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

\+ **<u>W.P.(C) 13095/2023 and CM APPL. 51686/2023</u>**

SADBHAV ENGINEERING LIMITED .....Petitioner

Through: Mr. Pradhuman Gohil and Ms. Ranu Purohit, Advocates.

versus

KGTS ENGINEERING INDIA PVT LTD & ORS.

.....Respondents

Through: Mr. Dhruv Rohatgi, Ms. Chandrika Sachdev and Mr. Dhruv Kumar, Advs., GNCTD.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% 13.01.2026

1. Learned counsel appearing on behalf of the petitioner contends that the reference for arbitration made by respondent no.2- Micro and Small Enterprises Facilitation Council (MSEFC) is bereft of any merit.

2. Reference order dated 11.07.2023 is extracted as under:-

> *"To,*
> *The Co-Ordinator,*
> *Delhi International Arbitration Centre (DIAC)*
> *Delhi High Court Campus, Shershah Road, New Delhi-110003*
> *Sub: Forwarding reference filed under Section 18 of the Micro, Small & Medium Enterprises Development (MSMED) Act, 2006 by Ms. Shalu Sharma, M/S KGTS Engineers India Pvt. Ltd.(App/Temp. No-DL-02A 0009401/M/00001) (Approved Case No.-DL/02/M/CDS/00334/2021).*
> *Sir,*
> *This is to inform you that a Micro and Small Enterprises Facilitation Council (MSEFC) had been established u/s 20 of the Micro, Small*

& Medium Enterprises Development (MSMED) Act, 2006 vide Notification No. F.Mo.1 (MSME)/01/2019/Pt. File/3120 dated 30-09-2020 Issued by Lieutenant Governor, Delhi in exercise of the power conferred u/s 2(p) of the Micro, Small and Medium Enterprises Development Act, 2006.
It is further informed that by Ms. Shalu Sharnia, M/S KGTS Engineers India Pvt. Ltd. filed a reference on 08.09.2021 u/s 18 of the Micra, Small & Medium Enterprises Development (MSMED) Act, 2006 before the above stated council for adjudication of disputed/delayed payment M/S Sadbhav Engineering Limited CEO Vashistha Patel.
In accordance with the provisions of the said case act, the Micro and Small Enterprises, Facilitation Council, Delhi took up the case for conciliation proceedings in its meetings held dated on 17-12-2021, 22-06-2022 and 22/09/2022. The Council made all efforts to facilitate for conciliation.
Accordingly, the Council has arrived at the conclusion that the Respondent is not ready for conciliation towards the disputed amount and felt that conciliation is not possible in this case and decided to terminate the conciliation proceedings and refer this case u/ 18 (3) of the Micro, Small and Medium Enterprises Development Act, 2000 to the Delhi International Arbitration Centre (DIAC) for initiating arbitration proceedings as per the Arbitration and Conciliation Act, 1996.
Therefore, the reference filed by Ms. Shalu Sharma, M/S KGTS Engineers India Pvt. Ltd. Against from M/S Sadbhav Engineering Limited CEO Vashistha Patel, along with relevant documents is forwarded herewith for DIAC. It is also requested that final decision/disposal in this regard may be got informed to this office. This issue with the prior approval of the district magistrate/ chairperson MSEFC, district Shahdara Delhi."

3. Respondent no. 2 seems to have conducted meetings on 17.12.2021, 22.06.2022 and 22.09.2022 and efforts were made to facilitate for conciliation. However, the same remained unsuccessful. It is under these circumstances, that the conciliation was terminated and reference was made under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006 (MSME Act) to the Delhi International Arbitration Conciliation (DIAC) for initiating arbitration proceedings as per the A&C Act, 1996.

4. The petitioner submits that all disputes *qua* Micro, Small and Medium Enterprises are not amenable to be referred to the Arbitrator under Section 18(3) of the MSME Act. Under the said provision, the MSEFC may refer disputes to arbitration only if the same are between enterprises which fall within the definition of 'supplier' under Section 2(n) of the MSME Act.

