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

% Judgement reserved on: **17.08.2026**
Judgement delivered on: **08.09.2026**

\+ ARB. A. (COMM) 30/2024 & I.A. 29603/2024

SHRI KRISHAN GRIT CO. ……Appellant

versus

CONTINENTAL ENGINEERING CORPORATION ....Respondent

Advocates who appeared in this case:

For the Appellant: Mr. Rohan Jaitley, Mr. Kapil Rustagi, Mr. Akshay Sharma, Mr. Dev Pratap Shahi and Mr. Yogya Bhatia, Advocates.

For the Respondent: Dr. Amit George, Mr. Kunal Kher, Mr. Amal AR. Mr.Dushyant Kishan Kaul and Mr. Arnav Bhansali, Advocates

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J.

1. The present appeal has been filed under Section 37(2)(a) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as *"the Act"*) and is directed against the order dated 13.09.2021 passed by the learned Arbitrator under Section 16 of the Act whereby the Arbitral Tribunal has held that it has no jurisdiction and that the claims of the appellant are not maintainable.

2. Facts in briefs are as under:

a. Appellant claims to be the Sole Proprietorship entity of Mr. Sanjeev Gupta, engaged in the business of supplying aggregates, its variants and TMT steel bars in accordance with customer's specifications as required for their constructions and infrastructure projects. Respondent claims to be a Foreign Company incorporated in Taiwan, having "Project Office" registered in India under the Companies Act, 2013.

b. Appellant claims to have supplied aggregates and TMT Bars as per the requirements of the respondent under separate contractual arrangements including but not limited to Memorandum of Understanding (MoU) dated 09.02.2016.

c. It is stated that several disputes arose between the parties, with respect to the unpaid dues payable to the appellant by the respondent, pursuant to which the appellant invoked arbitration as contained in the purchase orders issued under the MoU. It is stated that the sole Arbitrator, Mr. Devendra Gupta, Former Chief Justice of Andhra Pradesh High Court, entered upon reference to adjudicate the claims of the appellant, however, he terminated the said arbitration proceedings on account of the failure of the appellant to file the Statement of Claim (hereinafter referred to as *"SoC"*).

d. Thereafter, the appellant approached the Micro and Small Enterprises Facilitation Council (hereinafter referred to as *"MSEF Council"*). The said conciliation is stated to have failed, whereafter, MSEF Council referred to the disputes to Delhi International Arbitration Center (DIAC) under Section 18(3) of the Micro Small and Medium Enterprise Development Act, 2006 (hereinafter referred to as *"MSME Act, 2006"*).

e. Pursuant to the said reference, DIAC appointed a former Judge of this Court as the Sole Arbitrator to adjudicate the disputes between the parties. It is stated that the parties had filed their respective claims and counter claims. It is also stated the respondent herein, alongwith its Statement of defence and counter claim, also preferred applications under Section 16 and Section 17 of the Act. *Vide* Section 16 of the Act, respondent is stated to have challenged the jurisdiction of the Arbitral Tribunal to adjudicate the claims of the appellant.

f. Considering the submissions made by the parties, the Arbitral Tribunal *vide* the order dated 13.09.2021 allowed the application preferred by the respondent under Section 16 of the Act thereby holding that the Tribunal is without any jurisdiction, and thus, the arbitration proceedings initiated by the appellant herein are not maintainable.

g. Being aggrieved by the said order, appellant preferred by the present appeal.

3. Having heard learned counsel for the parties and after examining the record, this Court is unable to agree with the submissions of the appellant.

4. The only question to be considered by this Court is whether the claims of the appellant, pertaining to the years between 2016 and 2017-2018 are maintainable in view of the fact that the appellant was registered only on 26.02.2019 as a Micro, Small and Medium Enterprises under the MSME Act, 2006. The question also needs to be examined in the backdrop of the ratio laid down by the Supreme Court in ***Silpi Industries v. Kerala SRTC, (2021) 18 SCC 790***.

