$~21, 24 & 32

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

Date of decision: 9th May, 2023

\+ **W.P.(C) 16894/2022 and CM APPL. 53541/2022**

MUNICIPAL CORPORATION OF DELHI ..... Petitioner

Through: Mr. Kunal Vajani, Standing Counsel with Mr. Kunal Mimani, Mr. Sandeep Rai, Mr. Kartikey Bhatt, Advocates (M-8800394927)

versus

TRIWENI ENTERPRISES ..... Respondent

Through: Appearance not given.

24 WITH

\+ **W.P.(C) 16895/2022 and CM APPL. 53543/2022**

MUNICIPAL CORPORATION OF DELHI ..... Petitioner

Through: Mr. Kunal Vajani, Standing Counsel with Mr. Kunal Mimani, Mr. Sandeep Rai, Mr. Kartikey Bhatt, Advocates.

versus

M/S TRIWENI ENTERPRICES ..... Respondent

Through: Appearance not given.

32 AND

\+ **W.P.(C) 302/2023 and CM APPL. 1188/2023**

MUNICIPAL CORPORATION OF DELHI ..... Petitioner

Through: Mr. Kunal Vajani, Standing Counsel with Mr. Kunal Mimani, Mr. Sandeep Rai, Mr. Kartikey Bhatt, Advocates.

versus

SH. CHHATER PAL ..... Respondent

Through: Mr Rajeev Kumar, Advocate

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The issue that has arisen in these cases is whether reference could have been made by the Micro and Small Enterprises Facilitation Council

(MSEFC) to the DIAC, considering that the Respondents got registered under the Micro, Small and Medium Enterprises Development Act, 2006 (MSME Act, 2006) post the work order having been placed and the work having already been executed.

3. The Petitioner - Municipal Corporation of Delhi has challenged the impugned reference orders passed by the MSEFC, GNCTD (North) under the MSME Act, 2006.

4. The said references were issued by the MSEFC pursuant to agreements between the Petitioner and the Respondents. Due to certain disputes arising out of the agreements between the parties, the herein Respondents approached the MSEFC, which was the subject matter of the following reference orders and cases:

Writ Petition No.	**Case No.**	**Date of Reference order**
W.P.(C) 16894/2022	DL/04/M/DNC/01125	25.07.2022
W.P.(C) 16895/2022	DL/04/M/DNC/01126	25.07.2022
W.P.(C) 302/2023	DL/04/M/NWC/00763	30.09.2022

5. Both parties submit that the present petitions would be covered by the decision dated 16th March, 2023 passed by this Court in ***W.P.(C) 16891/2022*** titled ***Municipal Corporation of Delhi v. Ram Prakash***. The relevant part of the same is as under:

> *"7. Heard. In the judgements of **Shilpi Industries (Supra) and Gujarat State Civil Supplies Corporation ltd. v. Mahakali Foods Pvt. Ltd. (unit 2) & Anr. (2022 SCC Online SC 1492)** passed by the Hon'ble Supreme Court it has been held as under:*
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> > ***"M/s Shilpi Industries vs. Kerala State Road Transport Corporation, (2021 SCC Online SC 439)***

"26. Though the appellant claims the benefit of 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 registration of supplier. The said judgment of 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. <u>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</u>

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.

Gujarat State Civil Supplies Corporation ltd. v. Mahakali Foods Pvt. Ltd. (unit 2) & Anr. (2022 SCC Online SC 1492)

"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.

34. The upshot of the above is that:

(i) Chapter-V of the MSMED Act, 2006 would override the provisions of the Arbitration Act, 1996.

(ii) No party to a dispute with regard to any amount due under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Micro and Small Enterprises Facilitation Council, though an independent arbitration agreement exists between the parties.

(iii) The Facilitation Council, which had initiated the Conciliation proceedings under Section 18(2) of the MSMED Act, 2006 would be entitled to act as an arbitrator despite the bar contained in Section 80 of the Arbitration Act.

(iv) The proceedings before the Facilitation Council/institute/centre acting as an arbitrator/arbitration tribunal under Section 18(3) of MSMED Act, 2006 would be governed by the Arbitration Act, 1996.

(v) The Facilitation Council/institute/centre acting as an arbitral tribunal by virtue of Section 18(3) of the MSMED Act, 2006 would be competent to rule on its own jurisdiction as also the other issues in view of Section 16 of the Arbitration Act, 1996.

(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."

> *8. In view of above two judgments, it is clear that if the registration is subsequent to the completion of the works, the MSME Act would not be applicable. In view of the same as also the submissions by the ld. Counsels for the parties, the impugned references shall stand quashed."*

6. The admitted position on record is that the date of the agreement in these cases is prior to the registration of the Respondents as an MSME. Accordingly, the impugned reference order by the MSEFC in all these three cases is set aside.

7. The Respondents are free to avail of its remedies in accordance with law. If the Petitioner wishes to avail of its remedies by 31st July, 2023, the concerned forum shall extend benefit of Section 14 of the Limitation Act, 1963 for the period commencing from the date when the application was filed before the MSEFC till 31st July, 2023.

8. The Respondents are stated to have deposited a certain amount with the DIAC. In view of today's order, all the amounts shall be refunded by DIAC, to the Respondents subject to deduction of administrative expenses, as may be applicable.

9. Petitions are disposed of in these terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

MAY 9, 2023
Rahul/KT