
(2021) 08 TEL CK 0044

High Court For The State Of Telangana:: At Hyderabad

Case No: Writ Appeal No. 201 Of 2021

M/S. Vaishno
Enterprises

APPELLANT

Vs

Hamilton Medical AG

RESPONDENT

Date of Decision: Aug. 17, 2021

Acts Referred:

Constitution Of India, 1950 " Article 226, 227#Micro, Small and Medium Enterprises Development Act, 2006 " Section 2, 2(d), 8, 8(1), 18, 18(1), 18(4)#Arbitration and Conciliation Act, 1996 " Section 5, 16, 17, 37

Citation: (2021) 08 TEL CK 0044

Hon'ble Judges: Hima Kohli, CJ; B. Vijaysen Reddy, J

Bench: Division Bench

Advocate: Srikanth Hariharan

Final Decision: Dismissed

Judgement

1. The appellant (respondent No.2 in W.P.No.21623 of 2020) has challenged the judgment dated 20.04.2021, passed by the learned Single Judge in a

writ petition filed by the respondent No.1/writ petitioner for quashing the Intimation-cum-Notice dated 22.10.2020 and Notices dated 04.11.2020 and

12.11.2020, issued by the respondent No.2/Micro and Small Medium Enterprises Facilitation Council (in short, "Council"), on an application

moved by the appellant before the Council to act as an Arbitrator on a claim amount of Rs.8,21,68,340/-, raised on the respondent No.1/writ petitioner.

2. The brief relevant facts of the case as narrated in the impugned judgment are extracted herein below:-

“The petitioner is a Company registered under the laws of Switzerland, having its office at Bonaduz, Switzerland and is a manufacturer

and supplier of critical care ventilation solutions for a variety of patient segments, applications and environments across the world. The

petitioner-Company does not have any factory within India and therefore, is in the process of setting up a domestic private limited company.

The Company has its own consultants, engaged in India, who facilitate the installation of the equipment of the petitioners and undertake

related ancillary work. It also supplies the equipment to its distributors who supply to the customers in the private and Government sectors.

In August-September, 2018, M/s. Vaishno Enterprises, respondent No. 2 herein, a partnership firm, which provides consultancy services,

approached the petitioner-Company and requested to be associated with the Company in implementation of their projects in India. While so,

HLL Infra Tech Services Limited, a Nodal Agency of Government of India, had floated a tender, dated 20.08.2018 to purchase/procure

1186 high end ventilators and other medical equipment to be supplied to various hospitals/medical colleges/ departments across India. The

petitioner has participated in the said tender by offering its bid through its authorized local agent, M/s. Medelec Health Care Solutions

(Medelec Solutions). Eventually, the tender was awarded in favour of Medelec Solutions. Upon sudden resignation of Senior

Consultants of petitioner-Company, the respondent No. 2 contacted the petitioner-Company through email and offered their services. After

negotiations, the petitioner and the respondent No. 2 entered into a Consulting Agreement on 10.02.2020, with a restricted term of six

months, agreeing that the respondent No. 2 would act as a consultant for the petitioner-Company and handle such issues as per the terms

and conditions of the agreement, dated 10.02.2020. Immediately thereafter, the respondent No.2 had raised various invoices, dated

11.02.2020, 11.04.2020 and 15.05.2020 claiming certain amounts. Even though the respondent No. 2 is not eligible to claim those amounts,

the petitioner-Company, in good faith, paid the excessive amount as raised in Invoice Nos. 1 and 4 on 05.05.2020 and 17.06.2020

respectively, as supply was being maintained and LCs were being opened in a rush due to pandemic crisis. Again, the respondent No. 2

raised Invoice No. 5 on 22.06.2020 for an amount of USD 7,11,845.00. As there was no basis for raising of invoices, the petitioner through

email dated 24.08.2020 informed the respondent No. 2 that the invoices will be cleared in due course and asked the firm to perform its

obligations and to supply the equipments to meet the huge demand. The Consulting Agreement dated 10.02.2020 expired on 10.08.2020.