5. Learned counsel for the appellant had contended that the registration granted to the appellant under the MSME Act, 2006 for its manufacturing unit at Khasra

No.460/03, 748, 749 Village Bhageshwar, Theseel Neem Ka Thana, Sikar, Rajasthan dated 20.10.2016 ought to have been taken into consideration, even if its registration in Delhi dated 26.02.2019 is overlooked. According to learned counsel, what is *sine qua non* for the maintainability of the claims is the mere registration of an enterprise/industry under the MSME Act, 2006, and having regard to the fact that the appellant is indeed registered on 20.10.2016, the claims would be maintainable. It was also urged that in any case, the issue of registration, whether in Delhi or Rajasthan, and its effect, is a question which could only be decided at the stage of evidence, and thus, could not be decided in a summary manner, without affording an opportunity to the appellant.

6. In order to lay a background as to what are the principles to be considered by a Court examining the aforesaid issue under Section 16 of the Act, it would be apposite to reproduce hereunder the relevant paragraphs of ***Silpi Industries*** *(supra)*:

> *"**42.** Though the appellant claims the benefit of provisions under the 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 GE T&D India Ltd. v. Reliable Engg. Projects & Mktg. [GE T&D India Ltd. v. Reliable Engg. Projects & Mktg., 2017 SCC OnLine Del 6978] , 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 the 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 the 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 the MSMED Act.*
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> ***43.** While interpreting the provisions of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, this Court, in the*

judgment in Shanti Conductors (P) Ltd. v. Assam SEB [Shanti Conductors (P) Ltd. v. Assam SEB, (2019) 19 SCC 529 : (2020) 4 SCC (Civ) 409] 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 the appellant as the unit under the 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 the MSMED Act, 2006, as an enterprise, to claim the benefit retrospectively from the date on which the appellant entered into contract with the respondent.

***44.** The appellant cannot become micro or small enterprise or supplier, to claim the benefits within the meaning of the 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."*

7. Though, learned counsel for the appellant had argued that the observations made in ***Silpi Industries*** *(supra)* are *obiter dicta,* however, in the opinion of this Court, those observations are definitely not *obiter,* and appear manifestly to be a clear intention of the Supreme Court, expressing a principle of law. Thus, it cannot be said that the aforesaid observations are *obiter*.

8. ***Silpi Industries*** *(supra)* postulated that only those claims which fall during the period after registration under MSME Act, 2006 are maintainable. While holding so, judgements to the contrary holding that MSME Act, 2006, is a beneficial legislation, and therefore, the mere fact that an entity is a Micro or Small industry, even if not registered under the statutory regime, and thus, claims prior to registration, if any, would be maintainable, were expressly overruled.

9. Thus, it is settled law, which brooks no ambiguity, that only such claims which may arise post the registration of any entity as a Micro or Small industry under the MSME Act, 2006, would be maintainable. It is not claimed that in the present case the claims pertain to a period post the registration of the appellant as "supplier" on 26.02.2019.

10. Now to apply the aforesaid principles to the facts of the present case.

11. On facts, learned counsel for the appellant had emphasized that the place of registration is irrelevant to the maintainability of its claims. In that, learned counsel would insist that the registration of the appellant's manufacturing unit at Sikar, Rajasthan on 20.10.2016, by itself confers the right upon the appellant to maintain the claims for the period from 2016 to 2017-2018, and its subsequent registration at Delhi on 26.02.2019 would, for all practical purposes, be irrelevant. He would emphasize that what is material is the mere registration, and not the place where the appellant was first registered.

