

Chief Justice's Court

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. 139 of 2025

Appellant :- Northern Railway

Respondent :- M/s H.R. Constructional Company

Counsel for Appellant :- Subodh Kumar

Counsel for Respondent :- Akash Tomar, Ayush Mishra

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Kshitij Shailendra, J.

(Per : Arun Bhansali, CJ)

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ('Act, 1996') is directed against judgment dated 20.03.2025 passed by Commercial Court No. 01, Meerut whereby the application filed by the appellant under Section 34 of the Act, 1996 against award dated 22.02.2024 passed by Micro and Small Enterprises Facilitation Council ('MSEFC'), Meerut Zone, Meerut has been dismissed.

2. The respondent claimant was registered with the District Industries Centre, Noida, Uttar Pradesh as a 'small enterprise' on 14.02.2017 under the Micro, Small and Medium Enterprises Development Act, 2006 ('MSMED Act, 2006'). A tender notice dated 09.09.2016 was issued by the Railways for construction of retaining wall, construction/extension of passenger platform & surfacing, provision of station name board, water booth, prefab, surfacing, small bench shelter, washable apron, water pipe line, drain small building etc. in Dehradun yard or at any other station between Haridwar and Dehradun stations in connection with development of facilities for running 18 coach trains between Haridwar – Dehradun section of Moradabad Division. The claimant submitted its bid on 14.10.2016 and the work was awarded on 07.02.2017 which was to be completed within 18 months i.e. up to 07.08.2018. Performance Bank Guarantee ('PBG') was deposited by the claimant and a contract agreement was executed between the parties on 15.12.2017. On account of slow progress of work, the contract was

rescinded on 19.01.2019. The security deposit was forfeited, PBG was encashed.

3. Aggrieved of the said action, the claimant filed a case before the MSEFC, Kanpur. The conciliation proceedings were terminated on 15.11.2019 based on which, MSEFC, Kanpur served a notice for arbitration on 26.11.2020 and subsequently the arbitration was conducted by MSEFC, Meerut.

4. After claim, statement of defence and other material were submitted by both the parties, issues were framed by the MSEFC, Meerut and by the award impugned, a principal sum of Rs. 3,13,01,721/- along with interest to the tune of Rs. 4,71,20,191/- was awarded along with future interest till realisation.

5. Feeling aggrieved, application under Section 34 of the Act, 1996 was filed before the Commercial Court *inter alia* questioning the award on the ground that in terms of provisions of Section 28(3) of the Act, 1996, the Arbitrators were required to decide the issues in accordance with the terms and conditions of the contract agreement and that Clause 64(5) of the General Conditions of Contract ('GCC') pertaining to award of *pendente lite* interest was violated. Emphasis was laid on the fact that the claimant was registered under the provisions of the MSMED Act, 2006 after the award of Letter of Acceptance and therefore, the provisions of MSMED Act, 2006 was not applicable and consequently, the MSEFC had no jurisdiction.

6. Further claim was made that in terms of the contract, the claimant was required to approach the General Manager of the Northern Railway to resolve the dispute through arbitration and on that count, the MSEFC had no jurisdiction. Submissions were made that on the date of Letter of Acceptance, the claimant was not the 'supplier' as per the definition contained in Section 2(n) of MSMED Act, 2006 and as such, submissions were also made before the Commercial Court for the first time that as the nature of the contract and the work awarded was a works contract, the same

would not be covered under the provisions of MSMED Act, 2006 which only pertains to supply of goods and services.

7. Submissions made were contested by the respondent claimant.

8. The Commercial Court framed five issues for consideration and noticed the law laid down pertaining to ambit and scope of Section 34 of the Act, 1996 and came to the conclusion that the issue pertaining to the impugned contract being a works contract, was never raised before the MSEFC. The contract agreement was entered into between the parties on 15.12.2017 and first bill was raised on 30.12.2017, prior to which the claimant was registered as a small enterprise on 14.02.2017 and as Hon'ble Supreme Court has laid down that the relevant date for the purpose of examining whether the applicant is a 'supplier' within the meaning of Section 2(n) of the MSMED Act, 2006 is the date of contract, on the said date the claimant was registered.

