (supra) that a writ petition could never be entertained against any order/award of the MSEFC, completely bars or prohibits maintainability of the writ petition before the High Court?

(ii) If the bar/prohibition is not absolute, when and under what circumstances will the principle/restriction of adequate alternative remedy not apply?

(iii) Whether the members of MSEFC who undertake conciliation proceedings, upon failure, can themselves act as arbitrators of the arbitral tribunal in terms of [Section 18](#) of the MSMED Act read with Section 80 of the A&C Act?

The first and second question will subsume the question of when and in what situation a writ petition can be entertained against an order/award passed by MSEFC acting as an arbitral tribunal or conciliator.”

24. So far as the second issue with regard to entertainability of the present revision petition is concerned, the same deserves to be tested on the anvil of the facts and circumstances of the present case. In the present case, once the award was passed, the same was open to challenge before the competent Court by way of filing of objections under Section 34 of the Arbitration Act, 1996, which is a specific statutory remedy provided under the Act against an arbitral award. The petitioner after having invoked the aforesaid remedy under Section 34 of the Arbitration Act, 1996 had withdrawn the said objections and had thereafter filed the present revision petition challenging the impugned order passed by the Executing Court dismissing his objections to the execution petition. Therefore, the petitioner after having withdrawn the aforesaid objections cannot be permitted to re-agitate the very same grounds by invoking the extra ordinary powers of this Court under Article 227 of the Constitution of India. Article 227 confers a power of superintendence over all Courts by the High Court, but the said



superintendence by the High Court cannot be extended to assume appellate jurisdiction or an alternative remedy to the statutory remedy already available under the statute which was abandoned by the petitioner.

25. Once the petitioner had withdrawn the objections under the Section 34 of the Arbitration Act, 1996 and the objections to execution has already been dismissed, allowing the petitioner to re-agitate the same grounds under Article 227 would amount to permitting the petitioner to approbate and reprobate and would amount to an abuse of the process of law. The supervisory jurisdiction under Article 227 being discretionary and equitable ought not to be exercised in favour of a litigant who has by withdrawing the objections abandoned the statutory remedy and now seeks to circumvent the consequences of that withdrawal. Therefore, the petitioner after having withdrawn objections under Section 34 of the Arbitration Act, 1996 could not have filed the present revision petition by invoking Article 227 of the Constitution of India as the same was not entertainable as the petitioner is estopped from doing so because it creates an embargo upon it. Moreso, the petitioner did not comply with the provisions of Section 19 of the MSMED Act, 2006 at the time of filing objections under Section 34 of the Arbitration Act, 1996 while not depositing 75% of the awarded amount.

26. So far as the reliance placed by the learned Senior Counsel for the petitioner upon the judgment of Hon'ble Supreme Court in ***Bhadra International (India) Pvt. Ltd. and others's case (supra)*** is concerned, the same is not applicable to the present facts and circumstances of the present case since the aforesaid judgment was pertaining to the aspect of unilateral appointment of Arbitrator and its effect under Section 12(5) of the Arbitration Act, 1996. Therefore, the present petition filed under Article 227



of the Constitution of India is not entertainable. The petitioner after having participated before the learned Arbitrator and contesting the claim and thereafter, when the objections were filed by it to the execution under Section 36 of the Arbitration Act, 1996 having referred to Annexure P-1 by terming it as an 'award' could not have now turn around to contend that the same was not an award. It is a settled proposition of law that when an award is without jurisdiction then a plea can be taken regarding jurisdiction at any stage but in the facts and circumstances of the present case, the petitioner after having participated in the arbitral proceedings and thereafter, withdrawing the objections under Section 34 of the Arbitration Act, 1996 cannot now assail the award by invoking the jurisdiction of this Court under Article 227 of the Constitution of India as the same would amount to forum convenience. Therefore, this Court is of the considered view that in the facts and circumstances of the present case, the present revision petition is not entertainable.

27. Consequently, the present Civil Revision Petition is hereby dismissed.

15.05.2026

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No