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\$~6(SB), 12(SB), 15(SB), 16(SB)

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 18<sup>th</sup> September, 2023*+ **W.P.(C) 14734/2022 and CM APPL. 45311/2022**

DR. SHRADHA MALIK, ..... Petitioner

Through: Mr. M. Qayam Ud Din & Ms Smerity  
Rani, Advocates.

versus

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

Through: Mr. Ashish Verma, Advocate for R-4.

12(SB) WITH

+ **W.P.(C) 17764/2022 and CM APPL. 56766/2022**

TONMOY SHARMA ..... Petitioner

Through: Mr. M. Qayam Ud Din & Ms Smerity  
Rani, Advocates.

versus

MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL  
& ORS. .... RespondentsThrough: Mr. Avishkar Singhvi, Mr Naved  
Ahmed and Mr Vivek Kumar,  
Advocates for R-1.  
Mr. Ashish Verma, Advocate for R-4.

15(SB) WITH

+ **W.P.(C) 17768/2022 and CM APPL. 56773/2022**

SMT. MAYA DEVI ..... Petitioner

Through: Mr. M. Qayam Ud Din & Ms Smerity  
Rani, Advocates.

versus

MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL  
& ORS. .... RespondentsThrough: Mr. Avishkar Singhvi, Mr Naved  
Ahmed and Mr Vivek Kumar,  
Advocates for R-1.  
Mr. Ashish Verma, Advocate for R-4.

16(SB) WITH

+ **W.P.(C) 17788/2022 and CM APPL. 56833/2022**



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MS. REENA SHARMA

..... Petitioner

Through: Mr. M. Qayam Ud Din & Ms Smerity  
Rani, Advocates.

versus

MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL  
& ORS.

..... Respondents

Through: Mr. Avishkar Singhvi, Mr Naved  
Ahmed and Mr Vivek Kumar,  
Advocates for R-1.  
Mr. Ashish Verma, Advocate for R-4.  
Mr. Udit Malik, ASC with Mr. Vishal  
Chanda, Advs. (M:9999975448)**CORAM:****JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (ORAL)**

1. This hearing has been done though hybrid mode.
2. The present petitions have been filed by:

| Writ Petition      | Petitioner        |
|--------------------|-------------------|
| W.P.(C) 14734/2022 | Dr. Shradha Malik |
| W.P.(C) 17764/2022 | Mr. Tonmoy Sharma |
| W.P.(C) 17768/2022 | Smt. Maya Devi    |
| W.P.(C) 17788/2022 | Ms. Reena Sharma  |

3. The present petitions have been filed seeking setting aside of the notice of hearing for start of conciliation proceeding dated 6th April, 2022.
4. The said notice has been issued by the DAC pursuant to the references made by the MSEFC in **CASE/Reference ID: DL/10/M/SWC/00724 of 2022** titled ***IQ Consultancy v. Cogtest Services Pvt. Ltd. & Ors.***
5. The brief background of these cases is that the said Petitioners are directors of company - Cogtest Services Pvt. Ltd. The said company entered



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into a contract of service dated 1<sup>st</sup> June, 2018 with Respondent No.4. Certain disputes arose between the parties regarding payments to the Respondent No.4. Thereafter, Respondent No.4 being registered as a 'Supplier' under the Micro, Small and Medium Enterprises Development Act, 2006 (*hereinafter, 'MSMED Act, 2006'*) filed a complaint before the MSEFC. Pursuant thereto, settlement agreement dated 17th August, 2020 was entered into between the parties on the condition that the Respondent No.4 shall withdraw its complaints before the MSEFC.

6. As per the terms of the settlement between Cogtest Services Pvt. Ltd and Respondent No.4, Cogtest Services Pvt. Ltd was to pay monthly instalments of Rs 49,000/- each starting w.e.f 18<sup>th</sup> September, 2020 up to 18<sup>th</sup> February, 2022 Rs.49,000/- in 18 instalments and clear the dues amounting to Rs. 8,82,000/- of Respondent No.4. The relevant terms of the said settlement are extracted below:

**"3. PAYMENT:**

*The Company shall pay to the Agency Settlement Amount in 18 monthly instalments, the Settlement Amount is divided in 18 monthly instalments and amount of each instalment shall be Rs. 49,000/- [Rupees Forty-nine thousand only] per month . The Agency hereby agrees and accepts the receipt of the Said monthly instalments through cheques issued in favour of M/s IQ Consultancy. Detailed description of the instalments to be paid to the Agency by the Company are mentioned in the document annexed herewith and is marked as Annexure – (A).*

*The Agency shall submit the monthly receipt of instalments as referred herein above, to the Company."*

7. The first instalment as per the settlement was paid and the Respondent



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No.4 did not press the complaint before MSEFC. However, no payment was made thereafter. Due to alleged non-compliance of this settlement agreement, the MSEFC then passed orders referring the matter to arbitration. Pursuant thereto, arbitration proceedings were initiated in the DAC before the Id. Sole Arbitrator.