9. Further, on the issue pertaining to the subject matter of the contract being a works contract and beyond the jurisdiction of the MSEFC, relying on judgment in the case of **Hindustan Petroleum Corporation Limited Vs. The West Bengal State Micro, Small Enterprise Facilitation Council & Ors.:** 2023 SCC OnLine Cal 1700, it was held that MSMED Act, 2006 was applicable and the Council had jurisdiction to pass the award.

10. Whereafter, on the issue pertaining to award of *pendente lite* interest, it was held that the provisions of the MSMED Act, 2006 would have overriding effect on the provisions of the Act, 1996 in view of the judgment in **Gujarat State Civil Supplies Corporation Limited Vs. Mahakali Foods Private Limited (Unit 2) & Ors :** (2023) 6 SCC 401 and consequently, dismissed the application.

11. Learned counsel for the appellant made vehement submissions that the MSEFC had no jurisdiction to deal with the matter and the award passed by it is wholly without jurisdiction. Submissions were made that the contract in question was a works contract and in view of judgments in **M/s Rahul Singh**

Vs. Union of India & Ors. : 2017 (122) ALR 65; National Textile Corporation Limited Vs. Elixir Engineering Private Limited & Anr. : 2023 SCC OnLine Bom 653 : (2023) 3 Bom CR 345; Sterling and Wilson Private Limited, Mumbai & Anr. Vs. Union of India & Ors. : AIR 2017 Bom 242; M/s Shree Gee Enterprises Vs. Union of India & Anr. : 2015 SCC OnLine Del 13169 : (2015) 224 DLT 445 read with Kone Elevator India Private Limited Vs. State of Tamil Nadu : (2014) 7 SCC 1, the MSEFC had no jurisdiction to deal with the matter.

12. Further submissions were made that the Letter of Acceptance, pursuant to the tender in question, was issued on 07.02.2017 and admittedly, the respondent claimant was registered under the provisions of the MSMED Act, 2006 on 14.02.2017 i.e. after issuance of the Letter of Acceptance and as such, its status on the relevant date was not that of a 'supplier' and on that count, the MSEFC had no jurisdiction to deal with the matter and on that count also, the award impugned deserves to be quashed and set aside. Reliance was placed on judgments in **Gujarat State Civil Supplies Corporation Limited (supra); Shanti Conductors (P) Ltd. & Anr. Vs. Assam State Electricity Board & Ors.: (2019) 19 SCC 529**, and **M/s. Silpi Industries etc. Vs. Kerala State Board Transport Corporation & Anr. : (2021) 18 SCC 790**.

13. Feeble submissions were made pertaining to award of interest by the MSEFC.

14. Learned counsel for the respondent claimant supported the award as well as the judgment passed by the Commercial Court. Submissions were made that the pleas sought to be raised in the present appeal and before the Commercial Court, either were not available or the same have no substance. On the aspect of the subject matter of the contract being a works contract and therefore, beyond the scope of decision by the MSEFC, it was submitted that besides the fact that the MSEFC had the jurisdiction to deal with the subject matter of the contract, it was nowhere the case of the appellant before the MSEFC that it lacked jurisdiction on account of the subject matter

being a works contract. The only plea raised pertaining to jurisdiction was in respect of arbitration clause in the contract where the General Manager had the power to appoint Arbitrator and that on account of the registration of the respondent under the MSMED Act, 2006 being after the date of Letter of Acceptance, it was not a supplier. Not a word pertaining to the subject matter of the contract being works contract was raised.

