IN THE HIGH COURT AT CALCUTTA

COMMERCIAL APPELLATE DIVISION

ORIGINAL SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Aryak Dutt

AO-COM 13 of 2026
WITH
AP COM/382/2024
IA NO. GA-COM/1/2026

M/s. Mohindra Tubes Limited (Earlier known as Mohindra Tubes Private Limited)
Vs.
Public Health Engineering Department, Gorkha Territorial Administration, Darjeeling

AO-COM 20 of 2026
IA NO. GA-COM/1/2026

M/s. Mohindra Tubes Limited (Earlier Known as Mohindra Tubes Private Limited)
Vs.
Public Health Engineering Department, Gorkha Territorial Administration, Darjeeling

FMAT (ARBAWARD) 19 of 2025

M/s. Jaggi Brothers Overseas Private Limited
Vs.
M/s. BESCO Limited

For the Appellant in AO-COM/13/2026 & AO-COM/20/2026	:Mr. Avinash Kankani, Adv. Ms. Shyantee Datta, Adv.
For the Respondent in AO-COM/13/2026 & AO-COM/20/2026	:Mr. Surojit Nath Mitra, Sr. Adv./Adv.-Gen. Mr. Swernendu Ghosh, Sr. Adv. Mr. Soumanjan Bhattacharya, Adv. Mr. Debdut Mukherjee, Adv.

	Ms. Vidhi Birmecha, Adv.
For the Appellant in FMAT/19/2025	:Ms. Ujjaini Chaterjee, Adv. Ms. Pallavi Pain, Adv.
For the Respondent in FMAT/19/2025	:Mr. Siddhartha Banerjee, Adv. Mr. Rajib Mullick, Adv. Mr. Divyan Agarwal, Adv.
Hearing Concluded on	: August 28, 2026
Judgement on	: September 28, 2026

DEBANGSU BASAK, J.:-

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Preface

1. Three appeals have been heard analogously as they involve similar issues.

Nature of Appeals

2. Appellant in AO COM 13 of 2026 has assailed the order dated May 13, 2026 passed by the learned Single Judge restoring an application under Section 34 of the Arbitration and Conciliation Act, 1996. Same appellant has filed AO COM 20 of 2026 assailing the order dated March 31, 2026 by the learned Single Judge. Appellant in FMAT (ARBAWARD) 19 of 2025 has assailed the judgment and order dated February 10, 2025 passed by the Learned Chief Judge, City Civil Court, Calcutta, setting aside the award dated July 13, 2023 passed by the Facilitation Council.

Parties to Appeals

3. For the purpose of identification of the parties in the three appeals, appellant in AO COM 13 of 2026 and AO COM

20 of 2026 is referred to as Mohindra Tubes Limited or MTL while the respondent in those two appeals is referred to as Public Health Engineering or PHE. Appellant in FMAT (ARBAWARD) 19 of 2025 is referred to as Jaggi Brothers Overseas Private Limited or JB while the respondent therein as Besco Limited or BL.

Contentions of MTL

4. Learned Advocate appearing for the MTL has contended that, PHE assailed the award dated January 17, 2023 passed by the West Bengal Micro, Small and Medium Enterprises Development Facilitation Council hereinafter referred to as the Facilitation Council by filing an application under Section 34 of the Act of 1996 which was registered as AP No. 763 of 2023.

5. Learned advocate appearing for MTL has contended that, since the award was passed by the Facilitation Council acting under the provisions Micro, Small And Medium Enterprises Development Act, 2006, provisions of Section 19 of the Act of 2006 stood attracted and applicable to the application under Section 34 of the Act of 1996. He has contended that, pre-deposit under Section 19 of the Act of

2006 is mandatory. In support of such contention, he has relied upon ***2023 SCC OnLine Cal 2200 (Board of Major Port Authority for the Shama Prasad Mookerjee Port vs. Marine Craft Engineers (P) Ltd.)***, unreported decision of the Madras high Court in ***(Numaligarh Refinery Ltd. vs. M/s Solar Design Pvt. Ltd.)*** and ***2022 (1) SCC 61 (Gujrat State Disaster Management Authority vs. Aska Equipments Ltd.)***.

6. Relying upon ***1967 SCC OnLine SC 140 (Lakshmi Ratan engineering Works Ltd. Vs. Assistant commissioner (Judicial) I, Sales Tax Kanpur Range, Kanpur & Anr.)*** learned advocate appearing for MTL has contended that, when the application under Section 34 of the Act of 1996 is taken up for consideration, adequate proof of compliance with Section 19 of the Act of 2006 must be on record.

7. Learned advocate appearing for MTL has contended that, the application under Section 34 of the Act of 1996 was listed before the learned Single Judge on November 17, 2023 and December 15, 2023 when, the respondent did not comply with the mandatory pre-deposit. He has referred to the order dated December 18, 2023 by which, learned Single Judge had directed the respondent to deposit 75 per cent of the awarded amount out of which 75 per cent was to be secured by bank guarantee and 25 per cent by cash security before the Registrar, Original Side.

8. Learned advocate appearing for MTL has contended that, the application under Section 34 of the Act of 1996 was taken up on two further dates on April 1, 2024 and April 16, 2024 when PHE had failed to appear. Therefore, learned Trial Judge had dismissed the application for default on April 16, 2024.

9. Learned advocate appearing for MTL has relied upon ***2024 SCC OnLine Del 1472 (Central University of Jharkhand vs. King furnishing and Safe Co.)*** for the proposition that, filing and entertaining of the petition are two different aspects.

10. Relying upon ***2026 INSC 451 (Habban Shah vs. Sheruddin)*** learned advocate appearing for MTL has contended that, a conditional decree is self-operative and that non-compliance of the condition therein coupled with the failure to move any application for extension of time within the period stipulated results in automatic dismissal/lapse of the underlying proceedings which ceased to exist in the eyes of law and cannot thereafter be revised.

11. Learned advocate appearing for MTL has contended that, MTL had put the award into execution. He has referred to various orders passed in the execution proceedings and particularly to the order dated November 28, 2025 where non-compliance with Section 19 of the Act of 2006 was noted.

12. Learned advocate appearing for MTL has contended that, by the order dated March 31, 2026, learned Single Judge had condoned the delay in filing the application for restoration without inviting any affidavits. He has pointed out that the order dated March 31, 2026 is the subject matter of the appeal being AO COM 20 of 2026.

13. Relying upon ***2021 (4) SCC 602 (Chintels India Limited vs. Bhayana Builders Private Limited)*** learned advocate appearing for the MTL has contended that, the two appeals of MTL are maintainable inasmuch as, the impugned orders have the effect of an order refusing to set aside the award.

14. Relying upon ***2012 SCC OnLine Cal 13229 (Smt. Gitarani Rakshit vs. State of West Bengal & Ors.)*** learned advocate appearing for MTL has contended that gross negligence and lackadaisical conduct disentitles a party to a discretionary remedy.

15. Relying upon ***2003 (4) SCC 739 (State of A.P vs. Goverdhanlal Pitti)*** learned advocate appearing for the MTL has contended that, legal malice or malice in law means an act done wrongfully or wilfully without reasonable or probable cause and is deliberate act in disregard of the rights of others. He has pointed out that, the Government of West Bengal, Public Health Engineering Department has specifically allotted funds to the PHE by the allotment letter dated February 19, 2026 for the purpose of satisfying the amount in the award. He has contended that, PHE is presently trying to take a stand which is not permissible.

16. Relying upon ***2023 SCC OnLine SC 95 (Godrej Sara Lee Ltd. vs. The Excise Taxation Officer-cum-Assessing Authority and Ors.)*** learned advocate appearing for MTL has contended that, maintainability and entertainability are distinct concepts. In the facts and circumstances of the present case, the petition under Section 34 of the Act of 1996 although could be filed, could not have been proceeded with or entertained without compliance with the mandatory provisions of Section 19 of the Act of 2006.