12. The aforesaid argument appears to be attractive, however, is without any legal foundation.

13. In the above context, it may be relevant to examine the relevant provisions of the MSME Act, 2006, particularly, Section 18 by virtue whereof, the appellant sought reference of the disputes to arbitration before the MSEF Council at Delhi. Section 18 of MSME Act, 2006 reads thus:

> *"[**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.*
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> *(2) On receipt of a reference under sub-section (1), the Council shall either itself or refer the matter to any mediation service provider as provided under the Mediation Act, 2023.*

(3) The conduct of mediation under this section shall be as per the provisions of the Mediation Act, 2023.

(4) Where the mediation initiated under sub-section (3) 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 alternative 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.

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

[emphasis supplied]

14. The construction of the Scheme of Section 18 particularly, Section 18(4) of the MSME Act, 2006 clearly provides for the Competent Authority (MSFE Council) vested with the requisite territorial jurisdiction to either take up the dispute for arbitration by itself or refer the disputes to any institution or centre providing alternate dispute resolution services. Sub-section (5) of Section 18 of the Act is a *non obstante* clause, and contemplates that the MSFE Council or the centre providing alternative dispute resolution services would have the jurisdiction to act as an Arbitrator or mediator if the supplier is located within its jurisdiction, though the buyer may be located anywhere in India.

15. In order to complete the interpretation and construction of Section 18 of the MSME Act, 2006, it may be useful to refer to Section 2(n), which defines "supplier" read with Section 8, which prescribes the procedure for a Micro, Small and Medium Enterprise to file a memorandum with the authorities specified in

Section 8 for the purposes of registration. Sections 2(n) and 8 are extracted hereunder-

"2. In this Act, unless the context otherwise requires,-
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(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;
(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;
(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;"

xx xx xx

8. Memorandum of micro, small and medium enterprises – (1) Any person who intends to establish –

(a) a micro or small enterprise, may, at his discretion, or

(b) a medium enterprise engaged in providing or rendering of services may, at his discretion; or

(c) a medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), shall file the memorandum of micro, small or, as the case may be, of medium enterprise with such authority as may be specified by the State Government under sub-section (4) or the Central Government under sub-section (3):

Provided that any person who, before the commencement of this Act, established –

(a) a small scale industry and obtained a registration certificate, may, at his discretion; and

(b) an industry engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), having investment in plant and machinery of more than one crore rupees but not exceeding ten crore rupees and, in pursuance of the

notification of the Government of India in the erstwhile Ministry of Industry (Department of Industrial Development) number S.O.477(E) dated the 25th July, 1991 filed an Industrial Entrepreneur's Memorandum,

shall within one hundred and eighty days from the commencement of this Act, file the memorandum, in accordance with the provisions of this Act.

(2) The form of the memorandum, the procedure of its filing and other matters incidental thereto shall be such as may be notified by the Central Government after obtaining the recommendations of the Advisory Committee in this behalf.

(3) The authority with which the memorandum shall be filed by a medium enterprise shall be such as may be specified by notification, by the Central Government.

(4) The State Government shall, by notification, specify the authority with which a micro or small enterprise may file the memorandum.

(5) The authorities specified under sub-sections (3) and (4) shall follow, for as the purposes of this section, the procedure notified by the Central Government under sub-section (2).”

16. It is clear from a conjoint reading of Section 2(n) and Section 8 of the MSME Act, 2006, that any person who desires to establish a Micro, Small or Medium industry, shall file a memorandum in the prescribed manner as set down by either the State Government or the Central Government, as the case may be. Consequently, the appropriate government is to issue a Certificate. It is upon issuance of such certificate by following the aforesaid procedure, that a party, such as the appellant, shall be described as “supplier” as envisaged under section 2(n) of the Act. It is only upon such registration that a supplier would be entitled to all benefits conferred by the Act. In other words, the supplier can seek reference of disputes for arbitration under Section 18 of the MSME Act, 2006, only for the claims arising after such registration. This position has been firmly set to rest in ***Silpi Industries*** *(supra)*.

