IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION (L) NO. 11389 OF 2023

Nexus Infratech ...Petitioner

Versus

1) Micro And Small Enterprise Facilitation Council
Through Member Secretary
2) Sikco Engineering Services
Through Proprietor Archana Sikder
and Power Of Attorney Milton Sikder ...Respondents

Mr. Rohan Savant *a/w Rakesh Agrawal, Sandeep Nirban, Pallak Ranawat, for Petitioner.*

Mr. Satish Nikhar*, for Respondents.*

CORAM : SOMASEKHAR SUNDARESAN, J.

Reserved on : August 26, 2025
Pronounced on : September 30, 2025

Judgment:

Context and Background:

1. This Petition is a challenge under Section 34 of the Arbitration and Conciliation Act, 1996 ("***Arbitration Act***"), challenging an arbitral award dated December 30, 2022 ("***Impugned Award***") passed by the Facilitation Council under the Micro, Small and Medium Enterprises Development Act,

2006 ("***MSMED Act***").

2. The Petitioner, Nexus Infratech ("***Nexus***") is itself an enterprise that would otherwise be a protectee of the MSMED Act. Nexus was awarded the work of installation, testing and commissioning of a 2300 KWP grid-connected photovoltaic power plant at the Naval Station, Karanja, Uran. Nexus won the bid with the lowest quote at Rs. ~14.75 crores. The project was to be completed within nine months. A contract dated July 4, 2018 was executed between Nexus and the Chief Engineer, Military Engineering Services.

3. The Respondent, SIKCO Engineering Services Ltd. ("***SESL***") and Nexus entered into an agreement dated September 18, 2018 ("***Agreement***"), which was a back-to-back contract for setting up the project. The work under the Agreement between the parties commenced on September 17, 2018 and the targeted date of completion was April 16, 2019. The purchase order from Nexus on SESL was for an amount of Rs. ~12.35 crores.

4. Nexus is said to have terminated the work order and purchase orders by a letter dated August 26, 2019 ("***Termination Notice***"), on the premise of non-completion of work by SESL within the stipulated deadline.

According to Nexus, a sum of Rs. ~8.08 crores has been paid. SESL acknowledges receipt of Rs. ~8.06 crores. The dispute between the parties relates to SESL's contention that its invoices for supplies made and work carried out have not been fully honoured by Nexus.

5. Disputes between the parties proceeded to the Facilitation Council and after conciliation failed, arbitration commenced. The Impugned Award zeroes in on three out of 22 invoices raised between January 12, 2019 and August 20, 2019, aggregating to Rs. ~11.66 crores, and holds that Rs. ~2.05 crores remains payable along with interest computed under the MSMED Act.

6. The three invoices in question are numbered SIKCO/Uran/003; 018; and 020. Nexus has claimed that the invoices were bogus, fabricated and were not even raised on Nexus. Various issues were raised by Nexus against SESL in its written submissions and affidavits were filed before the Facilitation Council. According to Nexus, the materials covered by the invoice numbered 003 had never been received. Invoice numbered 018 is said to be a re-bill for invoice number 004 that had already been paid. It was contended that invoice numbered 020 had been raised for work that was never done and this was a facet covered by the Termination Notice.

Analysis and Findings:

7. I have heard Mr. Rohan Savant, Learned Advocate for Nexus and Mr. Satish Nikhar, Learned Advocate for SESL at length and I have examined the record with their assistance. SESL did not participate when the final hearing of this Petition commenced, although SESL had been represented when I had refused to commence hearing of the Petition unless the deposit in conformity with Section 19 of the MSMED Act was made. The deposit was made by Nexus and eventually the matter was taken up for hearing.

8. Well after the matter was underway and part-heard, Mr. Nikhar entered appearance and was given time to make submissions. An affidavit in reply dated August 16, 2025 too was taken on record. The affidavit is a copious extraction of various provisions of the MSMED Act and the Arbitration Act. I have considered its contents.

9. I have examined the Impugned Award adjusting for arbitral award not having been made by judicially trained minds, and yet being an arbitral award made by an arbitral forum that is specially constituted by law as a forum that is meant to specialise in engaging with commercial enterprises by bringing to bear commercial common sense by conciliation before arbitration.

