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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 9th May, 2023**Date of decision: 5th July, 2023*

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W.P.(C) 13758/2021 and CM APPL. 43444/2021

STERLITE POWER TRANSMISSION LIMITED Petitioner

Through: Mr. Deepak Khurana and Mr. Abhishek
Bansal, Advocates (9811231287)

versus

M/S EPC SOLUTIONS LLP & ANR Respondents

Through: Mr. Rohit Pandey, Mr. Varad Dwivedi
and Mr. Vaibhav Maheshwari, Advs., for
R-1 (8447258935) Mr. Prakash Kumar
Sinha, Advocate (8920451962)**CORAM:****JUSTICE PRATHIBA M. SINGH****JUDGMENT****Prathiba M. Singh, J.**

1. This hearing has been done through hybrid mode.
2. This petition raises an important issue arising out of the Micro Small and Medium Enterprises Development Act, 2006 (*hereinafter 'MSMED Act, 2006'*).
3. The question that is to be determined is –

Whether the Micro & Small Enterprises Facilitation Council (MSEFC) can entertain references to arbitration from Medium Enterprises, in addition to those made by Micro or Small Enterprises under the MSMED Act, 2006?

Brief Facts

4. The Petitioner – Sterlite Power Transmission Limited seeks quashing/ setting aside of the impugned reference order dated 27th October, 2021 passed by Respondent No.2 – Sub-Divisional Magistrate (East), Government of NCT of Delhi, acting as Micro and Small Enterprises Facilitation Council under the



MSMED Act, 2006 (*hereinafter*, 'MSEFC'). By the impugned reference order the reference filed by the Respondent No. 1 - M/s EPC Solutions LLP under Section 18 of MSMED Act, 2006 has been forwarded to the Delhi International Arbitration Centre (DIAC).

5. An agreement dated 15th September, 2017 was entered into by the Petitioner with Respondent No. 1 for providing vacuum pumps and engineers for PMC of 400kv Transmission Line on a rental basis on the project site in the State of Jammu & Kashmir. The effective date of the agreement was 5th September, 2017. As per the work order, the deployment of the engineer for PMC of GIS substation was for 90 days, deployment of the engineer for PMC of 400kV line was for 60 days and the supply for the vacuum pumps was for a period of 90 days from the effective date. Thus, as per the Petitioner the said agreement came to an end in November, 2017. It is stated by the Petitioner that the original value of the vacuum pumps is Rs. 9,41,084/-.

6. The case of the Petitioner is that Respondent No.1 failed to lift the vacuum pumps from the project site due to which disputes arose between the parties in respect of return of the said vacuum pumps. In view of the same, Respondent No.1 filed reference application before the MSEFC raising a claim of Rs. 20,27,31,392/-. Respondent No.1 also filed its Udhyam Registration certificate along with the reference application. The same has been placed on record and shows the Respondent No.1's registration under the MSMED Act, 2006 as a medium enterprise. The date of filing as provided in the said certificate is 12th June, 2019. The same contains a reference to a previous registration bearing No. DL07D0000528.



7. The claim filed by the Respondent No.1 was communicated to the Petitioner by the MSEFC. In response to the claim, the Petitioner took an objection that the provisions of the MSMED Act, 2006 would be applicable only to a micro or small enterprise and not to a medium enterprise. Accordingly, the jurisdiction of MSEFC was challenged by the Petitioner vide application dated 19th October, 2021 filed before the MSEFC. Thereafter, hearings were conducted in the conciliation proceedings before the MSEFC however, the same did not fructify into a settlement. Resultantly, the MSEFC referred the matter for arbitration to DIAC vide the impugned order dated 27th October, 2021. The same is challenged in the present petition.

8. In the present petition, vide order dated 6th December, 2021 notice was issued to the Respondents and counter affidavit/ short note was called from the Respondent No.1 explaining as to how it was entitled to refer the complaint to the DIAC. Vide the same interim order, DIAC was also directed not to commence arbitration proceedings.

