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

\+ W.P.(C) 15947/2024 & CM APPL.67027/2024

KALAMKARI LIFESTYLE TECH PVT LTD .....Petitioner

Through: Mr.Ankur Malik, Advocate

versus

MSME FACILIATION COUNCIL, MUMBAI ANR

.....Respondents

Through: None

% Date of Decision: 19th November, 2024

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, CJ : (ORAL)

1. Present writ petition has been filed challenging the constitutional validity of Section 18(4) of the Micro, Small, and Medium Enterprises Development Act, 2006 ("MSMED Act") to the extent that it mandates adjudication of the disputes at the supplier's location. In the alternative, the petitioner prays for reading down of Section 18(4) of the MSMED Act to provide MSME buyers the option to contest jurisdiction in any Court with a substantive link to the cause of action. The petitioner further seeks quashing of proceedings initiated by Respondent No.2 before the MSME Facilitation Council, Mumbai.

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2. Learned counsel for the petitioner states that the petitioner had previously filed a writ petition, being W.P. (C) 14572/2024, seeking transfer of proceedings before the MSME Facilitation Council, Mumbai to a venue in Delhi. He states that the said writ petition was dismissed by the learned Single Judge vide judgment dated 18th October, 2024. He further states that the Letters Patent Appeal being LPA 1115/2024 challenging the aforesaid judgment dated 18th October, 2024 was dismissed on 12th November, 2024 on the ground that the constitutional validity of Section 18(4) of the MSMED Act was not argued before the learned Single Judge.

3. He states that Section 18(4) gives exclusive jurisdiction to the Facilitation Council in the supplier's location. He states that the arbitrary jurisdictional bias in favor of the supplier disregards factors such as the cause of action, fairness, and equal protection under the law, creating a severe disadvantage to MSME buyers like the petitioner.

4. He submits that a coordinate Division Bench of this Court in ***IRCON International Ltd. vs. Pioneer Fabricators Pvt. Ltd., FAO (COMM) 200/2022*** has recognized that jurisdiction under the MSMED Act cannot override CPC principles entirely and that the Courts should consider the substantial connection of the dispute to the jurisdiction rather than exclusively relying on the Facilitation Council's location. He states that the Supreme Court in ***Indus Mobile Distribution Pvt. Ltd. vs. Datawind Innovations Pvt. Ltd. (2017) 7 SCC 678*** has held that the party's chosen jurisdiction should not create excessive inconvenience for the opposing party. He further states that in ***Indus Mobile*** (supra), the Supreme Court has recognised that although statutory provisions might prescribe jurisdiction, they must be applied in a manner that upholds procedural fairness. He also

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submits that the order of the High Court of Chattisgarh in ***Steel Authority of India Ltd. vs. Micro and Small Enterprises Facilitation Council, WPC No. 3124 of 2022*** supports the need for a balanced jurisdictional approach. He lastly emphasises that Section 20 of the CPC mandates jurisdiction based on where the cause of action arises.

5. Having heard learned counsel for the petitioner, this Court is of the view that it is not unheard of that legislature can confer territorial jurisdiction on a Court at variance with the principle enshrined in Section 20 CPC. For instance, in the Trade Mark Act, the Court, where plaintiff resides, also has the jurisdiction to entertain the suit.

6. Further, the petitioner's reliance on the aforementioned judgments is misplaced. In ***IRCON International Ltd.*** (supra), a Division Bench of this Court was dealing with an issue as to which Court would have the territorial jurisdiction to entertain a challenge to an arbitral award under the MSMED Act. In that context, the Court had held that once the arbitral award is pronounced, the challenge to the award will lie only before the Court upon which the parties had agreed to confer exclusive jurisdiction. Consequently, the exclusive jurisdiction clause will only come into play once the award has been rendered; however the jurisdiction under Section 18 of the MSMED Act will be determined as per the location of the supplier.

7. The judgment in ***Indus Mobile*** (supra) is also irrelevant to the facts of the present case. In ***Indus Mobile*** (supra), the Supreme Court has held that designation of a seat in an arbitration agreement is akin to an exclusive jurisdiction clause. The said judgment is not applicable to an arbitration initiated in terms of Section 18 of the MSMED Act. In fact, in a subsequent judgment of ***Gujarat State Civil Supplies Corporation v Mahakali Foods***

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Pvt Ltd. (Unit 2) & Anr. 2023 6 SCC 401, the Supreme Court has held that the provisions of Chapter V of the MSMED Act shall have an overriding effect over the provisions of Arbitration and Conciliation Act, 1996. Therefore, the jurisdiction under the MSMED Act will be the place of the supplier, notwithstanding the fact that the parties may have chosen another jurisdiction as seat or conferred exclusive jurisdiction upon another Court.

8. The order in ***Steel Authority of India*** (supra) is an interim order passed by Chattisgarh High Court and as such, the same has no precedentary value.

9. Keeping in view aforesaid as well as the fact that Section 18(4) of MSMED Act incorporates a legislative policy, this Court is of the view that no interference is called for.

10. Accordingly, the present writ petition along with pending application is dismissed.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

NOVEMBER 19, 2024
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