17. A harmonious and conjoint reading of sub-section (4) and (5) of Section 18 of the MSME Act, 2006 with the aforesaid provisions of the Act clearly envisage that (i) only that MSFE Council where the supplier is located alone shall have the jurisdiction to either arbitrate the disputes by itself or refer to any institution or centre which provides alternative dispute resolution; and (ii) only that MSFE Council would exercise such jurisdiction, with whom the party seeking reference i.e., the "supplier" is registered.

18. It is discernible from the above that the MSME Act, 2006 postulates different Competent Authorities for each State in India, and clearly envisages that the territorial jurisdiction exercised by each of such MSEF Council are confined within the State where such MSEF Council is established under the MSME Act, 2006. It clearly does not postulate overlap of jurisdiction. In other words, a "supplier" registered with a particular MSEF Council can seek reference of disputes before the same MSFE Council, which alone would have the jurisdiction to either resolve the disputes by itself or refer the same to any institution or centre which provides alternative dispute resolution where the "supplier" is located. It is of great significance that sub-section (5) of section 18 of the MSME Act, 2006 is a *non obstante* clause, and overrides any other provision, which might be contrary to or repugnant with its stipulations. Thus, as a *sequitor*, in the present context, it would be the MSFE Council at Delhi alone which could have acted in consonance with the provisions of sub-sections (4) and (5) of Section 18 of the MSME Act, 2006. However, whether the registration of the appellant at Delhi in the year 2019 would entitle the appellant to seek arbitration of disputes/claims pertaining to the period prior thereto, is altogether another matter.

19. The above understanding and interpretation also commends itself to the facts of the present case. The appellant claims that its manufacturing unit was registered in the State of Rajasthan in the year 2016 under the category "manufacturing activity". Subsequently, it was also registered in the State of Delhi in the year 2019 in the category of "Services". It is also not disputed that the appellant invoked the jurisdiction of the MSEF Council located at Delhi for the claims which are stated to have arisen in the years 2016 and 2017-2018. If that is so, then the claims fall foul of the principle laid down by the Supreme Court in ***Silpi Industries*** *(supra)*. In that, the claims pertain to a period which is prior to the registration of the appellant at Delhi, and thus, not claimable.

20. It may do well to consider the reasoning and analysis of the learned Arbitrator while dealing with this issue. The relevant paragraphs read thus:

> *"19. I also do not find· any merit in the contention of Claimant that registration under the MSMED Act was not mandatory for the Claimant falling within the ambit and scope of 11Supplier" within the meaning of section 2(ri) of MSMED Act. This question is no more res integra in view of the Supreme Court's dictum vide judgment dated 29.06.2021 passed in Civil Appeal Nos.1570-1578 of 2021 titled M/s Silpi Industries etc. Vs. Kerala State Road Transport Corporation and Anr. etc. The Supreme Court has held as under:*
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> > *"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 MSM ED Act, but same is not based on acceptable material. The appellant, in support of its case placed reliance on a judgment of the Delhi High Court in the case of* ***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."*

20. In this case, the MOU was executed on 02.02.2016. The supplies of TMT bars in respect of NC-01 were completed on 13.12.2016; in respect of NC-02 supplies were completed on 27.12.2016; in respect of NC-03 supplies were completed on 22.12.2016; in respect of PWD the supplies for TMT Bar were completed on 31.05.2016. As regards, the supplies for Sand/Aggregate in respect of NC-01 and NC-02 were completed on 25.05.2017; in respect of NC-03 were completed on 11.06.2017 and in respect of PWD on 30.03.2016. During that period, the Claimant was not registered under the MSMED Act and did not fall within the ambit and scope of the "Supplier" within the meaning of Section 2(n} of the Act, as it was registered in the month of February, 2019. Thus, MSMED Act was not *applicable to the transactions and Claimant could not have availed any benefit under the said Act."*

21. Having considered the above, it cannot be said that the view taken in the impugned award is perverse or contrary to or violative of fundamental policy of India or that the interpretation rendered is not plausible.

