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

+ **W.P.(C) 1180/2024**

OYO HOTELS AND HOMES PVT. LTD. AND ANR Petitioners

Through: **Mr. Harsh Kaushik, Advocate.**

versus

**MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL,
SOUTH WEST DELHI & ORS. Respondents**

Through: **Mr. Avishkar Singhvi, Mr. Naved
Ahmed, Mr. Vivek Kumar and Mr.
Shubham Kumar, Advocates for R-1.
Mr. M.C. Dhingra and Mr. Gaurav
Dhingra, Advocates for R-2.
Mr. Adhishwar Suri, Advocate for Dr.
Amit George, Advocate for R-3.**

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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16.05.2024

CM APPL. 28462/2024 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 1180/2024 & CM APPLs. 4954/2024, 28461/2024

1. The Petitioner has approached this Court challenging a Reference dated 25.05.2023 passed by Respondent No.1 referring the dispute to the Delhi International Arbitration Centre (DIAC) on the ground that since the Respondent No.2 has got himself registered as an MSME after termination of contract, Respondent No.2 cannot take the benefit of Micro, Small and Medium Enterprises Development Act.
2. The facts in brief are that an agreement was entered into between the



Petitioner and Respondent No.2 by which the Petitioner was to run the premises bearing Plot No.2, Sector-10, Dwarka, Delhi, for Respondent No.2.

3. It seems that disputes have arisen between the parties and the contract was finally terminated in April, 2020. This Court on 08.05.2024 had directed the learned Counsel for Respondent No.1 to verify the date on which Respondent No.2 was registered as an MSME.

4. Learned Counsel for Respondent No.1, on instructions, states that Respondent No.2 was registered as MSME on 23.08.2022.

5. The Apex Court in Gujarat State Civil Supplies Corporation v. Mahakali Foods Pvt. Ltd., (2023) 6 SCC 401, after considering the decisions in Silpi Industries & Ors. v. Kerala State Road Transport Corporation & Anr., has observed as under:-

“51. Following the abovestated ratio, it is held that a party who was not the “supplier” as per Section 2(n) of the Msmmed Act, 2006 on the date of entering into the contract, could not seek any benefit as a supplier under the Msmmed Act, 2006. A party cannot become a micro or small enterprise or a supplier to claim the benefit under the Msmmed 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 Msmmed Act, 2006.”

6. In view of the above, the said Reference is bad. However, it is always



open for the parties to take such recourse to the steps as available to them including filing applications under Section 11 of the Arbitration & Conciliation Act for appointment of an Arbitrator.

7. It is made clear that this Court has not made any observation on the merits of the case.

8. The writ petition is allowed. Pending application(s), if any, stand disposed of.

SUBRAMONIUM PRASAD, J

MAY 16, 2024

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