

**W.P.A. No. 12512 OF 2021
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

**Just Dial Limited & Anr.
Vs.
Micro and Small Enterprise Facilitation Council & Ors.**

For the Petitioners : Mr. Jayanta Kumar Mitra, Senior Advocate
Mr. Om Narayan Rai, Advocate
Mr. Nikhilesh Mittal, Advocate
Mr. Bandan Karkidholi, Advocate

For the State : Mr. Anirban Roy, Ld. GP
Mr. Jishnu Chowdhury, Advocate
Mr. Raja Saha, Advocate
Ms. Amrita Panja Mullick, Advocate

For the Respondent : Ms. Mimi Chowdhury
No. 5. Mr. Rajesh Upadhyay

Hearing concluded on : August 24, 2021

Judgment on : September 3, 2021

DEBANGSU BASAK, J.:-

1. The petitioners have challenged two letters dated June 6, 2021 and July 21, 2021 issued by the respondent No. 1. The petitioners have also challenged the Udyam Registration certificate bearing No. UDYAM-WB-10-0018227/M/00001 of the respondent No. 5.

2. Learned Senior Advocate appearing for the petitioners has submitted that, the respondent No. 1 did not have jurisdiction to issue any of the two impugned letters. He has submitted that, the petitioner No. 1 had entered into a lease deed on March 29, 2018 with the respondent Nos. 3 and 4. He has drawn the attention of the Court to the lease deed. He has submitted that, the lease was granted by two individuals being the respondent Nos. 3 and 4 to the petitioner No. 1 in respect of an immoveable property. The lease deed has an arbitration clause. Disputes and differences have arisen between the petitioner No. 1 and the respondent Nos. 3 and 4 with regard to the lease deed. The petitioner No. 1 has invoked the Arbitration Clause. The petitioner No. 1 has issued a notice for appointment of an arbitrator. The petitioner No. 1 has also approached the Hon'ble High Court at Delhi for the purpose of appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 to arbitrate on the disputes and differences arising out of the lease deed. The lease deed has a forum selection clause under which the parties had agreed to the exclusive jurisdiction of the High Court of Delhi.

3. Learned Senior Advocate appearing for the petitioners has submitted that, the first registration of the respondent No. 5 under the Micro, Small and Medium Enterprises Development Act, 2006 was on

July 19, 2017. Such registration had been obtained by the respondent No. 5 with the address at Goutam Buddhya Nagar, Uttar Pradesh which is beyond the jurisdiction of the respondent No. 1. He has drawn the attention of the Court to the Udyam Registration of the respondent No. 5. He has submitted that, the Udyam Registration is from May 3, 2021 which is subsequent to the lease deed dated March 29, 2018. He has relied upon **2019 SCC Online Bom 4542 (Scigen Biopharma Pvt. Ltd. vs. Jagtap Horticultuer Pvt. Ltd.)** and submitted that in similar circumstances, when, the registration under the Act of 2006 was after the date of contract, the Bombay High Court held that, proceeding under the Act of 2006 was not maintainable. He has contended that, since the respondent no. 5 obtained the Udyam Registration on May 3, 2021 which is subsequent to the lease deed dated March 29, 2018, the assumption of jurisdiction by the respondent No. 1 between the petitioners and the private respondents is bad in law.

4. Learned Senior Advocate appearing for the petitioner has referred to Section 18 of the Act of 2006. He has submitted that, under Section 18 of the Act of 2006, the respondent No. 1 cannot demand any sum from the petitioner as sought to be done through the impugned letters. The demand for money on behalf of the private

respondents, by the respondent No. 1 though the impugned letters are beyond the jurisdiction of the respondent No. 1. Moreover, the private respondents cannot be said to be a supplier and the petitioners to be a buyer within the meaning of Sections 2(n) and 2(d) of the Act of 2006. On such score also, the assumption of jurisdiction by the respondent No. 1 is bad in law. Referring to the two impugned letters of the respondent No. 1, learned Senior Advocate appearing for the petitioners has submitted that, the respondent No. 1 proceeded on the basis of an application claimed to be received from the respondent No. 4. He has submitted that, the respondent No. 4 can by no stretch of the imagination be said to be a supplier within the meaning of the Act of 2006. He has also referred to the tripartite amendment dated May 3, 2016 entered into between the partnership firm, the petitioner No. 1 and the Karur Vysya Bank Limited. He has submitted that, the transactions between the petitioner No. 1 with regard to the lease are with two individuals and not a partnership firm.