22. Another aspect which was argued by the learned counsel for the appellant was with respect to the placing on record the MSME registration of the year 2016 of the manufacturing unit of the appellant in the State of Rajasthan, at the time of arguments not having been considered by the learned Tribunal in the right perspective. The said submission is contrary to the observations in the said award. It would be apposite to extract the relevant paras of the impugned award as under:

> *"**21.** During the course of arguments, the Claimant vide list of additional documents dated 10.08.2021 filed another MSMS Certificate of the Claimant for the first time, in addition to the earlier certificate annexed with the Statement of Claim. By placing reliance on this, it was contended that the Claimant was registered under the MSMED Act even in the year 2016. I have carefully perused the Certificate and find it to be in respect of an Enterprise M/s Shri Krishan Grit Company located at Khasra No.460/03, 748, 749 VILL. Bhageshwar Theseel Neem Ka Thana, Sikar, Rajasthan. This Certificate is in respect of "manufacturing activity". It is further reflected that the application in respect of this Certificate was filed on 20.10.2016 but the registration appears to have been granted on 16.02.2019. The Claimant in this case is Shri Krishan Grit Co. having its registered office at Z-115, Loha Mandi, Narayana, New Delhi- 110028 and the registration Certificate annexed along with the SOC with regard to this company is for "Services". The Claimant Shri Krishan Grit Co.having its registered office Z-115, Loha Mandi, Narayana, New Delhi has signed the MOU for supply of material and had supplied the material not the other entity. The Certificate produced during the course of hearing would thus be of no help to Claimant."*

23. It may also be noted that the MSME certificate dated 20.10.2016 of the appellant appears to be in respect of "manufacturing activity", however, the latest certificate dated 16.02.2019 appears to be in respect of "services". Ostensibly, both the registrations appear to be different. The aforesaid paragraph of the impugned

award clearly demonstrates that the learned Arbitral Tribunal has come to a definite conclusion in respect of facts which cannot be interfered with by this Court under Section 37 of the Act. (See: ***C & C Constructions Ltd. v. IRCON International Ltd, 2025 SCC OnLine SC 218).***

24. Apparently, the submission was considered, and not acceded to. In order to appreciate the argument of the appellant in this context it would be significant to consider the premise on which the claims were predicated. On an examination of the averments in the Statement of Claim (hereinafter referred to as the "*SoC*"), it is apparent that the appellant was fully relying upon its registration at Delhi. It is only when the appellant apprehended that the issue may not be favourable to its interests, that the MSME registration at Rajasthan of the year 2016 was sought to be placed on record and relied on. The relevant paragraph of the SoC which needs examination is extracted hereunder:

> *"1. That the Claimant, Shri Krishan Grit Co., is a sole proprietorship entity of Mr. Sanjeev Gupta, which is engaged in the business of supplying aggregates, its various variants and TMT steel bars as per customers' specifications required for their constructions and infrastructure projects. The Claimant is a well reputed name in construction and infrastructure industry and have been supplying aggregates, sand, steel, m-sand to various constructions companies in various parts of India. The Claimant has been supplying goods to various projects of National and International repute 1ike Delhi Airport, Mumbai Airport, DMRC, Mumbai Metro and National Highways . The Claimant is a registered MSME entity as 'supplier'. under the provisions of Micro, Small & Medium Enterprises Development (MSMED) Act, 2006. The true copy of relevant registration certificate issued by the Ministry of Micro, Small & Medium Enterprises, Govt. of India is being attached herewith this Statement of Claim as Annexure-A."*

25. It is not denied by the appellant that Annexure A annexed to the SoC, is the MSME registration at Delhi dated 26.02.2019, and not the registration dated 20.10.2016 in the State of Rajasthan. In order to appreciate that the appellant in its SoC had predicated its claim on the registration certificate issued at Delhi alone, it

would also be relevant to consider the objections taken by the respondent in its Statement of Defence (SoD). Para 3 of the SoD is extracted hereunder:

