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

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **W.P.(C) 5750/2019 & CM APPLs. 25079/2019 & 42510/2023**

Between: -

PROSAFE INTERNATIONAL PVT. LTD.
THROUGH ITS AUTHORISED SIGNATORY
HAVING REGISTERED OFFICE AT
E-245, RIICO INDUSTRIAL AREA,
BHIWADI, RAJASTHAN - 301019

.....PETITIONER

*(Through: Mr. Shreyansh U. Lalit, Mr. Himanshu Vats and Mr.
Abhinav Aggarwal, Advocates).*

VERSUS

NORTH DELHI MUNICIPAL CORPORATION
THROUGH COMMISSIONER
DR. SHYAMA PRASAD MUKHERJEE CIVIC CENTRE,
E-BLOCK, 15TH FLOOR, JLN MARG,
NEW DELHI - 110002

.....RESPONDENT NO.1

SOLE ARBITRATOR, SH. BHARAT BHUSHAN,
DELHI HIGHER JUDICIAL SERVICES (RETD.),
HOUSE NO. 12, DDA SITE NO. 1,
NEW RAJINDER NAGAR,
BEHIND FIRE STATION, SHANKAR ROAD,
NEW DELHI - 110060

.....RESPONDENT NO.2

*(Through: Ms. Puja Kalra, SC along with Mr. Virendra Singh,
Advocate for MCD)*

Signature Not Verified
Digitally Signed
By: MAANAS JAJORIA
Signing Date: 06.08.2024
19:37:15

Signature Not Verified
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By: PURUSHAINDRA
KUMAR KAURAV

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Reserved on: 18.07.2024

Pronounced on: 06.08.2024

J U D G M E N T

The petitioner is a company, which claims to be a ‘small’ enterprise under Section 2(m) of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred as “*MSMED Act*”) and is essentially aggrieved by the impugned notification dated 28.03.2019, whereby, the erstwhile North Delhi Municipal Corporation (hereinafter referred as “*MCD*”) unilaterally appointed a former judicial officer as the sole Arbitrator regarding the disputes/claims submitted by the petitioner in respect of the purchase order dated 27.04.2016 for supply of 3,29,916 pairs of shoes for use of children studying in municipal schools of MCD.

2. The relevant facts which are germane to the controversy would indicate that on 12.09.2014, MCD issued a Notice Inviting Tender (hereinafter referred as “*NIT*”) for the supply of shoes for primary schools covered under the jurisdiction of the MCD. The petitioner admittedly stood as a successful bidder. Though, the selection appears to have been made for two Financial Years 2014-15 and 2015-16, however, for each year a separate and independent supply agreement was to be executed by the parties *inter se*.

3. The present dispute relates to the second year of supply i.e., 2015-16. The Letter of Intent (“*LOI*”) dated 17.03.2016 indicates that a fresh LOI was issued to the petitioner for the supply of shoes for the Financial Year 2015-16 and the petitioner was required to comply with certain terms as indicated in paragraphs nos.4 to 8 in LOI dated 17.03.2016. The paragraphs nos.4 to 8, therein read as under:-

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By:MAANAS JAJORIA
Signing Date:06.08.2024
19:37:15

Signature Not Verified
Digitally Signed
By:PURUSHAINDRA
KUMAR RAURAV

4. In accordance with the provisions of the above mentioned RFP documents, M/s Prosafe International Pvt Ltd. must submit the following within 15 (fifteen days from the date of issue of this Letter of Intent ("LOI") or on the date of execution of contract whichever is earlier.

i) Performance security which shall be subject to retention for a period of six months beyond the term period of the contract in the following forms:

(a) Demand draft from a Nationalized/Scheduled Bank for a sum of Rs.7,32,220/ Only (Rupees Seven Lacs Thirty Thousand Two Hundred Twnety Only) in favour of 'Commissioner, North Delhi Municipapl Corporation; and

(b) Unconditional and irrevocable Bank Guarantee issued by any Nationalized/Scheduled Bank for a sum of Rs.7,32,220/- Only (Rupees Seven Lacs Thirty Thousand Two Hundred Twenty Only) in the format prescribed in Chapter 6 – Annexure – VI of the RFP Document.

ii) A Non Judicial Stamp Paper amounting to Rs.100/- in the name of North DMC as the First Party for execution of agreement.