However, as the petitioner-Company is in need of services of respondent No. 2 to meet the demand, a fresh Consulting Agreement was

entered with the respondent No. 2 on 24.08.2020 for a period of six months. Subsequently, as there was no help and assistance for the

transportation, installations, demonstration of ventilators from the respondent No. 2, the petitioner-Company had to involve other

companies to ensure smooth supply of equipments. The respondent No. 2, thereafter, started to threaten the petitioner-Company in order to

extort money and started to send warning emails to various members of the Board and the Company of the petitioner, such as email dated

24.08.2020. Further, a legal notice, dated 09.09.2020 was sent by the respondent No. 2 calling upon the petitioner-Company to pay the

amounts covered by Invoice Nos. 5 and 6 within 30 days along with damages of Rs.50.00 lakh. In the said notice, the respondent No. 2

informed that it had registered itself under the Micro, Small and Medium Enterprises Act, 2006 (for short, "MSME Act"). Immediately,

the petitioner-Company terminated the Consulting Agreement, dated 24.08.2020 vide termination letter, dated 02.10.2020.

While so, the Chairman of Micro, Small, Medium Enterprises Facilitation Council, Ranga Reddy, the respondent No. 1 herein issued the

impugned Intimation-cum-Notice, dated 22.10.2020, whereby the petitioner was advised to pay an amount of Rs.8,18,20,882/- to the

respondent No. 2 being the dues of unpaid Invoice Nos. 5, 6 and proforma Invoice, dated 21.10.2020 within fifteen days. The petitioner-

Company sent a reply, dated 26.10.2020 informing the respondent No. 1 that no amount is payable to the respondent No. 2 and that the

petitioner-Company is not situated within India and therefore, the provisions of MSME Act will not be applicable to the Company.

Thereafter, the petitioner-Company received an email, dated 18.11.2020 from the official mail ID of respondent No. 1, containing therein a

covering letter of respondent No. 2, the Statement of Claim, dated 02.11.2020 along with attested affidavit being Reference No.

1581/MSEFC/2020 and impugned notice, dated 04.11.2020 issued thereon by the respondent No. 1 calling upon the petitioner-Company to

furnish their Statement of Defence to the Statement of Claim filed by the respondent No. 2 within 30 days. In the same mail, dated

18.11.2020, the petitioner had also received a copy of the Supplementary Pleadings, dated 16.11.2020, to the Statement of Claim.

3. Aggrieved by the Intimation-cum-notice dated 22.10.2020 and the notices dated 04.11.2020 and 12.11.2020, issued by the respondent No.2/Council,

the respondent No.1 filed a writ petition pleading inter alia that the appellant could not have invoked the provisions of Section 18 of the Micro, Small

and Medium Enterprises Development Act, 2006 (in short, "MSME Act") and approached the respondent No.2/Council by submitting a

reference for claiming amounts due and payable to it by the respondent No.1 as the Council does not have the jurisdiction to entertain any such

dispute. In other words, the respondent No.1 took a plea that it is a company registered in Switzerland and not located in India and therefore, the

appellant did not have the option of filing a claim petition against it, as contemplated in Section 18(4) of the MSME Act. To give a false impression that

the respondent No.1 is located in India, the appellant had deliberately furnished a wrong address of the respondent No.1 by mentioning the same as

“M-73 Block Main Market, Greater Kailash, Part-I, New Delhi-110048 and “Via Crush 87402 Bonaduz CH South Delhi, both

of which are incorrect. Rule 6 (v) of the G.O.Ms.No.39, dated 30.06.2017 was cited to urge that the respondent No.2/Council was empowered to

examine the reference at the preliminary stage to satisfy itself in respect of the fee and/or competence of the concerned MSME Unit to file a

reference and if dissatisfied, return the same. However, in the instant case, though the respondent No.1 had raised a specific objection on jurisdiction

in its reply dated 26.10.2020, the respondent No.2/Council did not exercise the said power and blindly proceeded to entertain the reference made by

the appellant. Rule 9(1) of the G.O.Ms.No.39, dated 30.06.2017 was cited to urge that the respondent No.2/Council was under an obligation to rule on

the aspect of jurisdiction before entertaining the claim of the appellant, which it had failed to do. Instead, the impugned notice dated 04.11.2020 was

issued by the respondent No.2/Council in a mechanical manner, calling upon the respondent No.1 to furnish its Statement of Defence.