Contentions of PHE

17. Learned Advocate General appearing for PHE has referred to the sequence of events leading to the appeals. He has contended that, the order dated April 16, 2024 makes it abundantly clear that, the application under Section 34 of the Act of 1996 was dismissed for non-appearance of the respondent and not for any other reason. Any incorrect recording in any subsequent order passed in the execution proceeding does not change the nature of the reasoning of the order dated April 16, 2024.

18. Learned Advocate General appearing for PHE has contended that, the order dated May 13, 2026 merely restores the application under Section 34 of the Act of 1996 and is not an order passed under Section 34 thereof. He has contended that the application under Section 34 of the Act of 1996 was not heard on merits at all. The impugned order dated May 13, 2026 therefore, does not have the effect of setting aside or refusing to set aside an arbitral award under Section 34 as contemplated under Section 37(1)(c) of the Act of 1996.

Consequently, he has contended that, neither of the appeals are not maintainable.

19. In support of the contention that the two appeals are not maintainable, learned Advocate General appearing for PHE has relied upon ***2020 (4) SCC 234 (BGS SGS Soma JV vs. NHPC Limited)***, ***2016 SCC OnLine Del 5383 (Harmanprit Singh Sandhu Vs. Arcadia Shares & Stock Brokes (P) Ltd.)*** , ***2021 (4) SCC 602 (Chintels India Limited vs. Bhayana Builders Private Limited)***, ***2000 (6) SCC 94 (Essar constructions vs. N.P. Rama Krishna Reddy)*** and ***2017 (14) SCC 225 (Union of India vs. Simplex Infrastructures Ltd.)***.

20. Learned Advocate General appearing for PHE has contended that, the document dated February 19, 2026 is an internal document of the respondent for allotment of funds and cannot be considered in the manner as sought to be contended on behalf of the appellant.

21. Referring to Section 19 of the Act of 2006 learned Advocate General appearing for PHE has contended that, time to deposit can be extended. In support of such contention, he has relied upon ***2012 (6) SCC 345 (Goodyear India Pvt. Ltd.***

vs. Norton Intech Rubbers (P) Ltd.), ***2012 (2) CTC 819 (Goodyear India Pvt. Ltd. vs. Norton Intech Rubbers (P) Ltd.)***, ***2022 (7) SCC 429 (Tirupati Steels vs. Shubh Industrial Component & Anr.)***.

22. Learned Advocate General appearing for PHE has contended that, the order dated December 18, 2023 was passed in an application under Section 36(2) of the Act of 1996. He has contended that, non-compliance of such order merely allows MTL to proceed with the execution case. Failure to deposit does not render the application under Section 34 of the Act of 1996 as infructuous or still born. Moreover, according to him, Section 19 of the Act of 2006, has not prescribed any time limit for the deposit to be made. According to him, only embargo is that the Court would not entertain the application under Section 34 of the Act of 1996 unless the prescribed deposit is made.

23. Learned Advocate General appearing for PHE has contended that, there is no bar in restoring the application under Section 34 of the Act of 1996 since, the same does not tantamount to entertaining such an application. According to him, restoration of an application under Section 34 of the Act of 1996 does not violate Section 19 of the Act of 2006.

Contentions of JB

24. Learned Advocate appearing for JB has contended that, the appeal under Section 37 of the Act of 1996 is directed against the judgment and order dated February 10, 2025 passed by the learned Chief Judge, City Civil Court setting aside an arbitral award dated July 13, 2023 passed by the Facilitation Council.

25. Learned Advocate appearing for the JB has referred to the sequence of events leading up to the impugned judgement and order. She has submitted that, in the arbitration proceedings, BL did not give any effective response as to why the bills of the appellant were not paid.

26. Learned Advocate appearing for the JB has contended that inadequate stamping of arbitral award is not a ground for setting aside the same. She has relied upon ***2003 (8) SCC 565 (M. Anasuya Devi & Anr Vs. Manik Reddy & Ors.)*** in support of her contention that, objection in respect of the inadequately stamped arbitral award can at best be taken at the time of execution of the award.

27. Learned Advocate appearing for the JB has contended that a deposit of 75 per cent as required under Section 19 of the Act of 2006 is mandatory. She has relied upon ***2022 (7) SCC 429 (Tirupati Steels vs. Shubh Industrial Component & Anr.)*** and ***2023 SCC Online Cal 2200 (Board of Major Port Authority for the Shama Prasad Mookerjee Port vs. Marine Craft Engineers (P) Ltd.)***, in support of such contention.

28. Learned advocate appearing for JB has contended that, Section 19 of the Act of 2006 does not contain any exception as appearing in Section 36 of the Act of 1996. According to her, Section 19 of the Act of 2006 and Section 36 of the Act of 1996 operate in separate fields. She has relied upon ***2021 (18) SCC 790 (Silpi Industries and Ors. vs. Kerala State Road Transport Corporation & Anr.)*** and ***2023 (6) SCC 401 (Gujarat State Civil Supplies Corporation Ltd. vs. Mahakali Foods Private limited (Unit 2) & Anr.)*** in support of the contention that, the provisions of the Act of 2006 override the provisions of the Act of 1996.

29. Relying upon ***1978 (4) SCC 16 (U.P. State Electricity Board and Anr. vs. Hari Shankar Jain & Ors.)*** learned advocate appearing for JB has contended that, the provisions of the Act of 1996 are applicable to a proceeding under the Act of 2006 to a limited extent. She has contended relying upon ***2014 (8) SCC 319 (Commercial Tax Officer, Rajasthan vs. Binani Cements Ltd. & Anr.)*** a purposive interpretation which advances the object of the Act of 2006 should be adopted.

30. Relying upon ***AIR 1952 Cal 124 (Satyanarayan Prasad vs. Diana Engineering)*** learned advocate appearing for JB has contended that, an appeal is a continuation of the proceedings before the learned Trial Judge. Therefore, any issue which was res judicata before the Trial Court will become sub judice in an appeal between the parties.

31. Referring to the merits of the matter, learned advocate appearing for JB has contended that, JB is a supplier as contemplated under the Act of 2006. In support of such contention, she has relied upon Section 2(n) and (8) of the Act of 2006 and the registration certificate of JB.

32. Relying upon ***2025 (3) SCC 440 (NBCC (India) Limited vs. State of West Bengal)*** learned advocate appearing for BL has contended that, the question of whether a supplier or a unit which may not have a registration prior to the date of supply is pending before the Larger Bench of the Hon'ble Supreme Court.

33. Referring to the registration certificate of JB, learned advocate appearing for JB has contended that, JB is involved in the activity of manufacturing and processing of Metal Steel Scraps. The investment of JB is less than the prescribed limit and therefore, JB is a small enterprise within the meaning of the Act of 2006. She has submitted that, the ratio of ***2023 SCC OnLine Cal 956 (Anupam Industries Limited & Anr. vs. West Bengal Micro Small Enterprise Facilitation Council and Anr.)*** applies to the facts and circumstances of the present case.

34. Learned advocate appearing for JB has contended that, an application under Section 34 of the Act of 1996 assailing an award passed by the Facilitation Council under the Act of 2006 cannot be entertained by passing the provision of Section 19 of the Act of 2006. She has relied upon ***2023 SCC OnLine SC 1852 (India Glycols Limited & Anr. vs. Micro and Small Enterprises Facilitation Council Medchal Malkajgiri & Ors.)*** in support of such contention.

Contentions of BL

35. Learned advocate appearing for BL has contended that, JB was not entitled to approach the Facilitation Council under the Act of 2006. JB cannot be considered to be a supplier within the meaning of the Act of 2006. He has referred to Section 2(n) and (8) of the Act of 2006 to contend that, JB does not fall in any of the categories under the Act of 2006. Invocation and assumption of jurisdiction by the Facilitation Council was bad in law.

36. Learned advocate appearing for BL has contended that, JB approached the Facilitation Council as a micro enterprise and not as a small enterprise as will appear from the Udyog Aadhaar Registration. According to him, JB therefore cannot claim any benefit under Section 8 of the Act of 2006 which deals only with small enterprise.