5. In accordance with the RFP document, contractual formalities will have to be completed by your firm within fifteen days of this LOI. Please note that as per the said Terms and Conditions of contract, if you fail or neglect to complete, the contractual formalities within fifteen days of this LOI, then this contract for your appointment as Supplier shall forthwith be automatically terminated and action will be initiated accordingly and also that the North DMC shall be entitled to appoint in your place another Supplier at your risk and costs consequences. Pending signing of the formal contract, this letter of Intent shall be governed by the terms & conditions of the relevant RFP document.

6. After the execution of agreement, a purchase order shall be placed on: M/s Prosafe International Pvt. Ltd.

7. Please acknowledge the receipt of this Letter of Intent ("LoI") and convey the acceptance of the offer made in this Letter of Intent ("LoI"), by signing a copy of this Letter of Intent ("LoI") and returning the same to us along with the documents mentioned above in para 4 within 15 days from the date of receipt of Letter of Intent ("LoI") to facilitate signing of the Contract Agreement.

8. *The contract must be signed within 15 days from the issue of this Lol.”*

5. It appears that on 26.04.2016, a fresh supply agreement came to be executed for the year 2015-16 between the petitioner and the MCD. It is thus, seen that after execution of the fresh supply agreement, a supply order came to be placed to the petitioner *vide* purchase order dated 27.04.2016. The extract of paragraph no. 1 of the purchase order dated 27.04.2016 reads as under:-

“1. With reference to the acceptance of Letter of Intent bearing no. D/137/ADE/ PUR/Edn/HQ/2016 dated 17.03.2016, conveyed vide your letter dated 18.03.2016, and subsequent execution of the Supply Agreement dated 26.04.2015, in connection with the supply of Shoes to the students of Primary Schools of the North Delhi Municipal Corporation against above mentioned Tender No. NDMC/Education/Shoes/Tender/ 08/2014 dated 12.09.2014, the Competent Authority is pleased to place an order for supply of Shoes as per description, quantity and rates given below:”

6. The MCD appears to have expressed satisfaction with respect to the quality of the shoes; and letters of acceptance were issued on 03.06.2016 and 11.07.2016.

7. It appears that, thereafter, according to the petitioner, a sum of Rs. 2.93 crores (approx.) became due it and was not paid despite multiple reminders. In the petition [W.P.(C) 3568/2018] filed by the petitioner, this Court on 11.04.2018 directed MCD to pass a speaking order on the petitioner’s representation.

8. The MCD, however, on 28.03.2019 (“impugned notification”), unilaterally appointed a formal judicial officer as the sole Arbitrator to decide and make his award regarding the disputes/claims raised by the petitioner and the counter-claim of the MCD. For the sake of clarity, the impugned notification dated 28.03.2019 is reproduced as under :-

“NOTIFICATION

Subject: In the matter of Arbitration between M/s Prosafe International (Pvt) Ltd (Supplier) Vs North DMC (Buyer) in respect of Purchase order dated 27.04.2016 bearing No. D/09/ADE/PUR/Edn./HQ/2016 awarded by Director (Edn.) for supply of 3,29,916 pairs of shoes for use of children studying in Municipal Schools of North DMC.

WHEREAS disputes have arisen between the Supplier and North Delhi Municipal Corporation in respect of the work as given in the subject and whereas disputes arising between the parties in term of the Arbitration Clause is required to be referred to the Sole Arbitrator to be appointed by the Commissioner, North Delhi Municipal Corporation.