15. Submissions have been made that under Section 16(2) of the Act, 1996, the plea that the Arbitral Tribunal does not have jurisdiction, is required to be raised not later than the submission of statement of defence and as no such plea based on the subject matter of contract being works contract was raised before the Arbitral Tribunal, the same is now not open to be raised. Reliance in this regard was placed on **M/s. Vidyawati Construction Company Vs. Union of India : 2025 INSC 101** and **Gayatri Projects Limited Vs. Madhya Pradesh Road Development Corporation Limited : 2025 INSC 698**.

16. Further submissions were made that the law laid down by Hon'ble Supreme Court in the case of **Gujarat State Civil Supplies Corporation Limited (supra)** is categorical and specific, requiring that the supplier must be registered under the MSMED Act, 2006 on the date of agreement and as, admittedly, the respondent was registered under the said Act on 14.02.2017 and the contract agreement was executed between the parties on 15.12.2017, therefore, the plea raised in this regard also apparently has no substance.

17. Further submissions were made that the pleas sought to be raised by the appellant, in the present appeal are apparently without any substance and the appeal therefore, deserves dismissal.

18. We have considered the submissions made by counsel for the parties and have perused the material available on record.

19. The first issue which was vehemently raised on behalf of the appellant pertains to the subject matter of the contract being a works contract and

therefore, the same being beyond the scope of the MSMED Act, 2006, the MSEFC had no jurisdiction to deal with the matter.

20. A bare look at the statement of defence as noticed in the Arbitral Award, reveals that the objection before the MSEFC pertained to the fact that the parties were governed with the arbitration clause as per the contract agreed between the parties (page 260 of the paper book) and the claimant does not come under the purview of Sections 2 and 7 of the MSMED Act, 2006. Apparently, the appellant never raised the issue that the contract was a works contract.

21. The issue whether the nature of contract is a works contract or not, is a pure question of fact and whether the agreement is a works contract or not, requires interpretation based on evidence of the parties and as apparently, no issue in this regard was raised before the MSEFC, neither any evidence was led nor any finding was recorded by the Arbitral Tribunal/MSEFC. The issue, sought to be raised essentially pertained to the jurisdiction of the Arbitral Tribunal to deal with the subject matter.

22. Provisions of Section 16(2) of the Act, 1996 *inter alia* read as under:

“16. Competence of arbitral tribunal to rule on its jurisdiction.—(1)

...
 (2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.”

23. The aspect pertaining to the stage at which objection about the jurisdiction of the Tribunal has to be raised, has been dealt with by Hon’ble Supreme Court in the case of **M/s Vidyawati Construction Company (supra)** wherein, after referring to provisions of Section 16(2) of the Act, 1996, it was laid down as under:-

“13. Hence, there is a clear bar on raising a plea of the lack of jurisdiction of the Arbitral Tribunal after submission of the statement of defence. Therefore, after 14th February, 2004, the respondent could not have objected to the jurisdiction of the sole Arbitrator. Hence, the objection raised by way of an application dated 24th April 2004 was rightly rejected by the learned Arbitrator by the order dated 20th October, 2004.

14. In so many words, on 5th December, 2003, the respondent submitted to the jurisdiction of the sole Arbitrator and agreed to file a statement of defence before the sole Arbitrator. We have already quoted that portion of the proceedings dated 5th December, 2003. After submitting to the jurisdiction of the sole Arbitrator, the respondent could not have belatedly objected to the jurisdiction of the sole Arbitrator on 24th April, 2004.

15. In view of the respondent's conduct and sub-Section (2) of Section 16 of the Arbitration Act, Sections 34 and 37 Courts were not right in upholding the respondent's objection to the jurisdiction of the Arbitral Tribunal. Therefore, the impugned judgments cannot be sustained.”