37. Learned advocate appearing for BL has contended that, the appellant is involved in an industry engaged in manufacturing goods falling under the First Schedule to the Industries (Development and Regulation) Act, 1951. JB has supplied metal, steel, heavy metal melting scrap to BL. Such materials fell under Serial No. 1.A of the First Schedule to the

Act of 1951. He has relied upon ***2023 SCC OnLine Cal 956 (Anupam Industries Limited & Anr. vs. West Bengal Micro Small Enterprise Facilitation Council and Anr.)*** in support of his contention.

38. Referring to ***2025 (3) SCC 440 (NBCC (India) Limited vs. State of West Bengal)*** learned advocate appearing for BL has contended that, the ratio laid down therein has no manner of application to the facts and circumstances of the present case.

39. Relying upon ***2014 (16) SCC 623 (Sundeep Kumar Bafna vs. State of Maharashtra & Anr.)*** learned advocate appearing for BL has contended that in case of conflict, the previous decision of the Co-ordinate Bench would prevail.

40. Referring to Sections 15 to 18 of the Act of 2006, learned advocate appearing for BL has contended that, only a dispute between a buyer and the supplier as defined under the Act of 2006 can be referred to or brought before Facilitation Council. According to him, JB was not a supplier at the material point of time, therefore, could not have approached the Facilitation Council for redressal of the grievances.

41. Learned advocate appearing for BL has contended that, JB was registered as a supplier under the Act of 2006 only on January 20, 2019. The work order had been issued on June 1, 2018 and the bills were raised between the period June to July 2018 which is much prior to JB being registered as a supplier under the Act of 2006.

42. Relying upon ***2021 (18) SCC 790 (Silpi Industries & Ors. Vs. Kerala State Road Transport Corporation & Anr.)*** learned advocate appearing for BL has contended that, since the bills were raised on a date when JB did not have registration, JB was not entitled to be treated as a supplier. He has relied upon ***2022 SCC OnLine SC 355 (Vaishno Enterprises vs. Hamilton Medical A.G. and Another)*** and ***2022 SCC OnLiine SC 1198 (Nitesh Estates Limited vs. Micro and Small Enterprises Facilitation Council of Haryana & Others)*** in support of such contention.

43. Relying upon ***2023 (6) SCC 401 (Gujarat State Civil Supplies Corporation Ltd. Vs. Mahakali Foods Private Limited (Unit 2) & Anr.)*** learned advocate appearing for BL has contended that, since, JB was not a supplier within the meaning of Section 2(n) read with Section 8 of the Act of 2006, the Facilitation Council did not have jurisdiction to pass the award.

44. Learned advocate appearing for BL has contended that, pre-deposit under Section 19 of the Act of 2006 was not mandatory. He has referred to the amendments introduced to Section 36 of the Act of 1996. He has contended that, such amendments were introduced in 2016 much after the enactment of the Act of 2006. He has referred to the second proviso to Section 36(3) of the Act of 1996 which provides that an award obtained by fraud or corruption may be stayed unconditionally pending challenge under the Act of 1996. He has contended that, Section 36 (3) of the Act of 1996 did not curve out any exception for an arbitration conducted by the Facilitation Council under the Act of 2006.

45. Relying upon ***1984 (3) SCC 127 (Ajoy Kumar Banerjee vs. Union of India)*** learned advocate appearing for BL has contended that, even if it is assumed that the Act of 1996 is a piece of general legislation and that the Act of 2006 is a special legislation then also the amendment in the general legislation took place while the special legislation was in force.

Therefore, the amended provisions of the general legislation would prevail over previous special legislation.

46. Relying upon ***1999 (5) SCC 624 (S. Prakash & Anr. vs. K. M. Kurian & Ors.)*** learned advocate appearing for BL has contended that, the proviso to Section 36 (3) of the Act of 1996 would prevail over Section 19 of the Act of 2006. Relying upon ***2021 (19) SCC 206 (Jharkhand UrjaVikas Nigam Limited vs. State of Rajasthan & Others)*** learned advocate appearing for BL has contended that, the exceptions curved out under Section 36 of the Act of 1996 for pre-deposit would apply to a challenge made to an award passed by the Facilitation Council.

47. Learned advocate appearing for BL has contended that, JB perpetuated fraud in law and on Facilitation Council by projecting itself as a supplier within the meaning of the Act of 2006 whereas it is not so. Such fraud perpetuated has rendered the award a nullity and void ab initio. Question of pre-deposit under Section 19 of the Act of 2006 therefore does not arise.

48. Without prejudice to the earlier contentions, learned advocate appearing for BL has contended that, in the event, BL is asked to make a deposit of 75 per cent then, BL should be allowed to do so by instalments. He has relied upon ***2022 (7) SCC 429 (Tirupati Steels vs. Shubh Industrial component & Anr.)***.

49. Learned advocate appearing for BL has contended that, the issue as to whether, the Facilitation Council can act as an arbitrator after having acted as a conciliator is pending before a Larger Bench.

50. Learned advocate appearing for BL has contended that, JB cannot be considered as a supplier within the meaning of the Act of 2006. In support of such contention, he has referred to the certificate of registration of JB and ***2019 SCC OnLine Bom 4542 (Biopharma Pvt. Ltd. vs. Jagtap Horticulateur Private Limited)*** and ***2019 SCC OnLine Guj 2474 (Easun Reyrolle Limited vs. Nik San Engineering Co. Limited)***.

51. Learned advocate appearing for BL has contended that, the award is liable to be set aside. He has contended that, the Facilitation Council carried an impression from the conciliation proceeding and did not independently apply its mind in the arbitration. He has contended that the award is passed on the submissions made by BL during the conciliation proceedings which violates the provisions of the Act of 1996. Moreover, according to him, BL was not provided with adequate opportunity to put up, statement of defence. BL was not supplied with a copy of the statement of claim and after a belated supply was denied an adequate opportunity to file statement of defence. He has contended that, the award stands vitiated under Section 34(2)(a)(iii)(iv) and Section 34(2)(d)(ii) of the Act of 1996.

Events in AO COM 13 of 2026 and AO COM 20 of 2026

52. AO COM 13 of 2026 and AO COM 20 of 2026 have arisen out of the orders passed in AP NO. 763 of 2023. MTL had approached the Facilitation Council for non-payment of its bills by PHE. Facilitation Council had passed the award dated January 17, 2023 in favour of the MTL. PHE had challenged the award dated January 17, 2023 passed by the Facilitation Council under Section 34 of the Act of 1996 being AP No. 763 of 2023 on September 26, 2023.

53. On October 17, 2023 PHE had filed an application under Section 36(2) of the Act of 1996 for stay of the award dated January 17, 2023 being AP NO. 776 of 2023.

54. By an order dated December 18, 2023, the learned Single Judge had disposed of the application under Section 36(2) of the Act of 1996 being AP No. 776 of 2023 by directing PHE to secure the entire awarded amount within five weeks from the date of the order, failing which the MTL was granted liberty to enforce the award. None of the parties had preferred any appeal therefrom.

55. Time to furnish security in terms of the order dated December 18, 2023 having expired, MTL had put the award into execution being EC (Com) No. 130 of 2024.

56. The petition of PHE under Section 34 of the Act of 1996 being AP No. 763 of 2023 was dismissed for default on April 16, 2024 on the failure of PHE to appear.

57. On May 24, 2024 PHE had applied for restoration of the petition under Section 34 of the Act of 1996 after condoning the delay in filing such restoration application.

58. By order dated July 22, 2025, learned Executing Court, had recorded that the application under Section 34 of the Act of 1996 was dismissed due to non-deposit of the amount mandated by Section 19 of 2006. PHE has contended that, such recording in the order dated July 22, 2025 is incorrect and in any event does not change the material position that no attempt under Section 19 of 2006 was made by PHE prior thereto.

59. There is substance in the contention of PHE that, the petition under Section 34 of the Act of 1996 was dismissed for default and not on the ground of non-compliance of the order of deposit made on December 18, 2023.

60. In the execution proceeding, being EC (Com) No. 130 of 2024, learned Executing Court had passed diverse orders enforcing the award dated January 17, 2023 passed by the Facilitation Council.

61. Executing Court had passed the order dated August 2, 2025 extending the order of attachment of bank account till November 30, 2025.

