



\$~31.

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

+ **LPA 224/2024 & CM APPLs. 16617-18/2024**

M/S. HINDUSTAN CONSTRUCTION COMPANY LTD

..... Appellant

Through: Ms. Charu Sachdev with Mr. Gulshan
Kumar Sachdev, Advs.

versus

MR. NAVIN KUMAR PROP. M/S JAI DURGE

CONSTRUCTION & ANR.

..... Respondents

Through: Mr. Natwar Rai, Advocate (Through
VC)

%

Date of Decision: 18th March, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

CM APPL. 16619/2024 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

LPA 224/2024 & CM APPLs. 16617-18/2024

1. The present Letters Patent Appeal has been filed under Clause X of the Letters Patent of the then High Court of Judicature at Lahore, which



stands extended to the High Court of Delhi, challenging the impugned order dated 15th December, 2023, passed in W.P.(C) 10657/2023, whereby the learned Single Judge declined to interfere with the Order dated 22nd May, 2023 passed by the Sole Arbitrator and disposed of the writ petition with directions to the Sole Arbitrator to take evidence on the issue, as to when was the actual date of registration of the MSME, so as to determine whether the Respondent has rendered any service under the contract after the date of registration or not.

2. The order dated 22nd May, 2023 was passed by the Sole Arbitrator while adjudicating the Appellant's objection to the jurisdiction of the Arbitral Tribunal on the anvil of Section 16 of the Arbitration and Conciliation Act, 1996 ('Act of 1996').

3. Learned counsel for the Appellant states that the learned Single Judge failed to decide the issue of lack of jurisdiction of the Arbitral Tribunal, which is a pure question of law. She states that the works contract entered between the parties is not governed by the Micro, Small and Medium Enterprises Development Act, 2006 ('MSMED Act').

4. We are of the considered opinion that the writ petition filed by the Appellant before the learned Single Judge for assailing the order dated 22nd May, 2023, passed by the Sole Arbitrator was not maintainable. The Constitution Bench of the Supreme Court [seven Judges Bench] in ***SBP and Co. v. Patel Engineering Ltd.***¹ has expressly disapproved the practice of High Courts in entertaining writ petitions under Article 226/227 of the Constitution against the order passed in the arbitral proceedings.

¹ (2005) 8 SCC 618 (paras 45 and 46)



5. The present proceedings emanate from a reference made to Arbitration by the Micro and Small Enterprises Facilitation Council. The Appellant has raised an objection that the provisions of the MSMED Act are not attracted in the present case. The Sole Arbitrator vide order dated 22nd May, 2023, has adjudicated on the said objection on the anvil of Section 16 of the Act of 1996 and rejected the same to hold that the Arbitral Tribunal has the requisite jurisdiction to try the arbitral proceedings. The Supreme Court in its recent pronouncement dated 6th November, 2023, passed in Civil Appeal No. 7491/2023, titled as '*M/s India Glycol limited and Anr. v. Micro and Small Enterprises Facilitation Council, Medchal – Malkajgiri and Ors.*' unequivocally held that petitions filed under Article 226/227 of the Constitution ought not to be entertained in view of Section 18 of the MSMED Act, which provides for recourse to statutory remedy for challenging the award under Section 34 of the Act of 1996.

6. The Appellant herein will therefore, have to await the passing of the final award and if aggrieved, take recourse under Section 34 of the Act of 1996, wherein the Appellant will also have the opportunity of challenging the order passed by the Arbitral Tribunal under Section 16 of the Act of 1996. However, no writ petition can be maintained by the Appellant against the in-between orders of the Arbitral Tribunal.

7. We are not satisfied with the reasons pleaded in CM APPL. 16618/2024 seeking condonation of delay of 50 days in filing this appeal. In fact, we also note that the Appellant herein unequivocally acted upon the impugned order dated 15th December, 2023 and sought favourable directions from the Sole Arbitrator in the proceedings held on 23rd February, 2024. The



Appellant has therefore, elected to act upon the relief granted in its favour and for this additional reason, the present appeal is not maintainable.

8. The present appeal along with applications is accordingly, dismissed on merits and on the grounds of limitation.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MARCH 18, 2024/hp/aa