> *"3. That the Claimant has not approached this Hon'ble Tribunal with clean hands and has suppressed material facts in getting the matter referred to Arbitration through the Micro and Small Enterprises Facilitation Council (MSEFC in short), New Delhi. The present Arbitration proceedings instituted on the reference of MSEFC under Section 18 (3) of the Micro, Small and Medium Enterprises Act, 2006 (MSME Act in short) are not maintainable and are liable to be dismissed in limine, for the reason that MSEFC had no locus to refer the present matter to Arbitration. <u>It is submitted that the Claimant was not registered under the MSME Act when the transactions have taken place between the parties. It is further submitted that the Claimant has got itself registered in February 2019 under MSME Act primarily to approach the MSEFC. The alleged disputes have arisen much earlier. Hence, MSEFC could not have assumed jurisdiction in the matter, and should have rejected the alleged claim of the Claimant as not maintainable. The present proceedings are thus not maintainable as MSEFC did not have the jurisdiction to refer the matter for arbitration, and hence, the present proceedings being non-est and void ab initio should be summarily rejected. The jurisdiction of MSEFC in referring the matter to arbitration is therefore denied altogether by the Respondent</u>."*

(emphasis supplied)

26. It may be relevant to also appreciate the stand taken by the appellant in the rejoinder. Para 1 of the rejoinder is extracted hereunder:

> *"1. The registration of the Claimant under The Micro, Small and Medium Enterprises Development (hereinafter MSME Act, 2006') is legally valid and complete in accordance with law. The Claimant is entitled to invoke provisions of the Act to recover its dues and interest thereon. Any allegation or objection by the Respondent as to alleged belated registration of the Respondent under the MSME, Act, 2006 is malicious and without any basis. It is submitted that the MSME Act, 2006 is welfare legislation and provides for a mechanism for the Claimant to recover its delayed payments along with interest. The Respondent at any stage has not challenged its registration or otherwise took any objection in respect of reference to MSME Council or to DIAC and infact actively participated in the proceedings conducted under the provisions of the Act. The alleged completion of transaction or payment of alleged dues have nexus and relevance as to stage of registration of Claimant under the Act in any manner. <u>The Claimant has invoked the present arbitration in accordance with provisions of MSME Act, 2006 and stage of registration do not limit, hamper or dilute rights of the Claimant to recover its delayed dues and Interest being an MSME entity</u>."*

(emphasis supplied)

27. Learned counsel for the respondent had also highlighted the same objections taken by it in the application under Section 16 of the Act, and its response by the appellant. The relevant paragraphs are extracted hereunder:

Application of respondent under Section 16 of the Act:

"C. SUBSEQUENT REGISTRATION BY THE CLAIMANT UNDER MSME

(i) It is submitted that the said order of the MSME Council and the DIAC is beyond the jurisdiction inasmuch as the disputes between the parties relate to the period before the Claimant was allegedly, registered under the Act. The Respondent draws the attention of this Hon'le Tribunal to Sections 2(n), 17 and 18 of the MSME Act, and in this regard it is submitted that a reference under Section 18 of the MSME Act would be maintainable only on behalf of the 'supplier'; the 'supplier' means a Micro or Small Enterprise, which has filed a Memorandum with the Authority referred to in Sub-Section 1 of Section 8 of the Act. It is thus submitted that when the contract was allegedly performed by the Claimant, though the said fact is disputed by the Respondent, the Claimant was not a 'supplier' within the meaning of the said terms under the MSME Act and therefore, could not have maintained the reference in relation to such alleged claims. In this regard, the Respondent places reliance on the judgement of the Gujarat High Court in Easun Reyrolle Limited v. Nik San Engineering Co. Ltd., wherein relying upon the judgement dated 24.07.2015 of the High Court of Madhya Pradesh in Writ Petition No.19319/2014, the Gujarat High Court has held that the provision of the Act cannot be invoked in respect of the disputes that have arisen between the parties prior to the 'supplier' having filed the Memorandum under Section 8 of the Act. It is further submitted that the claimant has allegedly taken registration in February 2019, when the arbitration proceedings were already pending between the parties."

