

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3034 OF 2022

M/s.Metaforge Engineering (I) P.Ltd. Petitioner

Vs.

Union of India and Ors. Respondents

Mr.Alankar Kirpekar a/w Mr.Sagar Kasar for the Petitioner

Mr.Pradeep S. Jetly, Sr.Counsel a/w Mr.Jitendra Mishra and
Ms.Sangeeta Yadav for Respondent no.1

Mr.Amol Wagh a/w Ms.Chaitali Bhogle for Respondent no.4

**CORAM: S.V. GANGAPURWALA &
SANDEEP V. MARNE, JJ.**

DATED : JULY 20, 2022

JUDGMENT: (PER: S.V.GANGAPURWALA, J.) :

1 Rule. Rule made returnable forthwith. By consent of the parties, matter is taken up for final disposal.

2 The Petitioner is a Company registered under the Companies Act. It is a Medium Enterprise. The Petitioner had filed an Application referable to section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (Act, 2006) against the present Respondent no.4 for payment of the amount. Request was made that

the Council may act as a Conciliator and or Arbitrator. If conciliation fails then matter is to be referred to Arbitration. The Micro and Small Enterprises Facilitation Council rejected the Application on the ground that the Petitioner is a Medium Enterprise and cannot invoke the Jurisdiction of the Council under section 18 of the Act, 2006.

3 The learned counsel submits that the Petitioner has made a categorical statement that it is a supplier of the goods manufactured and produced by the small enterprise. The Petitioner is covered under the definition of supplier as defined under section 2(n)(iii) of the Act, 2006. The learned counsel to substantiate his argument relies on the judgment of the learned single Judge of Delhi High Court in the case of Ramky Infrastructure Private Limited vs. Micro and Small Enterprises Facilitation Council and another¹.

4 We have heard the learned counsel for Respondent no.1 and the Respondent no.4. The learned Counsel for the Respondents support the order of the Council and submits that the Petitioner is a Medium Enterprise. It would not have availed the remedy under section 18 of the Act, 2006.

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5 We have considered the submissions canvassed by the learned Counsel for the parties.

6 Before we advert to the contention of the learned counsel, it would be appropriate to refer to the relevant provisions; i.e. Sections 2(n), 17 and 18(1)(2) and (3) of the Act, 2006 which read thus:

“Section 2(n):

(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)

(ii).....

(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;

Section 17:

Recovery of amount due. —For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.

Section 18 :

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.”

7 It is not disputed that the Petitioner is a Medium Enterprise

and the Respondent no.4 is a small enterprise.

8 The substratum of the matter is whether the Petitioner being a medium enterprise could have invoked jurisdiction of the Council under section 18 of the Act, 2006.

9 The definition of supplier is an inclusive definition. Clause (iii) of the section 2(n) of the Act, 2006 would be relevant for our consideration. According to the said definition, the terminology “supplier” would take within its fold any company / co-operative Society, trust or a body, by whatever name called, registered and 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. The Company registered under the Companies Act would be within the definition of “supplier” if it is engaged in selling goods produced by micro or small enterprise and rendering services which are provided by such enterprises. The aspect required to be considered is whether the Petitioner company is one selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises. If it is a small enterprise then the requirement as referred to in 2(n)(iii) of the Act, 2006 is required to be satisfied. An

enterprise other than micro or small enterprise is also within the realm of the supplier if is engaged in selling goods produced by micro or small enterprise and rendering services which are provided by such enterprises. Reading section 17 of the Act, 2006 conjointly with the definition of “supplier” it would be manifest that for any goods supplied or services rendered by the supplier, the buyer shall be liable to pay as provided under section 16 of the Act, 2006 and under section 18 of the Act, 2006 any party to a dispute may, with regard to any amount due under section 17 of the Act, 2006, make a reference to the Micro and Small Enterprises Facilitation Council.

10 Literal interpretation of these rules is unambiguous and would not admit of any ambiguity. Section 2(n)(iii), 17 and 18 of the Act, 2006 will have to be read harmoniously. The provisions in a statute cannot be read in a manner to render a particular provision otiose or superfluous. If it is held that a supplier engaged in selling goods produced by micro or small enterprise and rendering services which are provided by such enterprise cannot invoke the forum provided under section 18 of the Act, 2006, then, it would be doing violence to section 2(n) read with section 17 and 18(1) of the Act, 2006. Reading the provision of section 2(n)(iii), section 17 and 18(1) harmoniously the only irresistible conclusion that can be drawn is

that the enterprise other than the Micro and Small Enterprise may also be entitled to take recourse to section 18 of the Act, 2006. Provided, it is a supplier of the goods produced by the micro or small enterprise and rendering service which are provided by such enterprises.

11 The fundamental rule of construction of the provisions is to read the provision literally, i.e., by giving to the words their ordinary and natural meaning. Every provision of the statute has to be construed with reference to the context and other clauses of the Act. The definition of the “supplier” is precise and unambiguous. The words in the definition of the “supplier” will have to be expounded in the natural and ordinary sense.

12 Under the impugned order, the Council has failed to take into consideration the definition of the term “supplier” as defined under the Act, 2006 and thereby has misdirected itself in holding that a medium enterprise cannot invoke its jurisdiction. The Respondent no.1 was required to consider the definition of “supplier” as enumerated in section 2(n)(iii) of the Act, 2006.

13 In view of the above, it was necessary for the Council to first come to the conclusion whether the Petitioner is a supplier of goods produced by micro or small enterprises and rendering services which are provided by such enterprises. It is only thereafter Council could have arrived at a conclusion of jurisdiction under section 18.

14 In light of the above, impugned order is quashed and set aside. Council shall consider the factual matrix of the case and if it comes to the conclusion that the Petitioner is a supplier of the goods produced by the micro or small enterprises and rendering services which are provided by such micro and small enterprise then consider the claim of the Petitioner on its own merits. The matter would be decided by the Council as per the speculation made under section 5 of section 18 of the Act, 2006.

15 The learned Counsel for the Petitioner submits that there is no facility of filing online application for enterprise of micro and small enterprise. Council may consider the said aspect of providing online Application for the supplier as defined under section 2(n) of the Act, 2006. Till then, the Application filed by the Petitioner offline be considered.

16 Writ Petition is disposed of.

17 Rule made absolute in above terms. No order as to costs.

(SANDEEP V. MARNE, J.)

(S.V. GANGAPURWALA, J.)