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

\+ LPA 975/2024, CM.APPL. Nos. 57502-04/2024

CORRTECH INTERNATIONAL PVT. LTD .....Appellant

Through: Mr. Rajshekhar Rao, Sr. Advocate with Ms. Anushree Kapadia, Mr. Ajay Sabharwal and Ms. Ekta Kundu, Advocates.

versus

DELHI INTERNATIONAL ARBITRATION CENTER & ORS .....Respondents

Through: Mr. Shreesh Chadha, Mr. Aman Singh Bakshi and Mr. Divjot Singh Bhatia, Advocates for R-3 with Mr. Harvinder Singh Bhakshi, Director of R-3.

% Date of Decision: 30th September, 2024

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, CJ : (ORAL)

1. Present appeal has been preferred under Clause X of the Letters Patent Act, 1866, assailing the judgment dated 25th September, 2024, passed by the learned Single Judge of this Court in W.P.(C) 13469/2024 titled *"Corrtech International Pvt. Ltd. vs. Delhi International Arbitration Center & Ors"*, filed by the appellant, whereby the learned

Single Judge dismissed the writ petition as non-maintainable.

2. It is the case of the appellant that it was awarded a contract by Gas Authority of India Ltd., for services of HDD works at Kochi-Koottanad-Banglore-Manglore (for short 'KKBMPL'), Phase II Section VIIB. The appellant further awarded work to its Sub-contractor M/s Harji Engineering Pvt Ltd. (for short 'HEWPL') for installation of 24 PE coated pipe + 6 Dia Pipe with HDD works from Singasndra Bangalore to Krishnagiri Section for RLNG Gas Pipeline Project (Phase-II). It is stated that HEWPL further placed on the respondent no.3/claimant, a purchase order dated 10th July, 2018 for installation of the aforesaid Project. The appellant asserts that there is no purchase order/contract/agreement between the appellant and the respondent no.3/claimant.

3. The respondent no.3/claimant claims that HEWPL sent a letter dated 30th November, 2018 to the appellant, stipulating as under:-

> *"Subject: Payment arrangement for HDD Service provider. With Reference to above subject and rigorous discussion over the payment issue in presence of Mr. Y A Kumar (GM projects, GAIL) where it was decided for the R A bills of M/S knock pro infra Pvt Ltd to be directly paid by M/S CIPL from the R A bill raised by HEWPL for which a settlement sheet will accompany with all/any credit/debit notes duly signed and agreed upon by both HEWPL and knock pro. It is requested to put this in procedure for further on coming bills, Please do the needful and oblige."*

4. As per the material on record, it appears that a settlement sheet dated 14th December, 2018 delineating a *'Direct Payment Arrangement'* for the HDD services being provided by the respondent no.3/claimant, was executed between HEWPL and respondent no.3/claimant. The said settlement sheet was sent to the appellant *via* email dated 20th January, 2019. The respondent no.3/claimant is stated to have filed a case bearing no. DL/06/M/NWC/00781 dated 19th May, 2022 before the

respondent no.2/ SAMADHAN, Micro and Small Enterprise Facilitation Council (for short 'MSEFC') alleging non-payment of dues by the appellant. The conciliation proceedings between the appellant and the respondent no.3/claimant were unsuccessful. Consequently, the respondent no.2/MSEFC made a reference under section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006 (for short 'MSMED Act') to the respondent no.1/Delhi International Arbitration Center (for short 'DIAC'), to initiate proceedings in accordance with the Arbitration and Conciliation Act, 1996 (for short 'the Act').

5. Pursuant to the aforesaid reference, the respondent no.1/DIAC, through communication dated 13th May, 2024, called upon the parties to file their respective Statement of Claims, in Case Ref. No. DIAC/5674-0/11-22, in line with an earlier communication dated 22nd November, 2022. The parties were cautioned that failure to file the Statement of Claims would result in the closure of the proceedings. Subsequently, the respondent no.1/DIAC, through communications dated 2nd July, 2024 and 2nd August, 2024, directed the parties to deposit the arbitrator's fee and miscellaneous expenses with the respondent no.1/DIAC.

6. In the aforesaid background, Mr. Rajshekhar Rao, learned senior counsel appearing for the appellant states that the first date of notice to the respondent no.3/claimant being 22nd November, 2022, as per section 23(4) of the Act, the parties were to mandatorily complete their pleadings within six (6) months from the date of appointment of the arbitrator. By referring to section 25(a) of the Act, he states that on failure to comply with the provisions contained therein, the arbitral proceedings would terminate. He states that in the present case, admittedly no Statement of Claim was filed by the respondent

no.3/claimant within the stipulated time reckoned from 11th November 2022. Thus, the said arbitration is deemed to have terminated. On that basis, he states that the notice dated 13th May, 2024 issued by the respondent no.1/DIAC is without jurisdiction and violative of the provisions of the Act.

