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

+ **W.P.(C) 13469/2024 & CM APPL. 56375/2024**

CORRTECH INTERNATIONAL PVT. LTDPetitioner

Through: Ms. Anushree Kapadia, Ms. Ekta
Kundu and Ms. Sanya Narula,
Advocates.

versus

DELHI INTERNATIONAL ARBITRATION CENTER AND ORS.

.....Respondents

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

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

25.09.2024

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1. The present petition assails the arbitration proceedings ongoing between the Petitioner, Corrttech International Pvt. Ltd and Respondent No. 3, Knock Proinfratech Pvt. Ltd., which have been initiated pursuant to a reference made by the Micro and Small Enterprise Facilitation Council,¹ under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006² at the instance of Respondent No.3.

2. The facts leading to the initiation of the present proceedings are as follows:

2.1 The Petitioner was awarded a contract under a tender issued by GAIL for services of HDD works at Kochi-Koottanad-Banglore-Manglore, Phase

¹ ['MSEFC']

² ['MSMED Act']



II Section VIIB. To fulfil this contract, the Petitioner subcontracted the work to Harji Engineering Pvt Ltd.,³ for installation of ‘24 PE coated pipe + 6 Dia Pipe with HDD works’. Thereafter, HEWPL issued a purchase order dated 10th July, 2018, in favour of Respondent No. 3 for the said installation work.

2.2 Subsequently, HWEPL sent a letter dated 30th November, 2018 to the Petitioner, 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.”*

Accordingly, a settlement sheet dated 14th December, 2018 delineating a ‘Direct Payment Arrangement’ for the HDD services being provided by Respondent No. 3, was executed between HWEPL and Respondent No. 3. The said settlement sheet was sent to the Petitioner via email dated 20th January, 2019.

2.3 Respondent No. 3 filed a case bearing no. DL/06/M/NWC/00781 dated 19th May, 2022 before Respondent No. 2/ MSEFC alleging non-payment of dues by the Petitioner. The conciliation proceedings between the Petitioner and Respondent No.1 were unsuccessful. Consequently, MSEFC made a reference under Section 18(3) of the MSMED Act to Respondent No. 3/ Delhi International Arbitration Centre,⁴ to initiate proceedings in accordance with the Arbitration and Conciliation Act, 1996.

2.4 Pursuant to the said reference, DIAC, through communication dated 13th May, 2024, called upon the parties to file their respective statement of

³ [‘HEWPL’]

⁴ [‘DIAC’]



claims,⁵ 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 SoC would result in the closure of the proceedings.

2.5 Subsequently, 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 DIAC.

3. In the above background, the Petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India, 1950, seeking quashing of notice dated 13th May, 2024 and subsequent communications dated 2nd July, 2024 and 2nd August, 2024 issued by DIAC. They also seek a declaration that the proceedings pending before the DIAC have terminated/lapsed under Section 18(5) of the MSMED Act read with Section 29A of the Arbitration and Conciliation Act, 1996. Their prayers before the Court read as follows:

"A. Issue writ of certiorari, any other writ, order or direction in nature thereof setting aside the notices dated 13.05.2024, 02.07.2024 and 02.08.2024 issued by Respondent no. 1 at Annexures P-1, 2 & 3 and declare the proceeding in DIAC/DHC/AR-24 pending before Respondent no. 1 arising from Case Ref. No. DIAC/5674-D/11-22 titled as "Knock Proinfratech Pvt. Ltd. Vs. M/s. Corrttech International Pvt. Ltd." before Respondent no.2, as having terminated / lapsed under section 18 (5) of the MSMED Act and under section 29A of the Arbitration and Conciliation Act 1996;

C. Pending the admission, hearing and final disposal of the present petition, stay further proceedings in case bearing no. DIAC/DHC/AR-24 pending before Respondent no. 1 arising from Case Ref. No. DIAC/5674-D/11-22 titled as "Knock Proinfratech Pvt. Ltd. Vs. M/s. Corrttech International Pvt. Ltd." before Respondent no. 2;