62. By an order dated November 26, 2025, the Executing Court has noted that the awarded amount had escalated. Executing Court had directed the Executive Director of PHE to be present in Court to indicate the steps taken for payment of the award.

63. By an order dated November 28, 2025, Executing Court had noted the sequence of events heading up to the order dated November 26, 2025. Executing Court had recorded its strong dissatisfaction with the conduct of the PHE. Executing Court had, in view of the persistence non-compliance, suppression on material facts, failure to adhere to the statutory mandate or the order of the Court and lack of bonafide, issued various directions on PHE. Executing Court had also noted that, despite directions requiring the Executive Director of PHE to appear on November 28, 2025 it failed to do so.

64. By an order dated January 9, 2026 Executing Court had noted compliance of the earlier orders of filing of affidavits and presence of the Executive Director, PHE.

65. By an order dated January 22, 2026, Executing Court had extended the interim order.

66. By an order dated April 1, 2026 Executing Court had refused to extend the interim order in view of no application for extension having been filed.

67. PHE had filed supplementary affidavit in the restoration proceeding affirmed on February 27, 2026 by which, PHE had invited the Court to extend the time to comply with the order dated December 18, 2023.

68. By the order dated March 31, 2026, learned Single Judge has condoned the delay of seven days in filing the application for restoration. MTL has assailed this order in AO COM No. 20 of 2026. By an order dated May 13, 2026, learned Single Judge has recalled the order of dismissal for default dated April 16, 2024 and restored the petition under Section 34 of the Act of 1996 being AP NO. 763 of 2023. MTL has assailed the order dated May 13, 2026 in AO COM 13 of 2026.

Events in FMAT (ARBAWARD) No. 19 of 2025

69. In FMAT (ARBAWARD) No. 19 of 2025 JB had approached the Facilitation Council claiming various amounts against BL. Facilitation Council had passed the award dated July 13, 2023 in favour of the JB and as against BL.

70. BL being aggrieved by the award dated July 13, 2023 had filed an application under Section 33 of the Act of 1996 read with Rule 18 of the West Bengal Medium Small and Micro Enterprises Facilitation Council Rules, 2026 for correction of such award on the ground that the Facilitation Council had no jurisdiction to entertain the claim as JB was not a supplier within the meaning of the Act of 2006 and therefore, proceedings before the Facilitation Council were not maintainable.

71. By an order dated April 15, 2024, the Facilitation Council had ruled that on the basis of the permanent registration held that JB from January 13, 1981 issued by the Directorate of Cottage and Small Industries, Government of West Bengal. JB was a supplier within the meaning of the Act of 2006.

72. BL had assailed the award dated July 13, 2023 of the Facilitation Council before the learned City Civil Court at Calcutta. Records made available before us do not establish that BL had applied under Section 19 of the Act of 2006 ever prior to the impugned judgment and order dated February 10, 2025. By the impugned judgment and order dated February 10, 2025, learned Chief Judge, City Civil Court at Calcutta had set aside the award dated July 13, 2023 passed by the Facilitation Council. JB has thereafter preferred the appeal against such judgment and order.

73. By the impugned judgment and order dated February 10, 2025, learned Trial Judge has set aside the Arbitral Award on the ground it being inadequately stamped and therefore not a valid award in the eye of law and that, pre-deposit of 75 per cent of the awarded amount is not necessary and a question of fraud is involved. Moreover, learned Trial Judge has held that JB was not a supplier within the meaning of the Act of 2006 and that, Facilitation Council acted in violation of the principles of natural justice by playing a role of councilor and an arbitrator in contravention of the provisions of the Act of 1996.

Issues

74. The following issues have fallen for consideration in the three appeals:-

(i) Is an appeal against the order of restoration of a petition under Section 34 of the Act of 1996 assailing an award of the Facilitation Council which cannot be entertained under Section 19 of the Act of 2006, maintainable under Section 37 of the Act of 1996?

(ii) Can a petition under Section 34 of the Act of 1996 assailing an award of the Facilitation Council, dismissed for default before compliance of Section 19 of the Act of 2006, be restored?

(iii) Are the provisions for deposit in terms of Section 19 of the Act of 2006 for entertaining petition under Section 34 of the Act of 1996 mandatory?

(iv) What is the effect of the amended provisions of Section 36 of the Act of 1996 on Section 19 of the Act of 2006?

(v) Is registration under Section 8 of the Act of 2006 mandatory to invoke the jurisdiction of the Facilitation Council established under the Act of 2006?

Relevant provisions of the two statutes

75. With regard to the first four issues the provisions of the Act of 1996 and the Act of 2006 which have assumed significance are as follows:-

Section 36 and 37 of the Arbitration and Conciliation Act, 1996.

> *"36. Enforcement. (1)Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a decree of the court.*
>
> *(2)Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with*

the provisions of sub-section (3), on a separate application made for that purpose.

(3)Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908.

Provided further that where the Court is satisfied that a prima facie case is made out that,—

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under Section 34 to the award.

Explanation.—For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015.]

37. Appealable orders. - *(1) Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no* *others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:*

(a) refusing to refer the parties to arbitration under section 8;

(b) granting or refusing to grant any measure under section 9;

(c) setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie to a Court from an order of the arbitral tribunal

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

Section 15 to 19 and 24 of the Act of 2006.

"15. Liability of buyer to make payment.- Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five *days from the day of acceptance or the day of deemed acceptance.*

16. Date from which and rate to which interest is payable. - Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

17. Recovery of amount due.- For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.

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 mediation itself or refer the matter to any mediation service provider under the Mediation Act, 2023.

(3) The conduct of mediation initiated under this section shall be as per the provisions of the Mediation Act, 2023.

(4) Where the mediation 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 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.

(5) 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 mediator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.]

19. Application for setting side decree, award or order.- No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent. of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose.

24. Overriding effect.- The provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent *therewith contained in any other law for the time being in force."*

Scheme of Sections 15 to 19 and 24

76. The Act of 2006 is later in point of time than the Act of 1996 and has come into effect on October 2, 2006. Act of 2006 has come into being to facilitate and promote the development and enhance the competitiveness of micro, small and medium enterprises. The Act of 2006 has prescribed a mechanism for adjudication of claims of micro, small and medium enterprises. Chapter V of the Act of 2006 has dealt with issue of delayed payments to micro and small enterprises. In order to ensure timely payment of dues of micro and small enterprises, Chapter V has laid down the mechanism for conciliation and time line for payment, adjudication of disputes, and recovery of claims, amongst other. Section 15 to 19 and 24 falls within Chapter V. Section 15 of the Act of 2006 has fixed the outer time limit for a debtor to pay within 45 days of acceptance or deemed acceptance. Section 16 has imposed interest liability on the debtor failing to pay within stipulated time under Section 15. Section 17 has prescribed that, a buyer shall be liable to pay the amount with interest thereon as provide under Section 16, for any goods supply or services rendered by the supplier.

77. Section 18 of the Act of 2006 has prescribed that, any party to a dispute, with regard to any amount due under Section 17, can make a reference to the Facilitation Council.

78. The mechanism under Section 18 of the Act of 2006 is that, a reference of a dispute with regard to any amount due under Section 17 has to be made to the Facilitation Council. Under Sub-Section (2) on receipt of such reference, the Facilitation Council has to either conduct mediation itself or refer the matter to any mediation service provider under the Mediation Act, 2023. Sub-Section (3) has prescribed that the conduct of the mediation will be in terms of the provisions of the Act of 2023. Sub-section (4) has provided that where the mediation is not successful and stands terminated without out any settlement, the Facilitation Council has to then either undertake arbitration in respect of the dispute or refer it to any institution for arbitration. In the eventuality of the Facilitation Council or the designated institution taking up the dispute for arbitration, then the provisions of the Act of 1996 will apply to the resolution of the dispute as if the arbitration was in pursuance to an arbitration agreement referred to under Section 7 of the Act of 1996. Under Sub-section (5) of Section 18 of the Act of 2006 the Facilitation Council or the designated institution has been vested with the jurisdiction to act as an arbitrator or a mediator with regard to a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

79. When Section 18 of the Act of 2006 has prescribed that, a dispute referred to arbitration to the Facilitation Council or to any designated institution would be governed by the Act of 1996, then, the challenge to such an award would necessarily be governed by the Act of 1996. The time period prescribed by challenge to an award under the Act of 1996 as has been prescribed therein, would necessarily apply. To appertain the same analogy, on the issue of applicability of the provisions of Section 36 of the Act of 1996 when, the award passed by the Facilitation Council has been put into execution, would do violence to the provisions of Sections 19 and 24 of the Act of 2006.