9. In the counter affidavit/ short note filed by the Respondent No.1 it is submitted that Respondent no. 1 was a Micro enterprise prior to and during the period of dispute, the Udyam Registration certificate of Respondent No.1 as a Micro enterprise is also relied upon.

10. It is submitted in the counter affidavit/ short note that in anticipation of a joint venture in the year 2018, the Respondent no. 1 got itself upgraded to the status of medium enterprise on 12th June, 2019 vide Udyog Aadhar No. DL02F0013634. Further, the endorsement at this Udyog Aadhar under heading



“Previous Registration Details if Any” clearly indicates the Udyog Aadhar No. DL07D0000528 existed prior to date 11th January, 2018.

11. On 11th January, 2023 on a specific query from the Court to the Id. Counsels for the parties as to whether they are agreeable for an independent arbitrator to be appointed by the Court. Id. Counsels for both parties state that they have no objection as the work order has an arbitration clause.

Submissions

12. Mr. Khurana, Id. Counsel for the Petitioner submits as under:

- (i) that the MSEFC’s power to make a reference is not a mechanical process. The MSEFC has to verify as to whether the reference qua the entity is competent under the MSMED Act, 2006 or not;
- (ii) that in paragraphs 33 & 34 of the judgement in *Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd. & Anr. (Arising out of SLP (C) No. 12884/2020)* the Hon’ble Supreme Court is categorical in its decision that if on the date of entering into the contract, the MSMED Act, 2006 does not apply, reference cannot be made to the MSEFC;
- (iii) that under Section 17 of the MSMED Act, 2006 until and unless a party, which is invoking the jurisdiction of the MSEFC is a Supplier under section 2(n) of the Act i.e., a micro or small enterprise, the MSEFC would not have any jurisdiction. The Respondent No.1 not being a micro or small enterprise, the reference is barred by law;
- (iv) that as per the judgment of the Id. Single Judge in *W.P.(C) 10573/2019* titled *M/s Godwin Constructions Pvt. Ltd. & Ors. v.*



Tulip Contractors & Anr., the requirement as per Section 18 of the Act, is for the entity to be registered as a micro or small enterprise on the date of making the reference. The status of the entity would be of no consequence;

- (v) that there is no disputed question of fact in the present case and thus, the present writ petition would not be barred;
- (vi) that the Petitioner has written an email to the Respondent No.1 to take back the vacuum pumps, which the Respondent failed to do and continued to demand exorbitant sums of money to the tune of Rs.10 crores as principal and Rs.10 crores as interest;
- (vii) that under Section 16 of the MSMED Act, 2006 the interest rate which is prescribed is three times the bank rate notified by the RBI compounded with monthly rest, which imposes a higher burden on the buyer and until and unless there is clarity on the applicability of the MSMED Act, 2006 such claims cannot be entertained;
- (viii) that registration of Respondent No.1 as a Micro enterprise is in Shahdara District (Delhi) and Medium enterprise registration is in East District (Delhi), hence, the invocation is also bad in law.

13. Mr. Dinesh Goswami and Mr. Prakash Kumar, Id. Counsels for the Respondents submit as under:

- (i) that the Respondent No.1 was registered as a micro enterprise as on 11th April, 2017. On the date of agreement being entered into and even while the services were rendered, the Respondent No.1 was a micro enterprise, thus, the provisions of the MSMED Act, 2006



would be applicable to the present case. The fact that it may have converted to a medium enterprise cannot take away the benefit of invoking the provisions of the Act for the Respondent No.1;

- (ii) that the MSEFC is a conciliatory body, which is established for the purposes of resolving the disputes in a quick and conciliatory environment. Its jurisdiction ought to be construed in a broad manner rather than a narrow manner;
- (iii) that in the judgement of *M/s. Silpi Industries v. Kerala State Road Transport Corporation & Anr., C.A.Nos.1570-1578 of 2021*), the Hon'ble Supreme Court relying on the judgement of *Shanti Conductors Pvt. Ltd. & Anr. etc. v. Assam State Electricity Board & Ors. etc. (2019) 19 SCC 529* held that the date of supply of the services of goods is relevant date for the purpose of considering as to whether the MSMED Act, 2006 would apply or not.