5. Referring to the registration of the respondent No. 5 under the Act of 2006, learned Senior Advocate appearing for the petitioners has submitted that, such registration are in respect of the services noted on the certificate of registration. Such noted services does not

include lease rentals and therefore the respondent No. 5 cannot proceed under the Act of 2006 as against the petitioners.

6. Learned Senior Advocate appearing for the petitioners has referred to the merits of the case. He has submitted that claims of the private respondents are inflated without any basis and that, the same are not payable by the petitioner.

7. Learned Advocate appearing for the respondent No. 1 has submitted that, the respondent No. 1 received an application from the respondent No. 5 and consequently issued the impugned letter dated June 6, 2021. He has drawn the attention of the Court to the application number noted in the impugned letter dated June 6, 2021. He has contended that, the respondent No. 1 did not demand any amount from the petitioner No. 1. The impugned notice contains an advice for the petitioner No. 1 to pay the amount due to the respondent 5. Similarly, the second impugned letter dated July 21, 2021 had been issued on the application on the private respondents bears a different application number than that of the first impugned letter. The second impugned letter has also an advice for the petitioners to pay the amount due to the private respondent.

8. Learned Advocate appearing for the private respondents has submitted that, a part of the cause of action of the claim of the private

respondents as against the petitioners had arisen within the jurisdiction of the respondent No. 1. She has submitted that, the petitioners had paid the lease rentals to be respondent No. 5 at the address noted in the Udyam Registration. She has relied upon Form 26 AS being annual tax statement under Section 203 AA of the Income Tax Act, 1961. She has relied upon the notification dated June 26, 2020 issued in exercise of powers under the Act of 2006 to contend that with effect from July 1, 2020 there has been a change in policy of the Government. There has been a clarification thereto issued on August 6, 2020. An enterprise coming within the meaning of the Act of 2006 has been required to take a registration in terms of the notification dated June 26, 2020 which the respondent No. 5 has obtained. According to her, the Act of 2006 read with the notifications issued thereunder have laid down one single registration. One registration is sufficient to cover all business activities of the enterprise registered under the Act of 2006. In support of such contention, she has relied upon Clause 6 (7) of the notification dated June 26, 2020. She has also relied upon **2017 (3) Calcutta Law Journal (Calcutta) 253 (National Projects Construction Corporation Ltd. & Anr. Vs. West Bengal State Micro Small Enterprises Facilitation Council & Ors)** to contend that, in the facts

of the present case the arbitration clause in the lease deed and the pendency of the petition under Section 11 of the Act of 1996 is of no consequence.

9. Learned Senior Advocate appearing for the petitioners in reply has drawn the attention of the Court to the various provisions of the notification dated June 26, 2020 and contended that, the private respondents are governed by Clause 7 of such notification. He has submitted that the registration of the respondent No. 5 has not been done in accordance with such notification.

10. The petitioner No. 1 had entered into a lease deed dated March 29, 2018 with the respondent No. 5. The petitioner No. 1 had entered into an addendum to the lease deed dated March 29, 2018 for the purpose of repair of air-conditioner on March 1, 2020. The petitioners had been paying the respondent No. 5 the lease rentals from time to time. The lease deed dated March 29, 2018 has an arbitration clause which also contains a forum selection clause. The respondent No. 5 has approached the respondent No. 1 claiming that the petitioners are liable to pay interest for the delay in payment of the lease rentals.

