



\$~

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 27<sup>th</sup> February, 2024**Date of decision: 10<sup>th</sup> April, 2024*

+

**ARB.P. 13/2024**

M/S ADVANCE STIMUL

..... Petitioner

Through: Mr. Abhay Raj Varma, Mr. Arjun  
Rekhi & Mr. Anshay Dhatwalia,  
Advs., Advs. (M. 9899404819)

versus

GAIL (INDIA) LIMITED

..... Respondent

Through: Mr. Gopal Jain, Sr. Adv. with Mr.  
Kapil Sankhla, Mr. Akhilesh  
Aggarwal, Ms. Fagun Sharma, Mr.  
Hanish Phogat, Ms. Suvarna Kashyap  
& Mr. Gopesh Jindal, Advs. (M:  
8447322322)**CORAM:****JUSTICE PRATHIBA M. SINGH****JUDGMENT****Prathiba M. Singh, J.**

1. This hearing has been done through hybrid mode.

**Background**

2. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, '*the Arbitration Act*') by the Petitioner -M/s. Advance Stimul, a consortium of M/s. PKP Stimul as the leader and M/s. Advance Steel Tubes Ltd. as its member. The Petitioner and Respondent - GAIL (India) Limited, had entered into an agreement dated 14<sup>th</sup> October, 2011 for pipeline laying and associated works for Lingala - Kaikaluru isolated field grid with KG-Basin Pipeline network from Hanuman



Junction to VCL Project (hereinafter, '*subject work*'). The Petitioner emerged as the lowest bidder and the contract was executed on 17<sup>th</sup> November, 2011. The Letter of Acceptance dated 9<sup>th</sup> February, 2012 in favour of the Petitioner was issued by the Respondent, for the subject work estimated at contract value of Rs. 13,84,14,983/-. The agreed date of completion for the subject work was 13<sup>th</sup> April, 2012. However, further extensions were sought and subsequently provided, due to delays. Eventually, the subject work is stated to have been concluded sometime in March 2016.

3. During the execution of the subject work, as per the Petitioner various amounts became due and payable, as set out below:

- Rs. 1,71,13,848/- on account of extra work,
- Rs. 4,80,00,000/- as Extended Stay Compensation,
- Rs. 5,00,00,000/- for extra costs incurred due to the Respondent's failure to obtain necessary permissions timely, and
- Rs. 20,68,250/- as financial costs resulting from extensions of the Bank Guarantee.

4. The case of the Petitioner is that it sent a letter in which it raised a grievance that the Respondent was illegally withholding the Bank guarantee, given as a performance guarantee in favour of Respondent under the contract. However, the Respondent-GAIL refused to release the bank guarantee, which led the Petitioner to invoke the jurisdiction of the Micro and Small Enterprises Facilitation Council (*hereinafter 'MSEFC'*) under the Micro, Small and Medium Enterprises Development Act, 2006 (*hereinafter, 'the MSME Act'*).

5. The Petitioner vide communication dated 20<sup>th</sup> November, 2018, had served upon GAIL a claim petition and the same was filed before the MSEFC vide letter dated 21<sup>st</sup> November, 2018. In the said letter, the stand taken by the



Petitioner was that due to registration under the MSME Act, it is entitled to invoke the dispute resolution mechanism under the MSME Act.

6. As per Section 18 of the MSME Act, every reference made to MSEFC is to be completed within 90 days of commencement of such proceedings. However, when the conciliation proceedings seemed unfruitful, repeated letters had to be written by the Petitioner for the reference to DIAC on 6<sup>th</sup> March, 2019, 8<sup>th</sup> June, 2020, 26<sup>th</sup> December, 2020, 5<sup>th</sup> February, 2021 and 29<sup>th</sup> November, 2021. In each of these letters, the Petitioner sought reference to arbitration. On 4<sup>th</sup> March, 2022 again, the Petitioner stated that despite four meetings, there has been no conciliation and sought reference to arbitration once more.

7. The MSEFC maintained a stoic silence during this entire period, in clear contravention of the timelines provided under the Arbitration Act. The MSEFC, then held conciliation proceedings between the parties on 10<sup>th</sup> January, 2020, 9<sup>th</sup> April, 2021 and 4<sup>th</sup> March, 2022, however, no conciliation could be arrived at. When conciliation proceedings failed, the Petitioner prayed that the matter be referred to the Delhi International Arbitration Centre (hereinafter, 'DIAC'). Finally, on 17<sup>th</sup> November, 2022, the MSEFC referred the matter to arbitration through DIAC.

