



C.R.P(MD)No.2450 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.06.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.2450 of 2022

and

CMP(MD)No.11980 of 2022

M/s.Kushboo Creations,
Rep by its Proprietor,
Kushboo Gupta,
H No.G-193, Near Jhankaar Banghet,
Preetvihar, Delhi - 16

...Petitioner/Respondent

Vs.

M/s.Kanpur Shivasankar Spices,
Rep by its proprietor,
R.Kumar,
1/W12, Periyandavarpuram East lane,
Bodinayaknoor-625513.

...Respondent/Petitioner

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records relating to the petitioner and proceeding in O.P.No.64/MSEFC/MDU/2021 on the file of Micro, Small Enterprises Facilitation Council, Madurai Region, and to strike out the same.

For Petitioner : Mr.R.Suriya Narayanan
For Respondent : Mr.S.Ramsurdarvijayraj



C.R.P(MD)No.2450 of 2022

ORDER

WEB COPY

The petition has been filed to set aside the proceeding in O.P.No. 64/MSEFC/MDU/2021 on the file of Micro, Small Enterprises Facilitation Council, Madurai Region, and to strike out the same.

2.The petitioner herein is the respondent before the Micro, Small Enterprises Facilitation Council, Madurai Region in O.P.No. 64/MSEFC/MDU/2021 filed by the respondent herein to recover the amount due from the petitioner allegedly for transportation of cardamom. The reference to Facilitation Council under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 before the Micro, Small Enterprises Facilitation Council of Madurai region has been questioned primarily on the ground that the respondent (claimant before Micro, Small Enterprises Facilitation Council in O.P.No. 64/MSEFC/MDU/2021) has registered as MSME only on 21.07.2020 and thus, whereas claim petition has been filed on 08.11.2021 in respect of invoices allegedly raised by the respondent on the petitioner during the period between 2018 and 2019. Hence, it is submitted that the proceedings initiated before the Micro, Small Enterprises Facilitation Council was without jurisdiction.



C.R.P(MD)No.2450 of 2022

3. In support of the plea, the petitioner has placed reliance on the decisions of the Hon'ble Supreme Court in the cases of *M/s.Bharath Heavy Electricals Ltd., Vs Vector Engineering Company* reported in *2021 (5) LW 168* and *Vaishno Enterprises Vs Hamilton Medical AG and another* reported in *2022 (2) CTC 782*.

4. It is submitted that the respondent has obtained registration under the Act only on 21.07.2020 and therefore, Micro, Small Enterprises Facilitation Council cannot resolve the dispute in respect of transaction which indicate the date of registration under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006.

5. Per contra, the learned counsel for the respondent submits that the present Civil Revision Petition is without merits and liable to be dismissed. It is submitted that there is no embargo on the Micro, Small Enterprises Facilitation Council from entertaining the application filed under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006. It is submitted that the registration has been obtained subsequent to the transaction *ipso facto* would not mean that the application is not maintainable. Hence, prays for dismissal of the present civil revision petition.



C.R.P(MD)No.2450 of 2022

6. It is submitted that the attempt of the petitioner to strangle the proceedings cannot be entertained as the petitioner will have a remedy under the Arbitration and Conciliation Act, 1996 as made applicable under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006.

7. The learned counsel for the respondent has placed reliance on the decision of the High Court of Delhi in the case of **Purvanchal Vidyut Vitran Nigam Limited Vs SRV Techno Engineering Private Limited** reported in **2022 SCC Online Del 4713**. A specific reference is made to the following paragraphs:

"45. This Court finds force in the arguments of learned counsel for the respondent that petitioner had the knowledge of the proceedings pending before the MSME council since May 2021 and the petitioner had received the intimation of the appointment of Arbitrator under MSME Act in the month of August 2022. Despite having such knowledge of the proceedings before the Ld.Sole Arbitrator, the petitioner filed the application challenging the maintainability of the arbitration proceedings at a belated stage when the arbitration proceedings are about to be concluded.