D. Grant ex-parte ad-interim stay in terms of prayer C above;"

4. In light of the foregoing, Ms. Anushree Kapadia, Counsel for the Petitioner, makes the following submissions before the Court:

4.1 Respondent No. 3's claim for recovery of outstanding dues is

⁵ ['SoC']



fraudulent and baseless as there are no outstanding dues to be paid to them. The payment due to Respondent No. 3, as reflected in the settlement sheet dated 14th December, 2018 has already been settled by HEWPL. Therefore, Respondent No. 3's action of initiating proceedings before the MSEFC for recovery of dues is *mala fide* with the intent to extort money out of the Petitioner.

4.2 Respondent No. 3's claim before MSEFC was not maintainable on account of lack of relationship of 'buyer and supplier' between the Petitioner and Respondent No. 3. Although HEWPL, the sub-contractor employed by the Petitioner, had issued a purchase order in favour of Respondent No. 3, there is no privity of contract between the Petitioner and Respondent No. 3. Therefore, in absence of a direct agreement for supply of goods and services between the parties, Respondent No. 3's claim for recovery of dues was not maintainable before the MSEFC under Sections 17 & 18 of the MSMED Act. The claim of Respondent No. 3, if any, lies against HEWPL, and the proceedings are wrongly targeted towards the Petitioner.

4.3 Respondent No. 3 got registered as a Micro and Small Industry only on 30th August, 2018, after the issuance of purchase order by HEWPL dated 10th July, 2018. Consequently, disputes arising from any contracts executed before Respondent No. 3's registration as a Micro and Small Enterprise fall outside the purview of the MSEFC's jurisdiction and ought not to have been entertained.

4.4 DIAC has acted in contravention of Section 18(5) of the MSMED Act and Section 29A of the Arbitration and Conciliation Act. Despite issuing a notice to Respondent No. 3 on 22nd November, 2022 to file its statement of claims, Respondent No. 3 failed to comply within the prescribed timeline. Nearly 1.5 years later, DIAC unilaterally issued a notice dated 13th May,



2024, to resume arbitration proceedings. This action disregards the strict timelines set forth in Section 18(5) of the MSMED Act and Section 29A of the Arbitration and Conciliation Act, thus rendering the proceedings improper.

5. The Court has carefully considered the contentions advanced by the Petitioner. Ms. Kapadia has argued that HEWPL, the subcontractor employed by the Petitioner, is the contracting party with Respondent No. 3 and that the Petitioner itself is not privy to the contract. Section 17 of the MSMED Act mandates a direct buyer-supplier relationship for a claim of recovery to be maintainable. Thus, While Ms. Kapadia's contention is crucial to the Petitioner's case, the Court notes that Respondent No. 3, in support of its claims, has relied upon the letter issued by HEWPL to the Petitioner dated 30th November, 2018, and the settlement sheet dated 14th December, 2018. These documents indicate a 'Direct Payment Arrangement' involving the Petitioner, suggesting that the responsibility for the payment of outstanding dues may rest with the Petitioner. In the Court's opinion, the determination of whether Respondent No. 3's claim is maintainable against the Petitioner is a complex and disputed question of fact. This issue is not merely a matter of interpreting the terms of the contract, but involves examining the conduct of parties, their communications, and the implications of the arrangement evidenced by the settlement sheet. Therefore, this inquiry falls squarely within the jurisdiction of the Arbitral Tribunal in the ongoing arbitration proceedings. In light of the above, it would not be appropriate for this Court, in writ jurisdiction, to make a definitive assessment on the merits of the Petitioner's claim regarding the absence of a contractual relationship. The Petitioner must present its evidence and arguments in the arbitration proceedings before the



Arbitral Tribunal, where such factual disputes can be fully assessed and adjudicated.