8. The DIAC issued its notice on 23<sup>rd</sup> March, 2023 and 25<sup>th</sup> August, 2023 calling upon the Petitioner to file its statement of claims.

9. On 15<sup>th</sup> September, 2023, the Petitioner sought further time to file the statement of claims, in view of the judgement of Supreme Court in *Gujarat State Civil Supplies Corporation Ltd vs Mahakali Foods Pvt. Ltd. (Unit 2) & Anr. ((2023) 6 SCC 401)*.

10. In order to avoid the potential jurisdictional issues which the Petitioner



perceived, as arising from the said decision of the Supreme Court, the Petitioner approached this Court seeking clarification on its entitlements under the MSME Act. The present petition has thereafter been filed seeking appointment of a Sole Arbitrator to resolve the disputes or ratify arbitration proceedings initiated under the DIAC.

**Submissions:**

11. Mr. Gopal Jain, Id. Sr. Counsel along with Mr. Kapil Sankhla, Id. Counsel, for the Respondent submitted as under:

- (i) that the claims would be also barred by limitation, as the law in this regard i.e. for invocation of arbitration, is clear as laid down in *Rahul Jain and Others v. Atul Jain and Others*, (2022 SCC Online Del 3860), *Anil Goel v. Satish Goel*, (2022 SCC OnLine Del 3774), *Amit Guglani & Ors. v. L and T Housing Finance Ltd. & Ors.*, (MANUIDE/5680/2023) as also *Alupro Building Systems Pvt. Ltd. v. Ozone Overseas Pvt. Ltd.*, (2017) SCC OnLine Del 7228 wherein it is held that without the notice invoking arbitration under Section 21 of the Arbitration Act, the petition under Section 11(6) of the Arbitration Act would not be maintainable. The same being a mandatory condition, the petition is liable to be dismissed;
- (ii) that the contract was executed on 17<sup>th</sup> November, 2011 and the registration of the Petitioner as a MSME was on 14<sup>th</sup> May, 2015, thus, even the invocation of the jurisdiction of the MSEFC was completely untenable;
- (iii) that the prayer for conciliation made before the MSEFC and a letter written to the MSEFC cannot be construed as a letter under



Section 21 of the Arbitration Act.

12. Mr. Abhay Raj Varma, Id. Counsel for the Petitioner submitted as under:

- (i) that the first letter dated 17<sup>th</sup> October, 2018, itself clearly states that the same would be a formal request for arbitration under the MSME Act. Thereafter, when no resolution was seen to happen, a letter was written on behalf of the Petitioner on 21<sup>st</sup> November, 2018 to the chairman MSEFC along with the copies of a brief statement of the claim and also the claims. The claims along with the brief statement was served in advance on 20<sup>th</sup> November, 2018 itself upon GAIL;
- (ii) that both the letters dated 21<sup>st</sup> November, 2018 and 20<sup>th</sup> November, 2018 conjointly constitute invocation of arbitration under Section 21 of the Arbitration Act;
- (iii) that the registration of the company as MSME being of 2015 and the exit of the Petitioner from the site being in March, 2016, the MSME Act would have been applicable. However, only to avoid any legal objections in view of the later decisions of the Supreme Court in *M/s Shilpi Industries vs. Kerala State Road Transport Corporation, (2021 SCC Online SC 439)* and *Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd. (unit 2) & Anr. (2022 SCC Online SC 1492)* that the Petitioner decided to give a go by to the benefits under the MSME Act and decided to invoke jurisdiction of this Court under Section 11(6) of the Arbitration Act for the present contract;
- (iv) that the initial invocation took place at the time when the letter



dated 17th October, 2018 was issued. It again took place on 20th November, 2018 and 21st November, 2018 when the letters were written to GAIL and thereafter to the MSEFC. Reliance is placed upon the following judgments in *Brilltech Engineers Pvt. Ltd. v. Shapoorji Pallonji and Company Pvt. Ltd (2022 SCC OnLine Del 4422)*, *Badri Singh Vinimay Pvt. Ltd. v. MMTC Ltd. (2020 SCC OnLine Del 106)*, and *Smt. Bharati Ojha v. Simplex Infrastructures Ltd. (2023 SCC OnLine Cal 2797)*.

### Analysis

13. The facts of this case shows that the Petitioner was registered as a 'Micro Enterprise' under the Micro, Small and Medium Enterprises Development Act, 2006 (*hereinafter, 'MSME Act'*) vide registration dated 14<sup>th</sup> May, 2015. The certificate issued by the Commissioner of Industries, Delhi has been placed on record. It is noted that the tender was awarded to the Petitioner in the year 2011, prior to the registration of the Petitioner under the MSME Act. However, when the disputes arose between the parties, the Petitioner decided to approach the MSEFC for resolution of disputes.