80. The architecture of challenge to an award passed by the Facilitation Council or the designated institution of the

Facilitation Council, in our understanding is that, a petition under Section 34 of the Act of 1996 would have to necessarily comply with the time limit prescribed for filing of such petition. Having complied with such time-limit, the petitioner has to comply with Section 19 of the Act of 1996 for the Court in seisin of such petition to entertain it.

81. In a given case, the petition under Section 34 of the Act of 1996 may have been filed within the statutory time-limit prescribed. However, the petitioner therein may not have complied with the mandatory provisions of Section 19 of the Act of 2006. In such an eventuality, the Court in seisin of such petition under Section 34 of the Act of 1996 would have to dismiss the same as not entertainable in view of the mandatory provisions of Section 19 of the Act of 2006.

Mandatory nature of Section 19 of 2006 Act

82. ***Tirupati Steels (supra)*** has considered the question whether pre-deposit of 75 per cent of the awarded amount as per Section 19 of the Act of 2006 in a challenge to the award under Section 34 of the Act of 1996 is mandatory or not. It has noticed the earlier decision of the Supreme Court in ***Gujarat State Disaster Management Authority (supra)*** and

Goodyear India Private Limited (supra). It has held that, pre-deposit of 75 per cent of the awarded amount under Section 19 of the Act of 2006 is a mandatory requirement.

83. ***Goodyear India Private Limited (supra)*** has held that, compliance with Section 19 of the Act of 2006 is mandatory. However, the Court may allow the pre-deposit to be made in installments, if it has felt necessary.

84. ***India Glycols Limited and Anr (supra)*** has considered the maintainability of a petition under Article 226/227 of the Constitution of India assailing an award passed by the Facilitation Council under the Act of 2006. It has observed that, entertaining a petition under Article 226/227 of the Constitution of India would result in obviating the compliance with the requirement of pre-deposit under Section 19 of the Act of 2006 and that the same would defeat the object and purpose of the Act of 2006. Essentially, it has held that, Section 19 of the Act of 2006 is mandatory in nature.

85. ***Lakshmi Ratan Engineering Works Ltd. (supra)*** has held that, adequate proof of pre-deposit must be available on record to entertain the appeal under Section 9 of the Uttar Pradesh Sales Tax Act, 1948.

86. The High Courts in ***Goodyear India Private Limited (supra)***, ***Bharat Heavy Electricals Limited Electric Division (supra)*** and the ***Board of Major Port Authority for the Shyama Prasad Mookerjee Port (supra)*** have held that, provisions of Section 19 of the Act of 2006 are mandatory.

87. The authoritative pronouncements of the Supreme Court noted above have held that, provisions of Section 19 of the Act of 2006 are mandatory. Section 19 of the Act of 2006 being mandatory, the same has to be complied with in a petition under Section 34 of the Act of 1996 in addition to the time limit prescribed for filing of the same, for such petition to become entertainable.

Interplay of Section 34 of 1996 Act and Section 19 of 2006 Act

88. Section 34 has prescribed a time limit for challenge of an award. By virtue of Section 18(4) of the Act of 2006, the same time limit for the purpose of challenge to an award passed by the Facilitation Council would apply.

89. In addition to the rigours of Section 34 of the Act of 1996 governing challenge to an award, of the Facilitation Council, Section 19 of the Act of 2006 has imposed an additional embargo. Section 19 of the Act of 2006 has prescribed that, no application for setting aside the award of the Facilitation Council or award passed by any designated institution acting under the Act of 2006 shall be entertained unless the appellant has deposited with the Court 75 per cent of the amount in terms of the award.

90. Section 19 of the Act of 2006 therefore has prescribed a pre-deposit of 75 per cent of the award amount for a challenge to the award to be entertained. The only person challenging the award of the Facilitation Council or the designated institution who has been exempted from making such pre-deposit, is a supplier within the meaning of the Act of 2006. A supplier within the meaning of the Act of 2006 has not been required to make a pre-deposit under Section 19 of the Act of 2006.

Primacy of 2006 Act over 1996 Act

91. ***Gujarat State Civil Supplies Corporation Ltd. (supra)*** has held that, the Act of 1996 governs law of

Arbitration and Conciliation whereas the Act of 2006 governs specific nature or disputes arising between specific categories of persons to be resolved by following specific process through specified forum. It has held that, the Act of 2006 being a special law and the Act of 1996 being a general law, provisions of the Act of 2006 would have precedence over or prevail over the Act of 1996. It has observed that, even if the Act of 1996 is treated as a special law then also, since, the Act of 2006 having been enacted subsequent in point of time would override the provisions of the Act of 1996 particularly in view of Section 24 of the Act of 2006.

92. In ***U.P. State Electricity Board and Anr. (supra)*** Supreme Court in the context of Electric Supply Act, 1940 and the Regulations made thereunder, held that, general provisions should yield to a specific provision. It has observed that, when general Act is subsequently passed it is logical to presume that the Parliament has not repealed or modified the former Special Act unless it appears that the Special Act again received consideration from the Parliament.

93. In ***Binani Cements Ltd. (supra)*** Supreme Court has explained the maxim *generalia specialibus non derogant.* It has observed that, such a maxim is not a technical rule and that, it represents simple common sense and ordinary usage.

94. ***Ajoy Kumar Banerjee (supra)*** has laid down that, if there is a conflict between two statutes when one of them is special and the other general, then, the test to determine as to which one would prevail are (i) The Legislature has the right to alter a law already promulgated through subsequent legislation (ii) A special law may be altered, abrogated or repealed by a later general law by an express provision. (iii) A later general law will override a prior special law if the two are so repugnant that they cannot co-exists even though no express provision in that behalf is found in the general law. (iv) It is only in the absence of a provision to the contrary and of a clear inconsistency that a special law will remain wholly unaffected by a later general law.

95. In ***S. Prakash & Anr. (supra)*** Supreme Court has considered the maxim *generalia specialibus non derogant* (general things do not derogate from other things). It has noted that, if any of general provisions is clear and unqualified it will prevail over special provisions and that, special provisions must give way to general provisions if the legislature's intent was to establish the rule of universal application.

96. Section 36 of the Act of 1996 has prescribed in Sub-Section (1) that where, the time for making the application to set aside the Arbitral Award under Section 34 has expired then, the award shall be enforced in accordance with the Code of Civil Procedure, 1908.

97. By virtue of Section 24 of the Act of 2006, provisions of Section 15 to 23 which obviously includes Section 19 would have primacy over any other law for the time being in force.

98. Consequently, a Court before whom a petition under Section 34 of the Act of 1996 has been filed, assailing an order passed by the Facilitation Council or the designated institution of the Facilitation Council, would necessarily have to undertake an exercise under Section 19 of the Act of 2006 so as to determine its entertainability.

Section 37 of 1996 Act, Section 19 of 2006 Act, and Section 13 of 2015 Act

99. Since Section 18(4) has made the provisions of the Act of 1996 applicable in respect of award passed by Facilitation Council or the designated institution, provisions of Section 37 of the Act of 1996 stands attracted also. Section 37 of the Act of 1996 has prescribed that, notwithstanding anything contained in any other law for the time being in force, an appeal would lie from such orders as are prescribed and from no others. One of the categories from which, appeal has been allowed under Section 37 of the Act of 1996 is Section 37(1)(c) which is setting aside or refusing to set aside an arbitral award under Section 34.

