



2024:DHC:758



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

Date of decision: 30th JANUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 14515/2023 & CM APPL. 57558/2023**

MAHANAGAR TELEPHONE NIGAM LTD. Petitioner

Through: Mr. Chandan Kumar and Ms. Kirti Atri, Advocates.

versus

DELHI INTERNATIONAL ARBITRATION CENTRE, THROUGH ITS CO-ORDINATOR & ORS. Respondents

Through: Mr. Avishkar Singhvi, Mr. Naved Ahmed, Mr. Vivek Kumar Singh and Mr. Deokinandan Sharma, Advocates for R-2.

Dr. Anurag Kumar Agarwal, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court challenging a decision dated 02.05.2022 passed by the Micro and Small Enterprises Facilitation Council/Respondent No.2 herein, accepting the reference of dispute raised by Respondent No.3 against the Petitioner under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (*hereinafter referred to as the 'MSME Act'*) in Case No. 724/MSME/DCNW/2021 and further referring the dispute in the said case to Respondent No.1/Delhi International Arbitration Centre (DIAC).

2. The case of Respondent No.3, who is the Claimant before the Delhi



International Arbitration Centre, is that the Claimant was registered as a small enterprise under the MSME Act *vide* Udyog Aadhar Registration Certificate dated 14.11.2018 and got himself registered as micro enterprise *vide* Udyam Registration Certificate dated 12.10.2020.

3. It is stated that on 19.08.2006, Respondent No.3 submitted quotation for the construction for the balance work of the telephone exchange building at Keshav Puram, Delhi *vide* letter dated 18.09.2006. It is further stated that the Petitioner *vide* letter dated 04.09.2006 had requested the Delhi Development Authority (DDA) to extend the time for construction of the telephone exchange over the said plot.

4. It is stated that a Letter of Intent for Architectural Consultancy Service in respect of construction of the balance work of the telephone exchange building at Keshav Puram was given to Respondent No.3/Claimant. It is stated that the consultancy fee for the said services was settled at 2.95% of the estimated cost of the project and for this purpose Respondent No.3 was requested to submit an irrecoverable performance bank guarantee of Rs.1,69,920/-. Subsequently, a Letter of Award was issued on 30.09.2009. Thereafter, the architectural drawings submitted by Respondent No.3.

5. Bills were being raised by Respondent No.3 for the work done. In the interregnum, the plot allotted to the Petitioner was cancelled. The DDA agreed to restore the allotment of the said plot and granted an extension of three years for construction on 05.08.2016.

6. It is stated that revised building plans and revised estimates were sent by Respondent No.3 to the Petitioner. The first RA bill dated 08.08.2018 for a sum of Rs.55,80,311/- was submitted to the Executive Engineer (Civil)



North, MTNL for the project cost of Rs.80,15,38,516/-. The last of the RA bills on record is dated 12.05.2022 for the sum of Rs. 1,33,23,786/-.

7. Since the money was not being paid, Respondent No.3 approached the MSME Council for reference of the dispute to arbitration claiming a total sum of Rs.2,15,96,273.86/- towards non-payment of the RA bills of 2007 and 2022. In this regard, a table has been given in the Statement of Claims filed by Respondent No.3 showing the amount of money due and payable.

8. Respondent No.3 thereafter approached the MSME Council by filing an application under Section 17 for referring the dispute regarding non-payment of dues by the Petitioner to Respondent No.3 which were referred to the Respondent No.1/DIAC. A claim statement has been filed before DIAC for a sum of Rs.1,59,62,436.83/- which is the principal amount due along with interest.

9. The Petitioner has approached this Court stating on the day the contract was entered into between the parties, the Petitioner was not an MSME and, therefore, Respondent No.2 could not have entertained the request for referring the dispute to the DIAC for arbitration.

10. On 07.11.2023, learned Counsel for the Respondents appeared on advance notice.

11. Learned Counsel for the Petitioner contends that it is now well settled that the benefit of the MSME Act cannot be claimed if the person claiming the benefit under the said Act is not registered as an MSME. Reliance is made by the Petitioner on the judgment of the Apex Court in Silpi Industries & Ors. v. Kerala State Road Transport Corporation & Anr., 2021 (18) SCC 790 and the judgment of the Coordinate Bench of this Court in Malani Construction Company v. Delhi International Arbitration Centre & Ors.,

**2023 SCC OnLine Del 1665.**

12. Learned Counsel for the Petitioner draws the attention of this Court to the judgment of the Apex Court in Silpi Industries & Ors. v. Kerala State Road Transport Corporation & Anr., **2021 (18) SCC 790** and more particularly on Paragraphs 42 to 44 of the said judgment. He, therefore, states that in view of the said judgment, the entire reference is erroneous.