THEREFORE, I Varsha Joshi, Commissioner, North Delhi Municipal Corporation in pursuance of the matter hereby appoint Shri Bharat Bhushan, Delhi High Judicial Services (Retd.) as the Sole Arbitrator to decide and make his award only regarding the disputes / claims referred to him by claimant and also regarding the counter claims of the North DMC against the Supplier referred to him through Director (Edn.) on behalf of North DMC.

Arbitration fee will be paid as per approved rates communicated vide circular No. 444/DCA(Engg.) dated 31.03.2018 issued by the then Commissioner, North Delhi Municipal Corporation."

9. It is the petitioner's case that despite the Court's order and even after filing the contempt application, no decision was taken by the MCD, and the petitioner was constrained to file a reference under Section 18 of the MSMED Act before the Rajasthan Micro and Small Facilitation Council ("MSEFC").

10. Thereafter, the petitioner has filed the instant petition challenging the impugned notification dated 28.03.2019 and this Court on 27.05.2019 passed the following order:-

W.P.(C) 5750/2019 & CM. No. 25079/2019 (for Stay)

Mr. Raj Shekhar Rao, learned counsel appearing for the petitioner seeks to delete respondent no.2 from the memo of parties. Ordered accordingly. Let amended memo of parties be filed within two days.

Notice, Ms. Mini Pushkarna, learned Standing Counsel accepts notice for respondent nos. 1 and 2 in terms of the amended memo of parties. Noting the fact that the issue in this case is whether the parties shall be bound by the stipulation with regard to the arbitration in the agreement or as per the provisions of the Micro, Small and Medium Enterprises Development Act, 2006, it is made clear that the learned Arbitrator shall continue the proceedings but shall not pass a final award till the next date of hearing.

List on July 23, 2019.

11. Thereafter, on 23.07.2019, this Court deleted the Rajasthan MSEFC from the array of parties.

12. Under the aforesaid factual matrix, Mr. Shreyansh U. Lalit, learned counsel appearing for the petitioner, made the following broad submissions:-

(i) The petitioner is a registered 'small' manufacturing enterprise and is thus covered under the beneficial provisions of the MSMED Act since 06.01.2011.

(ii) The provisions of the MSMED Act shall prevail over the private arbitration agreements. Moreover, the unilateral appointment of the Arbitrator is arbitrary, illegal and improper. The same is *void ab initio* and deserves to be set aside. He placed reliance on the decision of the Supreme Court in the case of ***Perkins Eastman Architects DPC v. HSCC (India) Pvt Ltd***¹.

(iv) Besides the aforesaid submissions, he placed reliance on decisions of the Supreme Court in the cases of ***Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd***², ***Silpi Industries. v. Kerala State Road Transport Corporation***³, ***Principal Chief Engineer v. Manibhai & Bros. (Sleeper)***⁴, and

¹ 2019 OnLine SC 1517.

² 2022 SCC OnLine SC 1492.

³ 2021 SCC OnLine SC 439.

⁴ 2007 SCC OnLine SC 2109.

Neyveli Lignite Corporation Ltd. v. Driplex Water Engineering Ltd. & Anr.⁵

13. Ms. Pooja Kalra, learned standing counsel appearing for the MCD, strongly opposes the submissions and she submits that the petition is misconceived and deserves to be dismissed. She made the following broad submissions:-

- (i) The petitioner approached the MSEFC Rajasthan on 16.04.2019, whereas the appointment of the Arbitrator had already taken place on 28.03.2019, therefore the action of the petitioner i.e., resorting to the provisions of the MSMED Act is an afterthought and primarily to scuttle the arbitration proceedings of the present case.
- (ii) The MSEFC Rajasthan does not have any right or authority to deal with the controversy when this Court and the Arbitrator are already seized with the subject matter of the dispute. She submitted that there cannot be parallel proceedings and a race between two Courts to adjudicate the same dispute.
- (iii) There is a suppression of material facts by the petitioner who has not averred as to when it got registered under the MSMED Act and he never disclosed this factum either before the Negotiation Committee or before this Court, when he filed the petition seeking directions for deciding the representation.
- (iv) The NIT, in the instant case, was floated on 12.09.2014 and the petitioner applied for the certificate of registration under the MSMED Act only in the year 2016. Therefore, in view of the decision of the Supreme Court in ***Silpi Industries*** (*supra*), the petitioner cannot claim precedence of MSMED Act over the

arbitration proceedings. She also places reliance on the decision in the case of *Vaishno Enterprises v. Hamilton Medical AG*⁶.

