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

+ **W.P.(C) 9623/2024 & CM APPL. 39487/2024**

MS NAAGAR INFRASTRUCTURE PVT LTDPetitioner

Through: Ms. Runjhun Garg, Mr. Shreeyansh V. Lalit, Mr. Himanshu Vats, Mr. Angad Pahel, Mr. Krishnagopal Abhay, Advocates.

versus

**MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL
DISTRICT SOUTH WEST DELHI AND ANR.Respondents**

Through: Mr. Karan Bhardwaj, ASC for GNCTD with Mr. Shubham Singh, Mr. Rajat Gaba, Mr. Saurabh Dahiya, Advocates for R-1.
Mr. N.L. Ganapathi, Ms. Rini V. Tigga, Mr. Amogh S. Rao, Advocates for R-2/GAIL.

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+ **W.P.(C) 9631/2024 & CM APPL. 39519/2024**

M/S NAAGAR INFRASTRUCTURE PVT LTDPetitioner

Through: Ms. Runjhun Garg, Mr. Shreeyansh V. Lalit, Mr. Himanshu Vats, Mr. Angad Pahel, Mr. Krishnagopal Abhay, Advocates

versus

**MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL
DISTRICT SOUTH WEST DELHI AND ANRRespondents**

Through: Mr. Karan Bhardwaj, ASC for GNCTD with Mr. Shubham Singh, Mr. Rajat Gaba, Mr. Saurabh Dahiya,



Advocates for R-1.
Mr. N.L. Ganapathi, Ms. Rini V.
Tigga, Mr. Amogh S. Rao, Advocates
for R-2/GAIL.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
16.07.2024

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1. The present petitions have been filed seeking expeditious hearing of the reference sought by the Petitioner before Respondent No. 1/Micro and Small Enterprises Facilitation Council, District South-West, Delhi, under Section 18(1) of the Micro, Small and Medium Enterprises Development Act, 2006.¹
2. The Petitioner, a company engaged in the business of construction activities and civil engineering, is registered under the MSMED Act as a small enterprise. They were awarded a contract for laying of underground PE pipelines and above-ground GI installation, providing domestic connections, etc. by Respondent No. 2/ GAIL Gas Limited at Vrindavan in W.P.(C) 9623/2024 and at Bharatpur in W.P.(C) 9631/2024.
3. According to the Petitioner, they have completed the project substantially, however, Respondent No. 2 has unwarrantedly and unjustifiably made deductions in their bills. The Petitioner has calculated a sum of approximately INR 4 Crore in W.P.(C) 9623/2024 and INR 5 Crore in W.P.(C) 9631/2024 along with interest as amounts due to the Petitioner. Additionally, the Petitioner contends that Respondent No. 2 has directed their bank to invoke their bank guarantee.

¹ "MSMED Act"



4. On 07th December, 2023, Petitioner filed a reference before Respondent No. 1 under Section 18(1) of the MSMED Act, however, Respondent No. 2 failed to appear before Respondent No. 1 and, as a result, the proceedings under Section 18 of the MSMED Act have not concluded.

5. In the afore-noted circumstances, the Petitioner seeks the following reliefs:

*“(a) Call for records of Application No. UDYAM-DL-10-0006636/S/00001 pending before Respondent No. 1;
(b) Pass any order, direction as this Hon’ble Court may deem fit to injunct Respondent No. 2 from taking any precipitative/ coercive action until the conciliation proceedings are terminated in Application No. UDYAM-DL-10-0006636/S/00001 pending before Respondent No. 1; and
(c) Pass any further appropriate order, direction as this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.”*

6. Ms. Runjhun Garg, counsel for Petitioner argues that despite lapse of more than 7 months since the making of the reference, no decision has been taken by Respondent No. 1, even though the MSMED Act mandates that every reference has to be decided within a period of 90 days of making such reference. She further states that unless conciliation is concluded under Section 18(1) of the MSMED Act, arbitration proceedings cannot commence under Section 18(3) of the said Act.

7. Mr. Karan Bhardwaj, ASC who represents Respondent No. 1, on instructions, states that the Respondent No. 2 has not appeared before them till date. Nevertheless, on the next date i.e. 18th July, 2024, they would be inclined to take a decision and refer the matter for arbitration evrn if Respondent No. 2 does not participate in the proceedings.

8. Mr. N.L. Gangapathi, counsel for Respondent No. 2, at the outset, states that Respondent No. 2 has never received any notice from Respondent



No. 1 and, therefore, there is no wilful absence. He further submits that the reference itself is not maintainable as the contract in question is a works contract, which is beyond the purview of the MSMED Act. Nonetheless, he states that since Respondent No. 2 has now received the copy of the pending reference which is annexed as Annexure P-5, Respondent No. 2 would participate in the proceedings as scheduled on 18th July, 2024. He also seeks permission for sufficient time to file an appropriate reply/response to the said reference.

9. Mr. Gangapathi further points out that in case, Respondent No. 2 is permitted time to furnish their response, the proceedings scheduled for 18th July, 2024, would have to be deferred. To this, counsel for the Petitioner is agreeable but states that she is interested to have the reference proceedings concluded expeditiously.

10. In light of the submissions advanced by Respondents No. 1 and 2, the present petitions are disposed of with the following directions:

- (a) Respondent No. 2 shall appear before the Respondent No. 1 on 18th July, 2024.
- (b) Respondent No. 2 is permitted to file their response/reply for the reference on or before 24th July, 2024.
- (c) Considering the time granted to Respondent No. 2 to put forth their response, Respondent No. 1 shall schedule the next date of hearing accordingly. Respondent No. 1 is directed to take a decision on the reference after hearing the parties.

11. It is made clear that all rights and contentions of the parties are left open which includes the Petitioner's right to approach the Court of competent jurisdiction, in case they receive any threat from Respondent No.



2, in relation to the contracts in question. It is further clarified that the maintainability of such action will be adjudicated on its own merits, in accordance with law and this order shall not be construed as an opinion of the Court regarding the maintainability of such an action.

12. With the above directions, the present petitions, along with pending applications, are disposed of.

SANJEEV NARULA, J

JULY 16, 2024/ab