Reply of appellant to the application of the respondent under Section 16 of the Act:

"3. That the Hon'ble Tribunal is not competent to decide or exercise jurisdiction being a dispute beyond the reference of the Hon'ble Tribunal. The Hon'ble Tribunal conducting present Arbitration is exercising a limited jurisdiction with regard to disputes of dues under the MSME Act, 2006. The jurisdiction of MSME Council and DIAC are being challenged now at this stage when the same has attained finality for all intent and purposes. There was no challenge to under section 19 of the MSME Act, 2006 to any of the reference or order of the MSME Council and DIAC at any stage of proceedings before the conduct of arbitration proceedings under the MSME Act, 2006. It has been alleged that when the

contract was being performed, the Claimant was not a supplier within the meaning of section 2 of the MSME Act, 2006. It is submitted that the Buyer is yet to perform its part i.e. payment of outstanding dues as per section 17 of the MSME Act, 2006. <u>Nevertheless, it is settled law that registration is not mandatory to avail the benefits of the MSME Act. The Claimant was a registered supplier at the time of reference to the Council while invoking the provisions of the Act thereby the condition of being registered stood satisfied for the purposes of the MSME Act</u>. Therefore, contention raised by the Respondent is devoid of merits. Also, this Hon'ble Tribunal is not competent to exercise jurisdiction to decide the aforesaid said issue. The judgments relied upon by the Respondent has no application being distinguishable on facts and law on issue. The Claimant craves liberty to assist the Hon'ble Tribunal with updated law during the course of hearing."

(emphasis supplied)

28. At this juncture it may be relevant to reproduce the paragraph of the impugned award, which considered this issue in detail. Para 21 of the said impugned award is extracted hereunder:

"21. *During the course of arguments, the Claimant vide list of additional documents dated 10.08.2021 filed another MSMS Certificate of the Claimant for the first time, in addition to the earlier certificate annexed with the Statement of Claim. By placing reliance on this, it was contended that the Claimant was registered under the MSMED Act even in the year 2016. I have carefully perused the Certificate and find it to be in respect of an Enterprise M/s Shri Krishan Grit Company located at Khasra No.460/03, 748, 749 VILL. Bhageshwar Theseel Neem Ka Thana, Sikar, Rajasthan. This Certificate is in respect of "manufacturing activity". It is further reflected that the application in respect of this Certificate was filed on 20.10.2016 but the registration appears to have been granted on 16.02.2019. The Claimant in this case is Shri Krishan Grit Co. having its registered office at Z-115, Loha Mandi, Narayana, New Delhi- 110028 and the registration Certificate annexed along with the SOC with regard to this company is for "Services". The Claimant Shri Krishan Grit Co.having its registered office Z-115, Loha Mandi, Narayana, New Delhi has signed the MOU for supply of material and had supplied the material not the other entity. The Certificate produced during the course of hearing would thus be of no help to Claimant."*

29. The view taken by the learned Arbitrator appears to be a plausible one having regard to the facts as narrated by the appellant in its SoC and the rejoinder. Apart from the aforesaid, the reliance upon the 2016 registration appears to be

completely contrary to the statements made by the appellant in its SoC, rejoinder as well as the reply to the application under Section 16 of the Act.

30. Appreciating the entire gamut of the pleadings before the learned Arbitrator, it appears to this Court that the main stay of the appellant was completely predicated and hinged upon the registration of the appellant with the MSFE Council at Delhi on 26/2/2019. If that is so, then in terms of ***Silpi Industries*** *(supra)*, the claims being of a period prior to registration, would clearly not be actionable.

