

Ct. 05
Item No.21
30.09.2022
(Suvendu)

WPA 16667 of 2022

**The Board of Major Port Authority for the
Syama Prasad Mookerjee Port, Kolkata
Vs.
Micro and Small Enterprises
Facilitation Council & Anr.**

Mr. Kishore Dutta
Mr. Ashok Kumar Jena
.....for the petitioner

K. Thakker
..... for the respondent.

The petitioner is the Kolkata Port what entered into a contract with the respondent for hiring of a Pilot Launch. The disputes arose between the parties and the respondent approached the Micro and Small Enterprises Facilitation Council at Lucknow, Uttar Pradesh for conciliation. The petitioner prays for recalling of two Intimation Notices dated 25th April, 2022 and 12th July, 2022 by which the petitioner has been called to pay certain amounts to the respondent in furtherance of the proceedings before the Facilitation Council.

The petitioner takes primarily three points of objection on the applicability of The Micro, Small and Medium Enterprises Development Act, 2016 (MSME Act), namely that the respondent cannot invoke the provisions of the Act since the respondent was registered as MSME only in 2020 where as the contract was entered into between the parties in 2016. Learned counsel appearing for the petitioner relies on *Vaishno Enterprises Vs. Hamilton Medical AG and Another*, 2022 SCC OnLine SC 355 in this connection. The second point is that the contract was entered into within the territorial limits of Kolkata; hence the respondent could not have approached the Council in Lucknow and the third point is that there is an Arbitration Clause in the contract. Each of these contentions are dealt in the sequence mentioned above

It appears from a Gazette Notification dated 26th June, 2020 of the Ministry of Micro, Small and Medium Enterprises that the registration of existing Enterprises under EM Part -II or UAM shall register again on the Udyam Registration Portal on or after the 1st day of July 2020. This appears under Clause 7 of the Notification. Clause 7(2) further provides that all

enterprises registered till 30th June, 2020 shall be re-classified in accordance with this Notification.

The document shown to the Court by learned counsel appearing for the respondent shows that the respondent applied for registration under Clause 7(1) of the Notification which was duly acknowledged by the Udyam Registration Portal on 24th September, 2020. The other document shown to the Court further indicates that the respondent filed an application in the erstwhile Udyam Registration Portal on 22nd December, 2015 and was granted a registration on that day. This fact would appear from the UDAD acknowledgement slip and the number appearing in the Udyam Portal. Hence, the contention of the petitioner that the respondent cannot avail of the benefits of the provisions of the MSME Act by reason of being registered in 2020 (and not as on the date of the contract in 2016) cannot be sustained and is rejected on that basis.

Vaishno Enterprises was only cited on the particular facts of the appellant before the Supreme Court not being registered as a MSME on the date on which the contract was executed. This decision hence does not apply to the present case where the facts are wholly different, namely the

respondent was registered at least an year before the date of execution of the contract.

With regard to the second contention, namely that the entire cause of action has arisen within the territorial limit of Kolkata, Section 18(4) of the MSME Act may be referred to.

Section 18(4) of the MSME Act starts with a non-obstinate clause and makes it clear that the MSME Facilitation Council or the Center providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator in a dispute under Section 8 between the supplier located within its jurisdiction and a buyer anywhere in India.

The respondent is admittedly located in Lucknow and the petitioner approached Lucknow Facilitation Council accordingly. Hence, the second contention of the respondent not having locus to have approached the Lucknow Council is also rejected.

The contention with regard to existence of an Arbitration Clause is answered by Section 4 of the 2006 Act which has an overriding effect on any law which is inconsistent with Sections 15 to 23 of the MSME Act. The petitioner has approached the Facilitation Council within the bracket of these Sections and is also covered by Section 18 in

terms of jurisdiction. Hence, the objection to the impugned Notices on the existence of Arbitration Clause is rejected by reason of particular provisions of the Act.

Having arrived at the considered view that the petitioner does not have a defence and cannot claim any relief on the impugned Intimation Notices of the concerned Facilitation Council, WPA 16667 of 2022 is dismissed without any order as to costs.

It is made clear that whenever the respondent has been referred in this order it should mean to be the respondent no. 2 who is the MSME Unit present before the Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)