

38

7

38

\$~36 to 41

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

+ **W.P.(C) 5933/2018 & CM No. 23157/2018**

M/S THERMAX LTD

..... Petitioner

Through: Mr Akhil Sebal, Senior Advocate with  
Mr R. Sudhinder, Ms Amrita Sarkar, Advocates.  
versus

MICRO AND SMALL ENTERPRISES FACILITATION  
COUNCIL AND ANR.

..... Respondents

Through: Mr Ramesh Singh, Standing Counsel  
GNCTD & Mr Prabh Sahay Kaur, Advocate for  
R1.

Mr Dev P. Bhardwaj, CGSC for UOI  
with Ms Akanksha Mishra, Advocate for UOI.  
Mr Shashank Garg, Mr Tariq Khan, Mr Debojyoti  
Sengupta, Advocates for R2.

37.

+ **W.P.(C) 5956/2018 & CM No. 23209/2018**

M/S THERMAX LTD

..... Petitioner

Through: Mr Akhil Sebal, Senior Advocate with  
Mr R. Sudhinder, Ms Amrita Sarkar, Advocates.  
versus

MICRO AND SMALL ENTERPRISES FACILITATION  
COUNCIL AND ANR.

..... Respondents

Through: Mr Ramesh Singh, Standing Counsel  
GNCTD & Mr Prabh Sahay Kaur, Advocate for  
R1.

Mr Dev P. Bhardwaj, CGSC for UOI  
with Ms Akanksha Mishra, Advocate for UOI.  
Mr Shashank Garg, Mr Tariq Khan, Mr Debojyoti  
Sengupta, Advocates for R2.

38.

**W.P.(C) 5958/2018**

M/S THERMAX LTD ..... Petitioner

Through: Mr Akhil Sebal, Senior Advocate with  
Mr R. Sudhinder, Ms Amrita Sarkar, Advocates.

versus

MICRO AND SMALL ENTERPRISES FACILITATION  
COUNCIL AND ANR. .... Respondents

Through: Mr Dev P. Bhardwaj, CGSC for UOI  
with Ms Akanksha Mishra, Advocate for UOI.  
Mr Shashank Garg, Mr Tariq Khan, Mr Debojyoti  
Sengupta, Advocates for R2.

39.

+

**W.P.(C) 5960/2018 & CM No. 23214/2018**

M/S THERMAX LTD ..... Petitioner

Through: Mr Akhil Sebal, Senior Advocate with  
Mr R. Sudhinder, Ms Amrita Sarkar, Advocates.

versus

MICRO AND SMALL ENTERPRISES FACILITATION  
COUNCIL AND ANR. .... Respondents

Through: Mr Dev P. Bhardwaj, CGSC for UOI  
with Ms Akanksha Mishra, Advocate for UOI.  
Mr Shashank Garg, Mr Tariq Khan, Mr Debojyoti  
Sengupta, Advocates for R2.

40.

+

**W.P.(C) 5966/2018 & CM No. 23249/2018**

M/S THERMAX LTD ..... Petitioner

Through: Mr Akhil Sebal, Senior Advocate with  
Mr R. Sudhinder, Ms Amrita Sarkar, Advocates.

versus

MICRO AND SMALL ENTERPRISES FACILITATION  
COUNCIL AND ANR. .... Respondents

Through: Mr Dev P. Bhardwaj, CGSC for UOI  
with Ms Akanksha Mishra, Advocate for UOI.  
Mr Shashank Garg, Mr Tariq Khan, Mr Debojyoti  
Sengupta, Advocates for R2.

41.

+

**W.P.(C) 5987/2018 & CM No. 23330/2018**

9  
M/S THERMAX LTD

..... Petitioner

Through: Mr Akhil Sebal, Senior Advocate with  
Mr R. Sudhinder, Ms Amrita Sarkar, Advocates.  
versus

MICRO AND SMALL ENTERPRISES FACILITATION  
COUNCIL AND ANR.

..... Respondents

Through: Mr Ramesh Singh, Standing Counsel  
GNCTD & Mr Prabh Sahay Kaur, Advocate for  
R1.

Mr Shashank Garg, Mr Tariq Khan, Mr Debojyoti  
Sengupta, Advocates for R2

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

%

**13.09.2018**

1. The petitioner impugns the orders dated 20.03.2018 (six in number) which are similarly worded but relate to separate contracts entered into with respondent no. 2.
2. The petitioners are aggrieved by the aforesaid orders inasmuch as respondent no.1 (Micro and Small Enterprises Facilitation Council) has referred the disputes between the petitioners and respondent no.2 to arbitration in terms of Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act). It is the petitioners' case that respondent no.2 (Goel Construction) was not a 'Supplier' within the meaning of Section 2(n) of the MSMED Act at the relevant time, when the contracts in question were entered into or performed. It is stated that respondent no.2 had filed a Memorandum with the Micro or Small Enterprises Facilitation Council, in terms of Section 8 of the MSMED Act.

3. Mr Sibal, the learned Senior Counsel appearing for the petitioners states that the Performa to be filled in by respondent no.2 prior to entering into the contract specifically required respondent no.2 to disclose whether respondent no.2 was registered under the MSMED Act, and the petitioner had entered into the contract on the aforesaid basis.

4. Mr Ramesh Singh, learned counsel appearing for respondent no.1 contends that the issue whether respondent no.2 is a "Supplier" is covered by the earlier decision of this Court in *M/s Ramky Infrastructure Private Limited v. Micro and Small Enterprises Facilitation Council & Anr. : W.P. (C) 5004/2017, decided on 04.07.2018*. He further submits that the petitioners had waived any objection as regard to the petitioners falling within the scope of the MSMED Act, as no such objection in this regard was taken during the conciliation proceedings. The aforesaid contentions are disputed.

5. Mr Shashank Garg, learned counsel appearing for respondent no.2 submits that the Letter of Intent in certain cases was issued prior to filling the registration form, therefore, the petitioner had already decided to award the contract irrespective of whether the petitioners were registered under the MSMED Act or not.

6. It is apparent from the above that the principal controversy involved in this petition is whether respondent no.2 is a 'Supplier' within the meaning of Section 2(n) of the MSMED Act. Concededly, if it is so, the impugned orders cannot be faulted. This issue is covered by an earlier decision of this Court in *Ramky Infrastructure Private Limited (supra)*.

//

7. In this view, the present petitions are dismissed. All applications are, accordingly, disposed of.

8. Order *dasti*.



**VIBHU BAKHRU, J**

**SEPTEMBER 13, 2018**

pkv