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January 9, 2024.
MNS.

WPA No. 28661 of 2023

Essar Oil And Gas Exploration And
Production Limited
Vs.
The District Magistrate, Shahdara District,
Government of National Capital Territory
of Delhi and others

Mr. Rajarshi Dutta,
Mr. V.V.V.Sastry,
Mr. Rahul Poddar

... for the petitioner.

Mr. Sumit Agarwal,
Ms. Akanksha Mukherjee,
Mr. Dinabandhu Chowdhury

...for the respondent no. 3.

1. Affidavits-of-service filed in Court today be kept on record.
2. The present writ petition has been filed against assumption of jurisdiction by the District Magistrate, Shahdara District, New Delhi, under the provisions of Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 ("the 2006 Act").
3. It is contended that the District Magistrate did not have jurisdiction or authority to assume such jurisdiction. For such purpose, learned counsel for the petitioner places reliance on a notification issued by the Industries

Department of New Delhi dated July 30, 2007 which designates the members of the Micro, Small and Medium Enterprises Council ("the MSME Council") of the National Capital Territory of Delhi.

4. It is pointed out that the concerned District Magistrate is not a part of the said MSME Council and, as such, the assumption of jurisdiction by him is *ex facie* barred.
5. It is further argued by the petitioner that an initial notice was sent with a covering e-mail dated April 12, 2023 fixing a date for conciliation before the District Magistrate, Shahdara, New Delhi on April 17, 2023. However, since the copies of the same were addressed to some other entities and not the petitioner, an objection in that regard was taken by the petitioner by communication to the District Magistrate.
6. Subsequently, conceding to such stand of the petitioner, a further e-mail was sent on April 25, 2023. However, the attached notice sent with the said e-mail dated April 25, 2023 reiterated that the date of hearing was April 17, 2023. Thus, the date of hearing itself being prior to the date of communication by

the e-mal, the said notice itself was bad in law. The petitioner, accordingly, was not given opportunity to be present or attend the said conciliation proceeding and take necessary objections.

7. As such, the subsequent reference to Arbitrator by the MSME Council, Delhi, within the contemplation of Section 18(3) of the 2006 Act is also bad in law.
8. Upon query of the court regarding territorial jurisdiction of this Court to take up the present application under Article 226 of the Constitution of India, learned counsel for the petitioner contends that an application under Section 11 of the Arbitration and Conciliation Act, 1996 ("the Act of 1996") had previously been preferred before this Court. The same was entertained by this Court and an arbitrator appointed.
9. It is further argued that the impugned communication by the District Magistrate was received by the petitioner within the territorial jurisdiction of this Court. That apart, several correspondences were initiated by the petitioner, also from the territorial jurisdiction of this Court. The impugned decisions of the

respondent authorities were all received by the petitioner, also within the territorial jurisdiction of this Court.

10. Thus, it is argued that a part of the cause of action arose within the territorial jurisdiction of this Court as contemplated in Article 226(2) of the Constitution of India.

11. Learned counsel appearing for the respondent no. 3, at the outset, takes an objection as to the territorial jurisdiction of this Court. It is argued that the impugned decisions have all been taken within the territory of Delhi and, as such, the Delhi High Court is the appropriate High Court having jurisdiction to decide the matter.

12. That apart, it is argued that the petitioner had ample opportunity to take all objections before the appropriate forum. It is contended that the reference to the arbitration was made by the MSME Council, Delhi on August 30, 2023 whereas the present writ petition has been filed only in December, 2023. Thus, the petitioner sat tight over the matter throughout the relevant period.

13. It is also contended that the District Magistrate, Shahdara District, is the

Chairperson of the concerned MSME Council of New Delhi.

14. Be that as it may, at the outset the issue of territorial jurisdiction is required to be decided before proceeding to take up the matter on merits.

15. It is seen from the materials annexed to the writ petition and the averments made therein that the impugned decision was taken by the District Magistrate, Shahdara District, within the territorial jurisdiction of New Delhi.

16. The purported conciliation proceeding under the 2006 Act was initiated and concluded also within the territorial jurisdiction of New Delhi.

17. Thereafter, the MSME Council, New Delhi, referred the matter to arbitration.

18. The cause of action for the instant writ petition is not restricted to mere receipt and issuance of communication or correspondences but arises out of allegedly erroneous assumption of jurisdiction by the District Magistrate at Shahdara, Delhi and thereafter reference to arbitration by the MSME Council, also at Delhi.

19. Since the seats of the conciliation as well as the subsequent reference to arbitration under

Section 18 of the 2006 Act are situated within the territorial jurisdiction of New Delhi, the conspectus of the present challenge being such assumption of jurisdiction, the correspondence or the situs of such correspondence pales into insignificance while determining territorial jurisdiction.

20. Insofar as the cause of action is concerned, a note of caution is to be introduced herein. There is a distinction between the cause of action of the main arbitrable dispute between the parties and the cause of action of the challenge to assumption of jurisdiction of the authorities as in the present writ petition.

21. Whereas the application of the petitioner under Section 11 of the Act of 1996 was entertained because a part of the cause of action pertaining to the main dispute between the parties had arisen within the territorial jurisdiction of this Court, the cause of action of the present writ petition, which relates entirely to a challenge to assumption of jurisdiction, fell within the territorial jurisdiction of New Delhi and, as such, is amenable to the jurisdiction of the Delhi High Court.

22. In such view of the matter, this Court is not inclined to entertain the writ petition on the ground of lack of territorial jurisdiction.

23. Accordingly, WPA No. 28661 of 2023 is disposed of with liberty to the petitioner to approach the appropriate High Court with the challenge as preferred herein.

24. It is made clear that it will also be open to the petitioner to approach all forums, including the MSME Council or the Arbitrator appointed by the MSME Council, New Delhi, with the objections on merits as taken herein.

25. This court has not entered into the merits of any of the contentions of the parties but returns the present writ petition merely on the ground of lack of territorial jurisdiction.

26. Leave is granted to the learned Advocate for the respondent no. 3 to file his Vakalatnama by January 15, 2024.

27. There will be no order as to costs.

28. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)