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

+ W.P.(C) 18013/2024, CM APPL. 76599/2024, CM APPL.
76600/2024 & CM APPL. 76601/2024
OM CONSTRUCTIONPetitioner

Through: Mr. Rajesh Banati, Mr. Ashish Sareen
and Mr. Ankit Banati, Advocates

versus

MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL
& ORS.Respondents

Through: Mr. Udit Malik, Addl. Standing
Counsel for GNCTD with Mr. Vishal
Chanda and Ms. Rima Rao,
Advocates for GNCTD
Mr. Vinay Malik and Mr. Rohan
Aggarwal, Advocates for R-3.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
24.12.2024

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1. The present petition impugns order dated 10th October, 2024 and 18th October, 2024 passed by the Micro and Small Enterprises Facilitation Council, Respondent No. 1, referring the dispute between the Petitioner and Respondent No. 3 to Delhi Arbitration Centre,¹ Respondent No. 2 under Section 18(3) of Micro Small and Medium Enterprises Development Act, 2006² for initiation of arbitration proceedings under the Arbitration and Conciliation Act, 1996.

¹ "DAC"

² "the MSMED Act"



2. The challenge to the aforesaid orders is premised on two grounds: first, the registration of Respondent No. 3 as an MSME, is subsequent to the alleged cause of action, i.e. 6th October, 2020, when the contract between the parties was executed. Second, it is urged that neither the Petitioner nor Respondent No. 3 is situated within the jurisdiction of the MSMED, Delhi; and moreover, the work related to the contract was also not performed in Delhi. Further, since Respondent No. 3 had expressly agreed to the exclusive jurisdiction of the courts in Uttar Pradesh and maintains an office there, they ought to have approached the Facilitation Council in Uttar Pradesh. Consequently, Respondent No. 1 lacked jurisdiction to refer the matter to Respondent No. 2 under Section 18(4) of the MSMED Act.

3. On the first issue, counsel for Respondent No. 3 has pointed out that Petitioner's contention is factually incorrect. They were granted registration as an MSME on 31st July, 2018 and therefore, this jurisdictional ground urged by Petitioner is misconceived. A copy of the said registration has been handed over across the Board and taken on record. The Court has perused the document of registration. In terms thereof, Respondent No. 3's registration is indeed prior to the alleged cause of action and therefore, the first ground urged by Petitioner is unsustainable.

4. As regards the second ground relating to the jurisdiction of Respondent No. 1 in entertaining the request under Section 18(4) of the MSMED Act, it must be noted that Respondent No. 3 is also located within the jurisdiction of Delhi as their office is located at Pitampura. Accordingly, the Petitioner's challenge on this ground is deemed unsustainable.

5. At this stage, it is pertinent to note that counsel for Respondent No. 3 has apprised the Court that the Petitioner and Respondent No. 3 are engaged



in an ongoing arbitration before Hon'ble Mr. Justice (Retd.) Manmohan Singh. These proceedings were also initiated through a reference made under Section 18(3) of the MSMED Act by the same Facilitation Council. In this context, he submits that he has filed an application for consolidating both cases before the DAC. Counsel for the Petitioner, on instructions, has indicated the Petitioner's willingness to such consolidation. In light of the foregoing, Respondent No. 2 may issue appropriate directions to consolidate the arbitration proceedings between the Petitioner and Respondent No. 3.

6. At this juncture, counsel for Petitioner requests that further correspondence with Petitioner shall be done at omconstruction.official@gmail.com. Counsel for Respondent No. 3 assures the Court that this request will be complied with.

7. With the above directions, the present petition, along with pending applications, is disposed of.

SANJEEV NARULA, J

DECEMBER 24, 2024

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