10. Nexus had taken a stance before the Learned Arbitral Tribunal that it was working on a back-to-back basis with SESL on the timelines expected of it by the Navy. According to Nexus, the work was completed only to the extent of 15% by April 16, 2019, the stipulated deadline. Nexus alluded to various contemporaneous correspondence between the parties to support this view. Nexus claimed that it was constrained to issue the Termination Notice, setting out the balance work pending, and also setting out why it believed excess payments (of Rs. 3.01 crores) had been made and were due to be refunded by SESL to Nexus. It is Nexus' case that SESL issued invoices to avoid having to refund the excess payments. The specific allegation was that the invoices were fake and fabricated and that the GST liability or actual payment of GST claimed by SESL were not attributable to the invoices that SESL relied upon.

11. Nexus contends that the three invoices on which the Impugned Award is based (out of five invoices pursued in the proceedings by SESL) were not in existence and not received when they were purported to have been raised. It was alleged that three invoices bearing numbers 018, 019 and 020 are purported to have been raised on July 4, 2019, while invoice numbered 021 is purported to have been raised on August 20, 2019 but were

not received before the Termination Notice was issued.

12. It was stated by Nexus that the total value of invoices on which the claim before the Facilitation Council was made, appears to be Rs. ~14.78 crores while the total amount of invoices shown in the GST Returns was for Rs. ~10.24 crores. The upshot of this submission was that there were inherent inconsistencies and doubts about the veracity of the invoices and that these would need to be examined closely for adjudication of SESL's claim.

13. Nexus also contended that the invoice numbered 003, was for material purportedly supplied but never supplied. Nexus alleged that evidence led in order to purport delivery comprised three e-way bills, which would indicate hiring of a Mahindra Bolero pick-up vehicle, which had a maximum capacity of 1.5 tons. To cover the value of the materials indicated in the invoice, Nexus would contend, eight trailers of 30 tons each were needed to deliver the material for the value of Rs. 1.65 crores charged in the invoice. Invoice numbered 018 was indicated as being for precisely the same content as invoice numbered 004.

14. A chartered accountant's certificate on the actual GST paid and

attributable to the work conducted and the dates on which they were purported to have been paid and uploaded in the returns was also relied upon.

15. SESL contended before the Learned Arbitral Tribunal that Nexus terminated the contract by raising silly issues, and then started engaging directly with the suppliers and technical personnel. It was stated that the material required in terms of the contract were indeed supplied by SESL but some material was also directly supplied by Nexus on its own.

16. The reasoning set out in the Impugned Award is contained in the cryptic contents of a single paragraph (Paragraph 2). However, the "*findings and reasoning*" in their entirety, from the Impugned Award are *verbatim* extracted below: –

> ***Issues:***
>
> *In view of the above the Following issues are required to be decided by the council,*
>
> *1. Whether the Petitioner is entitled for the balanced outstanding principal amount with interest as per section 16 of the MSMED Act, 2006?*
>
> *Since no conciliation was possible the council has to decide the matter on merit on following findings and reasoning.*

1. The petitioner supplied material as per po/fo, which was accepted by the respondent. Although the respondent claimed that respondent directly acquired the material as the petitioner was unable to obtain the necessary funds to purchase the material, However, the respondent submitted bills of Rs 21,84,500/- only in support of this.

2. The council on going through invoices, documents submitted by both parties unanimously came to conclusion that the petitioner is entitled for pending bill no. 003, 018, 020 only. Since For Bill no. 021, GST amount not paid as per GSTR 1 update submitted by petitioner, therefore, bill is not considered. On going through GSTR1 statement submitted by petitioner for Invoice No. 010 of Rs. 5,48,700/-, GST amount not paid, however GST amount paid invoice is No. 010R therefore bill is not considered, the petitioner is entitled for balance payment against Invoice No. 003, 018 and 020.

3. The Respondent had done the part payment to the petitioner as per terms. The council came to conclusion that the respondent is liable to pay balance principal amount along with interest as per section 16 of the MSMED Act 2006.

17. It will be seen from Paragraph 1 of the extract above that there is a summary finding that SESL supplied material as per the purchase order and work order, which is found to have been accepted by Nexus. This is directly contradictory to the express contention of Nexus that one of the three invoices was already covered by an earlier invoice and that the invoices are purportedly fabricated and fake, raised only to avoid having to refund excess amount paid. This is not to say that in this Court's view Nexus is right in its

contention, since it is not for the Section 34 Court to see if the Learned Arbitral Tribunal is right or wrong in its assessment of evidence. However, what the Section 34 Court has to see is whether the Learned Arbitral Tribunal has dealt with the matters before it in a reasonable quasi-judicial manner that is commonsensical and logical at the least, since the Learned Arbitral Tribunal is meant to adjudicate competing claims in its role as an arbitrator.