5. It is the case of the petitioner that the respondent no. 1 was not registered as a Micro, Small, and Medium Enterprise under the Act of 2006, at the time of the issuance of the Work-Orders which are the subject matter of dispute. According to learned counsel for the petitioner, the impugned reference has been made by respondent no. 2 without jurisdiction. Reliance is also placed on the decision of the Supreme Court in ***Vaishno Enterprises v. Hamilton Medical AG and Another***[1] to justify the submission. The relevant portion of the decision is extracted below, for reference:

> ***"15.*** *It is not in dispute that the contract/agreement between the appellant and the respondent has been executed on 24.08.2020. Therefore, the laws of India applicable at the time of contract/agreement shall be applicable and therefore the parties shall be governed by the laws of India prevailing/applicable at the time when the contract was executed. It is admitted position that the date on which a contract/agreement was executed i.e. on 24.08.2020 the appellant was not registered MSME. Considering the relevant provisions of the MSME Act more particularly Section 2(n) read with Section 8 of the MSME Act, the provisions of the MSME Act shall be applicable in case of supplier who has filed a memorandum with the authority referred to in sub-section (1) of Section 8. Therefore, the supplier has to be a micro or small enterprise registered as MSME, registered with any of the authority mentioned in sub-section (1) of Section 8 and Section 2(n) of the MSME Act. It is admitted position that in the present case the appellant is registered as MSME only on 28.08.2020. Therefore, when the contract was entered into the appellant was not MSME and therefore the parties would not be governed by the MSME Act and the parties shall be governed by the laws of India applicable and/or prevailing at the time of execution of the contract. If that be so the Council would have no*

[1] 2022 SCC OnLine SC 355

jurisdiction to entertain the dispute between the appellant and the Respondent no. 1, in exercise of powers under Section 18 of the MSME Act. Therefore, in the aforesaid peculiar facts and circumstances of the case, more particularly the terms of the Agreement, the order passed by the learned Single Judge confirmed by the Division Bench holding the Council would have no jurisdiction with respect to Respondent No. 1 is not required to be interfered with."

(Emphasis supplied)

6. It is also claimed that as far as the conciliation proceedings required to be undertaken prior to the reference to arbitration are concerned, the petitioner had been served the notice, only once on 20.11.2021 (Annexure P-4) and the petitioner was unable to attend the same on the date fixed. Therefore, the petitioner had requested respondent no. 2 to provide updates on the next date for the said proceedings, but claims not to have received any communication in this regard, whereas in the impugned reference order, the failure of the conciliation process is attributed to the petitioner.

7. Learned counsel appearing on behalf of respondent no.2, however, submits that in the reply, an unequivocal position has been taken that respondent no. 1was duly registered as an MSME even on the date of execution of the contract. It is also stated that the petitioners participated in the conciliation proceedings dated 22.06.2022 and had even issued a consent letter for amicable settlement on the same date.

8. The Supreme Court, in its decision in ***NBCC (India) Ltd. v. The State of West Bengal and Ors.***,[2] has considered the decision in ***Vaishno Enterprises*** along with others and given a contrary opinion. The Court has held that the MSEFC may entertain a reference under Section 18 of the MSME Act even on an application by an enterprise which is not registered

[2] 2025 INSC 54

under Section 8 of the MSME Act. Therefore, the reliance placed by the petitioner on ***Vaishno Enterprises*** may not be of much help to it. The relevant portions of the decision in ***NBCC (India) Limited*** is extracted below, for reference:

> *"15. Having considered the definition of the expression 'supplier', and also having considered the classification of enterprises into micro, small and medium with respect to each of which there is a separate legal regime to be suggested by the Advisory Committee and notified by the Central and State Governments, and in view of the discretion specifically vested with the micro and small enterprises for filing a memorandum under Section 8 of the Act, the submission that the Facilitation Council cannot entertain a reference under Section 18 if the enterprise is not registered under Section 8 must be rejected.*
>
> *XXXXX*
>
> *29. Conclusion and reference to larger Bench: On the interpretation of the provisions of the Act we have arrived at a clear opinion and have expressed the same. Though it is possible for us to follow the precedents referred to in para 27 to arrive at the conclusion that the judgments in the case of Silpi Industries (supra) and Mahakali Foods (supra) coupled with the subsequent orders in Vaishno Enterprises (supra) and M/s Nitesh Estates (supra) cannot be considered to be binding precedents on the issue that has arisen for our consideration, taking into account the compelling need to ensure clarity and certainty about the applicable precedents on the subject, we deem it appropriate to refer this appeal to a three Judge Bench."*

9. However, if the petitioner was not served with the requisite notice for the conciliation proceedings despite repeated requests, severe prejudice would have been caused to the petitioner. Respondent No. 2's contention that the petitioner had participated in the conciliation proceedings is unfounded. Annexure R-3, which is relied on as proof of the same seems to be a letter signed by a representative of respondent no. 1 and not the petitioner.

10. Therefore, under these circumstances, the Court deems it appropriate to set aside the impugned order and to permit the respondent no.2-MSEFC

to pass a fresh order taking into consideration the objections raised by the petitioner.

11. With the aforesaid observations, the instant petition stands disposed of.

12. All rights and contentions of the parties are left open.

PURUSHAINDRA KUMAR KAURAV, J

JANUARY 13, 2026
Nc/amg