11. It has been contended on behalf of the petitioners that, the lease deed dated March 29, 2018 had been entered into by the

petitioner No. 1 with the respondent Nos. 3 and 4 in their individual capacities and not with the respondent No. 5 as a partnership firm. Such contentions however cannot be accepted in view of the fact that, the lease deed dated March 29, 2018 has specified the permanent account number of the partnership firm under the Income Tax Act, 1962 and the Goods and Service Tax Act registration of such partnership firm. The lease deed dated March 29, 2018 has described the two individuals as an adult Indian inhabitant but in partnership with each other. The description of the partnership firm being the respondent No. 5 in the lease deed may not be an ideal description of a partnership firm. However, the lease deed itself particularly taking into account the contemporaneous conduct of the parties to the lease deed does not establish the contention of the petitioners. The petitioner No. 1 had been paying the lease rentals to the respondent No. 5 in the bank account of the respondent No. 5 maintained by the respondent No. 5 at Kolkata. The parties to lease deed had represented to the tax authorities that the lease was between the petitioner No. 1 and the respondent No. 5, inter alia by issuance of tax deducted at source certificates. The parties to the lease deed should not be allowed to take a different stand in another forum. The petitioners had been making over the tax deducted at source

certificates to the respondent No. 5 at the office of the respondent No. 5 at Kolkata. The petitioners had deducted tax at source on account of the lease rentals payable to the partnership firm constituted by the two individuals being the respondent Nos. 3 and 4. Contemporaneously, therefore, the parties have acted on the lease deed dated March 29, 2018 on the basis that, the petitioner No. 1 had entered into the lease deed with the respondent No. 5. Therefore, the contention of the petitioners that, the lease deed had been entered into with the two individuals being the respondent Nos. 3 and 4 cannot be accepted.

12. The lease deed dated March 29, 2018 has an arbitration clause. The arbitration clause has the stipulation that the Courts at Delhi will have jurisdiction. ***National Projects Construction Corporation Limited and Anr. (supra)*** has taken into consideration Section 17, 18 and 24 of the Act of 2006 and held that, where there exists an arbitration agreement between two parties and one of such parties to the arbitration agreement is an entity within the meaning of the Act of 2006 then the Council established under the Act of 2006 has the jurisdiction to arbitrate the disputes between such parties on a request being made for such purpose. Learned Senior Advocate appearing for the petitioners has submitted that, the petitioners are

not contending that, the respondent No. 1 lost jurisdiction to arbitrate the disputes between the parties in view of the arbitration clause under the lease deed dated March 29, 2018. What the petitioners are contending is that the respondent No. 1 does not have jurisdiction in view of the subsequent registration of the respondent No. 5 under the Act of 2006 and the lack of any events occurring within the jurisdiction of the respondent No. 1 for the respondent No. 1 to assume jurisdiction.

13. In ***Scigen Biopharma Pvt. Ltd. (supra)*** the Court had found that, the legal entity did not obtain registration on the date on which the other party entered into a contract with the legal entity. It has also found that, the legal entity did not take any steps within 180 days from the commencement of the Act of 2006. In such circumstances, the Court had held that, recourse to the Act of 2006 was not available to such legal entity. In the facts of the present case, the registration of the respondent no. 5 was on July 19, 2017 with the date of commencement being specified as April 1, 2016. The lease deed had been entered into on March 29, 2018. Registration of the respondent No. 5 under the Act of 2006 was much prior to the lease deed. The notification dated June 26, 2020 had been issued in exercise by powers conferred under Section 7 and 8 of the Act of 2006.

It has superseded the previous notification dated June 1, 2020, June 30, 2017, November 1, 2013 and October 6, 2006. It has specified the form and procedure for filing the memorandum to be known as Udyam Registration with effect from July 1, 2020. The Ministry of Micro, Small and Medium Enterprise has issued an Office Memorandum dated August 6, 2020 clarifying the notification dated June 26, 2020. The clarification notification has stated that, the existing enterprises registered prior to June 30, 2020 shall continue to be valid till March 31, 2021. It has recommended that, holders of registration should file fresh registration in the new Udyam Registration Portal.