18. The Impugned Award also indicates that the Learned Arbitral Tribunal was cognisant of the fact that Nexus is purported to have directly acquired material – this is shown in the above extract as a claim of Nexus, while in an earlier part of the Impugned Award where contentions are recorded, it is recorded that it was SESL's claim that Nexus directly procured material from the suppliers, cutting SESL out. The Learned Arbitral Tribunal has held that Nexus submitted bills of only Rs. ~21.84 lakhs in support of having procured material directly from third parties, and has said nothing further – suggesting an insinuation that all material had been supplied by SESL and not directly by Nexus.

19. Earlier in the Impugned Award, the Learned Arbitral Tribunal has listed all the 22 invoices and recorded that the claims of SESL is based on non-payment of five invoices being invoices numbered 003, 010, 018, 020

and 021, aggregating to Rs. ~2.10 crores. Nexus' contentions on inconsistencies in the claimed payment of GST appears to have led to the Learned Arbitral Tribunal adopting the stance of the GST alone being the differentiator, as is seen from Paragraph 2 extracted above.

20. It is seen that invoices numbered 010 and 021 have been rejected by the Learned Arbitral Tribunal for GST not having been paid. Since GST is claimed to have been paid on invoices numbered 003, 010 and 018, the Learned Arbitral Tribunal has held that the balances claimed against these invoices must be awarded to SESL, with interest computed at the statutory interest rate under the MSMED Act.

21. It was Nexus' specific contention that no GST had been paid on invoice numbered 003 and that the GST is shown as having been paid with the GST return being filed on July 5, 2021 – two years later. This is well after disputes had broken out between the parties; well after the reference to the Facilitation Council had been made; and in fact, when the conciliation proceedings were underway. This finds no discussion in the Impugned Award. Likewise, Nexus' claim that the tonnage of vehicles that are claimed to have been engaged for the supply of the materials is inconsistent with the material claimed to have been delivered under the same invoice (to buttress

the allegation that the invoice is fabricated) is not even considered.

22. I have kept in mind the following passage from ***Associate Builders***[1] when considering this challenge to the Impugned Award (*the footnote in the judgement, to the extracted paragraph is also set out below the extract*):

> *It must clearly be understood that* ***when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected****. A possible view by the arbitrator on facts has necessarily to pass muster as* ***the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award****. Thus* ***an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score***
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> *[Inserted Footnote – extracted below:]*
> ***Very often an arbitrator is a lay person not necessarily trained in law****. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows:*
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> > *" General, you have a* ***sound head, and a good heart****; take courage and you will do very well, in your occupation, in a court of equity. My advice is, to* ***make your decrees as your head and your heart dictate, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your***

1 Associate Builders Vs. Delhi Development Authority – (2015) 3 SCC 49

> *determination may be substantially right, although your reasons may be very bad, or essentially wrong".*
>
> *It is very important to bear this in mind when awards of lay arbitrators are challenged.*
>
> *[Emphasis Supplied]*

23. Even applying this broad principle, one must not lose sight of the fact that the Facilitation Council is meant to comprise minds that need not be judicially trained but is meant to comprise minds that apply a commonsensical approach to matters of commerce and industry. Against this backdrop, it must be remembered that it was Nexus' specific case that the deliveries underlying the invoice numbered 003 had not been delivered. Specific contentions had been raised about the load that could be taken by the vehicles that were claimed to have delivered the underlying material. Likewise, the date on which the GST returns for this invoice dated April 11, 2019 was uploaded was purported to be July 5, 2021 (more than two years later and well after the proceedings before the Facilitation Council were underway) when GST returns for other contemporaneous invoices had been uploaded in proximity to the dates of those invoices. This was specifically alleged to be a post-dated action of fabrication. There is not a whisper in the Impugned Award, of an analysis of such a core contention involved.

24. The Impugned Award indeed records the contention that the invoices were allegedly fabricated and fake. It is seen from the record that Nexus raised the issue of a post-dated GST return raising doubts about the veracity of the invoices. This is not dealt with at all. The pivot for the decision-making in the Impugned Award is that wherever GST is shown as paid in the returns, without regard to when the returns were filed or when the GST was paid, the invoice is deemed to be accurate and payable.

25. The reasoning in the Impugned Order is skimpy, cryptic and summary and squarely does not even squarely deal with the issues raised. It is in this context that the following extracts from Paragraphs 80, 82 and 83 of the Supreme Court's decision in ***OPG Power***[2] would be relevant:

> ***80. We find ourselves in agreement with the view taken in Dyna Technologies (supra), as extracted above. Therefore, in our view, for the purposes of addressing an application to set aside an arbitral award on the ground of improper or inadequate reasons, or lack of reasons, awards can broadly be placed in three categories:***
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> ***(1) where no reasons are recorded, or the reasons recorded are unintelligible;***
>
> ***(2) where reasons are improper, that is, they reveal a flaw in the decision- making process; and***
>
> ***(3) where reasons appear inadequate.***

2 OPG Power Generation (P) Ltd. vs. Enoxio Power Cooling Solutions India Private Ltd. And Anr – (2025) 2 SCC 417

> ***82. Awards falling in category (2) are amenable to a challenge on ground of impropriety or perversity, strictly in accordance with the grounds set out in Section 34 of the 1996 Act.***
>
> ***83. Awards falling in category (3) require to be dealt with care. In a challenge to such award, before taking a decision the Court must take into consideration the nature of the issues arising between the parties in the arbitral proceedings and the degree of reasoning required to address them. The Court must thereafter carefully peruse the award, and the documents referred to therein. If reasons are intelligible and adequate on a fair-reading of the award and, in appropriate cases, implicit in the documents referred to therein, the award is not to be set aside for inadequacy of reasons. However, if gaps are such that they render the reasoning in support of the award unintelligible, or lacking, the Court exercising power under Section 34 may set aside the award.***
>
> ***[Emphasis Supplied]***

26. A core issue that was raised in the proceedings was whether the invoices were fabricated and the basis for raising such issue were the dates of the GST returns in juxtaposition with the purported dates of the invoices. Since GST was the sole pivotal reason that weighed with the Learned Arbitral Tribunal, at the least, the issue of why the GST returns were filed after more than two years when invoices purportedly raised later entailed GST returns being filed contemporaneously. The Learned Arbitral Tribunal ought to have

dealt with the issue of how the GST returns had been filed when conciliation proceedings before the Facilitation Council were underway. This is why I am of the view that the reasoning in the Impugned Award (based primarily on the GST returns) is inadequate and perverse.

27. Section 24 of the Arbitration Act indeed permits a documents-only approach without oral hearings, unless the parties otherwise agree. However, the Facilitation Council indeed conducted oral hearings, and all the dates are recorded in the Impugned Award. The principle of *post-litam motam* (conduct after the litigation has commenced) would necessitate this issue being considered and being dealt with.

28. I must hasten to add that nothing in this judgement is meant to be an endorsement of Nexus' stance on merits. What weighs with me is that these are squarely issues that had been raised but the reasoning does not deal with them. The reasons are cryptic, skimpy and summary. In my assessment, the reasons in the Impugned Award are inadequate and reveal a flaw in the decision-making process, applying the standard declared in ***OPG Power***. The findings in the Impugned Award are not plausible on the basis of the inadequate reasons provided by the Learned Arbitral Tribunal. On this ground, I am constrained to hold that the Impugned Award cannot withstand

the challenge mounted in this Petition.

29. I must record that the Impugned Award is vulnerable because of the Facilitation Council's approach and no fault is being found with either party and nothing in this judgement is an expression of an opinion on the merits of the case presented by the respective parties before the Facilitation Council. Therefore, I am of the view that costs need not follow the event in the peculiar circumstances of the case, but costs for this round of litigation may be pressed in the arbitration if it is resorted to afresh.

30. I must also mention that the Petitioner itself is an enterprise that would fall under the statutory protection of the MSMED Act. The policy objective underlying the MSMED Act is to level the playing field for weak enterprises, protecting them from abuse by others in the market. When the party making a claim and the party against whom the claim is made are both statutory protectees under the MSMED Act, the duty of care of the Facilitation Council is a higher one. This too would need to be borne in mind when testing the degree of perversity, and the flawed and inadequate reasoning when assessing the Impugned Award.

31. The parties are left to their own devices in addressing the arbitral

tribunal if they litigate afresh (since the statutorily-formed arbitration agreement would subsist). If they do so, the Facilitation Council shall permit the parties to lead evidence in the conduct of arbitration proceedings based on the pleadings already filed. The Facilitation Council shall adjudicate the matter afresh without taking anything contained in this judgement as a view of this Court on the merits of the dispute. All findings in this judgement are findings on the standards that were meant to have been applied by the Learned Arbitral Tribunal from the perspective of Section 34 of the Arbitration Act.

32. Therefore, in my opinion, this is a fit case for setting aside the Impugned Award. The Petition and any connected interim applications stand ***disposed of***. The amounts deposited in this Court, along with accruals thereon shall be released to the Petitioner within a period of four weeks from the upload of this judgement on the website of this Court.

33. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]

Shraddha