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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 24th February, 2021

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W.P.(C) 2554/2021 & CM APPL. 7515/2021

MS BSA CITI COURIERS PVT LTD

..... Petitioner

Through: Mr. Arjun Devan, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Amit Mahajan and Mr. Dhruv
Pande, Advocate for R-1.

Mr. Ramesh Singh and Mr. Shok
Chandra, Advocates for R-2 & 3.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. The present petition has been filed by the Petitioner in view of the delay being caused in the processing of its complaint before Respondent No.3. – Micro and Small Enterprises Facilitation Council (*hereinafter*, “MSEFC”).
3. The case of the Petitioner is that it is a registered Micro Small and Medium Enterprise and had a dispute with Respondent No.4 with respect to alleged non-payment for its services. The Petitioner had accordingly filed an application/complaint bearing number DL/01E0000588/S/0001 on 17th June, 2019 with the MSEFC. The said complaint was not acted upon and finally after the Petitioner repeatedly wrote to the grievance cell, the matter was sent for conciliation. The conciliation process failed and on 6th July, 2020, the claim was converted into a reference, as per section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (*hereinafter*,

“MSMED Act”). However, till date an arbitrator has not been appointed in accordance with Section 18(3) of the MSMED Act, inspite of the scheme of the Act providing for a disposal of such proceedings within 90 days according to section 18(5) of the MSMED Act.

4. Mr. Chandra, appearing for Respondent No. 2- MSEFC, submits that according to the notification of the GNCTD issued on 30th September, 2020, 11 new councils have been constituted. In view of this reconstitution, there has been a delay in examining the Petitioners reference

5. This court is of the opinion that the entire purpose of the MSMED Act would be completely defeated if references are delayed in this manner. Under Section 18 of the MSMED Act, the entire reference is to be decided within a period of 90 days. However, in the present case, inspite of the conciliation having failed and having been converted into a reference in July, 2020, there is no progress till date. The entire purpose of enacting this Act would be set at naught if the MSEFC fails to act diligently. The scheme of the MSMED Act and the importance of timely dispensation of references under Section 18 of the said act has been repeatedly affirmed by this Court including in the judgment titled ***Driplex Water Engineering Pvt. Ltd. v. MSEFC and ors., 2015 SCC Online Del 13879***. In the said judgment, a ld. Single Judge of this Court observed as under:

“11. It would thus be seen that the Act aforesaid has provided for the establishment of the Council to enable Micro and Small Enterprises, which may turn sick if the dues owed to them by the buyers of their goods and services are not recovered immediately, to expeditiously recover their dues and to not depend upon the procedure of the ordinary civil courts before whom owing to huge volumes, disposal of cases takes

considerably longer. Section 18(5) of the Act mandates the Council to decide the references made to it by Micro and Small Enterprises within a period of 90 days only.

12. In this light, the "inadvertent error" on the part of the respondent no.1 Council in dealing with and/or disposing of the references/claims made by the petitioner for the last over two years is alarming. Notwithstanding the Council having been established, it has not served the purpose for which it was established.

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22. The purport of the aforesaid discussion is to remind the respondents of the statutory provisions by which they are equally bound and to consider devising ways and means for abiding therewith."

6. Considering the settled legal position as also the clear mandate in section 18(5) of the MSMED Act, there can be no reason to delay the matter any further. The MSEFC is, accordingly, directed to appoint an arbitrator in terms of the Act, within a period of two weeks from today, failing which the Petitioner is permitted to approach this Court by way of an application. After appointment of the arbitrator, the said reference shall be disposed of within 90 days in terms of the statutory stipulation.

7. With these observations this petition all pending applications are disposed of.

**PRATHIBA M. SINGH
JUDGE**

FEBRUARY 24, 2021

dj/Ak