



2025:DHC:390-DB



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

+ LPA 50/2025 CM APPL. 4006-07/2025

SADBHAV ENGINEERING LTD.

.....Appellant

Through: *Appearance not given.*

versus

MICRO AND SMALL ENTERPRISES FACILITATION
COUNCIL, NEW DELHI & ORS.

.....Respondents

Through: Mr. Vijay K Wadhwa, Mr. Arush
Kumar Malhotra, Advocates for
R-2

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Date of Decision: 22nd January, 2025

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J: (ORAL)

1. Present letters patent appeal has been preferred under Clause X of the Letters Patent Act, 1866 assailing the impugned order dated 23rd December, 2024 passed by learned Single Judge of this Court whereby the underlying writ petition being W.P.(C) No.17846/2024 titled '*Sadbhav Engineering ltd. vs. Micro and Small Enterprises Facilitation Council, New Delhi & Ors.*' filed by the appellant was dismissed, thereby affirming the order dated 9th December, 2024 passed by the Sole Arbitrator in the arbitration proceedings being Arbitration Case No. DL/11/S/DWC/00734 of 2024 and the communication dated 16th



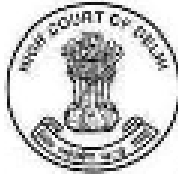
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August, 2024 passed by the Nodal Officer, Micro and Small Enterprise Facilitation Council. (hereinafter referred to as “MSEFC”).

2. The facts, shorn of unnecessary details and germane to the issue at hand and collated from the underlying writ petition and the present appeal, are as follows:

- a. The appellant is a company registered under the Companies Act, 1956 and is engaged in the business of Civil Construction and other allied work. The respondent No.2/Mr. Kapil Chanana is a Sole Proprietor of M/s S.K. Timber Traders, and is *inter alia* engaged in the business of renting construction equipments such as shuttering plates, scaffolding material etc. on hire basis.
- b. It is the case of the appellant that it had issued a Work Order bearing No. SEL/DMRC/CC-47/WO/113 dated 9th September, 2014 (hereinafter referred as “*Work Order*”) containing terms and conditions in favour of the respondent No. 2 for hiring of scaffolding materials supply.
- c. The appellant stated that during the execution of the awarded work, the respondent no.2 raised invoices against the hiring charges for scaffolding material supplied by it to the appellant. A dispute had arisen between the appellant and the respondent no.2 with respect to payments towards the services already provided by the respondent No.2 and return of the damaged scaffolding materials, in terms of the conditions prescribed under the Work Order.
- d. Thereafter, a settlement agreement dated 30th January, 2018 (hereinafter referred to as “*settlement*”) was executed between



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the appellant and the respondent no.2 for Rs.70,22,747/- against full and final settlement of scaffolding loss of CC-47.

e. It is the case of the appellant that the respondent no.2, raised an invoice dated 18th March, 2019 for an amount of Rs.82,86,842/- (inclusive of GST) towards damaged/unrepaired scaffolding materials in pursuance to the settlement. It is stated by the appellant that it had already made part payment amounting to Rs.64,10,789/-. Thereafter, pursuant to the said invoice, a reference has been made by the respondent no.2 on 8th June, 2022 under Section 18(1) of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as “*MSMED Act*”) for adjudication of disputes pertaining to delayed payments amounting to Rs.22,32,523/-.

f. Pursuant to the said reference, respondent No. 1/MSEFC issued notice to the appellant for initiating conciliation proceedings under Section 18(1) of the MSMED Act. The appellant participated in the proceedings and raised objections on the ground of the non-maintainability of the reference filed by respondent No.2. However, the conciliation failed, and respondent No. 1 proceeded to refer the matter to the respondent No.3/Delhi International Arbitration Centre (hereinafter referred to as “*DIAC*”) vide communication dated 16th August, 2024, under Section 18(3) of the MSMED Act.

g. Thereafter, the respondent no.3/DIAC appointed Mr. Pramod Kumar as the Sole Arbitrator. The appellant participated in the arbitration proceedings and filed an application under



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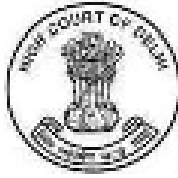


Section 16(3) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “*the Arbitration Act*”), raising objections relating to the jurisdiction of the Arbitrator. However, the Sole Arbitrator dismissed the said application *vide* an order dated 9th December, 2024.

h. Being aggrieved by the communication dated 16th August, 2024 and the order passed by the Sole Arbitrator dated 9th December, 2024, the appellant preferred the underlying Writ Petition, which was dismissed by the learned Single Judge of this Court.

i. Aggrieved by such decision, present appeal has been preferred by the appellant.

3. Learned counsel appearing for the appellant submits that the invoice dated 18th March, 2019 was raised by the respondent No. 2 in pursuance to the settlement dated 30th January, 2018 that was towards the loss of scaffolding material supplied in terms of Work Order. It is vehemently argued that the said invoice was deliberately issued after the registration of respondent No. 2 as MSME under the MSMED Act. He further submits that the same does not confer any jurisdiction to the respondent No. 1/MSEFC either to initiate conciliation proceedings or to send the matter to the respondent no.3/DIAC. According to the learned counsel for the appellant, merely because the invoice was raised subsequent to the registration under the MSMED Act would not, *ipso facto*, give rise to any cause of action, muchless for reference of any dispute to arbitration. He emphasises that having challenged the jurisdiction which is the very foundation of reference under Section

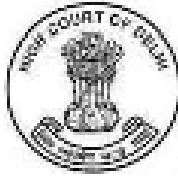


18(3) of the MSMED Act, the underlying writ petition was maintainable and ought to have been entertained.

