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ARBITRATION AND CONCILIATION

MATTERS CAN BE REFERRED TO ARBITRATION UNDER MSMED ACT, THOUGH THERE IS NO PRIOR ARBITRATION AGREEMENT

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The Punjab and Haryana High Court bench comprising Justice Lisa Gill in a recent judgment¹ held that even though there is no [arbitration](#) agreement between the parties, the dispute can be referred to arbitration as per Section 18 of the Micro, Small, and Medium Enterprises Development Act, 2006 ("[MSMED Act](#)").

Facts of the Case

The petitioner in the case, failed to clear dues for the goods supplied to him by the respondent in the year 2016, for which a claim was filed by the respondent to the Haryana Micro and Small Enterprises Facilitation Council ("HMSEFC") for an amount of Rs. 14,01,505/-. The HMSEFC referred the parties for arbitration by appointing a Sole Arbitrator.

Against this a petition was filed before the Punjab And Haryana High Court by the petitioner, under Section 14 of the Arbitration and Conciliation Act, 1996 ("A&C Act"), read with Section 151 of the Code of Civil Procedure, 1908. The petition demanded the termination of the Sole Arbitrator. The petitioner contended that no specified procedure of conciliation was followed as per MSMED Act before the case was referred for arbitration.

The petitioner contended that he had filed an application under Section 12 of the Arbitration Act before the Sole Arbitrator seeking valid disclosure from the learned Arbitrator. Petitioner further contended that the present petition has been filed on the grounds that the conduct of the Arbitrator is arbitrary and disclosure regarding independence and impartiality of the Arbitrator is imperative as per Section 12 of the Arbitration Act. Also, an objection was raised in the said application before the Arbitrator by the petitioner that primarily there existed no arbitration agreement between the parties and hence it should not be allowed for the matter to be referred to arbitration. The petition averred that the Sole Arbitrator dismissed the application.

Learned counsel for the petitioner also argued that Section 18 (3) MSMED Act, provides for referral of the dispute to any institution or center for arbitration, therefore referral to the Sole Arbitrator is illegal.

The respondent contended that it was registered under MSMED Act and it requested the assistance of HMSEFC for the payments due by the petitioner. HMSEFC directed the petitioner to pay the dues to the respondent. Later, HMSEFC referred the matter to the Sole Arbitrator, due to failure on the petitioner's part to pay the remaining amount. The respondent further argued that a prior arbitration agreement between the parties was not required for them to be able to seek the help of HMSEFC as per the MSMED Act.

Respondent further submitted that the petitioner was merely trying its level best to delay the proceedings in one way or the other and defeat the very purpose of the MSMED Act.

Observations of the court

The Court referred the provisions of the Section 15, 16, 17 of the MSMED Act. Section 18(1) of the MSMED Act provides that any party to a dispute may make a reference to the Micro and Small Enterprises Facilitation Council (MSEFC). Under Section 18(2), the MSEFC shall either itself conduct conciliation proceedings in the matter or it may seek the assistance of any institution or centre. Section 18(3) provides that where the conciliation initiated under Section 18(2) is not successful, the MSEFC may either itself take up the dispute for arbitration or refer the matter to any institution or centre for arbitration.

The Court further observed that a bare perusal of these provisions clearly indicates that the respondent who was registered under the MSMED Act, at the relevant time was entitled to approach the HMSEFC under the MSMED Act for redressal of its grievance. The Court observed that the petitioner did not challenge the appointment of the Arbitrator by the HMSEFC.

Citing the Case of **M/s Silpi industries etc., Vs. Kerela State Road Transport Corporation and another** the court noted "*It is specifically held that provisions of the MSMED Act being a Special Act shall prevail and have overriding effect vis-a-vis the Arbitration Act.*"

The court further added that "*Even in a case where exists an agreement between the parties for the resolution of disputes by Arbitration, if a seller is covered under the MSMED Act, the seller is at liberty to approach the competent authority to make its claim and agreement, if any, between the parties is to be ignored in view of the statutory obligations and mechanism provided under the MSMED Act. The counterclaim was also held to be permissible by the buyer. Section 18 of the MSMED Act starts with a non-obstante clause...*"

The court added that, therefore, the argument that proceedings are not maintainable in the absence of an arbitral clause is devoid of any merit and hence rejected.

The court concluded by stating that "*In respect to the argument that no conciliation etc., was carried out, it is to be reiterated that order, whereby the Sole Arbitrator was appointed, has never been subjected to challenge by the petitioner.*"

Lastly, the court noted that the remedy of the petitioner is to clearly wait for the award and avail of its remedies thereafter. It dismissed the petition by stating that petition was devoid of any merit.

1 M/s SGM Packaging Industries versus M/s Goyal Plywood LLP