4. It was further urged on behalf of the respondent No.1 that on receiving its reply dated 26.10.2020, raising an objection on the jurisdictional aspect,

the appellant/respondent No.2 filed Supplementary pleadings to its Statement of claim in an attempt to wriggle out of the bar of territorial jurisdiction

placed on the respondent No.2/Council. It was thus submitted that as the appellant does not fall in the definition of a “supplier” vis-à-vis the

respondent No.1, the provisions of the MSME Act could not have been invoked by the appellant by approaching the respondent No.2/Council for

resolution of any dispute with the respondent No.1.

5. The pleas taken by the respondent No.1/writ petitioner were countered by learned counsel for the appellant/respondent No.2 who submitted that the

initial Agreement dated 10.02.2020 between the parties was executed at Delhi, the second Agreement dated 24.08.2020 was also executed at New

Delhi, services were rendered by the appellant in India and since the cause of action has arisen in India and no part of the said cause of action has

arisen in Switzerland, the respondent No.2/Council is vested with the jurisdiction to entertain the claim petition filed by the appellant. It was also

submitted that the respondent No.1 was conducting its business in India through its registered service centres at New Delhi, Mumbai, Kolkata and

Bangalore and it had appointed a power of attorney holder/ Special agent who is based in Delhi, to act on its behalf. Therefore, the plea taken by the

respondent No.1/writ petitioner that its registered office is situated outside India, could not be a ground to challenge the jurisdiction of the respondent

No.2/Council for entertaining the reference submitted by the appellant/respondent No.2. Stating that the respondent No.1 has been the recipient of

services rendered by the appellant and it is located in India, it was argued that it is amenable to the jurisdiction of the respondent No.2/Council.

6. Besides the aforesaid submissions, a challenge was also laid to the maintainability of the writ petition as filed by the respondent No.1 on the plea

that a writ of mandamus cannot be issued to assail the action of the respondent No.2/Council of issuing notices, which has been done as per the

procedure prescribed under the MSME Act and Rules. Lastly, it was sought to be urged that the respondent No.1 had raised disputed questions of

facts relating to jurisdiction, which ought not to be entertained in a writ petition.

7. By the impugned judgment, the learned Single Judge has allowed the writ petition filed by the respondent No.1 and held that the respondent

No.2/Council does not have inherent jurisdiction to entertain the reference made by the appellant under Section 18 (4) of the MSME Act, which

provision prescribes that the Council has the jurisdiction to entertain a dispute only between "the supplier located within its jurisdiction and a buyer

located anywhere in India". In the instant case, the registered office of the respondent No.1 was situated outside the territorial jurisdiction of India.

Simply because the power of attorney holder/Special agent of the respondent No.1 was a resident of Delhi, could not be taken as a ground for vesting

jurisdiction on the respondent No.2/Council for entertaining the reference submitted by the appellant. Holding that the respondent No.2/Council lacked

inherent jurisdiction to try the case, the impugned notices were quashed and it was declared that no proceedings could not be maintained against the

respondent No.1 before the respondent No.2/Council. Aggrieved by the aforesaid judgment, the appellant/respondent No.2 has filed the present

appeal.

8. Arguing for the appellant, Mr. Hariharan, learned counsel submitted that the writ petition filed by the respondent No.1 was not maintainable and the

said respondent ought to have approached the respondent No.2/Council that is empowered to rule on its own jurisdiction in terms of Section 16 of the

Arbitration and Conciliation Act; that the impugned judgment has been passed on a misreading of Section 18(4) of the MSME Act, which only

prescribes that the buyer must be located in India and not that its registered office must be situated in India; that a reading of Section 2(d) in

conjunction with Section 18(4) MSME Act would show that whoever receives services/goods from a supplier and is located in India, would be

amenable to the jurisdiction of the respondent No.2/Council. It was argued that in the instant case, the respondent No.1 had received the summons

from the respondent No.2/Council and since it was located in India, having appointed an authorised agent, on its behalf, who is a resident of Delhi, it

was amenable to the jurisdiction of the respondent No.2/Council, notwithstanding the fact that its registered office is situated in Switzerland.

