

\$~52.

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

+ LPA 91/2019

M/S BHARAT HEAVY ELECTRICALS LTD Appellant
Through: Mr.Atul Shanker Mathur, adv. with
Ms.Priya Singh, Ms.Deepali Datta, Advs.
Versus

MICRO AND SMALL ENTERPRISES & ANR Respondents
Through: Mr.Ramesh Singh, Standing Counsel
with Ms.Prabhsahay Kaur, Mr.Chirayu Jain,
Ms.Shruti Gala, Advs. for R-1.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
08.02.2019

%

C.M.No.6137/2019 (exemptions)

Allowed, subject to all just exceptions.

LPA No.91/2019 & C.M.No.6138/2019

1. Seeking exception to an order passed by the learned writ Court on 18th December, 2018 in W.P.(C) No.13659/2018 dismissing the writ petition filed by the petitioner, this appeal has been filed under Clause 10 of the Letters Patent Act. The writ petition was filed by the appellant impugning the order dated 3rd October, 2018 passed by the Micro and Small Enterprises Facilitation Council (hereinafter referred to as 'the Facilitation Council') referring a dispute between the appellant and respondent No.2 for arbitration under the aegis of Delhi International Arbitration Centre.

2. This appeal has been filed primarily on the ground that in the agreement entered into between the appellant and respondent No.2 (M/s Slipco Constructions Private Limited), there was an independent arbitration clause and once there was an independent arbitration agreement between the parties, reference of the matter for statutory arbitration under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'the MSMED Act') is unsustainable. It was argued that merely because the appellant submitted to the conciliation process under the MSMED Act, that would not preclude the appellant from invoking the independent arbitration clause as contained in the agreement and in referring the matter for arbitration under Section 18 of the MSMED Act to the arbitration centre, it is argued that an error has been committed.

3. Learned counsel appearing for the respondent refuted the aforesaid submission and submitted that once the petitioner/appellant herein submitted to the jurisdiction of the MSMED Act and participated in the conciliation proceedings, a statutory procedure contemplated under Section 18 of the MSMED Act, then they are bound by the statutory provisions and in referring the matter for arbitration on failure of the conciliation as contemplated under the provisions of Section 18, the learned writ Court, according to Sh.Ramesh Singh, the learned ASC for the GNCTD, no error has been committed.

4. We have heard the learned counsel for the parties and we find that on a dispute having arisen between the petitioner and respondent No.2, the matter was taken up by the Conciliation Council under Section 18 of the MSMED Act and Section 18 of the Act reads as under:-

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

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

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

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

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

5. It is clear that once a reference was made to the Felicitation Council and the Council conducted conciliation proceedings as contemplated under sub-Section (2) of Section 18 and the appellant submitted to the conciliation, statutory in nature under Section 18(2), the necessary statutory consequence would be that on failure of the conciliation, the matter has to be referred for arbitration under sub-Section (3) of Section 18 and the impugned order only refers to the action taken by the Felicitation Council for reference to the arbitration on failure of the conciliation.

6. The learned writ Court has rightly rejected the contention of the appellant to the effect that once there was an arbitration agreement, therefore, the arbitration should have been as per the arbitration agreement. The MSMED Act is applicable in the dispute in question, in view of a decision rendered in the case of *Bharat Heavy Electricals Limited vs. The Micro and Small Enterprises Facilitations Centre & Anrs.*, (2017) SCC Online (Delhi) 10604 and the appellant themselves having chosen to take recourse to the remedy under the MSMED Act are bound by the entire statutory provision contained in Section 18. The appellant had two options, either to take recourse to the arbitration agreement and insist on invoking the arbitration clause but having chosen to take recourse to the statutory remedy under the MSMED Act, the entire process, statutory in nature contemplated under the said Act, i.e., Section 18 has to be complied with and in refusing to interfere into the matter on such consideration, in our considered view, no error has been committed by the learned writ Court.

7. Accordingly, finding no ground, the appeal stands dismissed along with the pending application.

CHIEF JUSTICE

V. KAMESWAR RAO, J

FEBRUARY 08, 2019
'anb'