8. The DAC issued the impugned notice of hearing dated 6<sup>th</sup> April 2022, which is challenged in these petitions.

9. In **W.P.(C) 14734/2022**, vide order dated 18th October, 2022, this Court had stayed further proceedings before the DAC on the ground that the Petitioners could not be sued in personal capacity. The relevant part of the said order is as under:

*“Prima facie, the Court finds merit in the challenge raised to the reference made by the Council invoking powers conferred by Section 18 of Micro Small & Medium Enterprises Development Act, 2006 in light of the submission that the invoice as well the contract between the parties for supply of the services was between the I.Q. Consultancy and Cogtest Services Pvt. Ltd. In that view of the matter, learned counsel would contend that there existed no justification for the petitioner being sued in a personal capacity. Matter requires consideration.*

*Till the next date of listing, there shall be stay of further proceedings pending before the Delhi Arbitration Centre pursuant to the order of reference dated 06 April 2022.*

*List again on 06.04.2023.”*

10. Relying upon the aforementioned order, this Court **W.P.(C) 17764/2022** and **W.P.(C) 17768/2022** vide order dated 28<sup>th</sup> December, 2022,



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stayed arbitration proceedings before the DAC in ***CASE/ Reference ID: DL/10/M/SWC/00724 of 2022.***

11. Today, Id. Counsel for the Respondent No.4 submits that one instalment has been paid and the remaining have not been paid which led Respondent No.4 to approach the MSEFC. Thereafter the MSEFC passed the impugned reference orders

12. On the other hand, Mr. M. Qayam Ud Din, Id. Counsel for the Petitioners again seeks an adjournment on the ground that the electronic record is not available with him.

13. It is noticed from a perusal of the record that the settlement agreements dated 17th August, 2020 has admittedly been entered into between Respondent No.4 and Cogtest Services Pvt. Ltd. The agreement on record is quite clear and is not disputed. Respondent No.4 admittedly was to be paid a sum of Rs. 8,82,000/- which has, admittedly, not been paid. Thus, the Petitioners as also the company Cogtest Services Pvt. Ltd. are clearly in default.

14. All the Directors of the company approached this Court individually and the company did not file any writ petition challenging the arbitral proceedings. This was clearly a clever tactic of getting the arbitral proceedings stayed without putting the company in the forefront. This ruse appears to have been adopted only to not honour the settlement agreement.

15. Further, the challenge by the Petitioner is that initially the MSEFC proceedings were only against the individual Petitioners and not the company and later on the company was added. A perusal of the claim petition dated 25<sup>th</sup> June 2022 filed by Respondent No.4 before the MSEFC



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by would also show that the said proceeding are between Respondent No.4, Cogtest Services Pvt. Ltd., Ms. Maya Devi Thappa, Ms. Reena Sharma, Ms. Shradha Malik, Mr. Tonmoy Sharma and Ms. Siddhanta Mangla Kashyap. Thus, the mere fact that, initially, notice may have been issued only to Ms. Shradha Malik would not have an impact on the proceedings before the MSEFC.

16. This is the second round of litigation between the Respondent No. 4, Cogtest Services Pvt. Ltd and their Directors. The Petitioners are misleading the Court by relying upon a notice of appearance issued by the DAC.

17. Clearly, on the date when this Court had granted interim orders dated 18th October, 2022 and 28<sup>th</sup> December, 2022, the claim petition dated 25th June, 2022 which had Cogtest Services Pvt. Ltd as a party was not brought to the notice of the Court

18. In view thereof, the interim orders granted on 18th October, 2022 and 28<sup>th</sup> December, 2022 do not deserve to be continued. The settlement being not in dispute and the default thereof also not being in dispute, the reference to arbitration by the MSEFC cannot be faulted.

19. Moreover, today the Id. Counsel for the Petitioners repeatedly submitted that he did not have the claim petition with him. It was discovered during the course of the hearing that the claim petition dated 25<sup>th</sup> June 2022, were very much a part of the record and were also with the Id. Counsel for the Petitioner.

20. In each of the cases, the Petitioners shall pay a sum of Rs.10,000/- to the Respondent No.4. The arbitration before the DAC shall continue in accordance with law.



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21. The costs shall be paid prior to the next hearing before the Id. Arbitrator which is now fixed on 2nd November, 2023 before the DAC.
22. These petitions, along with all pending applications, are disposed of in the above terms.

**PRATHIBA M. SINGH, J**

**SEPTEMBER 18, 2023**

*dj/kt*