9. Alluding to the Statement of claim and the Supplementary pleadings submitted by the appellant to the respondent No.2/Council, learned counsel for

the appellant submitted that the respondent No.1 had a office in India and was conducting its business as a buyer located within India, which aspect

has been ignored by the learned Single Judge while allowing the petition and quashing the impugned notices. Rather, the writ petition ought to have

been dismissed and the jurisdictional aspect raised by the respondent No.1 ought to have been left for adjudication before the respondent

No.2/Council, as it can only be decided on the basis of evidence required to be lead in the matter. In support of his submissions made above, learned

counsel for the appellant has cited Deep Industries Limited v. Oil and Natural Gas Corporation Limited reported as (2020) 15 SCC 706 and the order

dated 18.09.2020, of the Supreme Court in Special Leave to Appeal (C) No.8482 of 2020, entitled Punjab State Power Corporation Limited v. Emta

Coal Limited (reported as MANU/SCOR/38257/2020).

10. Per contra, Mr. S.Niranjan Reddy, learned Senior Advocate appearing for the respondent No.1/writ petitioner supported the impugned judgment

and submitted that the writ petition as filed by the appellant, was maintainable and could be entertained despite the availability of an alternative

statutory remedy. To substantiate the said submission, he relied on Whirlpool Corporation v. Registrar of Trade Marks, reported as (1998) 8 SCC 1

and Harbanslal Sahnia v. Indian Oil Corporation Limited, reported as (2003) 2 SCC 107. It was further argued that merely because the appellant has

tried to raise a dispute regarding the facts of the case on the jurisdictional aspect, could not preclude the respondent No.1 from invoking Article 226 of

the Constitution of India because there is no absolute bar on it for doing so. It was contended that in any case, the objection taken by the respondent

No.1 was that the impugned notice issued by the respondent No.2/Council suffers from lack of inherent jurisdiction which goes to the very root of the

matter and therefore the writ petition was maintainable in the High Court. It was lastly submitted that the dispute raised by the appellant before the

respondent No.2/Council is wholly without jurisdiction and therefore availability of an alternative remedy, will not be a bar on the High Court for

entertaining the writ petition filed by the respondent No.1. In support of the said submissions, reference was made to ABL International Limited v.

Export Credit Guarantee Corporation of India Limited, reported as (2004) 3 SCC 553 and the judgment dated 12.05.2021, of the Supreme Court in

Limited.

11. Before dealing with the arguments advanced by learned counsel for parties, it is considered appropriate to refer to the relevant provisions of the

MSME Act, which is a beneficial legislation enacted for facilitating promotion, development, for enhancement of the competitiveness of micro, small

and medium enterprises and for resolving the incidental and ancillary matters related thereto.

12. Section 2 of the MSME Act which is the definition clause, defines

“buyer” in sub-clause (d) and “supplier” in sub-clause (n), as follows:-

2 (d) “Buyer” means whoever buys any goods or receives any services from a supplier for consideration.

2 (n) “Supplier” means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of

section 8, and includes,-

(i) the National Small Industries Corporation, being a company registered under the Companies Act, 1956 (1 of 1956);

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered

under the Companies Act, 1956 (1 of 1956);

(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being

in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such

enterprise;

13. Section 18 of the MSME Act deals with the aspect of making a Reference of a dispute between the supplier and the buyer to the Micro and Small

Enterprises Facilitation Council for conciliation/arbitration, prescribes as follows:-

18. Reference to Micro and Small Enterprises Facilitation Council.

(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount

due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of

any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for

conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to

such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties,

the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution

services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as

if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(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.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.

14. As can be seen from the above, Section 18 of the MSME Act is the non-obstante clause. Sub-clause (4) of Section 18 prescribes that regardless

of anything contained in any other law for the time being in force, the Council/Centre providing alternate dispute resolution services, would have the

jurisdiction to act as an Arbitrator/Conciliator in respect of any dispute that may arise between a supplier who is located within its jurisdiction and a

buyer who is located anywhere in India.