Analysis and Findings

14. The short question in the present petition is whether the impugned reference order dated 27th October, 2021 passed by the MSEFC at the behest of the Respondent No.1 which was a Medium Enterprise under the MSMED Act, 2006 on the date of filing reference petition is valid.

15. Chapter V - Delayed Payments to Micro and Small Enterprises of the MSMED Act, 2006 specifically deals with the delayed payments to suppliers who are Micro and Small Enterprises. A perusal of the MSMED, 2006 Act shows that there are various kinds of enterprises that are contemplated under the Act,



namely Micro Enterprise, Small Enterprise and Medium Enterprise. The definition of the same are as under:

“Section 2: Definitions:

e) "enterprise" means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (55 of 1951) or engaged in providing or rendering of any service or services;

(g) "medium enterprise" means an enterprise classified as such under sub-clause (iii) of clause (a) or sub-clause (iii) of clause (b) of sub-section (1) of section 7;

(h) "micro enterprise" means an enterprise classified as such under sub-clause (i) of clause (a) or sub-clause (i) of clause (b) of sub-section (1) of section 7;

(m) "small enterprise" means an enterprise classified as such under sub-clause (ii) of clause (a) or sub-clause (ii) of clause (b) of sub-section (1) of section 7;”

16. The MSMED Act, 2006 also provides the definition for the term Supplier, the same is as under:

“Section 2 – Definitions:

(n) "supplier" means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes,--



(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);
(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956);
(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;”

17. The Act consists of various chapters. Sections 15 to 18 in the Chapter V of the Act provide the scheme of the chapter and deal with payments to suppliers who are Micro and Small Enterprises.

18. Section 15 of the MSMED Act, 2006 provides that if any Supplier i.e. a Micro or Small Enterprise supplies any goods or renders services to a buyer the payment for the same shall be made as agreed between the parties. As per the said section the maximum period for payment to a Supplier, which is a Micro or Small Enterprise, cannot exceed 45 days as stipulated therein. In case of delay *qua* the same, Section 16 provides for interest at a rate much higher than that provided by the banks. Further, Section 17 of the MSMED Act, 2006 stipulates that the buyer would be liable to pay the interest in terms of Section 16. The said provisions read as under:

“Section 15: Liability of buyer to make payment.



Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.”

“Section 16: Date from which and rate at which interest is payable.

Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

Section 17: Recovery of amount due.

For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.”

19. A perusal of the aforementioned Section 16 of the MSMED Act, 2006 make it clear that the provision contemplates the following:

- (i) payment of compound interest;



- (ii) with monthly rests;
- (iii) at three times the bank rate.

In view thereof the benefit of interest to supplier Micro/Small Enterprises under Section 16 is substantial. Further, as per Section 16 and 17 of the MSMED Act, 2006 the liability and responsibility is upon the buyer to release payments to the supplier as also to pay interest in case of failure to make timely payment.

20. In case of disputes regarding the payments arising out of the agreement between the parties, the MSMED Act, 2006 also provides for a reference to the MSEFC under Section 18. The same reads as under:

“Section 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 reading of Section 18 shows that any party to a dispute can make reference to the MSEFC in respect of any amount due under Section 17. Section 17 in turn refers to Section 16 and Section 16 in turn refers to Section 15. Thus, the provisions of Sections 15 to 18 of the Act are inter-linked with each other and are also linked to the title of the Chapter V i.e. Delayed Payments to Micro and Small Enterprises. In view thereof, the scheme of Chapter V of the MSMED Act excludes Medium Enterprises under Section 2(g) and only applies to Micro and Small Enterprises.