6. Furthermore, the Petitioner has contended that in light of the judgement of the Supreme Court in *Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd.*,⁶ the effect of registration of Respondent No. 3 as a Micro and Small enterprise would only apply prospectively, and thus, would not be applicable to the alleged contract between Respondent No. 3 and HEWPL. However, it is imperative to note that the Supreme Court, in the aforesaid judgement, had observed that if registration under the MSMED Act is obtained subsequent to the contract, the same would have a prospective effect and would be applicable to the supply of goods and services subsequent to the registration. In the present case, Respondent No. 3 obtained registration under the MSMED Act after the issuance of the purchase order by HEWPL. However, the critical question that arises is whether Respondent No. 3 continued to provide services related to the contract after its registration. Herein, it is not an ‘undisputed position’ that the supply of services was concluded prior to registration of the supplier. Thus, in case Respondent No. 3’s services to the Petitioner extended beyond the date of its registration, then the MSMED Act can potentially apply to those services, invoking the rights and protections afforded to Micro and Small Enterprises. The Petitioner’s contention that Respondent No. 3’s post-registration status precludes it from seeking the claimed amount under the MSMED Act is, therefore, contingent upon whether the services provided by Respondent No. 3 extended into the period following its registration. This question therefore cannot be addressed solely by examining the dates of registration and the contract. The appropriate

⁶ (2023) 6 SCC 401.



forum to address this factual dispute is the ongoing arbitration proceedings before the DIAC, where evidence can be examined, and a determination can be made regarding the timeline and nature of services provided by Respondent No. 3. Consequently, this Court, in writ jurisdiction, cannot undertake adjudication of such a fact-intensive issue. The Petitioner is at liberty to present this argument before the DIAC, where it can be duly considered in the context of all relevant evidence and contractual obligations.

7. The Petitioner further contends that Respondent No. 1 has acted in violation of the timelines specified under Section 18(5) of the MSMED Act and Section 29A of the Arbitration and Conciliation Act, 1996. Section 18(5) of the MSMED Act stipulates that every reference made to MSEFC shall be decided within a period of ninety days from the date of making such a reference. It is imperative to note that the aforesaid limitation period of ninety days is with respect to the reference made by the MSEFC to the Arbitration Tribunal, and does not encompass the timeline for conclusion of arbitration proceedings before the Tribunal. Therefore, the Petitioner's contention that DIAC has contravened the said timeline is untenable.

8. Further, the question as to whether the delay can be excused or if it justifies terminating the proceedings inherently depends on the facts specific to the case. Section 29A(5) of the Arbitration and Conciliation Act permits the parties to seek an extension from the court if the arbitration is not completed within the stipulated period. Additionally, the court, when considering such a request under Section 29A(4), may evaluate whether the delay was attributable to the arbitral tribunal. The Supreme Court, in ***Rohan Builders (India) (P) Ltd. v. Berger Paints India Ltd.***,⁷ recently clarified that

⁷ 2024 SCC OnLine SC 2494.



Section 29A(4) empowers the court to extend the period for making of the arbitral award even after the expiry of a period of twelve months or eighteen months, as the case may be. The evaluation as to whether extension can be granted involves examining the conduct of the parties, any agreements to extend timelines, and the reasons behind the delay. In light of the above, the determination of the questions as to whether the timeline under Section 29A of the Arbitration and Conciliation Act have been breached, and whether such a breach invalidates the proceedings, have to be addressed within the arbitration framework.

9. For the foregoing reason, the Court is not inclined to entertain the present petition. The Court's opinion expressed herein is limited to the adjudication of the present petition and shall not prejudice or bind the Arbitral Tribunal. The Arbitral Tribunal is at liberty to independently assess the merits of the claims and contentions raised by the parties during the arbitration proceedings. Furthermore, the Petitioner is at liberty to pursue any other remedies available under the Arbitration and Conciliation Act, 1996, to seek appropriate redressal for their grievances in accordance with the law.

10. With the above directions, the present petition, along with application(s), if any, is disposed of.

SANJEEV NARULA, J

SEPTEMBER 25, 2024

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