15. In the above context, we may also extract herein below, Rule 9(1) of G.O. Ms. No. 39, dated 30.06.2017, published by the Industries &

Commerce (FP&MSME) Department, that reads thus:-

“The Council shall if it is satisfied that, on the facts stated therein, it has jurisdiction to proceed with the reference, cause a copy of the

statement of claim to be sent by registered post to the Respondent along with the copies of the attached documents and issue notice in Form

(2) to the Respondent asking him to furnish within fifteen days a statement of Defense in Form (3) with such documents and facts in support

of his Defense or having a bearing on the matter under reference together with his half share of deposit for costs in such manner as may be

specified therein and within the time allowed to the Respondent for furnishing his statement of Defense.”

16. The bone of contention between the appellant and the respondent No.1 is whether the dispute, subject matter of the transaction between the

parties would fall within the ambit of the respondent No.2/Council for resolution.

17. It is not in dispute that the registered office of the respondent No.1/buyer, is in Switzerland. The address of the respondent No.1 mentioned in both

the Agreements dated 10.02.2020 and 24.08.2020 is “Via Crusch 8, 7402 Bonaduz, Switzerland”. The Certificate of Incorporation/Registration

filed by the respondent No.1 also mentions the above address in column 9. The very same address has been printed on the letterhead of the

respondent No.1, as is apparent on a perusal of the Termination of the Consultancy Agreement Notice dated 02.10.2020, addressed by it to the

appellant and the letter dated 26.10.2020 addressed to the respondent No.2/Council. Even the invoices raised by the appellant on the respondent No.1

mention the aforesaid address of the respondent No.1. This very address has been mentioned by the appellant in its legal notice dated 09.09.2020

served on the respondent No.1, except for the fact that additionally, Mr.Amit Bhalla has been addressed and described as a Special Power of

Attorney of the respondent No.1 in India. His address has been recorded as
"M-73, Block Main Market, Greater Kailash, Part-I, New
Delhi - 110048.

18. In view of the aforesaid undisputed factual position, the argument advanced on behalf of the appellant that the respondent No.1/buyer is located in

India, is found to be wholly untenable. Nor do we find any force in the submission made on behalf of the appellant that the fact that the Special Power

of Attorney of the respondent No.1 is a resident of New Delhi should be treated as sufficient ground to confer jurisdiction on the respondent

No.2/Council for entertaining the claim lodged by the appellant against the respondent No.1.

19. The impression we gather is that while submitting a reference to the respondent No.2/Council under Section 18(1) of the MSME Act for acting as

an Arbitrator, the appellant has deliberately furnished an incorrect address of the respondent No.1. The address furnished by the appellant is "M-

73, Block Main Market, Greater Kailash, Part-I, New Delhi - 110048, knowing very well that the said address is that of the Special

Power of Attorney/Special Agent and not of the respondent No.1/buyer. It is only below the address of New Delhi, India, that the address of the

respondent No.1 at Switzerland has been typed out in the Statement of Claim filed by the appellant. Interestingly, on receiving the application from the

appellant, the respondent No.2/Council issued the Intimation-cum-Notice to the respondent No.1 and the address that has been mentioned there is as

follows:-

"M-73 M Block Main Market, Greater Kailash, Part 1, New Delhi-110048 and Via
Crusch 8 7402 Bonaduz CH South Delhi.

20. The above mis-description of the address of the respondent No.1 demonstrates bad faith on the part of the appellant who with the sole intention of somehow or the other invoking the provisions of Section 18(4) of the MSME Act that vests jurisdiction on the respondent No.2/Council to adjudicate only such a dispute that arises between a supplier located within its jurisdiction and a buyer located anywhere in India, deliberately provided an incorrect address of the respondent No.1 while suppressing its correct address of Switzerland.