4. Learned counsel for the appellant forcefully submits that since the appellant had challenged the very inherent lack of jurisdiction in exercise of the provisions of section 18(1) of the MSMED Act, the *in limine* dismissal of the underlying writ petition was contrary to the facts on record. Thus, the learned counsel argued that the inherent lack of jurisdiction in respondent No. 1 and 3, to adjudicate or deal with the reference which was not otherwise maintainable, in view of the settled position of law laid down by the Hon'ble Supreme Court in the case of ***Silpi Industries & Ors. Vs Kerala State Road Transport Corporation & Anr.:* (2021) 18 SCC 790** and ***Gujarat State Civil Supplies Corporation Ltd . Vs. Mahakali Foods Pvt. Ltd . (Unit 2):* (2023) 6 SCC 401**, was fatal to the reference made by the respondent No.2 and consequently, the subsequent proceedings too, would be *non est*.

5. We have heard learned counsel for the appellant and given anxious consideration to the material available on record.

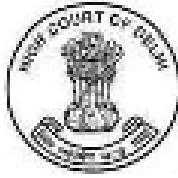
6. At the outset it is pertinent to note that the appellant has approached this Court under Article 226 of the Constitution of India, 1950, only after the Sole Arbitrator has rendered his opinion in respect of an application filed by the appellant under section 16(3) of the Arbitration Act. By the order dated 9th December, 2024, the Sole Arbitrator has dismissed the said application seeking termination of the arbitration proceedings premised on lack of jurisdiction of the arbitral tribunal. Thus, it is apparent that the appellant has sought to challenge both the reference of disputes to arbitration as well as dismissal of the



application under section 16(3) of the Arbitration Act, only after the proceedings under the Arbitration Act have been set in motion. It is trite that once the proceedings under the Arbitration Act have commenced and are underway, Courts would not interfere and interdict such proceedings, particularly, when appropriate and efficacious remedies are indeed available under the Arbitration Act. In this context, it would be apposite to refer to the judgement of the Supreme Court in ***SBP & Co. v. Patel Engineering Limited & Anr.***, (2005) 8 SCC 618 and the same judgement has been followed by the Supreme Court in its recent judgement – ***Sterling Industries vs. Jayprakash Associates Ltd.*** (2021) 18 SCC 367. The relevant paragraphs of ***Sterling Industries*** (*supra*) quoting the judgement of the Supreme Court in ***SBP & Co.*** (*supra*) reads thus:

“3. This Court in SBP & Co. v. Patel Engg. Ltd. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] in para 45 held as follows:

45. It is seen that some High Courts have proceeded on the basis that any order passed by an Arbitral Tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating its grievances against the award including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act. The party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The Arbitral Tribunal is, after all, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the Arbitral Tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution. Such an intervention by the



High Courts is not permissible.

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46. The object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage.”

7. That apart, as rightly and aptly observed by the learned single Judge, the Supreme Court in ***Bhaven Construction Vs. Executive Engineer, Sardar Sarovar,:* (2022) 1 SCC 75** has succinctly held that an order in exercise of powers under section 16 of the Arbitration Act can be assailed only by way of challenge to the final award under the provisions of section 34 of the said Arbitration Act. This would proscribe any other remedy to the aggrieved party.

8. To the argument of the learned counsel for the appellant that no services were rendered by the respondent no.2 post registration under the MSMED Act and thus the reference is without jurisdiction, it would be apposite to extract the relevant portion of the impugned order dated 9th December, 2024 of the sole arbitrator which found otherwise. The relevant portion of the impugned order of sole arbitrator is reproduced hereunder:

“This tribunal based on this understanding and after careful observation and deliberation, concludes that the claimant supplied its services after obtaining MSME registration. Accordingly, this question is answered in the negative against the applicant and in favor of the non-applicant, by holding that the claimant was a registered MSME unit during the relevant supply period.



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Consequently, the claimant is well entitled to have its claim adjudicated before the MSEFC and subsequently before this Tribunal”.

The aforesaid observation on facts would appear to render the argument of learned counsel nugatory.

9. Learned single Judge has also appropriately observed that the questions as to whether the invoice is erroneous or whether services were indeed rendered or not, are disputed questions of facts and cannot be examined in writ proceedings. Thus, on that premise too, the underlying writ petition was rightly dismissed leaving the appellant to avail alternate remedies available in law.

10. That said, we are of the considered opinion that to prevent any prejudice against the appellant in the pending arbitration proceedings or subsequent remedies, the observations made by the learned single Judge on facts in the impugned order as well as those made by us, would not tantamount to final expression on the facts of the case. Delving into facts was only for the purpose of examining the legal issue raised in the present appeal and would be limited only to that extent.

11. Resultantly, the appeal is dismissed along with pending applications, if any, however without any order as to costs.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

JANUARY 22, 2025/rl