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

\+ **ARB.P. 976/2023**

M/S SWASTIK OIL PRODUCTS MANUFACTURING NAVSARI PVT. LTD. ..... Petitioner

Through: Mr. S. K. Chaturvedi with Ms. Ankita, Ms. Josna, Ms. Sheereen, Advs along with petitioner in person (M. 9811756975)

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr. Akash Vajpai, Adv. for R-2 (M. 9711904919)

CORAM:
JUSTICE PRATHIBA M. SINGH

O R D E R

% **05.02.2024**

1. This hearing has been done through hybrid mode.

2. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 filed by the Petitioner-M/s Swastik Oil Products Manufacturing Navsari Pvt. Ltd. arises out of a contract dated 11th October, 2022 *(hereinafter, the agreement)* for supply of 36,540 Litres of Oil OM-15 Lubricant to the Director General Supplies and Transport *(hereinafter, 'DGST')* through the GeM portal.

3. The Petitioner's case is that despite completing the entire supply order, they have not received payment amounting to Rs.1,51,34,139/-. After sending repeated reminders dated 30th June, 2023, 18th July, 2023, 18th August, 2023 for payment to no avail, the Petitioner finally invoked the arbitration clause on 1st September 2023. Following the invocation notice, no response was received, leading to the filing of this petition.

4. Notice of the petition was issued on 21st September, 2023.

Subsequently, on 27th September 2023, the Respondent paid the entire outstanding amount to the Petitioner. The remaining issue to be resolved is the interest due on the delayed payment.

5. The submission of ld. Counsel for the Petitioner is that, the Petitioner is entitled to interest in terms of Section 16 of the Micro, Small and Medium Enterprises Development Act, 2006 *(hereinafter, MSMED Act)*. He thus submits that almost Rs.13 lakhs is liable to be paid.

6. Respondent No. 2-DGST submits that the dispute resolution clause in the agreement should not be invoked, given that the entire principal amount has been paid and there has been no specific invocation regarding the interest portion.

7. The Court has heard the matter. Given that the supplies were not disputed by the Respondent No. 2 and full payment has been made, there cannot be any issue in respect of the fact that the invocation was done properly in this matter, followed by the payment. Admittedly, there has been a delay in the payment of approximately five months.

8. The stand of the ld. Counsel for the Respondent No. 2 is that prior to use of the supplied oil, certain further approvals were to be obtained from Respondent. No.5. However, this submission is objected to by the Petitioner.

9. Be that as it may, once the goods were supplied and the payment was due, the same ought to have been made in terms of the contract. After issuance of notice, the amount has, admittedly been paid, *albeit* with a delay of five months.

10. Further, as per the certificate issued by the Respondent No. 1 bearing no. UDYAM-GJ-16-0003251, the Petitioner is a medium enterprise with effect from 26th June, 2022. Thus, on the date of the contract, which is 10th

October, 2022, the Petitioner would qualify as a medium enterprise and not as a small or micro enterprise. Thus the benefit under Section 16 of the MSMED Act prima facie, cannot be read in favour of the Petitioner.

11. The ld. Counsel for the Respondent No. 2 submits that he may be given permission to seek further instructions. Given the overall context, this Court is of the view that since the amount of interest calculated at 6.5% (approximately Rs.4 lakhs) is not significant, Respondent No. 2 could consider making a lump-sum payment to the Plaintiff. The said opportunity is given considering the costs likely to be incurred in arbitration proceedings, including the minimum fee for the Arbitrators.

12. If the matter is not resolved, within a period of two months, **Mr. Anuj Aggarwal, Advocate (M:9891363718)** is appointed as the Arbitrator to adjudicate the disputes between the parties. The arbitration proceedings shall be conducted under the aegis of DIAC.

13. Considering the amount of claims in this matter, a lump sum fee shall be paid to the ld. Arbitrator of Rs.2 lakhs.

14. List on 15th April, 2024 for awaiting instructions on behalf of the Respondents.

PRATHIBA M. SINGH, J.

FEBRUARY 05, 2024

Rahul/dn