31. The learned counsel for the appellant relied upon the judgement of a learned Single Judge of this Court in ***M/s Ramky Infrastructure Private Limited vs. Micro and Small Enterprises Facilitation Council & Anr.***, reported in ***2018 SCC OnLine Del 9671***, to contend that registration under the MSME Act, 2006, is not *sine qua non* for seeking arbitration of claims arising prior to such registration. Having regard to the authoritative pronouncement of the Supreme Court in ***Silpi Industries*** *(supra)* laying down the law to the contrary, the reliance upon the judgement in ***Ramky Infrastructure*** *(supra)* is misplaced.

32. An objection was raised by the respondent before the learned Arbitral Tribunal that for the same claims, the appellant had previously invoked arbitration, and permitted the same to be abandoned on which the previous learned Arbitral Tribunal terminated the arbitration proceedings themselves. It was argued that the appellant never sought to challenge the termination of the arbitral proceedings, and thus, the present arbitration would not be maintainable on that count too.

33. In this regard it may be imperative to consider and appreciate the reasoning rendered by the learned Arbitral Tribunal. The same reads thus:

> *"22. I am also of the view that earlier arbitration proceedings would also come in the way of the present arbitration. Earlier the Claimant had invoked the*

arbitration clause vide legal notice dated 03.11.2018 through its Lawyer. The notice was served on the respondent as well as CEC International (India) Pvt. Ltd. The notice was duly replied jointly by the respondent and CEC International (India) Pvt. Ltd. through their Lawyer on dated 01.12.2018 and Mr. Justice Devender Gupta was appointed as Sole Arbitrator, who entered upon the reference and conducted the arbitration proceedings; wherein the Claimant participated and sought time to file SOC but subsequently abandoned the proceedings without filing SOC resulting in termination of proceedings with costs. The Claimant did not file any application under section 16 of the Act in the said arbitration proceedings, thereby challenging the jurisdiction of the Arbitral Tribunal nor did it approach any Court of Law for replacement of the Arbitrator. During the pendency of said arbitration proceedings, the Claimant got itself registered under the MSMED Act and approached MSEFC. The plea taken by the Clafs ant that earlier arbitration proceedings were different, having being initiated against the joint venture of respondent and CEC International (India) Pvt. Ltd., in my view, is untenable. Simply because Claimant has chosen to initiate other proceeding resulting in referral of such proceeding to the present arbitration by dropping CEC International (India) Pvt. Ltd., in respect of the same subject matter and cause of action, that is, delayed payment in respect of the supplies effected under the same MOU dated 02.02.2016 coupled with the purchase orders, would make no difference and, thus, the present arbitration proceedings cannot be said to be distinct from the earlier arbitration proceedings. The Claimant cannot be permitted to resort to "forum hunting". The earlier arbitration proceedings ought to have been taken to logical end."

34. It has not been disputed by the appellant that the claims which were subject matter of the previous proceedings are the same as the ones raised in the underlying arbitration proceedings under challenge. It is also not disputed that the previous arbitration proceedings were terminated on account of non-filing of the SoC by the appellant. The reasons for not taking such rejection to its logical conclusion have been found to be untenable in the impugned award. Nothing contrary to that nor any judgement to overcome the same has been placed before this Court. Ordinarily, when the arbitration proceedings itself are terminated for whatever reason, the party aggrieved has appropriate remedies under the law for setting aside such termination. (See: ***Harshbir Singh Pannu v. Jaswinder Singh, 2025 SCC OnLine SC 2742***). Having not availed the same, in the opinion of this

Court, a party cannot be permitted to re-open such abandoned claims by mere registration under the MSME Act, 2006, subsequently. The view taken by the learned Arbitral tribunal commends to this Court.

35. Thus, as an upshot of the aforesaid analysis, the present appeal is unmerited and is dismissed as such.

TUSHAR RAO GEDELA
(JUDGE)

SEPTEMBER 08, 2026
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