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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 16720/2022**

JENENDRA MEDICOS PRIVATE LIMITED Petitioner

Through: Mr. Parmod Kumar Bhardwaj and
Ms. Neeshu Singh, Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Ajay Digpaul, CGSC with Mr.
Kamal Digpaul and Ms. Ishita Pathak,
Advocates for UoI.
Mr. Amit Dayal, Advocate for R-5.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

17.05.2024

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1. The Petitioner has approached this Court challenging the decision of the Micro and Small Enterprises Facilitation Council (MSEFC) in referring the dispute between the Petitioner and the Respondent No.5 to the Arbitration under the Micro, Small and Medium Enterprises Development (MSMED), Act, 2006.
2. Material on record discloses that Respondent No.5 supplies medicines to the Petitioner. A dispute arose between the Petitioner and the Respondent No.5 and, thereafter, the Respondent No.5 approached the Micro and Small Enterprises Facilitation Council (MSEFC) for reference under the MSMED Act and the dispute has been referred by the MSEFC to arbitration. An Arbitrator has been appointed and the matter is pending before the Arbitrator.
3. The short question which arises for consideration is whether the



reference made by the MSEFC is valid or not.

4. Learned Counsel appearing for the Petitioner draws attention of this Court to an Office Memorandum dated 27.06.2017 issued by Ministry of Micro, Small and Medium Enterprises, GoI which is being reproduced below:

F.No. UAM/MC/01/2017-SME
Government of India
Ministry of Micro, Small & Medium Enterprises
(SME Section)

Udyog Bhawan, New Delhi
Dated: 27.06.2017

OFFICE MEMORANDUM

Sub: Activities (NIC codes) not covered under MSMED Act, 2006 for registration of Udyog Aadhaar Memorandum(UAM)- regarding.

The undersigned is directed to inform that Sub Section 1 of Section 7 of Micro Small or Medium Enterprises Development Act 2006 provides for classification of enterprises engaged in manufacturing or production of goods as well as enterprises engaged in providing or rendering of services as micro, small and medium based on investment in plant and machinery and equipment respectively. Sub Section 1 of Section 8 provides that any person who intends to establish a micro or small or medium enterprise engaged in manufacture or production of goods or providing or rendering of services may at his discretion shall file a memorandum of micro, small or medium enterprises in accordance with the provisions of Act. Subsequently, Ministry of Micro Small or Medium Enterprises notified vide notification number S.O. 2576 (E) dated 18.9.2015 and subsequent notification No. SO 85(E) dated 10.1.2017 for registration of Udyog Aadhaar Memorandum for Micro, Small or Medium Enterprises. In this context it is further clarified that the activities in **Table.I** below would not be included in the manufacture or production of goods or providing or rendering of services in accordance with Section 7 of the Micro, Small and Medium Enterprise Development Act, 2006:-

Table.I

NIC Code	Activity
02	Forestry and logging
03	Fishing and aquaculture
45	Wholesale and retail trade and repair of motor vehicle and motorcycles
46	Wholesale trade except of motor vehicles and motor cycles 47
47	Retail Trade Except of Motor Vehicles and motor cycles
97	Activities of households as employees for domestic personnel
98	Undifferentiated goods and services producing activities of private households for own use
99	Activities of extraterritorial organization and bodies

2. The NIC 2-digit activity **01- crop, animal production, hunting and related activities** would also not be included as per Section 7 of the Act **except** for the sub-classes of activities at 5-digit level given in Table 2.:



Table. 2

NIC Code	Activity
01462	Production of eggs
01463	Operation of poultry hatcheries
01492	Bee- keeping and production of honey and beeswax
01493	Raising of silk worms, production of silk worm cocoons
01612	Operation of agricultural irrigation equipment
01620	Support activities for animal production
01631	Preparation of crops of primary markets i.e. cleaning, trimming, grading disinfecting
01632	Cotton ginning, cleaning and baling
01633	Preparation of tobacco leaves
01639	Other post-harvest crop activities, n.e.c
01640	Seed processing for propagation

(K. S. Ngangbam)
Deputy Director (SME)
Tel.No. 23961546

Distribution:

- (i) AS&DC, O/o Development Commissioner, Ministry of MSME.
- (ii) JS(SME)/JS(ARI)/JS(TC), Ministry of MSME.
- (iii) All Director, MSME-DIs
- (iv) All GM, District Industries Centres.

Copy to:

- (i) PS to Minister(MSME)/PS to MoS(GS)/PS to MoS(HPC)
- (ii) PPS to Secretary(MSME)

5. A perusal of the abovementioned Office Memorandum indicates that wholesale and retail trade and repair of motor vehicle and motorcycles and wholesale trade except of motor vehicles and motor cycles are outside the purview of the definition of service in accordance with Section 7 of the MSMED Act, 2006.

6. Since the retail trade is outside the purview of the MSMED Act, the present dispute between the parties which arises out of supply of medicines will fall outside the purview of the definition of service in accordance with



Section 7 of the MSMED Act, 2006, and therefore, even though the Respondent No.5 which might be a service provider in other avenues cannot avail of the benefit of MSMED Act.

7. In view of the above, the reference made by the Micro and Small Enterprises Facilitation Council (MSEFC) in referring the dispute between the Petitioner and the Respondent No.5 to the Arbitration under the Micro, Small and Medium Enterprises Development (MSMED), Act, 2006 is, therefore, is not correct.

8. The writ petition is allowed. Pending application(s), if any, stand disposed of. It is always open for the Respondent No.5 to take appropriate steps in accordance with law for recovery of money.

9. Needless to state the time period from the date of Respondent No.5 approached the Micro and Small Enterprises Facilitation Council (MSEFC) till the date of the present Order will be excluded while calculating the period of limitation under Section 14 of the Limitation Act.

SUBRAMONIUM PRASAD, J

MAY 17, 2024

S. Zakir