14. During the course of the hearing, it has also been brought to the notice of the Court that in the interregnum, on one hand, the arbitration proceedings could not progress while on the other, the MSEFC Rajasthan, *vide* order dated. 13.12.2023, pronounced its final award, wherein, the petitioner has been found to be entitled to certain reliefs. Learned counsel for the MCD however, submits that the order passed by the MSEFC Rajasthan is assailed before the High Court of Judicature for Rajasthan Bench at Jaipur in S.B. Civil Writ Petition No. 4988/2024 titled as *Municipal Corporation of Delhi v. Prosafe International Private Limited*.

15. I have heard the learned counsel appearing for the parties and perused the record.

16. Having considered the controversy involved in the instant writ petition and the submissions advanced by the counsel for the parties, the first and foremost issue that arises for consideration is whether the provisions of the MSMED Act will have precedence over the provisions of the Arbitration and Conciliation Act, 1996 (hereinafter referred as “*Arbitration Act*”)?

17. The aforesaid issue, however, is no longer *res integra*. The Supreme Court in the case of *Gujarat State Civil Supply Corporation (supra)*, has held that the Arbitration Act in general governs the law of arbitration and conciliation, whereas the MSMED Act governs the specific class of disputes arising between explicit categories of persons to be resolved by following a definite process through a particular forum. The principle of *lex specialis derogat legi generali*

which translates to – “*the special law will prevail over general law*” would squarely be applicable in the present case. The above exposition of law was upheld by the Supreme Court in the decision of ***Edukanti Kistamma v. S. Venkatareddy***⁷, wherein, it was held that a special statute would be preferred over a general one where it was a beneficial one. It was further explained that the purport and object of the Act must be given its full effect by applying the principles of purposive construction.

18. The Supreme Court noted that the MSMED Act being a special law and the Arbitration Act being a general law, the provisions of the MSMED Act would have precedence over the Arbitration Act. The Supreme Court in the case of ***Gujarat State Civil Supply Corporation*** (*supra*) relied on its earlier decision in the case of ***Silpi Industries*** (*supra*) and observed as under:-

*“42. Thus, the Arbitration Act, 1996 in general governs the law of Arbitration and Conciliation, whereas the MSMED Act, 2006 governs specific nature of disputes arising between specific categories of persons, to be resolved by following a specific process through a specific forum. **Ergo, the MSMED Act, 2006 being a special law and the Arbitration Act, 1996 being a general law, the provisions of the MSMED Act would have precedence over or prevail over the Arbitration Act, 1996.** In Silpi Industries case [Silpi Industries v. Kerala SRTC, (2021) 18 SCC 790 : 2021 SCC OnLine SC 439] also, this Court had observed while considering the issue with regard to the maintainability and counter-claim in arbitration proceedings initiated as per Section 18(3) of the MSMED Act, 2006 that the MSMED Act, 2006 being a special legislation to protect MSMEs by setting out a statutory mechanism for the payment of interest on delayed payments, the said Act would override the provisions of the Arbitration Act, 1996 which is a general legislation. **Even if the Arbitration Act, 1996 is treated as a special law, then also the MSMED Act, 2006 having been enacted subsequently in point of time i.e. in 2006, it would have an overriding effect, more particularly in view of Section 24 of the MSMED Act, 2006 which specifically gives an effect to the provisions of Sections 15 to 23 of the Act over any other law for***

the time being in force, which would also include the Arbitration Act, 1996.