24. In the case of **Gayatri Projects Limited (supra)**, Hon’ble Supreme Court framed issue whether a plea of lack of jurisdiction may be raised for the first time under Section 34 of the Act, 1996 if no such objection was taken before the Arbitral Tribunal and after referring to judgments in **Lion Engineering Consultants Vs. State of Madhya Pradesh & Ors.:** (2018) 16 SCC 758; **Madhya Pradesh Rural Road Development Authority & Anr. Vs. L.G. Chaudhary Engineers & Contractors :** (2018) 10 SCC 826; **Union of India Vs. Pam Development Private Limited :** (2014) 11 SCC 366, and **Gas Authority of India Ltd. & Anr. Vs. Ketri Construction (I) Ltd. & Ors. :** (2007) 5 SCC 38, it was laid down as under:

“35. Thus, what can be discerned from the aforesaid is that although a plea of lack of jurisdiction, being a question of law, can be raised even for the first time in the proceedings under Section 34 as held in **Lion Engineering** (supra), yet such a plea ought not to be allowed to be raised as it is deemed to have been waived in view of Section 4 of the Act, 1996 as per **Pam Development** (supra), unless the party makes out a strong and good reason for its failure to take such a plea before the arbitral tribunal as per **Gas Authority of India** (supra), and as per the dictum of **L.G. Chaudhary (II)** (supra) any failure to raise the issue of applicability of the MP Act, 1983 before the arbitral tribunal is not a strong and good reason to permit raising such a plea in the proceedings under Section 34 of the Act, 1996.”

25. From the law laid down by Hon’ble Supreme Court in the cases of **Vidyawati Construction Company (supra)** and **Gayatri Project Limited (supra)**, it is apparent that having failed to raise the plea of jurisdiction before the Arbitral Tribunal, such a plea was not available to be raised as the same is deemed to have been waived. Further, even in terms of judgment in the case of **Gayatri Project Limited (supra)**, no case much less a strong and good reason for failure to take such plea before the Arbitral Tribunal, has

been made out either in the application under Section 34 of the Act, 1996 or in the present appeal wherein not a word has been indicated as to why such a plea could not be taken before the Arbitral Tribunal.

26. In view of the above factual and legal position pertaining to the plea raised regarding the contract being a works contract and therefore, beyond the scope of the MSMED Act, 2006, the arguments raised by counsel for the appellant has no substance. As no such plea was taken before the Arbitral Tribunal, the submissions made before this Court on the strength of the judgments in the cases of **M/s Rahul Singh (supra)**; **National Textile Corporation Limited (supra)**; **Sterling and Wilson Private Limited (supra)** read with **Kone Elevator India Private Limited (supra)** as well as the judgment in the case of **Hindustan Petroleum Corporation Limited (supra)**, relied on by the respondent and the Commercial Court, does not require any adjudication by this Court.

27. So far as the plea raised pertaining to the respondent being not a supplier on the relevant date and therefore, the MSEFC had no jurisdiction is concerned, the law on the subject is settled wherein Hon'ble Supreme Court has repeatedly dealt with the said aspect and has, from time to time, indicated that the relevant date in this regard, would be the date of agreement/the date of supply.

28. In the case of **Shanti Conductors (P) Ltd. (supra)**, it has been laid down as under:

“61. We have noticed above that the *incidence of applicability* of the liability under the Act is *supply of goods or rendering of service*. In event the supply of goods and rendering of services is subsequent to Act, can liability to pay interest on delayed payment be denied on the ground that agreement in pursuance of which supplies were made were entered prior to enforcement of the Act? Entering into an agreement being not expressly or impliedly referred to in the statutory scheme as an incident for fastening of the liability, making the date of agreement as date for imposition of liability does not conform to the statutory scheme. This can be illustrated by taking an example. There are two small scale industries which received orders for supply of materials. 'A' received such orders prior to the enforcement of the Act and 'B' received the order after the enforcement of the Act. Both supplied the goods subsequent to enforcement of the Act and became entitled to receive payment after the supply, on or before the day agreed upon between the supplier and buyer or before the appointed day.