100. Section 19 of the Act of 2006 has prescribed an embargo of entertaining a petition under Section 34 of the Act of 1996 unless the prescribed pre-deposit is made, a Court in seisin of a petition under Section 34 of the Act of 1996 involving an award passed by the Facilitation Council or the designated institution would necessarily have to undertake an exercise under Section 19 of the Act of 2006 when, the petitioner before is not a supplier within the meaning of the Act of 2006.

101. Therefore, on a petition under Section 34 of the Act of 1996 being filed assailing an award passed by the Facilitation Council or the designated institution under the Act of 2006, the Court has to undertake an exercise under Section 19 prior to deciding to entertain such petition. Section 19 has therefore, raised an obligation on the Court, akin to that of Section 3 of the Limitation Act, 1963 which raises an obligation on the Court to decide on the issue of Limitation notwithstanding the same not being raised as a defence, to decide on the entertainibility of the petition under Section 34 of the Act of 1996.

102. A decision in terms of Section 19 of the Act of 1996 by a Court exercising powers under Section 34 of the Act of 1996 would be a final decision impacting on the entertainability of the petition under Section 34 of the Act of 1996. A final decision under Section 19 of the Act of 2006 would have the effect of either refusing to set aside an arbitral award due to non-compliance with Section 19 or holding the petition under Section 34 to be entertainable for the alleged compliance.

103. ***Chintels India Limited (supra)*** has noted that the expression "setting aside or refusing to set aside an arbitral award" in Section 37(1)(c) of the Act of 1996 does not stand by itself. The expression has to be read in conjunction with "under Section 34". Therefore, an order referring to condone delay in filing the challenge petition under Section 34 of the

Act of 1996 has been held to be appealable under Section 37 of the Act of 1996. It has considered both ***Simplex Infrastructures Ltd. (supra)*** as well as ***Essar Constructions (supra).***

104. ***Chintels India Limited (supra)*** has held in paragraph 25 that, "effect doctrine" is part and parcel of the statutory provisions for appeal under Section 37 of the Act of 1996. It has held that, if the effect of the order under appeal under Section 37 of the Act of 1996 is either setting aside of an award or refusal to set aside an award then, such an order is appealable. In the facts of that case, an appeal against an order refusing to condone the delay in filing application under Section 34 of the Act of 1996 has been held to be maintainable under Section 37(1)(c) of the Act of 1996 as such an order amounts to order refusing to set aside the award.

105. An award passed by the Facilitation Council or its designated institution has its origin in Section 18 of the Act of 2006. Whereas under Section 7 of the Act of 1996, there must be a written agreement between the parties to refer the disputes to arbitration, Section 18 of the Act of 2006 has made an exception thereto. Under Section 18 of the Act of

2006, should the criteria specified therein be satisfied, then, the claims have to be referred to the Facilitation Council. Once such a reference has been made, the provisions of the Act of 1996 govern the procedure for deciding the reference. Substantive rights created by the Act of 2006 continues to remain with the party to the arbitration as has been vested by the Act of 2006. For example right to receive interest at the rate as has been prescribed under Section 16 of the Act of 2006 continues to remain vested with the party entitled thereto notwithstanding anything contrary in the Act of 1996.

106. The distinctiveness of the award of the Facilitation Council continues to remain when it is sought to be challenged in the Civil Court. Distinctiveness has been enshrined in Section 19 of the Act of 2006 which requires a mandatory pre-deposit for the petition under Section 34 of the Act of 1996 being entertained by the Court concerned. Its distinctive feature is unique to an award of the Facilitation Council or its designated institution acting in terms of the Act of 2006.

107. Section 19 of the Act of 2006 has created a substantive right in favour of the award holder. In other words, in the event, a Court in seisin of a petition under Section 34 of the Act of 1996 mis-construes and mis-applies the provisions of Section 19 of the Act of 2006 and proceeds to deal with the challenge petition, the order refusing to adhere to Section 19 of the Act of 2006 would be appealable under Section 37(1)(c) of the Act of 1996 as it impacts a substantive right of one of the parties with the Court not refusing to set aside the award. Non-compliance with Section 19 of the Act of 2006 mandates the Court exercising, jurisdiction under Section 34 of the Act of 1996 to refuse to set aside the award as the challenge to the award is not entertainable.

108. Section 19 of the Act of 2006 which has imposed the embargo on entertainability of the challenge under Section 34 of the Act of 1996, is an additional exercise under Section 34 of the Act of 1996. It is a requirement independent of the provisions of the Act of 1996 and has its place in the Act of 2006. Validity, legality and sufficiency of the challenge under Section 34 of the Act of 1996 would only arise when the challenge petition has complied with the requirements of Section 19 of the Act of 2006.

109. In the scenario of a Court exercising powers under Section 34 of the Act of 1996 in which a challenge petition assailing the award of the Facilitation Council or its designated institution, has been filed, such Court in order to entertain such a petition has to arrive at a jurisdictional fact under Section 19 of the Act of 2006. Such jurisdictional fact being that, the petitioner filing the challenge under Section 34 of the Act of 1996 has deposited 75 per cent of the awarded amount with the Court to make the petition entertainable.

110. The absence of the jurisdictional fact of deposit of 75 per cent of the awarded amount in terms of Section 19 of the Act of 2006, renders such a petition not entertainable.

111. In ***Chintels India Limited (supra)*** Section 5 of the Act of 1996 has been read and construed to mean that a Court should interpret the provisions of the Act of 1996 no narrower than warranted by the language of the provisions of the Act of 1996. It has interpreted the scope of the appeal under Section 37 of the Act of 1996. It has held that, it is not the provincial duty of the Court in light of Section 5 of the Act of 1996 to further limit the already limited right of appeal under Section

37 by excluding appeals which are in fact provided for, given the language of Section 37 of the Act of 1996.

112. ***Chintels India Limited (supra)*** has applied the "effect doctrine" to construe the scope and ambit of an appeal under Section 37 of the Act of 1996. Since, compliance of Section 19 of the Act of 2006 is a mandatory requirement impacting the entertainability of a petition under Section 34 of the Act of 1996, a decision rendered by the Court with regard to the Section 19 of the Act of 1996 impacts the applicability of Section 19 of the Act of 1996 to a petition under Section 34 of the Act of 1996, and would therefore be appealable as, the same falls within the scope and ambit of an appeal under Section 37 of the Act of 1996. A decision on the entertainability of a petition under Section 34 of the Act of 1996 on the anvil of Section 19 of the Act of 2006 would be a decision to set aside or refusing to set aside the Arbitral Award within the meaning of Section 37 of the Act of 1996.

113. ***Habban Shah (supra)*** has answered the issue as to whether the decree for specific performance passed by the Court of the first instance directing execution of a sale deed on the deposit of the balance sale consideration within the stipulated time would be inexecutable by reason of the balance consideration not being deposited within the time stipulated. It has answered such issue by holding that such a decree became inexecutable on account of non-compliance of the condition to deposit the balance sale consideration within the time stipulated under the decree.

114. In respect of commercial disputes within the meaning of Section 2(1)(c) of the Commercial Courts Act, 2015, appeals are governed by Section 13 thereof. Section 13 has made Section 37 of the Act of 1996 applicable so far as arbitration proceedings are concerned.

115. We have however held that exercise of powers under Section 19 of the Act of 2006 is an additional requirement for entertaining the petition under Section 34 of the Act of 1996 as unless mandatory pre-deposit under Section 19 is made, the petition under Section 34 of the Act of 1996 is not entertainable.

116. Given the architecture of challenge to an award passed by the Facilitation Council or its designated institution, the irresistible conclusion is that, compliance with Section 19 of the Act of 2006 has to be mandatorily made in addition to the prescribed time limit for challenge being complied with. An order entertaining a petition under Section 34 of the Act of 1996 without compliance with Section 19 of the Act of 2006 would amount to the Court not refusing to set aside the award and would therefore be appealable under Section 37(1)(c) of the Act of 1996.

Intersectionality of 1996 Act, 2006 Act and 2015 Act on the right to appeal.

