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

Date of decision: 16th OCTOBER, 2023

IN THE MATTER OF:

\+ **W.P.(C) 2177/2023 & CM APPL. 8279/2023**

M/S COLUMBIA PETRO CHEM PVT. LTD. ..... Petitioner

Through: Mr. Anirudh Wadhwa, Mr. Vipul Kumar and Mr. Shashwat Awasthi, Advocates.

versus

MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL & ORS. ..... Respondents

Through: Mr. Avishkar Singhvi, ASC for GNCTD with Mr. Naved Ahmed and Mr. Vivek Kr. Singh, Advocates for R-1 and 3.
Mr. Rajesh Kumar, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The instant writ petition has been filed by the Petitioner challenging the Reference Order dated 15.03.2022 being Reference No.F.184/DM(S)/Ref.u/s-18/SRD/MSEFC/1534-36 in the matter of 'Mack Insurance Surveyors & Loss Assessors Pvt. Ltd v. Columbia Petrochem Pvt. Ltd.' passed by the Micro & Small Enterprises Facilitation Council (MSEFC)-Cum-District Magistrate, Saket, New Delhi. The Petitioner, by way of the present writ petition, has also challenged the Order dated 06.01.2023 passed by the Arbitral Tribunal comprising of sole arbitrator in

the said reference rejecting the application under Section 16 of the Arbitration and Conciliation Act, 1996.

2. Shorn of unnecessary details, facts leading to the filing of the instant writ petition are as under:

a) It is the case of the Respondent No.2 that the Petitioner herein approached the Respondent No.2 to engage the Respondent No.2 for its services as the Marine Surveyor for import of cargo at Taloja/Silvassu/Kherdi. It is stated that invoices were raised by the Respondent No.2 from October, 2018 to March, 2019 for services rendered by it.

b) It is stated that dispute arose between the parties and payments were not received by Respondent No.2 from the Petitioner for the services rendered by it. It is stated that Respondent No.2, approached the Micro & Small Enterprises Facilitation Council (MSEFC) regarding the claims made by Respondent No.2 and the said Council referred the dispute to Arbitration under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (*hereinafter referred to as 'MSMED Act'*).

c) It is stated by the Petitioner that Respondent No.2 got itself registered under the MSME only on 31.08.2020 which is after the last invoice raised by the Respondent No.2, and therefore, the Respondent No.2 is not entitled to take the benefit of MSMED Act.

d) The Petitioner filed an application under Section 16 of the Arbitration and Conciliation Act, 1996 claiming that Respondent No.2 was registered under the MSMED Act only on 31.08.2020 and, therefore, the referral to arbitration cannot be sustained. The Arbitrator *vide*

Order dated 06.01.2023 rejected the application of the Petitioner stating that the issue as to whether matter could be referred to arbitration or not and whether the claimant can take the benefit under the MSMED Act has to be adjudicated after the parties have been afforded an opportunity to lead evidence in support of their claims and that the issues will be decided in the Arbitration.

3. Pursuant to the Order dated 06.01.2023 passed by the Arbitrator, the Petitioner has approached this Court by filing the instant writ petition with the following prayers:

> *"A. Set aside the Impugned Reference Order dated 15.03.2022 in the matter of 'Mack Insurance Surveyors & Loss Assessors Pvt. Ltd v. Columbia Petrochem Pvt. Ltd.' being Reference No. F. 184/DM(S)/Ref.u/s-18/SRD/MSEFC/1534-36 passed by the Micro & Small Enterprises Facilitation Council (MSEFC)-Cum-District Magistrate, in Saket, New Delhi.*
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> *B. Set aside the Impugned Order dated 06.01.2023 in the matter of 'Mack Insurance Surveyors & Loss Assessors Pvt. Ltd v. Columbia Petrochem Pvt. Ltd.' being Arbitration Case No. DIAC/3844D/03-2022 passed by the Ld. Tribunal comprising of sole arbitrator Ms. Radhika Bishwajit Dubey, Delhi International Arbitration Centre;*
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> *C. Quash the proceedings initiated against the Petitioner before the Respondent No. 1 as well as the Ld. Arbitral Tribunal under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006;*
>
> *D. Pass such further direction(s) and other order(s) as this Hon'ble court may deem fit and proper in the facts*

and circumstances of the case and in the interest of justice."

4. Learned Counsel for the Petitioner has drawn attention of this Court to the MSME registration certificate to state that the Respondent No.2 registered as an MSME only on 04.05.2019 which was after the last invoice issued in the month of March, 2019 and, therefore, Respondent No.2 is not entitled to the benefit under MSMED Act. The Petitioner places reliance on the Judgments of the Apex Court in Silpi Industries vs. Kerala State Road Transport Corporation, **2021 SCC OnLine SC 439**, Vaishno Enterprises vs. Hamilton Medical AG & Anr., **2022 SCC OnLine SC 355** in support of his contention.

