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IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of Decision: 18th October, 2024**

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W.P.(C) 14572/2024

KALAMKARI LIFESTYLE TECH PVT LTD

.....Petitioner

Through: Mr. Ankur Malik, Advocate

versus

MSME FACILITATION COUNCIL MUMBAI AND ANR

.....Respondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE SANJEEV NARULA****JUDGMENT****SANJEEV NARULA, J. (Oral):**

1. The Petitioner, a New Delhi based company involved in the manufacturing and sale of ladies' garments, entered into an Agreement dated 15th November, 2022 with Respondent No. 2, a Mumbai based entity offering end-to-end strategic support, mentoring, and guidance to MSMEs. The Petitioner alleges that Respondent No. 2, despite making promises, failed to deploy the necessary team to fulfil their contractual obligations. Further, the Petitioner urges that without any prior notice, Respondent No. 2 unilaterally withdrew its promised services, leaving the Petitioner in a difficult position. Despite several attempts to resolve the matter amicably, Respondent No. 2 has now escalated the dispute to the MSME Facilitation Council in Mumbai, raising the claims of unpaid dues based on invoices



asserted by the petitioner to be fabricated. Moreover, Petitioner contends that Respondent No. 2 has initiated proceedings under the Micro, Small and Medium Enterprises Development Act, 2006¹, without acknowledging its own unfulfilled promises or the counter-claims raised by the Petitioner. Thus, the Petitioner views this escalation as a tactic to avoid accountability while presenting a one-sided narrative before the Facilitation Council.

2. Therefore, aggrieved by the actions of Respondent No. 2, the Petitioner has filed the present writ petition seeking directions for transferring the venue of the proceedings under Application No. UDYAM-MH-19-0026363/M/00002, initiated by Respondent No. 2 before the MSME Facilitation Council, Mumbai, to a venue in Delhi. The Petitioner asserts that such a transfer is necessary for reasons of convenience and fairness, considering that the Petitioner's principal place of business and operations are located in New Delhi.

3. The Petitioner argues that, in accordance with Section 20 of the Code of Civil Procedure², jurisdiction should be determined by the location where the primary cause of action originated. The Petitioner submits that since the core operations and key deliverables of Respondent No. 2 were concentrated in Delhi, the appropriate venue for adjudication should be Delhi. They further argue that, in the absence of an arbitration agreement specifically designating Mumbai as the seat of arbitration, it is legally inappropriate for the proceedings to be conducted there. Furthermore, Respondent No. 2 had previously agreed to the joint jurisdiction of both Delhi and Mumbai Courts in case of any disputes arising between the parties. As no exclusive

¹ "MSMED Act"

² "CPC"



agreement exists, jurisdiction should default to the location of the Petitioner's primary operational base, being in Delhi.

4. Furthermore, the Petitioner also contends that the provisions of the MSMED Act do not override the established principles of jurisdiction under CPC, and as such, the proceedings should be transferred to a venue aligned with the jurisdictional framework provided under CPC. The continuation of proceedings in Mumbai, they argue, would impose an undue logistical and financial burden on the Petitioner, and therefore, justice would be best served by transferring the proceedings to Delhi. To support this contention, reliance is placed on an order passed by the High Court of Chhattisgarh, Bilaspur in W.P.(C) No. 3124 of 2022.

5. The Court has carefully considered the contentions raised by the Petitioner but remains unconvinced. The allegations concerning the contractual disputes between the Petitioner and relating to non-fulfilment of obligations under the Agreement dated 15th November, 2022, are not the subject of examination by this Court, as the Petitioner's grievance pertains solely to the issue of territorial jurisdiction of the Facilitation Council. Specifically, the Petitioner challenges Respondent No. 1's authority to entertain the claims and disputes raised by Respondent No. 2 in Mumbai.

