



2024:DHC:6412



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 580/2023****M/S SOPHISTICATED INDUSTRIAL MATERIALS
ANALYTIC LABS (P) LTD. (SIMA LABS PVT. LTD.)**

.....Petitioner

Through: Mr. P.R. Sikka, Advocate.

versus

M/S DHAL ENGINEERING COMPANYRespondentThrough: Mr. Meghdut Bhattacharya,
Adv.**CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****ORDER (ORAL)**% **21.08.2024**

1. This is a petition under Section 11(5) of the Arbitration and Conciliation Act, 1996¹ for reference of the dispute between the parties to arbitration.

2. The dispute arises in the context of two agreements dated 16 May 2016 and 20 December 2016 executed between the petitioner and the respondent, whereunder the petitioner had sub-contracted, to the respondent, certain civil works, contracted to the petitioner by Kesoram Industries Ltd.

3. Both the agreements envisaged resolution of dispute by arbitration.

¹ "the 1996 Act" hereinafter



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4. The relevant clauses in the agreements read thus:

Agreement dated 16 May 2016

“39. An arbitrator will be appointed as per mutual understanding by both parties.

BREACH OF CONTRACT:

The second party specifically agrees that in the event of any act or deed or misbehavior (viz.. threat, provocation, agitation etc.) by the second party or its employees against the First party or its officials or its business interests or violation of clauses of this agreement, this contract shall be terminated by the first party without giving any notice to the second party.

JURISDICTION:

The first party and second party agree that in any action or legal proceedings arising out or in any way pertaining to this agreement, shall be adopted or instituted only in the Courts of competent jurisdiction in the state of Delhi to the exclusion of any other Court otherwise competent to entertain and try such action or legal proceedings”

Agreement dated 20 December 2016

“41. An arbitrator will be appointed as per mutual understanding by both parties in case of arbitration.

BREACH OF CONTRACT:

The second party specifically agrees that in the event of any act or deed or misbehavior (viz.. threat, provocation, agitation etc.) by the second party or its employees against the First party or its officials or its business interests or violation of clauses of this agreement, this contract shall be terminated by the first party without giving any notice to the second party.

JURISDICTION:

The first party and second party agree that in any action or legal proceedings arising out or in any way pertaining to this agreement, shall be adopted or instituted only in the Courts of competent

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jurisdiction in the state of Delhi to the exclusion of any other Court otherwise competent to entertain and try such action or legal proceedings”

5. Both the agreements contained the following exclusive jurisdiction clause:

“JURISDICTION:

The first party and second party agree that in any action or legal proceedings arising out or in any way pertaining to this agreement, shall be adopted or instituted only in the Courts of competent jurisdiction in the state of Delhi to the exclusion of any other Court otherwise competent to entertain and try such action or legal proceedings”

6. Disputes arose between the parties. As the arbitration agreement did not envisage any pre-arbitral protocol, the petitioner issued a notice dated 22 March 2023 to the respondent seeking to invoke the arbitration clauses in the agreements and requesting that the disputes be referred to arbitration.

7. As the respondent did not respond, the petitioner has approached this Court by means of the present petition under Section 11(5) of the 1996 Act.

8. Mr. Meghdut Bhattacharya, learned Counsel for the respondent, submits that the petitioner and Respondent are both Micro Small and Medium Enterprises² under the Micro Small and Medium Enterprises Act, 2006³. He submits that the dispute between the parties had suffered an attempt for an amicable resolution under the MSME Act,

² “MSMEs” hereinafter

³ “the MSME Act” hereinafter



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but could not be resolved, and any arbitration which follows would have to be as per the provisions of the MSME Act. He submits that the MSME Act would have overriding effect over the 1996 Act.

9. Mr P.R. Sikka, learned counsel for the petitioner submits, *per contra*, that the MSME Act was enacted after the execution of the contract between the parties and that, therefore, the provisions in the MSME Act cannot apply to the present case.

10. Mr. Bhattacharya has placed reliance on the judgment of the Supreme Court in *Gujarat State Civil Supplies Corporation Ltd v Mahakali Foods Pvt Ltd* (Arising out of SLP (C) No. 12884/2020). He has invited my attention to para 34(vi) of the judgment in that case which reads thus:

“(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.”

11. Para 34(vi), in my considered opinion, would actually support the case that Mr. Sikka seeks to canvass. The Supreme Court has clearly held that the benefits of the MSME Act are not applicable to persons who are not “suppliers” as per the definition in Section 2(n) of the MSME Act, *on the date of entering into the contract*.

12. Clearly, when, on the date when the contract was executed, the

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MSME Act had yet to come into force, there is no question of either of the parties being a “supplier” within the definition of Section 2(n) of the said Act, on that date.

13. Ergo, the provision for arbitration in the MSME Act cannot apply to the present case.

14. That being the only ground canvassed by the respondent, and in the face of the fact that, the agreements between the petitioner and the respondent contained an arbitration clause, applying the law laid down by the Supreme Court in its recent decision in *SBI General Insurance Co Ltd v Krish Spinning*⁴, this Court has to refer the dispute to arbitration.

15. The dispute between the parties is stated to be in the region of Rs. 32 lakhs.

16. Accordingly, this Court appoints Mr. Pushkar Kumar Singh, Advocate (Mob: 9868349202) as the arbitrator to arbitrate on the dispute between the parties.

17. The learned arbitrator would be entitled to fees in accordance with the Fourth schedule to the 1996 Act.

18. The learned arbitrator is also requested to furnish the requisite disclosure under Section 12(2) of the 1996 Act within a week of

⁴ 2024 SCC OnLine SC 1754



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entering on the reference.

19. Mr. Bhattacharya prays that the respondent may be permitted to attend arbitral proceedings remotely/through virtual hearing. Needless to say, in this day and age, such a request cannot be rejected. As such, the respondent is permitted to attend the proceedings virtually. Should either of the parties seek a change of the venue of arbitration, it shall be open to them to approach the arbitrator in that regard who can take a call as and when such a request is made.

20. The petition stands disposed of in the aforesaid terms.

C.HARI SHANKAR, J

AUGUST 21, 2024

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Click here to check corrigendum, if any

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