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

+ W.P.(C) 16112/2024, CM APPL. 67705-67706/2024

OMAXE LTD

.....Petitioner

Through: Mr. Ramesh Singh, Senior Advocate
with briefing counsel

versus

MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL
& ANR.Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

21.11.2024

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1. The present writ petition impugns Arbitral Award dated 13th September, 2024 passed by the Micro and Small Enterprises Facilitation Council, MMR Region, Mumbai in Petition No. 347/2018.¹

2. On the question of maintainability, Mr. Ramesh Singh, Senior Counsel for the Petitioner, places reliance on the decision of this Court in CM(M) 3059/2024² dated 8th August, 2024. He contends that the non-obstante clause in Section 5 of the Arbitration and Conciliation Act, 1996,³ does not restrict this Court's supervisory powers under Article 227 of the Constitution of India, 1950. Therefore, he argues, that the present writ petition, challenging the arbitral award, is indeed maintainable. When

¹ titled *M/s. Vadan Interior Pvt. Ltd. v. M/s Omaxe Ltd.*

² titled *DD Auto Private Limited v. Pivotal Infrastructure Private Limited*

³ "the Arbitration Act"



queried by the Court, Mr. Singh clarifies that the statutory period for challenging the award under Section 34 of the Arbitration Act has not yet lapsed. However, he submits that invoking Section 34 of the Arbitration Act would necessitate compliance with Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006,⁴ which mandates a pre-deposit of 75% of the awarded amount. He asserts that this statutory requirement operates as a significant deterrent, effectively depriving the Petitioner from seeking recourse under the Arbitration Act.

3. Having considered the facts and the grounds raised, in the opinion of the Court, the present petition is not maintainable and is liable to be dismissed *in limine*. The maintainability of the writ petition in respect of arbitration proceedings is no longer *res integra*. The Arbitration and Conciliation Act, 1996, is a self-contained statute providing a comprehensive framework for arbitration proceedings, including the mechanism for challenging an arbitral award. Section 5 of the Arbitration Act explicitly states that no judicial authority shall intervene except where so provided in the Act itself. This provision highlights the legislative intent to minimize judicial interference. The Supreme Court in *Deep Industries Limited v. ONGC*⁵ has emphasised that the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India can only be invoked in rare and exceptional circumstances. The rationale is to preserve the sanctity and finality of the arbitration framework envisaged under the Arbitration Act. More specifically, the present case is squarely covered by the Supreme Court's decision in *India Glycols Limited and Another v. Micro and Small*

⁴ "the MSMED Act"

⁵ (2020) 15 SCC 706



*Enterprises Facilitation Council, Medchal – Malkajgri and Others*⁶ wherein it was categorically held that a writ petition challenging an award passed in arbitral proceedings initiated under the MSMED Act is not maintainable. The Supreme Court has highlighted that permitting such petitions, merely to circumvent the statutory requirement of pre-deposit under Section 19 of the MSMED Act, would defeat the legislative intent. The Petitioner's apprehension regarding the mandatory pre-deposit of 75% of the awarded amount under Section 19 of the MSMED Act does not render the statutory remedy under Section 34 of the Arbitration Act, illusory. The requirement of pre-deposit is a legislative mandate intended to discourage frivolous challenges and ensure that micro, small, and medium enterprises receive timely payments. Financial inconvenience or hardship cannot be a ground to bypass the statutory mechanism.

4. The case at hand pertains to a challenge to an arbitral award rendered under the MSMED Act. Section 18 of the MSMED Act clearly provides for a recourse to statutory remedy for challenging the arbitral award under Section 34 of the Arbitration Act. The scope of interference under Article 226 of the Constitution is distinct from that provided under Section 34 of the Arbitration Act. Therefore, all the grounds raised in the present petition can be effectively urged under Section 34 of the Arbitration Act, provided they fall within its permissible parameters. Invoking the writ jurisdiction of this Court to challenge an arbitral award circumvents the specific statutory mechanism provided for such disputes. Moreover, the Supreme Court and various High Courts have consistently held that when a statutory remedy is

⁶ 2023 SCC OnLine SC 1852



available, especially one as efficacious as that under Section 34, writ petition should not ordinarily be entertained.

5. The reliance placed by Mr. Singh, on the decision in CM(M) 3059/2024 is, misplaced. That decision arose in the context of a procedural order passed by an arbitrator. In contrast, the present challenge to a final arbitral award rendered under the MSMED Act.

6. In light of the above, it is clear that there is no ground for this petition to be entertained and accordingly, is dismissed along with pending applications.

SANJEEV NARULA, J

NOVEMBER 21, 2024/ab