13. It is to be noted that pursuant to the judgment of the Apex Court in Silpi Industries (supra), the Apex Court in Gujarat State Civil Supplies Corporation Limited v. Mahakali Foods Private Limited (Unit 2) & Anr., **2023 (6) SCC 401**, has clarified the judgment of the Apex Court in Silpi Industries (supra).

14. Heard learned Counsel for the parties and perused the material on record.

15. It is stated that the purpose of Section 17 and 18 of the MSME Act is to grant a cost-effective dispute resolution mechanism for recovery of unpaid dues of the supplier, which is a micro, small and medium level enterprise. The said Section gives the right to a micro, small and medium enterprise to have its disputes adjudicated by approaching the Facilitation Councils and it cannot be obliterated on account of any other contract to the contrary.

16. On the question as to whether a micro, small and medium enterprise though had not been registered at the time when the contract was entered into between the parties but is registered during the subsistence of the contract and in such circumstances, whether such party which enter into the contract would be entitled to the benefits under the MSME Act was first dealt with by Silpi Industries (supra) which stated that the Act can be



extended to a person who is registered under the Act but the Apex Court in Silpi Industries (supra), did not go into the question if during the subsistence of a contract, the party gets registered under the MSME Act, then the benefit of the Act be given to the MSME after the commencement of the Act. The said issue came up for consideration before the Apex Court in Gujarat State Civil Supplies Corporation Limited v. Mahakali Foods Private Limited (Unit 2) & Anr., 2023 (6) SCC 401.

17. The Apex Court in Mahakali Foods (supra) after noticing Paragraphs 42 and 43 of the judgment passed by the Apex Court in Silpi Industries (supra), held that if any registration is obtained subsequently, the same would have effect prospectively and apply to the supply of goods and rendering services subsequent to the registration and this issue could be decided by the Facilitation Council/Institutes/Centre acting as an Arbitral Tribunal under the MSME Act. Paragraph 51 and 52.6 of the judgment passed by the Apex Court in Gujarat State Civil Supplies Corporation Limited v. Mahakali Foods Private Limited (Unit 2) & Anr., 2023 (6) SCC 401, reads 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 Msmad Act, 2006 on the date of entering into the contract, could not seek any benefit as a supplier under the Msmad Act, 2006. A party cannot become a micro or small enterprise or a supplier to claim the benefit under the Msmad 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 Msmed Act, 2006.

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52.6. A party who was not the "supplier" as per the definition contained In Section 2(n) of the Msmed Act, 2006 on the date of entering into contract cannot seek any benefit as the "supplier" under the Msmed Act, 2006. If any registration is obtained subsequently the same would have an effect prospectively and would apply to the supply of goods and rendering services subsequent to the registration."

18. The same view has been taken by a Coordinate Bench of this Court in Malani Construction Company v. Delhi International Arbitration Centre & Ors., **2023 SCC OnLine Del 1665**, wherein this Court has observed as under:-

"14. The ratio of these two judgments is clear to the effect that if the registration under the MSMED Act, 2006 was obtained subsequently, the benefits under the said Act would not apply. Even in a situation where some portion of the goods/services are supplied prior to registration and some are supplied post registration, the Act would apply, depending on the facts, only qua the goods and services which are supplied subsequent to the registration."

19. Undoubtedly, in the present case, the contract was entered into in the year 2006. Respondent No.3 got himself registered on 14.11.2018. One of the RA bills has been given subsequent to the registration of Respondent No.3 as a micro enterprise. What was the service rendered after the contract



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was entered into between the parties, whether the contract is a works contract or only a contract for providing services are all mixed questions of law and facts, which can be decided by the Arbitral Tribunal.

20. In view of the above, this Court is not inclined to enter into this issue at this juncture leaving it to open the Petitioner to raise this dispute between the parties before the learned Arbitrator by filing appropriate applications under the Arbitration & Conciliation Act, 1996.

21. The writ petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JANUARY 30, 2024

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