14. Without entering into the arena as to whether the two notifications evince a change of policy or not, suffice it to say that, the sum and substance of the notification dated June 26, 2020 read with the office memorandum dated August 6, 2020 is that they have introduced a new registration portal under the Act of 2006 being Udyam Registration Portal and that entities registered under the Act of 2006 should obtain a fresh registration under the Udyam Registration Portal. The memorandum and the notification read together have allowed continuance of the earlier registration obtained under the Act of 2006.

15. In the facts of the present case, the respondent No. 5 was registered with the Council under the Act of 2006 prior to the execution of the lease deed at Uttar Pradesh. The respondent No. 5 had thereafter obtained the registration with the respondent No. 1, under the Udyam Registration Portal. Such registration is essentially the continuation of the earlier registration with no break in between. While obtaining the registration under the Udyam Registration Portal, the respondent No. 5 has shown its place of business to be at Kolkata, rather than Uttar Pradesh as in the earlier registration. Nothing has been placed on record to establish that an enterprise registered under the Act of 2006 cannot have a change of address or migrate from one jurisdiction of a Council to another consequent upon change of business address or that such change has to be treated as a fresh registration.

16. Learned Senior Advocate appearing for the petitioners has referred to Section 2(d), (n) and Section 18 of the Act of 2006 which are as follows:-

“2(d) “buyer” means whoever buys any goods or receives any services from a supplier for consideration;

(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)1 of 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 (1 of 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;”

&

“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.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution

services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) 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 to it any institution or centre providing alternate 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.

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

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.”

17. Section 2(d) of the Act of 2006 has defined a buyer while Section 2(n) has defined a supplier. Section 18 of the Act of 2006 has laid down the manner and mode of reference to the Micro and Small Enterprises Facilitation Council. Sub-section (1) of Section 18 opens with a non-obstante clause. It has stipulated that any party to a dispute may, with regard to any amount due under Section 16 Act of 2006 make a reference to the Micro and Small Enterprises Facilitation Council. Sub-section (2) of Section 18 has stipulated that, on receipt of reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any Institution or Centre providing alternate dispute resolution services by making a reference to such an Institution or Centre, for conducting conciliation and the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act 1996 shall apply to such dispute as if conciliation was initiated under Part III of the Act of 1996. sub-section (3) of Section 18 has stipulated that, where the Conciliation under sub-section (2) is not successful and stands terminated without settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it any Institution or Centre providing

alternate dispute resolution services for such arbitration and that the provisions of the Act 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 the Act of 1996.

18. Sub-section (1) of Section 18 of the Act of 2006 has introduced a legal fiction of arbitration to decide the disputes between the 'buyer' and the 'supplier' covered under the Act of 2006. The legal fiction so introduced mandates the 'buyer' and the 'supplier' covered under the Act of 2006 to have their disputes settled by arbitration under the Act of 2006 notwithstanding there being no arbitration agreement between them. On a parity of reasoning the legal fiction of Section 18(3) of the Act of 2006 also overrides any arbitration agreement between the parties. The moment Section 18(3) overrides the existing arbitration agreement, if any, between the parties, it obliterates any forum selection or seat of arbitration clause in the arbitration agreement between the parties.

19. Sub-section (4) of Section 2018 has a non-obstante clause. It has stipulated that notwithstanding any contained in any other law for the time being in force the Council or Centre providing alternate dispute resolution services shall have jurisdiction to act as an arbitrator or conciliator in a dispute between the supplier located

within its jurisdiction and a buyer located anywhere in India. Sub-section (4) of Section 18 of the Act of 2006 has the effect of countermanding the provisions of Sections 15 to 20 of the Code of Civil Procedure, 1908. It has vested exclusive jurisdiction to the Council within whose jurisdiction the supplier within the meaning of the Act of 2006 is located, to assume and discharge jurisdiction and powers under the Act of 2006 notwithstanding any other criteria for assumption of jurisdiction being absent. It has allowed the Council within whose jurisdiction, the supplier is located to act as an arbitrator or conciliator as the case may be in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India. What is essential for the Council to assume jurisdiction in respect of a dispute, under Section 18 of the Act of 2006, is that the location of the supplier has to be within its jurisdiction. The cause of action of such dispute may have arisen anywhere in India. Such cause of action on part thereof may not have arisen within the jurisdiction of such Council. However, once the supplier is located within the jurisdiction of a particular Council thus such Council alone has jurisdiction under sub-section (4) of the Section 18 of the Act of 2006 to decide on the dispute between the buyer and the supplier.