6. In the opinion of the Court, on this issue, one would have to refer to Section 18(4) of the MSMED Act, which reads as follows:

"Section 18. Reference to Micro and small Enterprises Facilitation Council.

xx.....xx.....xx

(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.”

7. The aforementioned provision unequivocally establishes that the Facilitation Council or the designated centre has the jurisdiction to act as an arbitrator or conciliator in disputes between a supplier located within its territorial jurisdiction and a buyer located anywhere across India. In the present case, Respondent No. 2 being the supplier, is based in Mumbai, which places the jurisdiction squarely within the purview of Respondent No. 1, the MSME Facilitation Council in Mumbai, to entertain the claims brought by Respondent No. 2. In fact, to this effect, the Supreme Court in the case of ***Gujarat State Civil Supplies Corporation Ltd. v. Mahakali Foods Pvt. Ltd. (Unit 2) & Anr.***, 2023) 6 SCC 401 has held as follows:

“43. The Court also cannot lose sight of the specific non obstante clauses contained in sub-sections (1) and (4) of Section 18 which have an effect overriding any other law for the time being in force. When the MSMED Act, 2006 was being enacted in 2006, the legislature was aware of its previously enacted Arbitration Act of 1996, and therefore, it is presumed that the legislature had consciously made applicable the provisions of the Arbitration Act, 1996 to the disputes under the MSMED Act, 2006 at a stage when the conciliation process initiated under sub-section (2) of Section 18 of the MSMED Act, 2006 fails and when the Facilitation Council itself takes up the disputes for arbitration or refers it to any institution or centre for such arbitration. It is also significant to note that a deeming legal fiction is created in Section 18(3) by using the expression “as if” for the purpose of treating such arbitration as if it was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996. As held in K. Prabhakaran v. P. Jayarajan [K. Prabhakaran v. P. Jayarajan, (2005) 1 SCC 754 : 2005 SCC (Cri) 451] , a legal fiction presupposes the existence of the state of facts which may not exist and then works out the consequences which flow from that state of facts. Thus, considering the overall purpose, objects and scheme of the MSMED Act, 2006 and the unambiguous expressions used therein, this Court has no hesitation in holding that the provisions of Chapter V of the MSMED Act, 2006 have an effect overriding the provisions of the Arbitration Act, 1996.”

[Emphasis supplied]



8. Furthermore, the Petitioner's reliance on Section 20 of the CPC is misplaced in the present context. Given the statutory provisions under the MSMED Act, the question of jurisdiction, as raised by the Petitioner, becomes redundant. The MSMED Act's specific jurisdictional framework, as outlined in Section 18(4), takes precedence over general provisions under CPC, particularly when disputes involve suppliers located within the territorial jurisdiction of a particular Facilitation Council, in this case, Mumbai. Therefore, the argument concerning the cause of action under Section 20 of the CPC holds no merit. Additionally, the Agreement dated 15th November, 2022, expressly acknowledges that it was entered into in Delhi/Mumbai, further undermining the Petitioner's claim that the proceedings should solely be conducted in Delhi. Clause 13 of the Agreement, which deals with governing law and jurisdiction, explicitly provides that both Delhi and Mumbai courts have concurrent jurisdiction. This clause clearly permits Respondent No. 2 to invoke proceedings either in Delhi or Mumbai, based on where the cause of action arose or the supplier is located. Given that Respondent No. 2 is based in Mumbai, it cannot be said that part of the cause of action has not arisen there. Thus, the jurisdiction of the MSME Facilitation Council in Mumbai stands justified. The governing law and jurisdiction clause in the said Agreement provided in Clause 13 reads as follows:

"13. GOVERNING LAW & JURISDICTION

This Agreement shall be governed by and construed under the laws of India and the courts in Delhi / Mumbai, India shall have exclusive jurisdiction on the matters arising from or in connection with this Agreement."

9. In light of the foregoing, the present writ petition is devoid of merits



and accordingly the same is disposed of.

SANJEEV NARULA, J

OCTOBER 18, 2024

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