22. It is only in this context that an objection has been raised by the Petitioner to the effect that the reference petition filed by the Respondent No.1, which was a Medium Enterprise on the date of filing is invalid and the impugned reference order dated 27th October, 2021 arising out of the same is not tenable.




23. Admittedly, in the present case, the agreement was entered into on 15th September, 2017. On the said date, the Respondent No.1 was a Micro Enterprises as it had obtained registration for the same on 11th April, 2017. The copy of Respondent No.2's Udhayam registration as a Micro Enterprises is set out below:








भारत सरकार
Govt. of India
सूक्ष्म, लघु और मध्यम उद्यम विभाग
MINISTRY OF MICRO, SMALL & MEDIUM ENTERPRISES



सूक्ष्म, लघु और मध्यम उद्यम
MINISTRY OF MICRO, SMALL & MEDIUM ENTERPRISES

उद्योग आधार

Udyog Aadhaar

D	Type of Enterprise	Micro	Small	Medium
	Manufacturing	A	B	C
	Services	D	E	F
	UAM No.	DL07DD000528		

Udyog Aadhaar Registration Certificate
 Udyog Aadhaar Number: DL07DD000528
 Name of Enterprise: EPC SOLUTIONS LLP

Location of Plant Details

SN	Flat/Door/Block No.	Name of Premises/Building Village	Road/Street/ Lane	Area/Locality	City	Pin	State	District
1	G-13 Basement	Nr Metro Pillar-105	Vikas Marg	Prast Vihar	Delhi	110092	DELHI	EAST

Official Address of Enterprise

A-49, YOUNA VIHAR
 District: SHAHDARA State: DELHI PIN: 110092
 Mobile No: 8800590802 Email: company.registrar@epcsolution.org

Date of commencement: 11/01/2018
 Major Activity: SERVICES
 Enterprise Type: Micro

Previous Registration details-if any: ..

National Industry Classification Code

SN	NIC 2 Digit	NIC 4 Digit	NIC 5 Digit Code	Activity Type
1	62 - Computer programming, consultancy and related activities	6202 - Computer consultancy and computer facilities management activities	62023 - Computer consultancy and computer facilities management activities	Services
2	64 - Financial service activities, except insurance and pension funding	6499 - Other financial service activities, except insurance and pension funding activities, n.e.c.	64990 - Other financial service activities, except insurance and pension funding activities, n.e.c.	Services
3	71 - Architecture and engineering activities; technical testing and analysis	7110 - Architectural and engineering activities and related technical consultancy	71100 - Architectural and engineering activities and related technical consultancy	Services
4	71 - Architecture and engineering activities; technical testing and analysis	7120 - Technical testing and analysis	71200 - Technical testing and analysis	Services
5	74 - Other professional, scientific and technical activities	7499 - Other professional, scientific and technical activities n.e.c.	74990 - Other professional, scientific and technical activities n.e.c.	Services
6	77 - Rental and leasing activities	7730 - Renting and leasing of other machinery, equipment and tangible goods n.e.c.	77301 - Renting and operational leasing, without operator, of other machinery and equipment that are generally used as capital goods by industries	Services
7	43 - Specialized construction activities	4321 - Electrical installation	43211 - Installation of electrical wiring and fittings	Manufacturing
	43 - Specialized construction activities	4321 - Electrical installation	43214 - Installation of fire alarm system and burglar alarm system	Manufacturing
8	35 - Electricity, gas, steam and air conditioning supply	3510 - Electric power generation, transmission and distribution	35105 - Electric power generation using solar energy	Manufacturing
10	41 - Construction of building	4100 - Construction of buildings	41502 - Activities relating to alteration, addition, repair, maintenance carried out on case-account basis or on a fee or contract basis	Manufacturing