21. When the provisions of the MSME Act confer only a limited jurisdiction on the respondent No.2/Council that can entertain a dispute that may arise between a supplier located within its jurisdiction and a buyer located anywhere in India, the respondent No.2/Council could not have exercised its jurisdiction qua the respondent No.1 and adjudicate upon disputes raised by the appellant/supplier when the respondent No.1/buyer is not located anywhere in India.

22. Furthermore, Rule 9 of G.O.Ms.No.39 dated 30.06.2017 requires that the respondent No.2/Council must satisfy itself that it is vested with the jurisdiction to proceed with the reference. Only thereafter, could the respondent No.2/Council have forwarded a copy of the Statement of Claim of the appellant to the respondent No.1 calling upon it to furnish a Statement of Defence. In the present case, at the first opportunity available, the respondent No.1 had questioned the jurisdiction of the respondent No.2/Council to entertain the Statement of Claim filed by the appellant, vide letter dated 26.10.2020. In the said letter, the respondent No.1 had clarified that it is based in Switzerland and functioning from the address mentioned by it, for the past three decades. A specific request was made by the respondent No.1 to the respondent No.2/Council not to proceed further in the matter since the provisions of the MSME Act could not be extended to it. Despite the aforesaid position being brought to its notice, respondent No.2/Council mechanically proceeded to issue the notice dated 4.11.2020, calling upon the respondent No.1 to submit its Statement of Defence in response to the

Statement of Claim filed by the appellant, within thirty days from the date of the receipt of the said notice.

23. We find force in the submission made by the learned counsel for the respondent no.1 that the alternate remedy being harped about by the

appellant, cannot act as a blanket bar on the High Court for entertaining a writ petition under Article 226 of the Constitution of India. In several rulings

of the Supreme Court, four exceptional circumstances have been carved out where a writ petition can be filed for relief, namely (i) where

enforcement of a fundamental right is prayed for, (ii) where there has been a violation of the principles of natural justice, (iii) where the order or

proceedings are wholly without jurisdiction and (iv) where the vires of the Act has been challenged. (Refer Harbanslal Sahnia (supra) and Uttar

Pradesh Power Transmission Corporation Limited (supra)). Therefore, the argument advanced by learned counsel for the appellant that an alternate

remedy operates as an absolute bar on the respondent No.1 to file a writ petition and that an embargo is placed on the court to entertain a writ petition

under Article 226 of the Constitution of India even when the circumstances explained are exceptional, is turned down as meritless.

24. Even in a recent decision in the case of Deep Industries Limited (supra), on which heavy reliance has been placed by learned counsel for the

appellant, the Supreme Court has clarified that writ petitions can be filed under Article 226/227 of the Constitution of India, but the High Courts must

be extremely circumspect in interfering in the said proceedings, when the Statute provides for an alternate remedy. The aforesaid decision is entirely

distinguishable on facts. In the said case, a claim petition was filed by the appellant before the Arbitrator, challenging termination of a contract.

Meanwhile, an application was moved before the learned Arbitrator under Section 17 of the A&C Act for some interim measures. The appellant also

moved an application to amend the petition and another one under Section 17 of the A&C Act. On the dismissal of the application under Section 17 of

the A&C Act by the learned Arbitrator, an appeal was preferred which was also dismissed by the City Civil Court, Ahmedabad. Aggrieved by the

said dismissal order, a First Appeal was filed under Section 37 of the A&C Act, which was also dismissed. Contemporaneously, ONGC filed a petition

under Article 227 of the Constitution of India before the High Court challenging the order passed by the City Civil Court. Though the High Court took

notice of the objection taken on the maintainability of such a petition, on jurisdictional grounds, the said question was not answered. Instead, after

examining the merits of the case, the writ petition was allowed and the order passed by the City Civil Court was set aside. Aggrieved by the said

order, the appellant approached the Supreme Court with a grievance that given the non-obstante clause contained in Section 5 of the A&C Act and

the limited scope of interference in a First Appeal moved under Section 37 of the A&C Act, the High Court ought not to have entertained the writ

petition filed by the other side and instead, ought to have decided the preliminary objections raised by the appellant as to the maintainability of the writ

petition.