43. The Court also cannot lose sight of the specific non obstante clauses contained in sub-sections (1) and (4) of Section 18 which have an effect overriding any other law for the time being in force. **When the MSMED Act, 2006 was being enacted in 2006, the legislature was aware of its previously enacted Arbitration Act of 1996, and therefore, it is presumed that the legislature had consciously made applicable the provisions of the Arbitration Act, 1996 to the disputes under the MSMED Act, 2006 at a stage when the conciliation process initiated under sub-section (2) of Section 18 of the MSMED Act, 2006 fails and when the Facilitation Council itself takes up the disputes for arbitration or refers it to any institution or centre for such arbitration.** It is also significant to note that a deeming legal fiction is created in Section 18(3) by using the expression “as if” for the purpose of treating such arbitration as if it was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996. As held in *K. Prabhakaran v. P. Jayarajan* [*K. Prabhakaran v. P. Jayarajan*, (2005) 1 SCC 754 : 2005 SCC (Cri) 451], a legal fiction presupposes the existence of the state of facts which may not exist and then works out the consequences which flow from that state of facts. **Thus, considering the overall purpose, objects and scheme of the MSMED Act, 2006 and the unambiguous expressions used therein, this Court has no hesitation in holding that the provisions of Chapter V of the MSMED Act, 2006 have an effect overriding the provisions of the Arbitration Act, 1996.**”

19. It is thus seen that so far as the principal issue is concerned as to whether which statute would prevail is concerned, the same is settled by the authoritative pronouncements of the Supreme Court in the case of *Silpi Industries* (*supra*) and *Gujarat State Civil Supply Corporation* (*supra*). Therefore, this Court unequivocally holds that the provisions of the MSMED Act will have precedence over the Arbitration Act.

20. The MCD, however, under the facts of the present case, seeks to distinguish the decisions of the Supreme Court on two fundamental counts:-

(i) *Firstly*, the petitioner did not have a registration certificate at the time of entering into the agreement.

(ii) *Secondly*, she, therefore, places strong reliance on paragraph no. 26 of *Silpi Industries (supra)* and paragraph no. 15 of *Vaishno Enterprises (supra)* to demonstrate that the provisions of the MSMED Act would not be applied in a present factual matrix.

19. Undoubtedly, in *Silpi Industries (supra)*, the Supreme Court indisputably held that to seek the benefit of the provisions under the MSMED Act, the seller should have been registered under the provisions of the MSMED Act as on the date of entering into the contract. The relevant extracts of the said decision read as under:-

*“42. Though the appellant claims the benefit of provisions under the MSMED Act, on the ground that the appellant was also supplying as on the date of making the claim, as provided under Section 8 of the MSMED Act, but same is not based on any acceptable material. The appellant, in support of its case placed reliance on a judgment of the Delhi High Court in GE T&D India Ltd. v. Reliable Engg. Projects & Mktg. [GE T&D India Ltd. v. Reliable Engg. Projects & Mktg., 2017 SCC OnLine Del 6978], but the said case is clearly distinguishable on facts as much as in the said case, the supplies continued even after registration of entity under Section 8 of the Act. In the present case, undisputed position is that the supplies were concluded prior to registration of supplier. The said judgment of the Delhi High Court relied on by the appellant also would not render any assistance in support of the case of the appellant. **In our view, to seek the benefit of provisions under the MSMED Act, the seller should have registered under the provisions of the Act, as on the date of entering into the contract. In any event, for the supplies pursuant to the contract made before the registration of the unit under provisions of the MSMED Act, no benefit can be sought by such entity, as contemplated under the MSMED Act.***

43. While interpreting the provisions of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, this Court, in the judgment in Shanti Conductors (P) Ltd. v. Assam SEB [Shanti Conductors (P) Ltd. v. Assam SEB, (2019) 19 SCC 529 : (2020) 4 SCC (Civ) 409] has held that date of supply of goods/services can be taken as the relevant date.

opposed to date on which contract for supply was entered, for applicability of the aforesaid Act. Even applying the said ratio also, the appellant is not entitled to seek the benefit of the Act. There is no acceptable material to show that, supply of goods has taken place or any services were rendered, subsequent to registration of the appellant as the unit under the MSMED Act, 2006. By taking recourse to filing memorandum under sub-section (1) of Section 8 of the Act, subsequent to entering into contract and supply of goods and services, one cannot assume the legal status of being classified under the MSMED Act, 2006, as an enterprise, to claim the benefit retrospectively from the date on which the appellant entered into contract with the respondent.