117. Compliance with Section 19 of the Act of 2006 is mandatory for a petition under Section 34 of the Act of 1996 to become entertainable. By virtue of Section 19 of the Act of 2006 requirement of pre-deposit is a jurisdictional fact which must mandatorily exist for the Court to entertain a petition under Section 34 of the Act of 1996. Existence of this jurisdictional fact is in addition to the requirement of compliance of the time limit prescribed for filing a petition under Section 34 of the Act of 1996. Compliance with Section 19 of 2006 is an obligation post filing of the petition under Section 34 of the Act of 1996 and is in addition to the mandate of time limit prescribed under Section 34 of the Act of 1996.

118. Requirement to comply with the mandate under Section 19 of the Act of 2006 is a prescription under the Act of 2006. Court while assessing the existence of the jurisdictional fact as to whether requisite compliance of pre-deposit exists or not is called upon to exercise and does exercise a power under Section 19 of 2006 to arrive at a finding as to whether or not to entertain the petition under Section 34 of the Act of 2006.

119. Act of 2006 has primacy over the Act of 1996. Act of 2006 does not prescribe an appeal directed against its exercise. Given the fact that the Act of 2006 has primacy and does not prohibit an appeal against an order under Section 19, and given the effect of the order Section 19 of the Act of 2006 reading a prohibition of an appeal in respect of such an order would militate against the intersectionality of the two provisions of the two statutes.

120. Inasmuch as Section 13 of the Act of 2015 prescribe an appeal under Section 34 of the Act of 1996 in respect of commercial disputes, on the parity of the reasoning of an appeal being maintainable against an order under Section 19 of the Act of 2006, Section 13 of the Act of 2015 should be read as not to prohibit the appeal.

121. An exercise under Section 19 of the Act of 2006 attaches finality on the issue of entertainability of the petition under Section 34 of the Act of 1996. Such an order is therefore an order deciding to entertain or not to entertain a petition to set aside an award. Such an order would resonate on the right to appeal under Section 37 of the Act of 1996 for refusing to set aside an award.

122. Interpreting Section 37 of the Act of 1996 and Section 13 of the Act of 2015 to deny a right of appeal would militate against the objectives of the Act of 2006 which provides for an architecture of expeditious recovery of money owed to an entity governed by such Act of 2006.

Effect of Amendment of Section 36 of the 1996 Act on Section 19 of 2006 Act

123. Amendment of Section 36 of the Act of 1996 subsequent to Section 19 of the Act of 2006 coming into force has not altered the mandatory nature of compliance with Section 19 of the Act of 1996 in respect of a challenge petition under Section 34 of the Act of 1996 directed against an award passed by the Facilitation Council or the designated institution of the Facilitation Council. Section 36 of the Act of

1996 has been amended with retrospective effect from October 23, 2015. Relevant provisions of the amended Section 36 of the Act of 1996 which has been pressed into service before us is the proviso and explanation appended to Section 36 (3) of the Act of 1996. By such proviso, the Court while considering a request for enforcement of the arbitral award, may grant unconditional stay of enforcement thereof, in the event, it is of the prima facie view that, the award was tainted by fraud or corruption. The explanation has made the proviso applicable to all Court cases arising out or in relation to arbitral proceedings, irrespective of whether the arbitral or Court proceedings were commenced prior to or after the amendment.

124. Section 36 of the Act of 1996 is involved in a petition under Section 34 of the Act of 1996 directed against an award of the Facilitation Council or its designated institution then such, a Court has to necessarily entertain a petition under Section 34 of the Act of 1996 first in order to assess whether or not the award impugned before it stood vitiated by fraud or corruption in order to arrive at a prima facie finding so as to stay its enforcement. An exercise under Section 36 of the Act of 1996 cannot be undertaken by a Court in seisin of a petition under Section 34 of the Act of 1996 in the event, such Section 34 petition has not overcome the rigours of Section 19 of the Act of 2006 when, the challenge in such petition is an award passed by the Facilitation Council or its designated institution. A petition under Section 34 of the Act of 1996 must necessarily have to be made entertainable within the meaning of Section 19 of the Act of 2006 for such Court to exercise powers under Section 36 of the Act of 1996 if requested to do so.

125. Section 36 of the Act of 1996 has been amended in order to obviate the argument of automatic stay of an arbitral award. It has been amended in order to provide the circumstances under which, stay of enforcement of an award may be granted. One of the grounds that has been recognised for grant of stay of enforcement of the arbitral award is if the Court is of the view that, the arbitral award suffers from the vice of it being obtained by fraud or corruption.

126. In our view, there is no inconsistency between the amended Section 36 of the Act of 1996 and Section 19 of the Act of 2006. Section 36 of the Act of 1996 comes into operation only when, there is a valid petition under Section 34 of the Act of 1996 pending which can be entertained. Section 36 of the Act of 1996 has no manner of application to an invalid petition under Section 34 of the Act of 1996. For example, if the Section 34 petition is beyond the time limit prescribed for its institution. Section 36 of the Act of 1996 cannot be pressed into service for stay of enforcement of the award. Any other constitution will imitate against the adage of minimal curative instruction by Court in respect of arbitration and award.

127. Section 36 of the Act of 1996 has been introduced later than Section 19 of the Act of 2006. While Section 36 of the Act of 1996 has been amended and introduced in the Act of 1996, no provision has been made in Section 36 of the Act of 1996 dealing with the scenario prescribed under Section 19 of the Act of 2006 nor has the Act of 2006 been amended so as to provide that Section 36 of the Act of 1996 would prevail.

128. Applying the ratio of ***Ajoy Kumar Banerjee (supra)*** to the interplay of Section 19 of the Act of 2006 and the amended provisions of Section 36 of the Act of 1996, it cannot be said that, Section 36 of the Act of 1996 has primacy over of the Act of 2006 or that, compliance with of the Act of 2006 is not required should, the petitioner under Section 34 of the Act of 1996 is able to demonstrate prima facie fraud or corruption in obtaining the award. Such issues of corruption and fraud can only be raised in a challenge petition to an award governed under the Act of 2006 if such challenge petition has satisfied the requirement of Section 19 of the Act of 2006.

129. A petitioner challenging an award passed by the Facilitation Council or the designated institution failing to comply with Section 19 of the Act of 2006 may not be remediless when, the issue of enforcement of such award arises. Such a petitioner may nonetheless have recourse to Section 47 of the Code of Civil Procedure 1908 to the extent permissible by it, as has been recognised in ***Electrosteel Steel Ltd (supra) Cholamandalam Investment and Finance Company Ltd (supra)*** and ***Gowra Petrochem Private Limited (supra).***

130. ***Godrej Sara Lee Ltd (supra)*** has explained the difference between a petition which is maintainable and entertainable. It has held that, a petition may be found to be maintainable but nonetheless may also be held not to be entertainable. In the scenario of Section 19 of the Act of 2006, a petition under Section 34 of the Act of 1996 may be filed but would remain not entertainable without compliance with Section 19 of the Act of 2006.

131. A petition challenging an award of the Facilitation Council or its designated institution, if dismissed for default prior to compliance with the provisions of Section 19 of the Act of 2006, remains not entertainable when, it is dismissed for default and when, an application is made for its restoration. While adjudicating on an application for restoration, the Court necessarily has to take into consideration the factum of compliance or non-compliance with Section 19 of the Act of 2006 as the case may be. It is more so in view of the object of the Act of 2006 which has postulated promotion, development and enhancement of the competitiveness of the enterprises governed under the Act of 2006.

132. Section 19 of the Act of 2006 is a measure to secure the claim enterprise governed under the Act of 2006 so that, such an enterprise may have the benefit of the award immediately on failure of the challenge thrown there to. The provisions are such that, it discourages a routine challenge in order to delay the enforcement of the award, if possible. Keeping in view such salutary provisions, a Court considering a petition for restoration of a Section 34 challenge without compliance with Section 19 of the Act of 2006 must not restore the Section 34 petition as, the same would remain not entertainable. Otherwise in effect, the Court would be restoring a petition under Section 34 of the Act of 1996 which it cannot entertain. An enterprise governed by the Act of 2006 would then be precluded from enjoying the usufructs of an award which it would have otherwise been entitled to but for a restoration of a petition which is not entertainable. Such a course of action would not advance the course of justice and in our view would militate against the avowed objectives of the Act of 2006.