25. It was in the aforesaid factual context that the Supreme Court has emphasised that the policy behind the A&C Act is speedy disposal of

arbitration cases and as the Act is a self-contained code dealing with arbitration matters, ordinarily, a writ petition ought not to be entertained. At the

same time, it has been clarified that interference by the High Court in writ petitions is permissible when it is noticed that an order passed patently lacks

jurisdiction. The aforesaid view has been reiterated by the Supreme Court in Punjab State Power Corporation Limited (supra).

26. In the case in hand, the respondent No.1 has filed a writ petition raising an objection as to the maintainability of the Statement of Claim filed by the

appellant before the respondent No.2/Council on the ground that there is a patent lack of inherent jurisdiction in the respondent No.2/Council to

entertain the same, in view of sub-section (1) of Section 18 of the MSME Act.

27. A reading of Section 18(4) of the MSME Act leaves no manner of doubt that the ambit of the jurisdiction of the respondent No.2/Council is limited

to only those cases where there is a dispute between a supplier located within its jurisdiction and a buyer located anywhere in India but not under any

other circumstances. No doubt, the appellant firm is operating in Hyderabad and is therefore located within the jurisdiction of the respondent

No.2/Council as contemplated under Section 18(4) of the MSME Act, but by no stretch of imagination can it be urged that the respondent

No.1/company that has its registered office in Switzerland and no presence in India, is located in India merely on the strength of a Special Power of

Attorney executed by the said company in favour of an individual who happens to be a resident of New Delhi, India. There is sound logic in the

observations made by the learned Single Judge that when the court lacks inherent jurisdiction to try a particular case, it cannot act beyond the powers

vested in it and that jurisdiction can be exercised by any Court/Tribunal only in terms of the powers conferred on it by the specific provisions of a

statute and not otherwise.

28. As noticed above, in its reply dated 26.10.2020, the respondent No.1 did question the jurisdiction of the respondent No.2/Council to enter upon

reference but the said objection was not examined at all. On the other hand, a notice dated 04.11.2020 was issued by the respondent No.2/Council in a

mechanical manner calling upon the respondent No.1 to submit its Defence to the Statement of Claim within the stipulated period, thereby, indicating

that the respondent No.2/Council was proposing to deal with the case on merits instead of satisfying itself on the jurisdictional aspect. The above

approach adopted by the respondent No.2/Council also runs contrary to the prescription of Rule 9(1) of the G.O.Ms.No.39, dated 20.06.2019,

extracted above.

29. Although the appellant has tried to raise a smokescreen of disputed questions of fact in its Supplementary Pleadings to the Statement of Claim and

sought to urge that evidence ought to have been permitted to be lead before the respondent No.2/Council on the aspect of jurisdiction, we are of the

firm view that once the documents placed on record remain undisputed and their perusal makes it amply clear that the jurisdiction of the respondent

No.2/Council cannot extend to the respondent No.1/company when it is located outside India, the presence of the Special Power of

Attorneyholder/Special Agent appointed by the respondent No.1 in Delhi, can hardly be treated as a factor to vest jurisdiction on the respondent

No.2/Council. The plea of the learned counsel for the appellant that Section 18(4) of the Act prescribes that a buyer must be located in India and not

that its registered office ought to be situated in India, is found to be meritless and is turned down.

30. Another insurmountable objection that was taken by the respondent No.1/petitioner in the writ petition, but does not find mention in the impugned

judgment is that the appellant cannot take shelter of the MSME Act having admittedly been registered as a micro, small and medium Enterprise only

on 28.08.2020, much after the date of execution of the Agreements between the parties. Most of the invoices raised by the appellant for services

rendered by it were earlier to the date of its registration under the MSME Act. On this count too, the appellant could not have taken recourse to the

said statute against the respondent No.1. The registration obtained by the appellant could only have prospective effect in respect of services rendered

by it after 28.08.2020. The Supreme Court was confronted with a similar situation in *Silpi Industries v. Kerala State Road Transport Corporation*,

reported as 2021 SCC Online SC 439, where it has held as follows:-

“26. Though the appellant claims the benefit of provisions under MSME Act, on the ground that the appellant was also supplying as on

the date of making the claim, as provided under Section 8 of the MSME Act, but same is not based on any acceptable material. The

appellant, in support of its case placed reliance on a judgment of the Delhi High Court in the case of *GE T&D India Ltd. v. Reliable*