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24. Thereafter, the status of the Respondent No.1 changed with effect from 12th June, 2019 when it became a Medium Enterprises. The copy of Respondent No.2's Udhayam registration as a Medium Enterprises is set out below:

Type of Enterprise		Micro	Small	Medium
Manufacturing		A	B	C
Services		D	E	F
UAM No.		DL02F0013634		

F

Udyog Aadhaar Registration Certificate

Udyog Aadhaar Number: DL02F0013634
 Name of Enterprise: EPC SOLUTIONS LLP

Location of Plant Details

SN	Flat/Door/Block No.	Name of Premises/Building Village	Road/Street Lane	Area/Locality	City	Pin.	State	District
1	G 13	Basement	Vikas Marg, Metro Pillar 106	Preet Vihar	Delhi	110092	DELHI	EAST

Official Address of Enterprise: G 13 BASEMENT, VIKAS MARG, NEAR METRO PILLAR 106, PREET VIHAR, DELHI-110092
 District: EAST State: DELHI PIN: 110092
 Mobile No: 9111116071 Email: company.register@epcsolution.org

Date of commencement: 11/01/2016
 Major Activity: SERVICES
 Enterprise Type: Medium
 Previous Registration details-if any: DL07D0000528
 National Industry Classification Code

SN	NIC 2 Digit	NIC 4 Digit	NIC 5 Digit Code	Activity Type
1	30 - Manufacture of other transport equipment	3091 - Manufacture of motorcycles	30911 - Manufacture of motorcycles, scooters, mopeds etc. and their engine	Manufacturing
2	30 - Manufacture of other transport equipment	3091 - Manufacture of motorcycles	30912 - Manufacture of three-wheelers and their engine	Manufacturing
3	35 - Electricity, gas, steam and air conditioning supply	3510 - Electric power generation, transmission and distribution	35105 - Electric power generation using solar energy	Manufacturing
4	38 - Waste collection, treatment and disposal activities; materials recovery	3821 - Treatment and disposal of non-hazardous waste	38210 - Treatment and disposal of non-hazardous waste	Manufacturing
5	42 - Civil Engineering	4220 - Construction of utility projects	42202 - Construction/erection and maintenance of power, telecommunication and transmission lines	Manufacturing
6	62 - Computer programming, consultancy and related activities	6201 - Computer programming activities	62011 - Writing, modifying, testing of computer program to meet the needs of a particular client excluding web-page designing	Services
7	64 - Financial service activities, except insurance and pension funding	6499 - Other financial service activities, except insurance and pension funding activities, n.e.c.	64990 - Other financial service activities, except insurance and pension funding activities, n.e.c.	Services
8	71 - Architecture and engineering activities, technical testing and analysis	7110 - Architectural and engineering activities and related technical consultancy	71100 - Architectural and engineering activities and related technical consultancy	Services
9	71 - Architecture and engineering activities, technical testing and analysis	7120 - Technical testing and analysis	71200 - Technical testing and analysis	Services
10	77 - Rental and leasing activities	7730 - Renting and leasing of other machinery, equipment and tangible goods n.e.c.	77301 - Renting and operational leasing, without operator, of other machinery and equipment that are generally used as capital goods by industries	Services

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25. In terms of the decision in *M/s. Silpi Industries v. Kerala State Road Transport Corporation & Anr., C.A.Nos.1570-1578 of 2021*) passed by the Hon'ble Supreme Court, in order to avail of the benefits under the MSMED Act, 2006 the supplier should be registered under the provisions of the Act as on the date of entering of the agreement. The relevant portion of the said judgment reads as under:

“26. Though the appellant claims the benefit of provisions under MSMED 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 MSMED 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.

Thus, what is relevant is the date of contract in order to confirm as to whether the MSMED Act, 2006 would be applicable or not.



26. In addition, the date of supply of goods/rendering of services, can also be taken into account. This position is confirmed in the decision of the Hon'ble Supreme Court in *Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd. & Anr. (Arising out of SLP (C) No. 12884/2020*

“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...