7. Apart from the above, he contends that the total time of eighteen (18) months' including the extension of six (6) months', which can be granted for completion of the arbitral proceedings as per section 29A(1) & 29A(3) of the Act respectively, has also expired. In such circumstances, he contends that the respondent no.1/DIAC could not have extended the limitation on its own since neither the Act nor the DIAC Rules confer any such authority or jurisdiction. He relies upon a judgement of the Supreme Court in ***Rohan Buildtech vs. Berger Paints India Limited***, ***2024 SCC OnLine SC 2494*** in support of the said submission.

8. Learned senior counsel for the appellant also contends that there being no privity of contract with the respondent no.3/claimant, no reference of disputes by arbitration could at all be maintainable. He states that it is not disputed that as on the date of awarding of the sub-contract by the appellant to HEWPL i.e., 10th July, 2018, the respondent no.3/claimant was not registered under the MSMED Act. He states that it is trite that where a party is not registered under the MSMED Act, reference of disputes under section 18(3) of the said Act by the respondent no.2/MSEFC for arbitration between the parties is not permissible. He relies upon a judgement of the Supreme Court in ***Gujarat State Civil Supplies Corporation Ltd vs. Mahakali Foods Pvt. Ltd.***, ***(2023) 6 SCC 401***. He also states, by relying upon the said judgement that the provisions of the MSMED Act would apply

prospectively from the date of registration. Hence, once the respondent no.3/claimant has got registered after the date of award of contract by HEWPL, it is not permissible for the respondent no.2/MSEFC to exercise jurisdiction under section 18(3) of MSMED Act. He states as per the settled principle of law, when the claimant is not registered as an MSME on the date of the contract under which goods / services are supplied, such claimant is not entitled to make any claim under the MSMED Act. In support of his submission, he relies upon the judgements of the Supreme Court in ***Silpi Industries Etc. vs. Kerala State Road Transport Corporation & Anr., 2021 SCC OnLine SC 439*** and ***Vaishno Enterprises vs. Hamilton Medical AG & Anr.***, ***2022 SCC OnLine SC 355***.

9. Learned senior counsel for the appellant relies upon a judgement of the Supreme Court in ***Bhaven Constructions vs. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd. & Anr.***, ***(2022) 1 SCC 75*** to submit that though interference under Article 226/227 of the Constitution of India in arbitral process is not permissible, yet, in exceptionally rare circumstances, the High Court can interfere. Referring to the facts and the legal position narrated above, he states that the present case is one such exception and that the writ petition be declared to be maintainable.

10. That apart, learned senior counsel for the appellant handed over the Bench, a judgement of this Court in ***HFCL Ltd. (Formerly Himachal Futuristic Communications Ltd.) vs. Micro and Small Enterprises Facilitation Council & Ors.***, ***2024 SCC OnLine Del 5462*** passed by the learned Single Judge in another matter, wherein, according to him, a diametrically opposite view was taken by the learned Single Judge. He states that in similar circumstances, the learned Single Judge held the writ petition filed therein to be maintainable. He states that the

learned Single Judge could not have taken contrary view on the same subject matter while deciding the underlying writ petition.

11. *Per contra*, Mr. Shreesh Chadha, learned counsel appears for the respondent no.3/claimant and states that the appellant has argued only disputed questions of fact and is seeking to project as if the whole issue pertains only to the lack of jurisdiction either on the part of the respondent no.2/MSEFC or the respondent no.1/DIAC. He states that there are documents to show that the appellant was to make direct payments to the respondent no.3/claimant which can be proved in arbitration proceedings. He also states that in any case the arguments raised by the appellant can be subject matter of an application under section 16 of the Act. He also states that, even otherwise, to the extent of the services rendered and bills raised subsequent to the registration under the MSMED Act, there cannot possibly be any quarrel that the disputes can be referred to arbitration under section 18(3) of MSMED Act. He states that now that the arbitrator has been appointed, the appellant can avail of all remedies before the arbitrator.