46. On perusal of the records, it is clear that the application filed by the petitioner is still pending before the Arbitrator for adjudication and the Arbitrator already have fixed the date for final arguments in the instant proceedings.

47. In view above facts and circumstances, available records, the admitted facts and foregoing discussions, this Court does not find any merit in the instant petition for



C.R.P(MD)No.2450 of 2022

WEB COPY

termination of the mandate particularly, when the pleadings in the arbitration proceeding has already concluded and the matter is fixed for the final hearing for deciding the application before passing the award."

8.I have considered the argument advanced by the learned counsel for the petitioner and perused the decisions of the Hon'ble Supreme Court in the cases of ***Vaishno Enterprises Vs Hamilton Medical AG and another*** reported in **2022 (2) CTC 782**, **Surya Dev Rai Vs. Ram Chander Rai** reported in **2003 6 SCC 675** and the decision of this Court in the case of ***M/s.Bharath Heavy Electricals Ltd., Vs Vector Engineering Company*** reported in **2021 (5) LW 168** cited by the learned counsel for the petitioner and also perused the decision of the Hon'ble Supreme Court in the case of ***Bhaven Construction Vs. Executive Engineer, Sardar Sarpvar Narmada Nigam Limited and another*** reported in **2022 1 SCC 75** and that of paragraph 6 of the decision of the Hon'ble Supreme Court in ***Purvanchal Vidyut Vitran Nigam Limited Vs SRV Techno Engineering Private Limited*** reported in **2022 SCC Online Del 4713** cited by the learned counsel for the respondent.

9. The decision of the Hon'ble Supreme Court in the case of ***Vaishno Enterprises Vs Hamilton Medical AG and another*** cannot be



C.R.P(MD)No.2450 of 2022

applied to the facts of this case. Therein, ratio was rendered in the contest of an arbitration agreement between the parties, wherein it was agreed that the parties shall be governed by the laws of India applicable and/or prevailing at the time of execution of the contract.

10. In the said case, admittedly, at the time of execution of the contract on 10.02.2020, the petitioner/appellant namely, the ***Vaishno Enterprises*** was not registered as MSME under Section 8 of the MSME Act, 2006. The petitioner/appellant had registered as a MSME only on 28.08.2020.

11. In the case of ***M/s. Bharath Heavy Electricals Ltd., Vs Vector Engineering Company***, the respondent was not even registered as MSME under Section 8 of the MSME Act.

12. The facts of the present case indicate that the respondent has registered as a MSME under MSME Act, 2006, only on 21.07.2020. The respondent has approached the Facilitation Council under MSME Act, 2006, in respect of amount allegedly due under invoice raised between 2018 to 2019. The terms of contract has not been filed before this Court. There is no universal stipulation on date of the contract. The respondent



C.R.P(MD)No.2450 of 2022

should have been registered as a MSME under MSME Act, 2006.

WEB COPY

13. The decision of the Hon'ble Supreme Court in *Vaishno Enterprises Vs Hamilton Medical AG and another* cannot be universally applied to the facts of the present case. It pertains to a trans-national commercial transactions with two parties one from India and other from Germany. On the date of contract, the appellant therein has not registered as a MSME under MSME Act, 2006. It was found that under the terms of the agreement, there were restriction. No such restriction is discernible in the dispute between the parties here to. Now, wherein the invoice raised by the petitioner on various dates indicate that the respondent was prohibited from invoking jurisdiction of MSME Facilitation Council and the provisions of the said Act.

14. Therefore, there is no merits in the present Civil Revision Petition and the Civil Revision Petition is liable to be dismissed and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs.

12.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
dss



WEB COPY



C.R.P(MD)No.2450 of 2022

C.SARAVANAN,J.

dss

To

- 1.The Micro, Small Enterprises Facilitation Council,
Madurai Region.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.R.P(MD)No.2450 of 2022
and
CMP(MD)No.11980 of 2022

12.06.2023