14. Proof of supply of advance copy of the claim petition to the Respondent was attached with the reference petition, filed before the MSEFC on 21<sup>st</sup> November 2018. Various particulars were set out in the said communication to the MSEFC. The total claim raised by the Petitioner against GAIL was a sum of Rs.11,71,82,098/-.

15. The contract dated 17<sup>th</sup> November, 2011 executed between the parties contained an arbitration clause which reads as under:



## **“47.0 ARBITRATION**

*47.1 Clause No.107.0 of GCC pertaining to Arbitration shall be replaced by the following:-*

*47.1.1 All disputes, controversies, or claims between the parties (except in matters where the decision of the Engineer- in-Charge is deemed to be final and binding) which cannot be mutually resolved within a reasonable time shall be referred to Arbitration by sole arbitrator.*

*47.1.2 The Employer/Consultant (GAIL) shall suggest a panel of three independent and distinguished persons to the other party (Bidder / Contractor / Supplier/Buyer as the case may be) to select any one among them to act as the sole Arbitrator.*

*47.1.3 In the event of failure of the other party to select the sole Arbitrator within 30 days from the receipt of the communication suggesting the panel of arbitrators, the right of selection of sole Arbitrator by the other party shall stand forfeited and the Employer/Consultant shall have discretion to proceed with the appointment of the sole Arbitrator. The decision of the Employer/Consultant on the appointment of Sole Arbitrator shall be final and binding on the parties.*

*47.1.4 The award of the Sole Arbitrator shall be final and binding on the parties and unless directed/awarded otherwise by the Sole Arbitrator, the cost of arbitration proceedings shall be shared equally by the Parties. The arbitration proceeding shall be in English language and the venue shall be at New Delhi, India.*

*47.1.5 Subject to the above, the provisions of (Indian) Arbitration & Conciliation Act, 1996 and the rules framed there under shall be applicable.*

*47.1.6 All matters relating to this contract are subject to the exclusive jurisdiction of the Courts situated in the State of Delhi (India).*

*47.1.7 Bidders/ Supplier/ Contractors may please note that the Arbitration & Conciliation Act, 1996 was enacted by the Indian Parliament and is based on United Nations Commission on International Trade*



*Law (UNCITRAL. Model law), which were prepared after extensive consultation with Arbitral Institutions and centres of International Commercial Arbitration. The United Nations General Assembly vide resolution 31/98 adopted the UNCITRAL Arbitration rules on 15 December 1976.”*

16. Before the MSEFC conciliation proceedings failed and the matter was referred to the DIAC. However, the stand of the Petitioner now is that in view of the decision in ***Gujarat State Civil Supplies Corporation Ltd. (supra)***, the Petitioner may not be entitled to benefits under the MSME Act as its registration under the MSME Act was subsequent to the date of the contract and supplies thereunder. The Petitioner also relies upon the decision in ***M/S Silpi Industries (supra)***.

17. The decision in ***M/S Silpi Industries (supra)*** and ***Gujarat State Civil Supplies Corporation Ltd. (supra)*** were rendered on 29<sup>th</sup> June, 2021 and 31<sup>st</sup> October, 2022 respectively. In ***M/S Silpi Industries (supra)***, the Supreme Court holds as under:

*“26. Though the appellant claims the benefit of provisions under MSME 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 MSME 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 Engineering Projects and Marketing***, 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 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 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.** While interpreting the provisions of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, this Court, in the judgment in the case of Shanti Conductors Pvt. Ltd. & Anr. etc. v. Assam State Electricity Board & Ors. etc. 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 appellant as the unit under 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 MSMED Act, 2006, as an enterprise, to claim the benefit retrospectively from the date on which appellant entered into contract with the respondent. 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.”*

18. In *Gujarat State Civil Supplies Corporation Ltd. (supra)*, the Supreme Court holds as under:

*“33. 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.*

*34. The upshot of the above is that:*

*(i) Chapter-V of the MSMED Act, 2006 would override the provisions of the Arbitration Act, 1996.*

*(ii) No party to a dispute with regard to any amount due under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Micro and Small Enterprises Facilitation Council, though an independent arbitration agreement exists between the parties.*

*(iii) The Facilitation Council, which had initiated the Conciliation proceedings under Section 18(2) of the MSMED Act, 2006 would be entitled to act as an arbitrator despite the bar contained in Section 80 of the Arbitration Act.*