12. This Court has heard the arguments of learned counsel appearing for the parties. The law regarding locus of the respondent no.2/MSEFC to refer disputes of MSMEs registered under the MSMED Act to arbitration and its applicability is no more *res integra* as it has been settled by the Supreme Court in ***Gujarat State Civil Supplies Corporation Ltd.*** *(supra)*. It is also not disputed that the reference to arbitration can only be prospective from the date the party is registered as MSME with the Competent Authority under the MSMED Act. The Supreme Court has also observed that the same would be applicable only to supply of goods and services which are rendered subsequent to such registration alone. The relevant paragraphs of ***Gujarat State Civil***

Supplies Corporation Ltd. *(supra)* are reproduced hereunder:

> *"51. Following the abovestated 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.*
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> *xxx* *xxx*
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> *52.6. A party who was not the "supplier" as per the definition contained in Section 2(n) of the MSMED Act, 2006 on the date of entering into contract cannot seek any benefit as the "supplier" under the MSMED Act, 2006. If any registration is obtained subsequently the same would have an effect prospectively and would apply to the supply of goods and rendering services subsequent to the registration."*

(emphasis supplied)

13. It is clear that in the present case, the possibility of supply of goods or services by the respondent no.3/claimant, after the registration but before the work awarded had concluded, cannot be ruled out. It also appears that there is a dispute as to whether the appellant was informed about direct payment settlement arrived at between the HEWPL and the respondent no.3/claimant and as to whether there were earlier payments made to the respondent no.3/claimant by the appellant directly. Thus, there appears to be a number of disputed questions of facts, apart from other legal issues.

14. The argument of learned senior counsel for the appellant regarding the jurisdiction and authority of the respondent no.1/DIAC to the purported extension of limitation for filing the Statement of Claim; the

validity of reference of disputes by the respondent no.2/MSEFC to the respondent no.1/DIAC; and as to whether the arbitral proceedings have terminated in the interregnum due to supervening circumstances, are issues intrinsically intertwined with the facts arising in the appeal and thus cannot be examined *de hors* such facts. Thus, the learned Single Judge has rightly held that such facts cannot be considered by a Constitutional Court under Article 226 of the Constitution of India. Even otherwise, the Supreme Court in ***Bhaven Construction*** *(supra)* has categorically held that interference in arbitral proceedings in exercise of jurisdiction under Articles 226/227 of the Constitution of India, can be permissible only and only in *'exceptional circumstances'*. We do not find any such exceptional circumstance in the present appeal. The relevant paragraph of ***Bhaven Construction*** *(supra)* is reproduced hereunder:-

> *"18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a constitutional right. In Nivedita Sharma v. COAI [Nivedita Sharma v. COAI, (2011) 14 SCC 337 , this Court referred to several judgments and held : (SCC p. 343, para 11)*
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> > *"11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation — L. Chandra Kumar v. Union of India [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] . However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."*

(emphasis supplied)

It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear "bad faith" shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient*."*

(emphasis supplied)

15. It is also clear that under section 16 of the Act, the Arbitral Tribunal is empowered to consider issues of its own jurisdiction and other legal objections that the appellant possibly may have. The framework envisaged under the Act confers independent power upon the Tribunal to independently assess the merits of the claims and legal issues too. Thus, the grievances of the appellant can suitably be redressed within the provisions of the Act, which is a complete code in itself. To a specific query put by this Court on approaching the Arbitral Tribunal under section 16 of the Act, the learned senior counsel for the appellant submitted that once the application under section 16 is dismissed, no appeal is provided in the statute and the challenge to section 16 application being dismissed must await the passing of a final award to file an appeal under section 34 of the Act. It must be noted that section 16 of the Act mandates that the issue of jurisdiction must be dealt first by the Arbitral Tribunal, before the Court examines the same under section 34 of the Act. Therefore, the appellant is not left remediless as the statute provides him a chance of appeal. Under section 34 of the Act, the aggrieved party has an avenue for adjudicating its grievances against the award including any orders that might have been passed by the Arbitral Tribunal acting under section 16 of the Act. This Court is fortified in its view taken by the Supreme Court in ***Deep Industries Ltd. vs. Oil and***

Natural Gas Corporation Ltd & Anr.*, *(2020) 15 SCC 706. The same is extracted hereunder:-

> *"22. One other feature of this case is of some importance. As stated hereinabove, on 9-5-2018, a Section 16 application had been dismissed by the learned arbitrator in which substantially the same contention which found favour with the High Court was taken up. The drill of Section 16 of the Act is that where a Section 16 application is dismissed, no appeal is provided and the challenge to the Section 16 application being dismissed must await the passing of a final award at which stage it may be raised under Section 34."*

16. This Court also agrees with the liberty granted by the learned Single Judge to the appellant to raise all legal and other objections available to it without the Tribunal being influenced in any way with the observations made in the impugned order or by this Court in this order.

17. With the aforesaid observations, the appeal is disposed of granting the aforesaid liberty to the appellant. The contentions of both the parties are kept reserved.

18. Pending applications, if any, stands disposed of.

CHIEF JUSTICE

TUSHAR RAO GEDELA, J

SEPTEMBER 30, 2024/*rl*