



CIVIL

Delhi High Court Upholds Arbitral Award, Grants MSME Interest Rights and Affirms Liability: Shristi v. Scorpio

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Introduction

In *Shristi Infrastructure Development Ltd. v. Scorpio Engineering Pvt. Ltd. & Anr.*, the Delhi High Court dismissed a challenge by Shristi Infrastructure Development Ltd. against an arbitral award passed in 2019, thereby upholding the award in favour of Scorpio Engineering Pvt. Ltd., a registered Micro and Small Enterprise (MSME). The dispute arose out of a contract for a coal handling system at a thermal power plant, where Shristi was held jointly liable along with another contracting party for unpaid dues. In his judgment, Justice Jasmeet Singh reaffirmed the applicability of the 'Group of Companies' doctrine to bind non-signatories to arbitration, recognized the enforceability of statutory interest under the MSMED Act, and reiterated the limited scope of interference under Section 34 of the Arbitration and Conciliation Act, 1996.

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Factual Background

Scorpio Engineering Pvt. Ltd. (Respondent No. 1) was awarded a contract in 2012 for supplying and installing a coal handling system at a thermal power plant owned by India Power Corporation (Haldia) Limited (Respondent No. 2). Initially, BF Infrastructure Ltd. (BFIL) acted as the EPC contractor, but in 2013, Shristi Infrastructure Development Ltd. (the petitioner) entered the picture by issuing identical purchase and work orders to Scorpio.

In 2014, a Tripartite Agreement was signed between BFIL, Respondent No. 2, and Shristi, transferring all rights and obligations of BFIL to Respondent No. 2. Subsequently, in 2015, Shristi was formally appointed the EPC contractor under a Supply Contract with Respondent No. 2. Scorpio raised claims for outstanding payments for supplies and services rendered, as well as costs incurred in maintaining bank guarantees.

An arbitral award passed in October 2019 directed Shristi and Respondent No. 2 to jointly and severally pay ₹6.56 crore to Scorpio, along with compound interest at 38.85% under the MSMED Act. Shristi challenged the award under Section 34 of the Arbitration Act.

Key Issues

- Whether the arbitral tribunal had jurisdiction despite the MSMED Act's dispute resolution mechanism.
- Whether Shristi, as a non-signatory, could be bound by the arbitration clause through the 'Group of Companies' doctrine.
- Whether awarding MSMED Act interest in an ad hoc arbitration was legally permissible.
- Whether the arbitrator committed errors in law or fact warranting interference under Section 34.

Arguments and Court Analysis

The High Court examined four primary objections raised by the petitioner:

1. **Jurisdiction of the Arbitrator under the MSMED Act:** The petitioner claimed that the arbitrator lacked jurisdiction as the dispute involved claims under the MSMED Act, which requires reference to the Facilitation Council.

The Court held that the arbitral tribunal's jurisdiction was not affected by the MSMED Act merely because Scorpio Engineering was a registered MSME. Since neither party had invoked Section 18 of the MSMED Act (which provides for reference to the Facilitation Council), the arbitration clause in the contract remained fully enforceable. The Court clarified that Section 18 is discretionary, not mandatory, and the arbitration was validly initiated under the contractual mechanism.

2. **Application of the Group of Companies Doctrine:** Shristi argued it had no corporate or functional connection with Respondent No. 2 and was wrongly treated as a group company.

The Court upheld the arbitrator's finding that Shristi was effectively bound by the arbitration clause despite being a non-signatory. It emphasized Shristi's direct involvement in the contractual performance including issuing purchase and work orders, approving invoices, and being named in key agreements, all of which demonstrated a clear intention to be part of the contractual framework. Citing the Supreme Court's decision in *Cox and Kings v. SAP India*, the Court found that applying the Group of Companies doctrine was justified.

3. **Liability as an Agent:** Shristi claimed that even if it acted in the transaction, it did so as an agent and could not be held liable under Section 230 of the Indian Contract Act.

It noted that the issue of agency was not raised before the arbitral tribunal, and more importantly, the arbitrator did not impose liability on the basis of agency. Instead, liability was based on Shristi's independent and substantive role in the project. The Court found no reason to interfere with the tribunal's factual findings in this regard.

4. **Award of Interest under MSMED Act:**

The petitioner contested the award of interest under Section 16 of the MSMED Act on the basis that the arbitration was not conducted through the MSMED framework.

Addressing the objection to the award of interest under Section 16 of the MSMED Act, the Court held that the right to interest under Sections 15 and 16 is substantive and not dependent on following the dispute resolution process under Section 18. Therefore, the arbitrator was within his authority to award compound interest at the rate of 38.85% as prescribed under the MSMED Act, even though the arbitration was not conducted through the Facilitation Council. This view was supported by prior decisions, including *Indian Highways Management Co. Ltd. v. SOWiL Ltd.*

Author's Opinion

This decision reinforces the legal foundation toward holding non-signatories accountable where their conduct demonstrates deep involvement in contractual obligations. It also clarifies that MSMED rights are substantive and independent of procedural mechanisms. Courts should, however, apply the Group of Companies doctrine carefully to avoid overextension that undermines corporate separateness. The judgment strikes a balance between commercial reality and legal principle, particularly in the context of protecting MSMEs.

Conclusion

By upholding the arbitral award, the Delhi High Court emphasized that form cannot override substance in commercial disputes. The judgment is a strong precedent for enforcing statutory rights and ensuring accountability of entities that participate in contract performance, even if they are not formal signatories.

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