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

Date of decision: 9th May, 2023

\+ **W.P.(C) 10197/2022 & CM APPL. 29510/2022**

M/S. QUICKDEL LOGISTICS PVT. LTD. ..... Petitioner

Through: Mr. Achint Kumar, Mr. Murari Kumar and Ms. Lisha Saha, Advocates (M-85880 61334)

versus

DELHI ARBITRATION CENTRE & ORS. ..... Respondents

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner-M/s. Quickdel Logistics Pvt. Ltd. challenging the impugned reference notice dated 16th June 2022 under the Micro Small and Medium Enterprise Development Act, 2006 (hereinafter *'MSMED Act'*) by the Micro and Small Enterprises Facilitation Council(hereinafter *'MSEFC'*).

3. The case of the Petitioner is that it had entered into an agreement with the Respondent No.3-M/s Sangeeta Cargo Movers on 1st October, 2013 for providing courier and cargo services on credit basis. Further, an addendum agreement dated 14th January, 2015 was also executed between the parties. The said Respondent No.3 was stated to have been registered under the MSMED Act only on 21st July, 2018 and sought to raise disputes against the Petitioner. The MSEFC initially started conciliation proceedings. However, the reference to arbitration proceedings was made by the MSEFC

thereafter.

4. The matter was referred to the Delhi Arbitration Centre which has also appointed a Sole Arbitrator on 16th June, 2022. At that stage, the Petitioner approached this Court challenging the reference made by the MSEFC.

5. Vide order dated 7th July, 2022, the Court had noticed the judgment of the Supreme Court in ***Silpi Industries Etc. vs. Kerala State Road Transport Corp & Another [2021 SCC Online SC 439]*** and had stayed the arbitration proceedings. Notice was issued to the Respondents.

6. On 30th November, 2022, Respondent No. 3 had entered appearance. However, thereafter the Respondent No.3 has not appeared and neither has it filed the counter affidavit.

7. Clearly, as is evident from the facts in the present case, the registration of the Respondent No.3 under the MSME Act is subsequent to the award of the contract as also the completion of the contract in November, 2015. In fact an FIR also appears to have been registered in respect of the rendering of services by the Respondent No.3 in December, 2015.

8. Following the dictum of the Supreme Court in ***M/s Silpi Industries vs. Kerala State Road Transport Corporation (supra)*** as also the view taken by this Court in ***WP(C) 9608/2022*** titled ***Malani Construction Company v. Delhi International Arbitration Centre & Ors***., the reference would not sustain. The relevant extract of the said decision reads:

> *"11. In both MSEFC cases, the date of registration admittedly being after the date of the last invoice having been raised, the ratio in Silpi Industries (supra) would clearly be applicable to this case. In Silpi*

Industries (supra) the Supreme Court has clearly held as under:

"26. Though the appellant claims the benefit of the provisions under MSMED Act, on the ground that the appellant was also supplying as on the date of making the claim, as provided under Section 8 of the MSMED Act, but same is not based on any acceptable material. The appellant, in support of its case placed reliance on a judgment of the Delhi High Court in the case of GE T&D India Ltd. v. reliable Engineering Projects and Marketing , but the said case is clearly distinguishable on facts as much as in the said case, the supplies continued even after registration of entity under Section 8 of the Act. In the present case, undisputed position is that the supplies were concluded prior to the registration of the supplier. The said judgment of the Delhi High Court relied on by the appellant also would not render any assistance in support of the case of the appellant. In our view, to seek the benefit of provisions under MSMED Act, the seller should have registered under the provisions of the Act, as on the date of entering into the contract. In any event, for the supplies pursuant to the contract made before the registration of the unit under provisions of the MSMED Act, no benefit can be sought by such entity, as contemplated under MSMED Act. While interpreting the provisions of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, this Court, in the judgment in the case of Shanti Conductors Pvt. Ltd. & Anr. etc. v. Assam State Electricity Board & Ors. Etc. has held that date of supply of goods/services can be taken as the relevant date, as opposed to date on which contract for supply was entered, for applicability of the aforesaid Act. Even applying the said ratio also, the appellant is not entitled to seek the benefit of the Act. There is no acceptable material to show that, supply of goods has taken place or any services were rendered,

subsequent to registration of appellant as the unit under MSMED Act, 2006. By taking recourse to filing memorandum under sub-section (1) of Section 8 of the Act, subsequent to entering into contract and supply of goods and services, one cannot assume the legal status of being classified under MSMED Act, 2006, as an enterprise, to claim the benefit retrospectively from the date on which appellant entered into contract with the respondent. The appellant cannot become micro or small enterprise or supplier, to claim the benefits within the meaning of MSMED Act 2006, by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods and services. If any registration is obtained, same will be prospective and applies for supply of goods and services subsequent to registration but cannot operate retrospectively. Any other interpretation of the provision would lead to absurdity and confer unwarranted benefit in favour of a party not intended by legislation."

12. This judgment in Silpi Industries(supra) has been subsequently considered by the Supreme Court, recently, in 'Gujarat State Civil Supplies Corporation Limited v. Mahakali Foods Private Ltd. (Unit 2) & Anr, the operative portion for which reads:

"33. Following the above stated ratio, it is held that a party who was not the "supplier" as per Section 2(n) of the MSMED Act 2006 on the date of entering into the contract, could not seek any benefit as a supplier under the MSMED Act, 2006. A party cannot become a micro or small enterprise or a supplier to claim the benefit under the MSMED Act, 2006 by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods or rendering services. If any registration, is obtained subsequently the same would have the effect prospectively and would apply for the supply of goods

> *and rendering services subsequent to the registration. The same cannot operate retrospectively. However, such issue being jurisdictional issue, if raised could also be decided by the Facilitation Council/Institute/Centre acting as an arbitral tribunal under the MSMED Act, 2006*
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> *34. The upshot of the above is that-...*
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> *(vi) A party who was not the supplier' as per the definition contained in Section 2(n) of the MSMED Act, 2006 on the date of entering into contract cannot seek any benefit as the 'supplier' under the MSMED Act, 2006.If any registration is obtained subsequently the same would have an effect prospectively and would apply to the supply of goods and rendering services subsequent to the registration..."*
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> *13. The ratio of these two judgments is clear to the effect that if the registration under the MSMED Act, 2006 was obtained subsequently, the benefits under the said Act would not apply. Even in a situation where some portion of the goods/services are supplied prior to registration and some are supplied post registration, the Act would apply, depending on the facts, only qua the goods and services which are supplied subsequent to the registration."*

9. The impugned reference is accordingly set aside.

10. If the Respondent No.3 has deposited any amounts with the Delhi Arbitration Centre the same shall be refunded. However, the said amounts shall be subject to the deductions of any incidental and administrative expenses.

11. The Respondent No. 3's right to avail of its remedies in accordance with law is left open.

12. The period during which the writ petition has been pending from the

date of the Respondent's letter to the MSEFC seeking reference, till today, shall not be counted for the purposes of calculating limitation if the Respondent no.3 chooses to avail of its remedies.

13. The present petition is disposed of in these terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

MAY 9, 2023
Rahul/rp