...(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 ...”



27. In view of the aforementioned judgements of *Silpi Industries (Supra)* and *Gujarat Civil Supplies (Supra)* the relevant date in order to confirm as to whether the MSMED Act, 2006 would be applicable shall be the date of agreement between the parties and the date of supply of goods/rendering of services.

28. In the present case the date of contract between Respondent No.1 and the Petitioner is 15th September, 2017 and the agreement came to end in November, 2017. A perusal of the aforementioned registration certificates under the MSMED Act, 2006 makes it clear that Respondent No.1 was registered as a Micro Enterprise during the relevant period.

29. Going by the settled legal position, as also the fact that the MSMED Act, 2006 is a beneficial legislation for Micro, Small and Medium Enterprises and ought to be construed in a manner that is beneficial to such enterprises. Thus, even if on the date when the reference application was filed before the MSEFC, the supplier i.e. Respondent No.1 had upgraded itself to the Medium Enterprises, it cannot be deprived of the benefits of the provisions of the MSME Act, 2006 and the impugned reference order would be liable to be upheld.

30. In addition to the above reasoning, the Court is also informed of the notification dated 18th October, 2022 issued by the Ministry of MSME, which reads as under:

“MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES

NOTIFICATION

New Delhi, the 18th October, 2022



S.O. 4926(E) - In exercise of the powers conferred by sub-section (1) read with sub-section (9) of section 7 and sub-section (2) read with sub-section (3) of section 8 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006), the Central Government hereby makes the following further amendments in the notification of the Government of India, Ministry of Micro, Small and Medium Enterprises number S.O. 2119(E), dated the 26th June, 2020, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i), namely:-

In the said notification, for sub-paragraph (5) of paragraph 8, the following sub-paragraph shall be substituted, namely:-

“(5) In case of an upward change in terms of investment in plant and machinery or equipment or turnover or both, and consequent re-classification, an enterprise shall continue to avail of all non-tax benefits of the category (micro or small or medium it was in before the re-classification, for a period of three years from the date of such upward change.”

[F. No. P-05/1/2022-GEN]

SHAILESH KUMAR SINGH, Addl. Secy. and
Development Commissioner (MSME)

Note: The principal notification was published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (il) vide number S.O. 2119 (E), dated the 26th June, 2020 and subsequently amended vide numbers S.O. 1055(E), dated the 5th March, 2021, S.O. 2347(E), dated the 16th June, 2021, S.O. 278(E), dated the 19th January, 2022 and S.O. 2134(E), dated the 6th May, 2022.”



31. In terms of the above notification, if there is reclassification of any enterprise, the enterprise would continue to avail of the benefits of the category in which it existed before reclassification for a period of 3 years. In the present case, the reclassification of the Respondent took place only on 12th June, 2019 and 3 years period would expire only on 11th June, 2022. Even going by this notification, the impugned reference order is tenable.

32. In view of the aforementioned reasons, the impugned reference order dated 27th October, 2021 passed by the MSEFC shall be liable to be upheld.

33. However, during the course of proceedings, since the Id. counsels for the parties are agreeable for the appointment of a Sole Arbitrator by the Court *de hors* the MSMED Act, 2006, also bearing in mind the amount of claim involved, this Court appoints Mr. Ravi Prakash, Advocate [M:9810529222] as the Id. Sole Arbitrator. The Id. Sole Arbitrator shall be paid the fees in terms of the 4th Schedule of the A&C Act, 1996. The timelines for passing of the award shall also be governed by the A&C Act, 1996. The seat and venue of the arbitration shall be New Delhi.

34. All the rights and contentions of the parties before the Id. Sole Arbitrator are left open.

35. The present petition along with pending applications is disposed of.

PRATHIBA M. SINGH
JUDGE

JULY 5, 2023

Mr/kt