



\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 318/2024, CM APPL. 23375/2024, CM APPL. 23376/2024, CM
APPL. 23377/2024 & CM APPL. 23378/2024

THE EXECUTIVE ENGINEER & ORS. Appellants
Through: Mr. Atul Nigam and Ms. Tanvi
Nigam, Advocates

versus

M/S BHOLASINGH JAIPRAKASH CONSTRUCTION LTD. &
ANR. Respondents

Through: Mr. Sudhir Nandrajog Senior
Advocate with Mr. Sujit Kumar
Singh, Advocate for R-1
Mr. Avishkar Singhvi ASC, Mr
Naved Ahmed, Mr. Vivek Kumar
Singh and Mr. Shubham Kumar,
Advocates for R-2

%

Date of Decision: 29th April, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****JUDGMENT****MANMOHAN, ACJ : (ORAL)****CM APPL. 23377/2024 (for exemption)**

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

**LPA 318/2024, CM APPL. 23375/2024, CM APPL. 23376/2024 & CM
APPL. 23378/2024**

1. Present letters patent appeal has been filed challenging the judgment dated 16th February, 2024 passed by the learned Single Judge of this Court in W.P. (C)14378/2023, whereby the writ petition filed by the appellant, challenging the arbitration proceedings initiated by Respondent No. 1 company under the Micro, Small and Medium Enterprise Development Act,



2006 ("MSMED Act"), was dismissed on the ground that the appellant has failed to invoke other remedies under the law.

2. Learned counsel for the appellant submits that under Articles 226 & 227 of the Constitution, this Court has the power to correct jurisdictional errors and set aside the arbitral award. Relying upon *Whirlpool Corporation v. Registrar of Trade Marks, (1998) 8 SCC 1* and *JSW Steel Ltd. v. Kamlakar V. Salvi and Others 2021 SCC OnLine Bom 3113*, he submits that remedy by way of writ petition is available where the impugned order has been passed by a court which inherently lacks jurisdiction. According to him, an alternative remedy does not act as a bar in circumstances when the proceedings are without jurisdiction. He contends that the appellant vide letter dated 16th August, 2022 had challenged the jurisdiction of the arbitral tribunal. He states that the arbitral tribunal failed to consider the objection.

3. He states that the learned Single Judge has failed to consider that respondent no. 1 could not have availed benefits of MSMED Act for contracts executed prior to registration under Section 8(1) of the MSMED Act. He points out that the contract was executed on 27th August, 2005, whereas respondent no. 1 was registered as MSME on 20th May, 2017. Relying upon the judgment of the Supreme Court in *Silpi Industries v. Kerala State Road Transport Corporation, 2021 SCC OnLine SC 439*, he submits that provisions of MSMED Act cannot be applied retrospectively as registration under the MSMED Act is prospective.

4. Upon a perusal of the paper book, this Court finds that the arbitral award was passed ex-parte. The appellants chose to not appear before the tribunal or file any application under Section 16 of the Arbitration and Conciliation Act, 1996 ('the Act'). Further, the Appellants have not challenged the award under Section 34 of the Act.



5. In the opinion of this Court, the proper recourse against proceedings under the MSMED Act is to file an application under Section 18(3) of the MSMED Act or Section 16 of the Act and in case an award has been passed, then the proper recourse is to file objections under Section 34 of the Act.

6. Recently, in LPA 91/2024, this Court has refused to interfere with the judgment passed by the learned Single Judge in similar circumstances. This Court, while dismissing the appeal, relied upon the judgment of the Supreme Court in Civil Appeal No. 7491/2023, titled as *M/s India Glycols limited and Anr. v. Micro and Small Enterprises Facilitation Council, Medchal Malkajgiri and Ors.*, wherein it was held that petitions filed under Article 226/227 of the Constitution of India 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. The Supreme Court in the said case has observed that entertaining of petitions under Article 226/227 of the Constitution, in order to obviate compliance with the requirement of pre-deposit under Section 19 of the Act, would defeat the object and purpose of special enactment which has been legislated upon by Parliament.

7. Consequently, the present appeal along with pending applications is dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

APRIL 29, 2024/hp/sk