5. *Per contra*, learned Counsel for Respondent No.2 draws attention of this Court to the MSME registration certificate to state that the date given on the said certificate is actually 05.04.2019 and not 04.05.2019. He states that the date given in the certificate i.e., 04.05.2019 is in the American format and not in the Indian format. As per the American format, the month is given first and then date and then year which, according to the Indian format, will be 05.04.2019. To substantiate his contention, the learned Counsel for Respondent No.2 draws attention of this Court to another certificate issued by Ministry of Micro, Small and Medium Enterprises which reflects that the Respondent No.2 was registered as an MSME on 05.04.2019. He also draws attention of this Court to the evidence of Mr. Rajesh Bhattacharya, Assistant Director, GR-1 of MSME-Development and Facilitation Office, Okhla, New Delhi given by him before the Arbitrator. The relevant portion of the evidence deposed by the said Officer reads as under:

> *"**I further state that the date mentioned under column "added on" is 5 April, 2019**. I have seen Page 99 filed along with the Statement of Claim and state that it is Udyam Registration Certificate issued in the name of the Claimant company which has been migrated from Udyog Aadhaar Memorandum by the Claimant Company. I state that this certificate is system generated based on Self Declaration. I state that the date of this document is the migration date of the document i.e. 31.08.2020. I further state that the date mentioned on the left hand top of the said document is the date of the printing of the document i.e. 31.08.2020. I further state that the status of whether the Claimant company is an MSMI: unit as of date or not can be verified from the public domain. I have now checked the status of the Claimant company on the website of MSME and I can confirm that as of date, it is a MSME unit. While the document Exhibit CW-4/1 provides that it is valid till 30.06.2022, as stated above the Government is still entertaining cases of migration. In the case of the Claimant company, since the Claimant has already migrated to the new system on 31.08.2020, the carlier certificate will not be considered and it is the new certificate which will be considered for the purposes of MSME: registration."* (emphasis supplied)

6. Learned Counsel for Respondent No.2 states that the Respondent No.2 has been registered as an MSME on 05.04.2019. He states that even though the last invoice was issued on 29.03.2019, the goods arrived in the Mumbai port only on 06.04.2019 which is after the registration of the Respondent No.2 as an MSME and, therefore, the reference to arbitration does not require any interference. He draws attention of this Court to a letter dated 29.03.2019 issued by the Respondent No.2 to the Petitioner informing the Petitioner that the Import Bulk Cargo of base oil is arriving in Vessel M/T "Royal Jasper" ETA Mumbai Port on 06.04.2019. He states that the

services have been rendered in the present case after the date of Respondent No.2 being registered as an MSME and, therefore, the reference to the arbitration under Section 18 of the MSMED Act cannot be challenged. He states that the arbitration is on an advance stage of hearing , the evidence of the parties have been concluded and the matter is ripe for final hearing. He states that no interference is required at this stage.

7. Heard learned Counsel appearing for the Parties and perused the material on record.

8. The dispute in the present case is regarding the date of registration of Respondent No.2 as an MSME. The Petitioner contended that the Respondent No.2 has been registered as an MSME only on 04.05.2019 which is after the last date of invoice. Admittedly, the case of the Respondent No.2 is that the Respondent No.2 has been registered as an MSME on 05.04.2019 and the date of arrival of the consignment was on 06.04.2019 for which the services of Respondent No.2 was hired. The Arbitrator *vide* Order dated 06.01.2023 rejected the application filed under Section 16 of the Arbitration and Conciliation Act by the Petitioner on the ground that since there is a disputed question of fact, both the parties should be permitted to adduce the evidence. The Respondent No.2 has produced Mr. Rajesh Bhattacharya, Assistant Director, GR-1 of MSME-Development and Facilitation Office, Okhla, New Delhi who has given evidence that Respondent No.2 was registered as an MSME on 05.04.2019. Since it is a disputed question of fact, this Court does not find any reason to interfere with the Order dated 06.01.2023 passed by the Arbitrator.

9. The Apex Court in <u>Deep Industries Limited v. Oil & Natural Gas Corporation Limited & Anr.,</u> **2020 (15) SCC 706** while discussing the scope

of the High Court under Article 226/227 of the Constitution of India in interfering with the Order passed during the arbitration proceedings has observed as under:

> *"17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction."*

10. The material on record does indicate that the Respondent No.2 has been registered as an MSME before the date of arrival of consignment of Bulk Cargo of base oil at Mumbai Port which was on 06.04.2019. The Arbitrator was within his jurisdiction to decide this question after the Petitioner led evidence. Needless to state that the arbitrator will decide the case after analysing the law laid down by the Apex Court in various Judgments and the aforementioned Judgments on which the Petitioner has placed reliance. It is made clear that this Court has not made any observations regarding the merits of the case.

11. As stated by the learned Counsel for Respondent No.2 that arbitration is on advance stage of hearing, the evidence has already been laid by the

parties and the matter is ripe for final hearing, at this stage and on the basis of material available on record, this Court is not inclined to interfere under Article 226 of the Constitution of India.

12. In view of the above, the writ petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 16, 2023
S. Zakir