Compliance of Section 19 of 2006 Act in AO COM 13 of 2026 and AO COM 20 of 2026

133. Supplementary affidavit affirmed on February 27, 2026 in support of the IA GA No. 1 of 2024 and IA GA No. 2 of 2024 in AP COM 382 of 2024 has been pressed into service by PHE to contend that, Section 19 of the Act of 1996 had been invoked on behalf of PHE for the first time.

134. We are unable to agree with the contention of the PHE that, PHE had invoked Section 19 of the Act of 2006 in its challenge petition under Section 34 of the Act of 1996. Supplementary affidavit affirmed on February 27, 2026 which has now been contended to be an application under Section 19 of the Act of 2006 does not contain any pleadings with regard to Section 19 of the Act of 2006 nor does it refer to Section 19 of the Act of 2006 at all. In fact, what it does, is seek permission of the Court to secure the amount in terms of the order dated December 18, 2023.

135. Order dated December 18, 2023 was not an exercise under Section 19 of the Act of 2006 and the same has not been contended to be so by PHE. Therefore, in the appeal, PHE cannot be heard to contend that, it had applied under Section 19 of the Act of 2006 for the purpose of securing the award, and that, such an exercise was undertaken by the order dated December 18, 2023. PHE cannot be allowed to approbate or re-probate on the issue of invocation of Section 19 of the Act of 2006.

136. Learned Single Judge had passed the order dated December 18, 2023 when invited to do so under Section 36(4) of the Act of 1996. With the deepest of respect, Section 36(4) could have been invoked only when there is a petition under Section 34 of the Act of 1996 which is entertainable. On December 18, 2023 the learned Single Judge did not have a petition under Section 34 of the Act of 1996 which was entertainable for invoking Section 36(4) of the Act of 1996.

137. In such circumstances, PHE not having invoked Section 19 of the Act of 2006 at all, question of, the petition under Section 34 of the Act of 1996 of PHE being entertainable does not arise. Since such petition is not entertainable, question of restoring such a petition also does not arise. PHE could not have invited the Court to restore the Section 34 petition without undertaking an exercise under Section 19 of the Act of 2006 simultaneously as such an exercise was never done.

138. Not having invoked Section 19 of the Act of 2006 at all, PHE had allowed its petition under Section 34 of the Act of 1996 to remain not entertainable on the date of its dismissal for default as also on the date when it applied for its restoration including the dates on which, the two impugned orders were passed. Impugned orders dated March 31, 2026 and May 13, 2026 could not have been passed in a proceeding which was not entertainable.

139. PHE therefore cannot obtain a relief on the award passed by the Facilitation Council impugned in the petition under Section 34 of the Act of 1996 filed by it after not having taken any steps to make such petition entertainable.

Compliance of Section 19 of the 2006 Act in FMAT (ARBAWARD) No. 19 of 2025

140. Our understanding of the materials that have been placed before us in FMAT (ARBAWARD) 19 of 2025 is that, compliance with Section 19 of the Act of 2006 has never been done at the behest of the parties therein. Learned Trial Judge has considered the petition under Section 34 of the Act of 1996 without having the petitioner filing such petition to comply with Section 19 of the Act of 2006. Learned Trial Judge therefore could not have entertained such a restoration petition without compliance of Section 19 of the Act of 2006. Learned Trial Judge has erred in entertaining the petition under Section 34 of the Act of 1996 which it could not have done. Learned Trial Judge has erred in passing the impugned judgment and order setting aside the award in a petition which was not entertainable.

Answer to Issue No. (i)

141. In view of the discussions above, issue no (i) is answered by holding that, an appeal against the order of restoration of a petition under Section 34 of the Act of 1996 assailing an award of the Facilitation Council or its designated institution which cannot be entertained under Section 19 of the Act of 2006 is maintainable under Section 37(1)(c) of the Act of 1996.

Answer to Issue No. (ii)

142. Issue No. (ii) is answered by holding that, a petition under Section 34 of the Act of 1996 assailing an award of the Facilitation Council or its designated institution, dismissed for default before compliance with Section 19 of the Act of 2006 cannot be restored without a simultaneous compliance with of the Act of 2006. In other words, compliance with Section 19 of the Act of 2006 is a mandatory requirement for considering the application for restoration, assuming good grounds for restoration have been made out. We hasten to add that, we are not suggesting that, simplicitor by compliance with

Section 19 of the Act of 2006 would lead to restoration even in the event of failure of adequate grounds being shown for restoration. In other words, the restoration application must have adequate grounds for restoration and also comply with Section 19 of the Act of 2006 with compliance with Section 19 being a pre-requisite.

Answer to Issue No. (iii)

143. Issue No. (iii) is no longer res integra in view of the authoritative pronouncements of ***Tirupati Steels (supra)***, ***Gujarat State Disaster Management Authority (supra)*** and ***Goodyear India Private Limited (supra)***. Compliance with Section 19 of the Act of 2006 is mandatory.

Answer to Issue No. (iv)

144. Issue No. (iv) is answered by holding that, the amended provisions of Section 36 of the Act of 1996 does not impeach upon the mandatory nature of Section 19 of the Act of 2006 in any manner or form.

Answer to Issue No. (v)

145. In the facts and circumstances of the three appeals before us, in view of our decision in the first 4 issues, issue No. (v) has lost relevance and therefore not decided by us.

Directions

146. Learned Single Judge, in AO COM 20 of 2026 has condoned the delay in filing the restoration petition by the order dated March 31, 2026 and has restored the petition under Section 34 of the Act of 1996 by the order dated May 13, 2026 which is being assailed in AO COM 13 of 2026. Learned Single Judge could not have done either of them in view of the non-compliance by the petitioner with the provisions of Section 19 of the Act of 1996.

147. In the facts and circumstances of the two appeals being AO COM 13 of 2026 and AO COM 20 of 2026, learned single Judge had passed an order requiring pre-deposit of 75% of the award amount which, PHE had failed to comply with. According to PHE it had never undertaken in exercise under Section 19 of the Act of 2006 save and except, filing a supplementary affidavit in the restoration application inviting the Court to undertake the exercise under Section 19 of the

Act of 2006. A supplementary affidavit cannot be a substitute of a substantive petition with appropriate relief sought for. In the proceedings under Section 34 of the Act of 1996 leading to the two appeals being AO COM 13 of 2026 and AO COM 20 of 2026, PHE had never filed any petition under Section 19 of the Act of 2006.

148. Conduct of PHE subsequent to its filing of the petition under Section 34 of the Act of 1996 does not inspire much confidence. Despite the order dated December 18, 2023 of the learned Single Judge requiring PHE to deposit 75% of the awarded amount, within the stipulated time, and granting liberty to MTL to execute the award on failure of PHE to deposit 75% within the stipulated time, PHE not only failed to deposit such amount but also suffered orders in the execution proceedings and made part payments of the awarded amount.

149. AO COM 13 of 2026 and AO COM 20 of 2026 are allowed. Impugned orders dated March 31, 2026 and May 13, 2026 are set aside. AP No. 763 of 2023 is dismissed as not entertainable in terms of Section 19 of the Act of 2006.

150. FMAT (ARBAWARD) 19 of 2025 is allowed. Impugned judgement and order dated February 10, 2025 is set aside.

Petition under Section 34 of the Act of 1996 leading to the impugned judgement and order dated February 10, 2025 is dismissed as not entertainable for not having complied with Section 19 of the Act of 2006.

[DEBANGSU BASAK, J.]

151. I agree.

[ARYAK DUTT, J.]

Later:-

Learned Advocate appearing for the PHE seeks stay of operation of the judgment and order.

Prayer for stay is opposed on behalf of MTL.

Considering the fact that, the restoration application was allowed two years after the date of dismissal for default and in view of our reasoning as contained in the judgment and order, we are not minded to grant any stay, as prayed for.

[DEBANGSU BASAK, J.]

I agree.

[ARYAK DUTT, J.]