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

+ **W.P.(C) 4513/2024 & CM APPLs. 18427/2024, 26764/2024**

POWER MECH PROJECTS LIMITED

..... Petitioner

Through: Mr. Arjun D. Singh and Mr. Vishnu
Thulasi Menon, Advocates.

versus

**MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL
MSEFC AND ORS.**

..... Respondents

Through: Mr. Sumit Kumar, Mr. Samuel
Mathew and Mr. Gokul, Advocates
for R-3.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

15.05.2024

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1. This Court on 27.03.2024 has passed the following order:-

“1. The writ petition has been filed with the following prayer:-

“Issue an appropriate writ, order or direction in the nature of Certiorari, seeking for calling of the records of the Impugned Order dated 10.01.2023 vide MSEFC/ North /DL/06/ S/DNC/01336 issued by the 1st Respondent as well as call for the records of the Arbitral proceedings currently pending before the 2nd Respondent and quash the same;

2. Respondent No.3- M/s Zillion Infra Projects Private Limited filed a reference on 16.09.2022 under Section 18 of The Micro, Small and Medium Enterprises Development [“MSMED”] Act, 2006 before the Micro & Small Enterprises Facilitation Council [“MSEFC”]. After considering the matter, MSEFC concluded that petitioner was not interested in conciliation regarding the disputed amount and conciliation was not possible.



As a result, MSEFC decided to terminate the conciliation proceedings and referred the case under Section 18 (3) of the Act to Delhi International Arbitration Centre [“DIAC”] for arbitration proceedings as per the Arbitration and Conciliation Act, 1996.

3. Learned counsel for the petitioner has submitted that respondent No.3- M/s Zillion Infra Projects Private Limited is a medium enterprise and therefore, the matter could not have been referred to arbitration by MSEFC. Learned counsel in support of his arguments has relied on the judgment of this Court in the case of Sterlite Power Transmission Limited vs EPC Solutions LLP & Anr 2023 SCC Online Del 3890; wherein, dealing with the question as to whether Micro and Small Enterprises Facilitation Council [“MSEFC”] can entertain reference to arbitration to Medium Enterprises, the Court in paragraph 22 held that the scheme of Chapter V of MSMED Act excludes Medium Enterprises under section 2(g) and only applies to micro and small industries.

4. Learned counsel for the petitioner further submits that sole arbitrator has already been appointed by DIAC.

5. Issue notice.

6. Mr. Sumit Kumar, Advocate accepts notice on behalf of respondent No.3.

7. Counter affidavit be filed within four weeks. Rejoinder, if any, be filed within two weeks thereafter.

8. Notice of the petition and CM APPL. 18427/2024 be issued to respondent No.1.



9. Learned counsel for respondent No.3 undertakes to inform the Arbitrator about the pendency of the Writ Petition.”

2. There is no dispute that Respondent No.3 is a medium enterprise, and therefore, the matter could not have been referred to arbitration by the Micro & Small Enterprises Facilitation Council (MSEFC) under Section 18 of the Micro, Small and Medium Enterprises Development Act since it only applies to micro and small industries.
3. In view of the above, the impugned order is set aside. It is open to the parties to take such steps as available under law for resolution of their disputes.
4. The petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MAY 15, 2024

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