

THE MICRO, SMALL AND MEDIUM ENTERPRISES ACT, 2006 WOULD ONLY APPLY WHEN THE SUPPLIER IS A REGISTERED MSME AT THE TIME OF EXECUTION OF CONTRACT

INTRODUCTION:

*The Supreme Court in its decision in **M/s Vaishno Enterprises v. Hamilton Medical AG & Anr.**¹, observed that the jurisdiction of the Micro, Small and Medium Enterprises Council ("**the MSME Council**") pursuant to Section 18 of the Micro, Small and Medium Enterprises Act, 2006 ("**the Act**") would depend on whether the supplier within the meaning of the Act was a registered MSME at the time of execution of the contract.*

FACTS:

The appellant is a registered partnership consultant which provides consultancy services to foreign medical equipment companies in the form of liasoning services with hospitals and government departments and entities for procurement of medical equipment like ventilators.

The respondent no. 1 is a company registered under the laws of Switzerland, and is a manufacturer and supplier of critical care ventilation solutions ("**said Company**"). According to the said Company, it has its own consultants engaged in India who facilitate the installation of their equipment and undertake related ancillary work.

The appellant, also providing consultancy services approached the said Company and requested to be associated with it in implementation of the Company's projects in India.

Subsequently, one HLL Infra-Tech Services Limited, a Nodal Agency of the Government of India, floated a tender in 2018 to purchase high

end ventilators and other medical equipment to be supplied to various hospitals across India. The said Company through its local authorised agent participated and was awarded the tender.

Following this, the appellant and the said Company entered into a Consulting Agreement dated 10th February, 2020 for a period of six months. Thereafter, the appellant raised various invoices claiming certain amounts under this agreement and the same were alleged to have been paid by the said Company. The agreement having expired on 10th August, 2020, the parties thereafter entered into a fresh Consulting Agreement dated 24th August 2020 ("**said Agreement**") for a further period of six months.

Following the execution of the said Agreement dated 24th August, 2020, the appellant registered itself under the MSME Act, 2006 on 28th August, 2020. A dispute arose between the parties, and the appellant addressed a legal notice dated 9th September, 2020 calling upon the said Company to pay the amounts under certain invoices along with damages.

On 22nd October, 2020, the said Company terminated the said Agreement under a

¹ 2022 SCC OnLine SC 355.

termination notice. Consequently, the appellant approached the MSME Council established under the Act praying *inter alia* for payments to be made by the said Company to it under the said Agreement and alleging that the termination of the said Agreement was illegal and void. The MSME Council addressed an intimation letter dated 22nd October, 2020 to the said Company. The said Company replied to the same, stating that it was based in Switzerland and hence the Act would not be applicable to it. Thereafter, the MSME Council addressed a Form 2 notice calling upon the said Company to file its Statement of Defence.

Thereafter, the said Company filed Writ Petition No. 21623 of 2020 before the High Court of Telangana challenging the legality and validity of the above notices addressed by the MSME Council to it. On 20th April 2021, the learned Single Judge allowed the Writ Petition and set aside the notices observing that the MSME Council has no jurisdiction to resolve the dispute between the parties. Aggrieved by the aforesaid order, the appellant challenged the same before the Division Bench of the Telangana High Court. The High Court dismissed the appeal and confirmed the judgment passed by the learned Single Judge.

Aggrieved by the judgment and order of the Division Bench, the appellant approached the Apex Court.

ISSUES FOR CONSIDERATION:

The main issue for consideration before the Hon'ble Supreme Court was:

Whether the MSME Council has jurisdiction under the MSME Act with respect to the dispute between the appellant and the said Company when the said Company was based and located outside India?

SUBMISSIONS ON BEHALF OF THE APPELLANT:

The appellant submitted that the consulting agreements were executed between the parties at Delhi, the services were rendered by the appellant in India and the said Company conducted its business in India through registered service centres.

Therefore, the appellant submitted that it would not be open for the said Company to contend the MSME Council would have no jurisdiction to entertain the dispute.

The appellant further submitted that the Act is a beneficial legislation considering the object and purpose, and contended that the MSME Council would have the jurisdiction to entertain the dispute between the parties as the dispute arose subsequent to 28th August, 2020, being the date when the appellant was registered as a MSME under the Act.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

Relying on the definitions of "buyer" and "supplier" under the Act, the said Company submitted that the appellant registered itself as a MSME on 28th August, 2020, i.e. after the execution of the said Agreement dated 24th August, 2020.

Further, the said Company submitted that the said Agreement between the parties would be governed by the laws applicable in India prevailing at the time of the execution of the agreement.

JUDGMENT:

The Hon'ble Supreme Court observed that under the said Agreement the parties had agreed to be governed by the laws of India.

Further, the Supreme Court observed that in this context, when the said Agreement was executed, the appellant was not a registered MSME under the Act. The Supreme Court dealt with the importance of this fact in light of the statutory provisions of Section 2(n) read with Section 8 of the Act which provides that the Act applies only in cases where the supplier has filed a memorandum with the relevant authority. Noting that the appellant was registered as a MSME under the Act on 28th August, 2020, i.e. four days after the execution of the said Agreement, the Supreme Court held that the parties would not be governed by the Act as the appellant was not a registered MSME at the time of the execution of the said Agreement.

Consequently, the Supreme Court held that the MSME Council would not have the jurisdiction to entertain the dispute between the parties pursuant to Section 18 of the Act. Therefore, the Supreme Court held that in view of the said Agreement, the parties would be governed by the laws of India applicable at the time of execution of the said Agreement.

On the issue of whether in a case where the buyer is located outside India but has availed the services of an Indian supplier in India, and the contract was executed in India, the Supreme Court kept the same open to be considered in an appropriate case bearing in mind Section 8 read with Section 18 of the Act.

Further, the Supreme Court arrived at this conclusion by referring to the judgments in the

case of *Shilpi Industries v. Kerala State Road Transport Corporation*,² arising under the provisions of the Act and *Shanti Conductors Pvt. Ltd. v. Assam State Electricity Board*³ which considered a similar provision under the Small Scale and Ancillary Industries Undertakings Act, 1993.

In view of the facts and circumstances, the Supreme Court dismissed the appeal.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

² 2021 SCC OnLine SC 439.

³ (2019) 19 SCC 529.