20. In the facts of the present case, admittedly, the respondent No. 5 has its office in Kolkata. It has registered itself with the respondent No. 1 with an address at Kolkata. Therefore, the contention of the petitioners that, no cause of action had arisen within the jurisdiction of the respondent No. 1 for the respondent No. 1 to assume jurisdiction over the dispute between the parties, is no consequence in view of Section 18(4) of the Act of 2006. Since, the respondent No. 5 has its office within the jurisdiction of the respondent No. 1 and since the respondent No. 5 is registered with the respondent No. 1, the assumption of jurisdiction by the respondent No. 1 in respect of the dispute of the respondent No. 5 and the respondent No. 1 cannot be faulted.

21. The Act of 2006 has a requirement of registration of an enterprise coming within the definition of the Act of 2006. The Act of 2006 does not stipulate that the registration of an enterprise under the Act of 2006 has to be product specific. The Act of 2006 has a requirement of registration on the basis of three categories of enterprise as defined and described therein, that is to say, an enterprise registered under the Act of 2006 should be registered either as a 'medium enterprise' within the meaning of Section 2 (g) read with Section 7 or a 'micro enterprise' as defined under Section 2(h) read

with Section 7 or a 'small enterprise' as defined in Section 2(m) read with Section 7 of the Act of 2006. The petitioners have not drawn the attention of the Court to any provision of the Act of 2006 which requires registration of a micro, small or a medium enterprise under any specific product or class of product. Under the Act of 2006 the registration depends upon the size of the enterprise rather than the products supplied or manufactured. The registration under the Act of 2006 is product neutral and size of enterprise specific. It has allowed the enterprise seeking the registration to apply for and obtain registration specifying one place of business. Once the registration is granted at such specific location, the Council within whose jurisdiction the location of the business of the registered enterprise falls will discharge the jurisdiction in relation to such enterprise. Such registered enterprise can carry on business anywhere or in any product but the same will not affect the jurisdiction of the Council where the supplier is located.

22. The respondent No. 1 has issued letters dated June 6, 2021 and July 21, 2021. According to the petitioners, the respondent No. 1 has demanded payments on behalf of the private respondents through such letters and that the respondent No. 1 has acted without jurisdiction in doing so. In the two letters impugned herein the

respondent No. 1 has advised the petitioners to pay the amount due to the supplier. The letters have a default clause stating that, in the event of the failure of the petitioners paying the supplier a case would be registered by the respondent No. 1. By the impugned letters the respondent No. 1 has invoked the provision of Section 18(1) of the Act of 2006. The respondent No. 1 has stated about the invocation of the same in the impugned notices. The impugned letters cannot be construed to mean that there are demand notices issued on behalf of the private respondents. The impugned letters are information supplied to the petitioners that, the respondent No. 1 had received the application specified therein from the respondent No. 5 of non-payment of bills of the respondent No. 5 by the petitioner No. 1, the advise to the parties to conciliate and settle their dispute and the steps that respondent No. 1 will take in the event the respondent No. 1 is not informed about the payment thereof. Neither of the two letters can be said to have transgressed the powers under Section 18 of the Act of 2006.

23. The merits of the claim of the respondent No. 5 against the petitioner No. 1 for which the respondent No. 5 has approached the respondent No. 1, need not be adjudicated upon by a Writ Court particularly when the parties have statutory alternative remedy. The

merits of the claim are not such as to denude the jurisdiction of the respondent No. 1 thereon.

24. In such circumstances, I find no merit in the present Writ Petition. WPA No. 12512 of 2021 is dismissed without any order as to costs.

[DEBANGSU BASAK, J.]