(iv) *The proceedings before the Facilitation Council/institute/centre acting as an arbitrator/arbitration tribunal under Section 18(3) of MSMED Act, 2006 would be governed by the Arbitration Act, 1996.*

(v) *The Facilitation Council/institute/centre acting as an arbitral tribunal by virtue of Section 18(3) of the MSMED Act, 2006 would be competent to rule on its own jurisdiction as also the other issues in view of Section 16 of the Arbitration Act, 1996.*

(vi) *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."*

19. Clearly, these two decisions came much after the Petitioner had approached the MSEFC in November 2018. The legal position as to whether the MSME Act would apply to such cases or not, was not clear in 2018. The Petitioner cannot therefore be faulted for having invoked the jurisdiction under the MSME Act.

20. The MSME Act provides for a separate mechanism for reference of disputes i.e., firstly through conciliation and thereafter through arbitration with a 90 days period being provided under Section 18(5) of the MSME Act. Section 18 of the MSME Act reads as under:

*"18. Reference to Micro and small Enterprises Facilitation Council.*

*(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises*



*Facilitation Council.*

**(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation** and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

**(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration** and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section(1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

**(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.**

21. A perusal of Section 18(1) of the MSME Act would show that the same is 'Notwithstanding anything contained in any other law for the time being in force' i.e., the provision begins with a *non-obstante* clause. Thus, the provisions of the MSME Act usually prevail over the provisions of the



Arbitration Act. In the case of MSMEs, the reference has to go through the steps as set out in Section 18 of the MSME Act and not as per the Arbitration Act.

22. The Petitioner having invoked the dispute resolution mechanism through MSEFC in 2018 under the MSME Act cannot therefore be blamed for having done so.

23. The change in the legal position happened in 2021-2022 when the *Gujarat State Civil Supplies Corporation Ltd. (supra)* and *M/S Silpi Industries (supra)* judgment was rendered, wherein it was categorically held that if the entity or person was not registered under the MSME Act, on the date when the contract was executed and when the supplies etc. were made, such an entity or person cannot claim to be covered under Section 18 of the MSME Act.

24. It is upon this clarification or settling of the legal position by the Supreme Court that the Petitioner has filed the present petition seeking appointment of an Arbitrator.

25. The two objections of the Respondent i.e., are that there is no invocation under Section 21 under Arbitration Act and that the claims are barred by limitation.

26. Insofar as the judgments filed by Mr. Gopal Jain, Id. Sr. Counsel are concerned, there can be no doubt that under the Arbitration Act, invocation of arbitration under Section 21 is compulsory.

27. However, insofar as invocation under Section 21 of the Arbitration Act is concerned, due to the peculiar facts wherein initially the Petitioner had invoked the jurisdiction of the MSEFC in 2018 and had also sought arbitration under the Arbitration Act, the Petitioner's letter dated 21<sup>st</sup> November, 2018



has to be construed as a notice under Section 21 of the Arbitration Act. With the said notice, the Petitioner had also served upon the Respondent the statement of claims as well vide advance service letter dated 20<sup>th</sup> November, 2018 along with the statement of claims. Thus, the allegation that there is absence of notice for invocation of arbitration is not tenable.

28. From the narration above, clearly the Petitioner was under the impression that it is covered by the MSME Act and had invoked the jurisdiction of MSEFC. The subsequent change in the legal position would therefore ensure to the benefit of the Petitioner to avail remedies under the Arbitration Act.

29. Insofar as limitation is concerned, the work was stated to have been completed by the Petitioner only in 2016. The letter dated 21<sup>st</sup> November, 2018 has given the details of the claims mentions the principal amounts due as Rs. 11,71,82,098/-. The matter was pending before the MSEFC from 21<sup>st</sup> November, 2018 till 17<sup>th</sup> November, 2022. Thus, the Petitioner would be entitled to benefit under Section 14 of the Limitation Act, 1963 and the claims would not be barred. Section 14 of the Limitation Act is extracted herein below:

*“14. Exclusion of time of proceeding bona fide in court without jurisdiction.—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. (2) In computing the period of limitation for any application, the time during*



*which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. (3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.*

*Explanation.—For the purposes of this section,—*

- (a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;*
- (b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;*
- (c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with*
- (d) defect of jurisdiction.”*

30. In view of Section 14, the claims are not barred by limitation as the Petitioner had initiated the dispute resolution proceedings in its capacity as an MSME by approaching the MSEFC within the limitation. However, subsequent change in the position of law has led to the Petitioner approaching this Court for reference to arbitration. This subsequent change of position of law should not be allowed to become an impediment for the Petitioner to avail of its remedies under the Arbitration Act.

