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

+ W.P.(C) 13659/2018

M/S BHARAT HEAVY ELECTRICALS
LIMITED

..... Petitioner

Through: Mr A. S. Mathur, Ms Priya Singh and
Ms Deepabali Datta, Advocates.

versus

MICRO AND SMALL ENTERPRISES
FACILITATION COUNCIL AND ANR.

..... Respondents

Through: Mr Ramesh Singh, Standing Counsel,
GNCTD with Ms Prabhsahay Kaur,
Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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18.12.2018

1. The petitioner has filed the present petition impugning an order dated 30.10.2018 passed by the Micro and Small Enterprises Facilitation Council, Government of NCT (hereafter 'the Council') referring the disputes between the petitioner and respondent no.2 to arbitration under the aegis of Delhi International Arbitration Centre.
2. It is the petitioner's contention that the contract between the petitioner and respondent no.2 included a specific arbitration clause and, therefore, reference made by the Council under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act) is without jurisdiction. The petitioner also submits that prior to the respondent approaching the Council, respondent no.2 had already invoked the

arbitration clause as contained in the agreement by virtue of a letter dated 16.03.2018 and, therefore, it was not open for the Council to take recourse to the provisions of Section 18(3) of the MSMED Act.

3. The above contention is unmerited and the issue whether the Council would have jurisdiction to refer the matter to the arbitration under Section 18(3) of the MSMED Act is covered by earlier decision of this Court in ***Bharat Heavy Electricals Limited v. The Micro and Small Enterprises Facilitations Centre & Anr.: 2017 SCC OnLine Del 10604***. The contention that the respondent had already invoked the arbitration under the contract by a letter dated 16.03.2018 is correct. However, the respondents had not acted on the said letter prior to respondent no.2 in moving the Council. Further, it is also seen that the petitioner had participated in the conciliation proceedings before the Council without any reservation. MSMED Act being statutory Act cannot be avoided by taking recourse to an arbitration clause once a party had invoked the provisions of that Act.

4. The petition is unmerited and is, accordingly, dismissed.

VIBHU BAKHRU, J

DECEMBER 18, 2018

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