44. The appellant cannot become micro or small enterprise or supplier, to claim the benefits within the meaning of the MSMED Act, 2006, by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods and services. If any registration is obtained, same will be prospective and applies for supply of goods and services subsequent to registration but cannot operate retrospectively. Any other interpretation of the provision would lead to absurdity and confer unwarranted benefit in favour of a party not intended by legislation.”

20. The aforementioned ratio has also been followed by the Supreme Court in *Vaishno Enterprises* (*supra*) in paragraph no. 15, wherein, it was reiterated that the relevant date to invoke the provisions of the MSMED Act would be when the contract was entered into. Paragraph no.15 of the said decision reads as under:-

*“15. It is not in dispute that the contract/agreement between the appellant and the respondent has been executed on 24.08.2020. Therefore, the laws of India applicable at the time of contract/agreement shall be applicable and therefore the parties shall be governed by the laws of India prevailing/applicable at the time when the contract was executed. It is admitted position that the date on which a contract/agreement was executed i.e. on 24.08.2020 the appellant was not registered MSME. **Considering the relevant provisions of the MSME Act more particularly Section 2(n) read with Section 8 of the MSME Act, the provisions of the MSME Act shall be applicable in case of supplier who has filed a memorandum with the authority referred to in sub-section (1) of Section 8. Therefore, the supplier has to be a micro or small enterprise registered as MSME, registered with***

any of the authority mentioned in sub-section (1) of Section 8 and Section 2(n) of the MSME Act. It is admitted position that in the present case the appellant is registered as MSME only on 28.08.2020. Therefore, when the contract was entered into the appellant was not MSME and therefore the parties would not be governed by the MSME Act and the parties shall be governed by the laws of India applicable and/or prevailing at the time of execution of the contract. If that be so the Council would have no jurisdiction to entertain the dispute between the appellant and the Respondent no. 1, in exercise of powers under Section 18 of the MSME Act. Therefore, in the aforesaid peculiar facts and circumstances of the case, more particularly the terms of the Agreement, the order passed by the learned Single Judge confirmed by the Division Bench holding the Council would have no jurisdiction with respect to Respondent No. 1 is not required to be interfered with.”

21. The MSMED Act which came into force on 02.10.2006, has been enacted for facilitating the promotion, development and for enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto. The legislative intent behind the enactment of the MSMED Act would signify that considering the thriving and vigorous sector of the country's economy, the need was felt to establish a coherent, comprehensive and conducive legal framework to deal with the explicit problems faced by such industries and to facilitate their growth and development. Furthermore, a scrupulous glance over the Statement of Objects and Reasons of the MSMED Act would reveal that this beneficial legislation was enacted to extend policy support for small-scale sectors so that they are enabled to grow into medium ones and to adopt better and higher levels of technology and achieve higher productivity to remain competitive in a rapid globalization period.

22. Considering the facts of the case, a bare perusal of the Udyog Aadhar Registration Certificate, as has been placed on record, would indicate that the petitioner had commenced its business in the area of

manufacturing footwear w.e.f 01.03.2006. The certificate as issued by the Ministry of Micro, Small and Medium Enterprises would indicate that the necessary application was submitted by the petitioner only on 14.01.2016 and print thereto has been taken on 10.01.2018. The certificate also recognizes that the previous registration of the petitioner was SSI::080034 12 00369 Part II.

