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

\+ **ARB.P. 976/2023 and I.A. 3442/2024**

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

Through: Mr. S. K. Chaturvedi, Advocate with Ms. Ankita and Sheereen, Advocate (M: 7042933661).

versus

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

Through: Mr Akash Vajpai, SPC (M: 9319511996).

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER

% 15.04.2024

1. This hearing has been done through hybrid mode.

I.A. 3442/2024 (for modification) in ARB.P. 976/2023

2. This is an application on behalf of the Petitioner seeking modification of the order dated 5th February, 2024. It is the case of the Petitioner that the Court has given *prima facie* findings in the said order that the Petitioner is not a small or micro enterprise but a medium enterprise and hence is not liable to benefit in terms of Section 16 of the MSMED Act, 2006, which deserves to be modified.

3. Ld. Counsel for the Petitioner relies upon a notification dated 18th October, 2022, which provides that irrespective of any reclassification, the position that was applicable between buyer and seller at the time when the contract was entered into, would still be applicable to the transaction.

4. Further, ld. Counsel for the Petitioner places reliance upon a decision of this Court in ***Sterlite Power Transmission Limited v. EPC Solutions LLP and Another, 2023 SCC OnLine Del 3890***, where the Court had observed as under:-

> ***"31.*** *Going by the settled legal position, as also the fact that the MSMED Act, 2006 is a beneficial legislation for Micro, Small and Medium Enterprises and ought to be construed in a manner that is beneficial to such enterprises. Thus, even if on the date when the reference application was filed before the MSEFC, the supplier i.e. Respondent No. 1 had upgraded itself to the Medium Enterprises, it cannot be deprived of the benefits of the provisions of the MSME Act, 2006 and the impugned reference order would be liable to be upheld.*
> ***32.*** *In addition to the above reasoning, the Court is also informed of the notification dated 18th October, 2022 issued by the Ministry of MSME, which reads as under:*
>
> *"MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES*
>
> *NOTIFICATION*
> *New Delhi, the 18th October, 2022*
>
> *"**S.O. 4926(E)** - In exercise of the powers conferred by sub-section (1) read with sub-section (9) of section 7 and sub-section (2) read with sub-section (3) of section 8 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006), the Central Government hereby makes the following further amendments in the notification of the Government of India, Ministry of Micro, Small and Medium Enterprises number S.O. 2119(E), dated the 26th June, 2020, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i), namely:—*

In the said notification, for sub-paragraph (5) of paragraph 8, the following sub-paragraph shall be substituted, namely:—

"(5) In case of an upward change in terms of investment in plant and machinery or equipment or turnover or both, and consequent re-classification, an enterprise shall continue to avail of all non-tax benefits of the category (micro or small or medium it was in before the re-classification, for a period of three years from the date of such upward change."

[F. No. P-05/1/2022-GEN]
SHAILESH KUMAR SINGH, Addl. Secy. and Development Commissioner (MSME)

***Note:** The principal notification was published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (il) vide number S.O. 2119 (E), dated the 26th June, 2020 and subsequently amended vide numbers S.O. 1055(E), dated the 5th March, 2021, S.O. 2347(E), dated the 16th June, 2021, S.O. 278(E), dated the 19th January, 2022 and S.O. 2134(E), dated the 6th May, 2022."*

***33.** In terms of the above notification, if there is reclassification of any enterprise, the enterprise would continue to avail of the benefits of the category in which it existed before reclassification for a period of 3 years. In the present case, the reclassification of the Respondent took place only on 12th June, 2019 and 3 years period would expire only on 11th June, 2022. Even going by this notification, the impugned reference order is tenable."*

5. Heard. In view of the above notification and the decision cited, it is clarified that the question whether the Petitioner would be entitled to compound interest in terms of Section 16 of the MSMED Act, 2006 in view of the said notification dated 18th October, 2022 shall be decided by the ld.

Arbitrator itself. Further, the observation in the order dated 5th February, 2024 with respect to payment of a lump sum amount in the prevalent situation when the Petitioner was not being given any benefit under the MSMED Act, 2006 shall not affect the arbitration proceedings. In view thereof, it is again clarified that the said two observations in paras 10 and 11 of the order dated 5th February, 2024 shall not affect the arbitration proceedings.

6. Application is disposed of.

7. Parties to appear before the DIAC on 8th May, 2024. Copy of this order be also communicated to the ld. Arbitrator.

8. Petition is also disposed of.

PRATHIBA M. SINGH, J.

APRIL 15, 2024
mr/rks