31. In fact, the Petitioner had written repeated letters seeking reference to the DIAC and at the stage when the DIAC called upon the Petitioner to file



the claim, the Petitioner may have realized that there was a change in the legal position and it may no longer covered under the MSME Act owing to the decisions in *M/S Silpi Industries (supra)* and *Gujarat State Civil Supplies Corporation Ltd. (supra)*.

32. In the present case, the initial letter of 21<sup>st</sup> November, 2018 has to be construed as the invocation letter under Section 21 of the Arbitration Act. The decision cited by the Respondent in *Smt. Bharti Ojha (supra)* related to a case where the MSME proceedings were dropped in 2022 under similar facts where the Calcutta High Court gave benefit of period of pendency before the MSME Council. The relevant paragraph of the said judgment reads as under:

*“20. The facts persuade the Court to hold that the petitioner’s reference before the Council in 2020 and the disposal of it in September, 2022, would entitle the petitioner to take advantage of section 14 of the Limitation Act where the petitioner has been able to tick all the boxes, mainly of the subject matter and the parties to the dispute being the same and the petitioner prosecuting the proceeding before the Council in good faith. Therefore, the second objection of the respondent is also rejected.*

*21. The respondent's argument of whether the petitioner was registered as an MSME on the date of entering into the contract with the respondent is completely irrelevant to the issue before the Court. The petitioner is not seeking any relief from this court on the basis of the petitioner being an MSME. Hence the decisions relied upon by the respondent are not relevant. Ram Bhawan Singh v. Jagdish, (1990) 4 SCC 309 on section 14 of the Limitation Act was decided on the appellants before the Supreme Court being unable to show any affidavit for condonation of delay or any other material to prove that the appellants had exercised due diligence in availing of their remedies. The Supreme Court hence found lack of*





*good faith on the part of the appellants. In **Silpi Industries v. Kerala State Road Transport Corporation**, 2021 SCC OnLine SC 439, the Supreme Court found that section 43 of the Act makes the provisions of the Limitation Act applicable to arbitrations. This case may not assist the petitioner at this stage since arbitration is still to commence between the parties.”*

33. A similar view has already been taken by this Court in **Quickdel v. Delhi Arbitration Centre**, (2023 SCC OnLine Del 2743) where the period during which the matter was pending before the MSEFC has been directed to be not counted for calculating limitation. The relevant paragraph of the said judgment is set out below:

*“12. The period during which the writ petition has been pending from the date of the Respondent’s letter to the MSEFC seeking reference, till today, shall not be counted for the purposes of calculating limitation if the Respondent no.3 chooses to avail of its remedies.”*

34. Further, in the present case the reference from the MSEFC to DIAC was sent on 17<sup>th</sup> November, 2022 and the same was forwarded to both the Petitioner as also the Respondent, making it clear that the dispute between the parties could not be settled through conciliation proceedings, and thus the matter was referred to arbitration. Relevant portions of the letter dated 17<sup>th</sup> November, 2022 are reproduced hereinbelow for reference:

*“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 on 10-01-2020, 09-04-2021 and 04-03-2022. 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/s 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006 to the Delhi International Arbitration Centre (DIAC) for initiating arbitration proceedings as per the Arbitration and Conciliation Act, 1996.*

*Therefore, the reference filed by M/S Advance Stimul, against M/S GAIL (India) Limited along with relevant document is forwarded herewith for arbitration”*

35. Thus, the objection of the Respondent both under Section 21 of the Arbitration Act and on the ground of the claims being barred by limitation are not tenable and are liable to be rejected.

36. Accordingly, in terms of the arbitration agreement, **Justice R. K. Gauba (Retd.) (M: +91 9650411919)** is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. The fee of Id. Arbitrator shall be as per the Fourth Schedule under the Arbitration Act, as amended by DIAC rules, 2023.

37. Considering the long pendency of this dispute since 2018 before the MSEFC and thereafter before the DIAC and now before this Court, the Id. Arbitrator is requested to adjudicate the dispute expeditiously.

38. Let the copy of the present order be emailed to Secretary, DIAC on email id- [delhiarbitrationcentre@gmail.com](mailto:delhiarbitrationcentre@gmail.com).

39. Petition is disposed of in these terms. All pending applications, if any, are also disposed of.

**PRATHIBA M. SINGH  
JUDGE**

**APRIL 10, 2024**  
*Rahul/dj/bh*