23. It is to be noted that the second supply agreement was admittedly entered on 26.04.2016 as indicated in the extract of paragraph no. 1 as reproduced in the preceding paragraphs. It is thus understood that the claim which is sought to be agitated by the petitioner has arisen out of a second supply agreement dated 26.04.2016. It is not even the case of the MCD also that the petitioner's claim has arisen out of the first supply agreement. The MCD tried to substantiate that the second supply agreement is nothing but a continuation of the NIT dated 12.09.2014, however, the LOI dated 17.03.2016 displayed otherwise.

24. The contention of MCD, therefore, will have to be rejected on the perspicuous score that the supply has been made by the petitioner not on the basis of the LOI for the first supply agreement but on the basis of the fresh supply agreement which was specifically directed by the MCD itself to be entered into on the compliance of certain terms and conditions. The MCD may have selected the petitioner pursuant to the NIT for two academic sessions for the supply of footwear, however, the continued supply for the second academic session, i.e. Financial Year 2015-16, required a fresh supply agreement, which too, has been entered between the parties. Moreover, a perusal of the second LOI would indicate that it was a precursor to the second supply agreement and was meant to enjoin the petitioner with a fresh

set of obligations and required various compliances for proceeding with the second agreement. In such a scenario, the MCD could not be permitted to go back and self-servingly read it as a part and parcel of the first agreement.

25. If that be so, the Court then needs to consider another limb of MCD's contentuon as to whether on the date of the second supply agreement dated 26.04.2016, the petitioner did possess a registration certificate under the MSMED Act or not. The certificate which has been relied upon by the petitioner has not been doubted by the MCD in their counter-affidavit. The certificate remained undisputed. It is only at the time of the written submissions, the learned counsel for MCD tried to indicate that the registration certificates are issued in some different format. Such a contention will have to be rejected as the same is not based on any available material on record. Astonishingly, during the entire saga of proceedings, there was not even an iota of whisper or any inkling of doubt expressed in the counter-affidavit neither over the 'small' enterprise status of the petitioner nor over the veracity of the Udyog Aadhar Registration Certificate. On this very count, this Court could have straightway rejected the said contention of the MCD, however, in the interest of justice, the Court scrupulously looked into the said aspect and rejects it.

26. Thus, in the absence of there being any adverse material on record, the Court finds that the petitioner did have the certificate as on 26.04.2016 i.e., the date of execution of the second supply agreement, which is the genesis of the entire claim in question. Thus, even the petitioner's contention deserves to be succeeded in view of the dictum laid down in *Silpi Industries (supra)* and *Vaishno Enterprises*

(*supra*). The Court thus finds that the petitioner passes the litmus test of *Silpi Industries (supra)* and *Vaishno Enterprises (supra)* as well.

27. Another limb of the MCD's contention is that since the MCD has first appointed the Arbitrator and the petitioner has taken recourse to the MSEFC only thereafter, the Arbitration Act will have precedence. At the outset, it is suffice to note that this argument has been specifically rejected by the Supreme Court in the case of *Gujarat State Civil Supply Corporation (supra)*. Moreover, it is trite law that the operation of a statute could not be curbed by private action of parties. The said contention, therefore, does not have any substance and is accordingly rejected. In light of this discussion, it is held that the impugned notification was bad in law, for being without legal sanction and in violation of the special enactment of MSMED Act, the applicable law in the facts and circumstances of the case.

28. The Court, however, makes it clear that the scope of adjudication in the instant petition is only confined to adjudging the legality of the impugned notification. So far as the decision rendered by MSEFC and its validity is concerned, the Court does not comment anything on the aforesaid and has therefore, *vide* order dated 23.07.2019 already directed for deletion of the said authority. All rights and contentions pursuant thereto are left open.

29. In view of the aforesaid, the writ petition, therefore, stands allowed and the impugned notification dated 28.03.2019 and all consequential proceedings emanating therefrom, are set aside. All pending applications also stand disposed of accordingly.

30. No order as to costs.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

AUGUST 06, 2024/MJ

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Digitally Signed
By:MAANAS JAJORIA
Signing Date:06.08.2024
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Signature Not Verified
Digitally Signed
By:PURUSHAINDRA
KUMAR KAURAV