Payments were not made both to 'A' and 'B' as required by Section 3. Can the buyer who has received supplies from supplier 'A' escape from his statutory liability to make payment of interest under Section 3 read with Section 4? The answer has to be No. Two suppliers who supply goods after the enforcement of the Act, become entitled to receive payment after the enforcement of the Act one supplier cannot be denied the benefit of the statutory protection on the pretext that the agreement in his case was entered prior to enforcement of the Act. When the date of agreement is not referred as material or incidence for fastening the liability, by no judicial interpretation the said date can be treated as a date for fastening of the liability. The 1993 Act being beneficial legislation enacted to protect small scale industries and statutorily ensure by mandatory provision for payment of interest on the outstanding money, accepting the interpretation as put by learned counsel for the Board that the day of agreement has to be subsequent to the enforcement of the Act, the entire beneficial protection of the Act shall be defeated. The existence of statutory liability depends on the statutory factors as enumerated in Section 3 and Section 4 of the 1993 Act. Factor for liability to make payment under Section 3 being the supplier supplies any goods or renders services to the buyer, the liability of buyer cannot be denied on the ground that the agreement entered into between the parties for supply was prior to the 1993 Act. To hold that liability of buyer for payment shall arise only when agreement for supply was entered into subsequent to enforcement of the Act, it shall be adding words to Section 3 which is not permissible under the principles of statutory construction."

29. In **M/s Silpi Industries (supra)**, it has been laid down as under:

"42. Though the appellant claims the benefit of provisions under MSMED Act, on the ground that the appellant was also supplying as on the date of making the claim, as provided under Section 8 of the MSMED Act, but same is not based on any acceptable material. The appellant, in support of its case placed reliance on a judgment of the Delhi High Court in the case of *GE T&D India Ltd. v. Reliable Engg. Projects and Mktg.*, [*GE T&D India Ltd. v. Reliable Engg. Projects & Mktg.*, 2017 SCC OnLine Del 6978], but the said case is clearly distinguishable on facts as much as in the said case, the supplies continued even after registration of entity under Section 8 of the Act. In the present case, undisputed position is that the supplies were concluded prior to registration of supplier. The said judgment of the Delhi High Court relied on by the appellant also would not render any assistance in support of the case of the appellant. In our view, to seek the benefit of provisions under the MSMED Act, the seller should have registered under the provisions of the Act, as on the date of entering into the contract. In any event, for the supplies pursuant to the contract made before the registration of the unit under provisions of the MSMED Act, no benefit can be sought by such entity, as contemplated under the MSMED Act.

43. While interpreting the provisions of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, this Court, in the judgment in *Shanti Conductors (P) Ltd. v. Assam SEB* [*Shanti Conductors (P) Ltd. v. Assam SEB*, (2019) 19 SCC 529 : (2020) 4 SCC (Civ) 409] has held that date of supply of

goods/services can be taken as the relevant date, as opposed to date on which contract for supply was entered, for applicability of the aforesaid Act. Even applying the said ratio also, the appellant is not entitled to seek the benefit of the Act. There is no acceptable material to show that, supply of goods has taken place or any services were rendered, subsequent to registration of the appellant as the unit under the MSMED Act, 2006. By taking recourse to filing memorandum under sub-section (1) of Section 8 of the Act, subsequent to entering into contract and supply of goods and services, one cannot assume the legal status of being classified under the MSMED Act, 2006, as an enterprise, to claim the benefit retrospectively from the date on which the appellant entered into contract with the respondent.

44. The appellant cannot become micro or small enterprise or supplier, to claim the benefits within the meaning of the MSMED Act, 2006, by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods and services. If any registration is obtained, same will be prospective and applies for supply of goods and services subsequent to registration but cannot operate retrospectively. Any other interpretation of the provision would lead to absurdity and confer unwarranted benefit in favour of a party not intended by legislation.”