Engineering Projects and Marketing, but the said case is clearly distinguishable on facts as much as in the said case, the supplies continued

even after registration of entity under Section 8 of the Act. In the present case, undisputed position is that the supplies were concluded prior

to registration of supplier. The said judgment of Delhi High Court relied on by the appellant also would not render any assistance in

support of the case of the appellant. In our view, to seek the benefit of provisions under MSMED Act, the seller should have registered

under the provisions of the Act, as on the date of entering into the contract. In any event, for the supplies pursuant to the contract made

before the registration of the unit under provisions of the MSMED Act, no benefit can be sought by such entity, as contemplated under

MSMED Act. While interpreting the provisions of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act,

1993, this Court, in the judgment in the case of Shanti Conductors Pvt. Ltd. v. Assam State Electricity Board has held that date of supply of

goods/services can be taken as the relevant date, as opposed to date on which contract for supply was entered, for applicability of the

aforesaid Act. Even applying the said ratio also, the appellant is not entitled to seek the benefit of the Act. There is no acceptable material to

show that, supply of goods has taken place or any services were rendered, subsequent to registration of appellant as the unit under

MSMED Act, 2006. By taking recourse to filing memorandum under sub-section (1) of Section 8 of the Act, subsequent to entering into

contract and supply of goods and services, one cannot assume the legal status of being classified under MSMED Act, 2006, as an

enterprise, to claim the benefit retrospectively from the date on which appellant entered into contract with the respondent. The appellant

cannot become micro or small enterprise or supplier, to claim the benefits within the meaning of MSMED Act 2006, by submitting a

memorandum to obtain registration subsequent to entering into the contract and supply of goods and services. If any registration is

obtained, same will be prospective and applies for supply of goods and services subsequent to registration but cannot operate

retrospectively. Any other interpretation of the provision would lead to absurdity and confer unwarranted benefit in favour of a party not

intended by litigation.Ã¢â‚¬â€œ

(emphasis added)

31. In the case in hand, it is not in dispute that the appellant and the respondent No.1 had entered into a Consultancy Agreement on 10.02.2020,

followed by an Agreement dated 24.08.2020. However, the appellant got itself registered as a micro, small and medium Enterprise under the MSME

Act only on 28.08.2020. When the appellant was not even registered under the provisions of the MSME Act on the date of entering into the contract

with the respondent No.1, the question of invoking the provisions of the said Act or seeking the benefits thereunder, by filing a Statement of Claim

with the respondent No.2/Council in respect of monies due from services rendered by it till 28.08.2020 could not arise. Any registration could only

have a prospective effect. Therefore, even if the appellant would have managed to succeed in overcoming the jurisdictional aspect, which is staring it

at its face, at best, it could have invoked the MSME Act only in respect of those goods/services that were offered by it to the respondent No.1, post

the date of its registration as a micro, small and medium enterprise under the MSME Act, but not anterior thereto.

32. However, the aforesaid aspect of registration of the appellant under the MSME Act subsequent to the date of entering into agreements with the

respondent No.1 need not engage the court any further in the light of the view expressed hereinabove that the respondent N.2/Council lacks the

inherent jurisdiction to try and entertain a reference submitted to it by the appellant against the respondent No.1/buyer as the latter is not located in

India, as prescribed in the statute. There is no manner of doubt that the respondent No.1 does not fall within the ambit of Section 18 (4) of the MSME

Act and therefore, it cannot be treated as a “buyer located anywhere in India”, premised on a specious plea taken by the appellant that an

individual was appointed by the respondent No.1 as a Special Power of Attorney/Special Agent who happens to be a resident of New Delhi, India.

33. In view of the aforesaid discussion, we are of the opinion that the impugned judgment does not warrant any interference. The present appeal is

accordingly dismissed as meritless, along with pending applications, with no order as to costs.