**HIGH COURT OF JUDICATURE FOR RAJASTHAN**
**BENCH AT JAIPUR**

S.B. Civil Miscellaneous Application No. 325/2024
In
S.B. Civil Arbitration Application No.161/2021

M/s Kamal Drives And Automation Services, 4, Ami Apartments, Near Saraswati High School, Punit Road, Mani Nagar, Ahmedabad 380008

----Petitioner

Versus

Commander Works Engineer, Military Engineering Services, Jaipur

----Respondent

Connected With
S.B. Civil Miscellaneous Application No. 326/2024

In

S.B. Civil Arbitration Application No.162/2021

M/s Kamal Drives And Automation Services, 4, Ami Apartments, Near Saraswati Singh School, Punit Road, Mani Nagar, Ahmedabad-380008.

----Petitioner

Versus

Commander Works Engineer, Military Engineering Services, Jaipur.

----Respondent

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| For Petitioner(s) | : | Mr. Rahul Joshi |
| For Respondent(s) | : | Mr. Manjeet Kaur |

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**HON'BLE MR. JUSTICE SUDESH BANSAL**

**Order**

**20/12/2024**

1. Both Miscellaneous Applications under Sections 151/152 of the Code of Civil Procedure have been preferred by the applicant-claimant, seeking to recall the order dated 08.11.2024 passed by this Court, whereby and whereunder Hon'ble Mr. Justice S.K. Keshote (Former Judge) was appointed as substituted Arbitrator in place of the erstwhile Arbitrator Hon'ble Mr. Justice Sangeet Raj

Lodha (Former Judge), in view of recusal expressed by the Arbitrator.

2. Heard counsel for both parties on the Miscellaneous applications.

3. It is an admitted fact that on the two Arbitration Applications being S.B. Civil Arbitration Application Nos.161/2021 & 162/2021 filed by applicant, the Arbitration Tribunal of Hon'ble Mr. Justice Sangeet Raj Lodha (Former Judge) was constituted vide order dated 25.11.2022, however, on expressing recusal by the Hon'ble Arbitrator, substituted Arbitrator Hon'ble Mr. Justice S.K. Keshote (Former Judge) was appointed by this Court vide order dated 08.11.2024.

4. Counsel for applicant submits that the applicant is a proprietorship firm and registered under the rules, regulations and provisions of Micro, Small and Medium Enterprises Development Act, 2006 (for short, "the Act of MSMED") and has submitted application dated 16.08.2024 before the Micro & Small Enterprises Facilitation Council, Ahemdabad, for adjudication of dispute and the council has entered into reference to the dispute between parties, therefore, in view of Sections 18 and 19 of the Act of MSMED, the jurisdiction of arbitral tribunal cease to exist and no need to appoint arbitrator in the present matters. The submission of counsel for applicant is on the strength of a judgment of Hon'ble Supreme Court delivered in case of **Gujarat State Civil Supplies Corporation Ltd. Vs. Mahakali Foods Pvt. Ltd. [(2023) 6 SCC 401]** decided on 31.10.2022, wherein it was held and observed by the Hon'ble Supreme Court that the provisions of Chapter V of the Act of MSMED would have an

overriding effect over the provisions of Arbitration and Conciliation Act, 1996. On such submission, the applicant has prayed to recall the order of appointment of Arbitrator, since the dispute between parties has been entertained by the Micro & Small Enterprises Facilitation Council, Ahemdabad.

5. Counsel appearing on behalf of non-applicant, who has appeared on receiving an advance copy, has resisted the miscellaneous applications verbally and pointed out that the Arbitration Tribunal was constituted on the applications filed by the applicant and at that point of time, no such issue was raised.

6. This Court is of considered opinion, by virtue of Section 16 of the Arbitration and Conciliation Act, 1996, that the Arbitration Tribunal itself is competent to rule on its own jurisdiction and therefore, it is open for the applicant to raise the present issue before the Arbitral Tribunal itself.

If applicant would raise the issue, the Arbitral Tribunal obviously shall consider and decide such an issue in accordance with law, after dealing with respective contentions, legal and factual, put forth by both the parties.

7. In view of above, counsel for applicant seeks permission to withdraw these miscellaneous applications with liberty to raise all these issues before the Arbitral Tribunal.

8. Accordingly, these miscellaneous applications stand disposed of with the liberty as prayed for.

**(SUDESH BANSAL),J**

TN/RONAK JAIMAN/20&21