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

+ **W.P.(C) 16233/2022**

**THE NEW HARYANA OFFICERS COOPERATIVE GROUP
HOUSING SOCIETY** Petitioner

Through:

versus

**MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL
& ANR.** Respondents

Through: Mr. Avishkar Singhvi, ASC with Mr.
Naved Ahmed and Mr. Vivek Kumar
Singh, Advocates for R-1.
Mr. Sahil Garg, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER
17.05.2024

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1. The Petitioner has approached this Court challenging an Order dated 11.10.2022 passed by the MSME Council referring the dispute raised by Respondent No.2 against the Petitioner to arbitration under MSME Act.
2. The facts in brief are that the Petitioner entered into a contract with the Respondent No.2 for construction of a group housing project at Plot No.GH-1, Sector-6, Mansa Devi Complex, Panchkula, Haryana. Disputes arose between the parties and Respondent No.2 approached the MSME Council. The MSME Council has referred the dispute to arbitration.
3. The petition has been filed that Respondent No.2 had applied for registration as an MSME on 26.02.2019, i.e., after the services were ended.
4. Learned Counsel for the Petitioner places reliance on the judgment



passed by the Apex Court in Gujarat State Civil Supplies Corporation v. Mahakali Foods Pvt. Ltd., (2023) 6 SCC 401, wherein the Apex Court after considering the decisions in Silpi Industries & Ors. v. Kerala State Road Transport Corporation & Anr., has observed as under:-

“51. Following the abovestated ratio, it is held that a party who was not the “supplier” as per Section 2(n) of the Msmmed Act, 2006 on the date of entering into the contract, could not seek any benefit as a supplier under the Msmmed Act, 2006. A party cannot become a micro or small enterprise or a supplier to claim the benefit under the Msmmed Act, 2006 by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods or rendering services. If any registration is obtained subsequently, the same would have the effect prospectively and would apply for the supply of goods and rendering services subsequent to the registration. The same cannot operate retrospectively. However, such issue being jurisdictional issue, if raised could also be decided by the Facilitation Council/Institute/Centre acting as an Arbitral Tribunal under the Msmmed Act, 2006.”

5. In view of the fact that Respondent No.2 has been registered after the conclusion of the contract, it could not have taken the benefit of the MSME Act. The Reference is, therefore, contrary to the law laid down by the Apex Court in Gujarat State Civil Supplies Corporation v. Mahakali Foods Pvt. Ltd., (2023) 6 SCC 401.

6. In view of the above, the writ is allowed. Pending application(s), if any, stand disposed of.

7. It is always open for the parties to take recourse to the steps as available under law.



8. The period from filing of the present writ petition till the date of disposal of the writ petition would come in aid of the Petitioner while calculating limitation under Section 14 of the Limitation Act.

MAY 17, 2024
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SUBRAMONIUM PRASAD, J