

FRIDAY | 21 APRIL 2023

Case Update



WORKS CONTRACT OUTSIDE THE PURVIEW OF MSME ACT, 2006



The Hon'ble High Court of Delhi ("High Court") by way of its Order dated 12.04.2023 has proceeded to hold that the Work Orders issued by Tata Power Company Limited ("TPCL") to Genesis Engineering Company ("GEC") are Works Contract, in terms of the law laid down by the Hon'ble Supreme Court of India in the matter titled as Kone Elevator India Private Limited vs. State of Tamil Nadu, (2014) 7 SCC 1, as it comprises of two contracts which include supply of goods such as cables, wire, connectors, street lights and poles and subsequent involvement of work and labour for its installation.

While the present Arbitration Petition was pending before the High Court, simultaneously a reference under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 ("MSME Act, 2006") was made by GEC before the Facilitation Council which was also pending for consideration. The question that arose for consideration before the High Court was whether the dispute/claims arising from Works Contract are amenable to the jurisdiction of Facilitation Council constituted under the MSME Act, 2006.

High Court while duly considering the law laid down by various High Courts in the matters titled as Sterling and Wilson Private Limited vs. Union of India & Ors. and Shree Gee Enterprises vs. Union of India has proceeded to hold that that dispute/claims arising from Works Contract are not amenable to the jurisdiction of Facilitation Council constituted under the MSME Act, 2006, therefore, GEC is not entitled to take the benefit of the provisions of MSME Act, 2006 and assail the maintainability of the present proceedings.

High Court while relying upon the 'Dispute Resolution & Arbitration' Clause of the General Conditions of Contract ("GCC") has held that the agreement between the parties provides for arbitration and the dispute between the parties are also arbitrable in nature, hence, the Petition filed by TPCL under Section 11(6) of the Arbitration and Conciliation Act, 1996 is allowed.

Tata Power Company Limited was represented by Shri Venkatesh (Managing Partner), Siddharth Joshi (Senior Associate), Abhishek Nangia (Associate) and Soumyaa Sharma (Associate).