

2023:PHHC:160768

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CR No.1028 of 2013 (O&M)
Date of Decision: 13.12.2023

Mirador Commercial Pvt. Ltd.

.....Revisionist-Petitioner.

Versus

Micro & Small Enterprises Facilitation Council and another

.....Respondents.

CORAM: *HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA*

Argued by:- Mr. Sukhandeep Singh, Advocate, appearing for
 Mr. Lokesh Sinhal, Advocate for the petitioner.

None for respondent No.1.

Mr. Sourabh Goel, Advocate
for respondent No.2.

MEENAKSHI I. MEHTA, J.

By filing the instant revision-petition under Article 227 of the Constitution of India, the petitioner has laid challenge to order Annexure P-5 handed down by respondent No.1-Council on 10.01.2013, whereby the application (Annexure P-4), as moved by it (petitioner) under Section 8 of the Arbitration and Conciliation Act, 1996 with the prayer to refer the dispute between it and respondent No.2 to the sole Arbitrator named Mr. D. Simpson Rajasekaran, has been rejected.

2. As per the brief factual-matrix emerging from the perusal of the record and culminating in the filing of the present revision-petition, one Purchase Order Agreement (Annexure P-1 and for short 'the POA') had

been executed between the petitioner and respondent No.2 for the supply/purchase of the goods and as per Clause 39 thereof, the parties had agreed that any dispute or difference or question, arising between them in respect of their rights and liabilities thereunder, would be referred to the sole Arbitrator, to be appointed by the owner only. Further, from the contents of Annexure P-2, the copy of the letter dated 08.11.2012 shown to have been addressed by the petitioner to respondent No.2, it transpires that a dispute had arisen between the parties regarding the payment of an amount of Rs.11,10,769/-, as claimed by respondent No.2 to be outstanding against the petitioner for the goods supplied by it and respondent No.2 had made its Reference to respondent No.1-Council, as envisaged under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (here-in-after to be referred as 'the MSMED Act'). After putting in appearance before respondent No.1 in pursuance of the notice as issued by it, the petitioner moved the afore-mentioned application (Annexure P-4), which has been rejected vide the impugned order, as already indicated in the opening para of this judgment.

3. It is worth-while to mention here that vide the order passed by the Co-ordinate Bench on 28.07.2014, the instant revision-petition had been adjourned *sine-die* to await the decision in **LPA No.491 of 2012**, as stated to be pending before the Division Bench of this Court.

4. It is also pertinent to point it out here that vide the order passed by this Court on 15.11.2023, the application bearing **CM No.5888-CII of 2021**, as filed by respondent No.2 with the prayer for fixing some

actual date of hearing in the present revision-petition, had been allowed and accordingly, this revision petition had been taken on the Board on that day.

5. It will also not be out of place to mention here that respondent No.2 has moved another application bearing **CM No.6185-CII of 2023** for seeking the dismissal of the instant revision-petition in view of the verdict handed down by Hon'ble Supreme Court in the case titled as **Gujrat State Civil Supplies Corporation Ltd. Vs Mahakali Foods Pvt. Ltd (Unit 2) and another, 2022 SCC Online 1492 (decided on 31.10.2022)**, while averring that the dispute involved in this revision-petition, is covered by the same.

6. Reply to this application has already been filed on behalf of the petitioner, wherein it has been asserted that the above-referred LPA is still pending adjudication before the Division Bench.

7. I have heard learned counsel appearing for the petitioner as well as learned counsel for respondent No.2 in the present revision petition and also on **CM No.6185-CII of 2023** and have perused the file carefully.

8. As mentioned earlier, the dispute arisen between the petitioner and respondent No.2, pertains to the supply of goods in pursuance of the POA and thus, it squarely falls within the four corners of the provisions as contained in Section 17 of the MSMED Act and respondent No.2 has made the Reference in respect thereof to respondent No.1-Council, under Section 18(1) of the said Act. Mere factum of the pendency of the afore-mentioned LPA, in the considered opinion of this Court, does not suffice at all to be a cogent and valid ground to keep the instant revision-petition alive/pending any more in the circumstances, when the issue/matter/controversy, directly

involved herein, has been put to the rest by Hon'ble Supreme Court vide the judgment as rendered in **Gujrat State Civil Supplies Corporation Ltd. (supra)**, while observing that “*the MSMED Act of 2006, being the special law and the Arbitration Act of 1996, being the general law, the provisions of the MSMED Act of 2006 would have precedence over and prevail over the Arbitration Act of 1996 and even if the Arbitration Act of 1996 is treated as special law, then also, the MSMED Act of 2006, having been enacted subsequently in point of time, would have over-riding effect in view of Section 24 of the MSMED Act of 2006 and no party to the dispute covered under Section 17 of the Act would be precluded from making reference to the Facilitation Council under Section 18(1) thereof merely because there is arbitration agreement existing between the parties.*” These observations clinch the entire controversy in this revision-petition and in the light of the same, it is held that the impugned order Annexure P-5 is perfectly legal and valid.

9. Resultantly, the revision-petition in hand stands dismissed and the application bearing **CM No.6185-CII of 2023**, as filed by respondent No.2, stands allowed accordingly.

December 13, 2023

Yag Dutt

(MEENAKSHI I. MEHTA)

JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes