

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH

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*CWP No.21088 of 2018*  
*Date of Decision:07.09.2018*

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M/s Nitesh Estates Ltd.

. . . . . Petitioner

Vs.

Micro & Small Enterprises Facilitation Council of Haryana and others

. . . . . Respondents

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**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN**

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Present: - Mr.Abir Phukan, Advocate, for  
Mr.Kanwardeep Singh, Advocate,  
for the petitioner.

Mr.Ashish Chopra, Advocate,  
for the respondents.

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***RAKESH KUMAR JAIN, J.***

The prayers made in this petition are for the issuance of a writ in the nature of certiorari for quashing the notice dated 13.3.2018 and the order dated 7.6.2018 of the Micro and Small Enterprises Facilitation Council of Haryana/respondent No.1 [hereinafter referred to as 'the Council] and the notice dated 24.7.2018 issued by the Arbitrator (Respondent No.3) appointed by the Council.

In brief, the petitioner is a limited company engaged in the business of real estate whereas respondent No.2 is a real estate broker based in Gurugram. The petitioner and respondent No.2 entered into an agreement called "Channel Partner Agreement" on 23.7.2014 for a period of 8 months as per which respondent No.2 was entitled to a brokerage for arranging and negotiating the sale of flats in the projects of the petitioner in Bengaluru.

The said agreement was terminated on 11.12.2014. Respondents No.2 sent a

letter dated 3.01.2015 asking the petitioner to pay ₹12,74,847/- towards brokerage and ₹6,00,00,000/- towards damages. Respondent No.2 applied for registration on 17.3.2016 as a micro enterprise under Section 8 of the Micro, Small and Medium Enterprises Development Act, 2006 [hereinafter referred to as 'the Act'] and was accordingly registered. Respondent No.2 filed a petition under Section 433(2) & (f) of the Companies Act, 1956 [for short 'the Act'] before the National Company Law Tribunal, Bengaluru [for short 'the NCLT'] in September, 2017 against the petitioner for winding up, which is pending. Respondent No.2 also raised a claim with registration No.SEHIP/MH17/0005372/1 on 28.12.2017 with the Securities and Exchange Board of India [SEBI] against the petitioner-company which has been dismissed. Respondent No.2 filed a petition bearing Claim Application No.460 of 2018 under the Act before respondent No.1 in which impugned notice was issued on 13.3.2018 to the petitioner to which reply was filed on 2.4.2018 but on 06.06.2018, respondent No.1 passed the impugned order and referred the claim of respondent No.2 to respondent No.3, empanelled Arbitrator notified by the Government. The petitioner received a notice dated 24.7.2018 for appearance before respondent No.3 on 7.8.2018.

This petition is filed on 13.8.2018 to challenge the impugned notice dated 13.3.2018 and order dated 7.6.2018 issued/passed by respondent No.1 and notice dated 24.7.2018 issued by respondent No.3, *inter alia*, on the ground that respondent No.2 was got registered vide registration certificate on 17.3.2016 as a micro enterprise and as such the benefits of the provisions of the Act cannot be availed by respondent No.2 for the services rendered prior to its registration under the Act, respondent No.1 was not entitled to proceed in terms of the provisions of Section 18(3) of the Act in

barred because the agreement was terminated on 11.12.2014 and the claim petition No.460 of 2018 was filed on 11.01.2018.

Learned counsel for the petitioner has referred to a decision rendered by this Court in the case of ***“Gats Financial Reconstructions Ltd. Vs. Director of Industries-cum-Chairman, Industrial Facilitation Council and others”*** (2016) 183 PLR 776 and a decision rendered by the Bombay High Court in the case of ***“M/s Faridabad Metal Udyog Pvt. Ltd. Vs. Mr. Anurag Deepak and M/s Bharat Petroleum Corporation Ltd.”*** 2013 (7) BomCR 631.

In support of his second submission about the arbitration clause in the agreement, reference is made to a decision of the Bombay High Court in the case of ***“M/s. Steel Authority of India Ltd. and another Vs. Micro, Small Enterprise Facilitation Council, through Joint Director”*** AIR 2012 Bom 178 and another decision rendered by the Bombay High Court in the case of ***“M/s Hindustan Wires Limited Vs. Mr. R.Suresh and others”*** 2013 SCC Online Bom 547.

It is also submitted that respondent No.2 has set up the claim of admitted liability of ₹11,54,678/- in the petition filed under Section 433(e) & (f) of the Act before the NCLT whereas, the claim before respondent No.1 has been set up for an amount of ₹1,32,44,191/- with interest.

Learned counsel for respondent No.2, while contesting this petition on the facts given by the petitioner, has submitted that even according to the petitioner, respondent No.2 has been registered as a micro enterprise vide registration certificate dated 17.3.2016 and has made the claim of the amount accrued before its registration but according to him registration is only a qualification and is not a *sine qua non* for maintaining the application before respondent No.1 and has relied upon a decision





***“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, 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*





















































