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

Date of decision : 23rd August, 2019

+ LPA 42/2019 and CM Nos. 2683, 2686, 10426, 20357-
20359/2019

UNION OF INDIA

..... Appellant

Through: Mr. Malaya Kumar Chand, Sr.
Panel Counsel-UIO

versus

M/S SIRUS GLOBAL PVT LTD

..... Respondent

Through: Mr. H. Banerjee, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

23.08.2019

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D.N. PATEL, CHIEF JUSTICE (ORAL)

1. This Letters Patent Appeal has been preferred by the original petitioner in W.P.(C) 2273/2018, which was dismissed by the learned Single Judge *vide* order dated 25th September, 2018.

2. Having heard learned counsel for the appellant (original petitioner) and the respondent, it appears that the Micro and Small Enterprises Facilitation Council, Delhi (hereinafter referred as MSEF

Council for the sake of brevity) has passed an order on 1st May, 2017, (which is at page 74 of this appeal). As per this order by passed MSEF Council, Delhi, meetings were held on 10th December, 2016, 10th February, 2017 and 7th April, 2017, and the Council made all efforts to facilitate conciliation between the parties to this litigation, but conciliation could not be arrived at and hence as per Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006, the council has referred the dispute for arbitration.

3. Being aggrieved by the aforesaid order, dated 1st May, 2017, of the MSEF Council, Delhi, a writ petition was preferred by this appellant, being W.P.(C) No. 2273/2018.

4. The said writ petition has been dismissed by the learned Single Judge *vide* order dated 25th September, 2018 and hence the original petitioner has preferred the present Letters Patent Appeal.

5. It appears from the facts of the case that despite an arbitration clause in the agreement between the parties to the litigation, the MSEF Council, Delhi has the power, jurisdiction and authority to refer the dispute to arbitration, under Section 18(3) of the Act, 2006.

6. MSEF Council, Delhi has power, jurisdiction and authority to act as an Arbitrator or a Conciliator especially looking to Section 18(4) of the Act, 2006 read with Section 24 of the Act, 2006.

7. For ready reference, Section 18(3), 18(4) and Section 24 of the Micro, Small and Medium Enterprises Development Act, 2006 read as under :

“18(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.

18(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.

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.”

8. In view of the aforesaid provisions of law, no error has been committed by the learned Single Judge while deciding W.P.(C) 2273/2018, *vide* order dated 25th September, 2018. Thus, despite an arbitration clause in the agreement between the parties to the litigation, if the Micro, Small and Medium Enterprises Development Act, 2006 is applicable to them, the MESF Council, has the power, jurisdiction and authority under Section 18(3) to either take up the matter for arbitration itself or refer the matter for arbitration to any institution or centre providing alternate dispute resolution services once the conciliation proceedings before MESF Council fails. This provision has overriding effect, looking to Section 18(4) and Section 24 of the Act, 2006. This aspect of the matter has been properly appreciated by the learned Single Judge while deciding W.P.(C) 2273/2018, *vide* order dated 25th September, 2018, especially looking to para 10 of the judgment delivered by the Hon’ble Gujarat High Court in First Appeal No. 637/2016, wherein it has been observed as under :

“10. In view of the above and for the reasons stated above, no error has been committed by the learned Council in not entertaining the application under Section 8 of the Arbitration Act, 1996. We see no reason to interfere with the order passed by the learned Council. As observed herein above and

considering the sub-section (1) of Section 18 of the Act, 2006 the Facilitation Council has jurisdiction to act as Arbitrator and/or conciliator any dispute between the parties and that Council had only one of two courses of action open to it, either to conduct an arbitration itself or to refer the parties to a centre or institution providing alternate dispute resolution services stipulated in Section 18(3) of the Act, 2006. Therefore, while dismissing the present appeal, it is observed that Council shall now act in accordance with provision of sub-section (3) of Section 18 and either to conduct an arbitration itself or to refer the parties to a centre or institution providing alternate dispute resolution services. With the above observations, present appeal is dismissed. No costs. In view of dismissal of the First Appeal, Civil Application stands dismissed accordingly.”

9. In view of the aforesaid facts, reasons and judicial pronouncements, there is no substance in this appeal and the same is, therefore, dismissed.

10. No other argument than what is stated hereinabove has been canvassed by the learned counsel for the appellant (original petitioner).

CM Nos. 2683/2019, 2686/2019, 10426/2019, 20357/2019, 20358/2019 and 20359/2019

1. In view of the orders passed in the appeal, these applications stand disposed of.

CHIEF JUSTICE

AUGUST 23, 2019/kr

C. HARI SHANKAR, J.



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