30. In the case of **Gujarat State Civil Supplies Corporation Limited** (*supra*), it has been laid down as under:

“49. One of the submissions made by the learned counsel for the buyers was that if the party supplier was not the “supplier” within the meaning of Section 2(n) of the MSMED Act, 2006 on the date of the contract entered into between the parties, it could not have made reference of dispute to Micro and Small Enterprises Facilitation Council under Section 18(1) of the MSMED Act, 2006 and in such cases, the Council would not have the jurisdiction to decide the disputes as an arbitrator.

50. At this juncture, a very pertinent observations made by this Court in *Silpi Industries case* [*Silpi Industries v. Kerala SRTC*, (2021) 18 SCC 790 : 2021 SCC OnLine SC 439] on this issue are required to be reproduced : (SCC paras 42-44):

“42. ... In our view, to seek the benefit of provisions under the MSMED Act, the seller should have registered under the provisions of the Act, as on the date of entering into the contract. In any event, for the supplies pursuant to the contract made before the registration of the unit under provisions of the MSMED Act, no benefit can be sought by such entity, as contemplated under MSMED Act.

43. While interpreting the provisions of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, this Court, in the judgment in *Shanti Conductors (P) Ltd. v. Assam SEB* [(2019) 19 SCC 529 : (2020) 4 SCC

(Civ) 409] has held that date of supply of goods/services can be taken as the relevant date, as opposed to date on which contract for supply was entered, for applicability of the aforesaid Act. Even applying the said ratio also, the appellant is not entitled to seek the benefit of the Act... by taking recourse to filing memorandum under sub-section (1) of Section 8 of the Act, subsequent to entering into contract and supply of goods and services, one cannot assume the legal status of being classified under the MSMED Act, 2006, as an enterprise, to claim the benefit retrospectively from the date on which appellant entered into contract with the respondent.

44. The appellant cannot become micro or small enterprise or supplier, to claim the benefits within the meaning of MSMED Act 2006, by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods and services. If any registration is obtained, same will be prospective and applies for supply of goods and services subsequent to registration but cannot operate retrospectively. Any other interpretation of the provision would lead to absurdity and confer unwarranted benefit in favour of a party not intended by legislation.”

51. Following the above-stated ratio, it is held that a party who was not the “supplier” as per Section 2(n) of the MSMED Act, 2006 on the date of entering into the contract, could not seek any benefit as a supplier under the MSMED Act, 2006. A party cannot become a micro or small enterprise or a supplier to claim the benefit under the MSMED 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.”

31. In the present case, it is not in dispute that the award of Letter of Acceptance is dated 07.02.2017 and the contract agreement has been executed between the parties on 15.12.2017 and the first bill has been raised by the respondent on 30.12.2017 and the respondent was registered as a small enterprise under the provisions of the MSMED Act, 2006 on 14.02.2017. The reliance placed on the Letter of Acceptance being prior to the date of the registration under the provisions of the MSMED Act, 2006 for the purpose of claiming that the respondent is not a supplier, in view of the law repeatedly laid down by Hon’ble Supreme Court noticed herein

before, wherein the date of contract has been indicated as the relevant date for the said purpose, the submissions made in this regard also have no substance.

32. Insofar as the objection raised pertaining to the arbitration clause in the agreement between the parties is concerned, as laid down by Hon'ble Supreme Court as noticed herein before, the provisions of the MSMED Act, 2006 override the provisions of the Act, 1996 and therefore, the plea raised in this regard also apparently has no substance.

33. So far as the plea raised pertaining to interest with reference to the clause in GCC is concerned, as the provisions of MSMED Act, 2006 have overriding effect, the plea raised in that regard also has rightly been negated by the Arbitral Tribunal. In fact, no plea has been raised with regard to the jurisdiction to award interest in the memo of appeal. The only plea raised in Ground No. 19 of the memo is that the impugned award is exorbitant, which plea, in view of the statutory provisions, cannot be countenanced.

34. In view of the above discussion, we do not find any substance in the present appeal, the same is therefore, dismissed.

Order Date :- 09-07-2025

AHA

(Kshitij Shailendra, J) (Arun Bhansali, CJ)