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Registration mandatory under MSME Act

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It envisages the establishment of the Micro & Small Enterprise Facilitation Council

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A question that often arose was whether the counter parties — the buyers — would, despite, not being MSMEs, be able to raise counter claims in the mechanism under the Act | Photo Credit: AMIT DAVE

The Supreme Court of India, in its recent judgment in *Silpi Industries Vs Kerala State Road Transport Corporation*, has dispelled the ambiguity surrounding the legal position governing the commencement of proceedings under the MSMED Act – a legislation that was aimed at promoting small and medium industries.

Towards this objective, the Act envisages the establishment of the Micro and Small Enterprise Facilitation Council, a statutory body set up to adjudicate disputes pertaining to claims for payment made against buyers who obtain the benefit of goods and services from a MSME supplier. The adjudicatory process would involve mediation, and in the event of the same failing, arbitration by the Council. The question that often arose was whether the counter parties, i.e. the buyers would, despite not being MSMEs, be able to raise their counter claims in the mechanism under the Act. A further question which arose was whether an entity could, prior to obtaining the registration under the MSME Act, take recourse to the mechanism; and whether the law of limitation would apply to the proceedings commenced under the Act.

Who is a supplier?

While dealing with the issue of whether a counter claim can be raised against the party invoking the arbitration before the Council, the Court has conclusively settled a very pertinent legal issue of who qualifies as a ‘supplier’ under Section 2 (n) of the Act, to be able to invoke its provisions. On the facts that were considered by the Court, the supplier/seller had not filed their memorandum of registration as an MSME as mandated by Section 8 of the Act prior to the execution of the contract, and the supply of goods and services to the buyer.

While considering whether the entity would be an MSME nevertheless, and can take the benefit of a subsequent registration, the Supreme Court has held that any registration obtained under the Act can only be applied prospectively to seek the benefits of the Act. It has further categorically held that the seller/supplier ought to have registered under the provisions of the Act as on the date of entering into the contract with the buyer for the purpose of taking the benefit of the provisions of the Act. With this, the position that the requirement of registration under the Act is mandatory stands settled. The emphasis on the need for registration as on the date of entering into arrangements for supply and on the date of supply, is also reasonable, as it would put the parties dealing with the MSME on clear notice of its position.

Antithetical to law’s intent

While dealing with the issue of whether a buyer can raise a counter claim before the MSME Council, which adjudicates the claims made by the supplier, the Court also dealt with the concerns raised that the Act is unilateral and confers blanket powers on the Council to safeguard the interests of the supplier at the cost of leaving the buyer unarmed.



In this regard, the Apex Court relying on the words ‘any party to a dispute’ employed in Section 18 of the Act which is the provision dealing with dispute resolution, clarified that since the dispute may be initiated by either party (supplier or the buyer), a reading that only entitles suppliers to make claims would amount to even placing an embargo on the filing of a counter claim by a supplier in a reference made by the buyer.

The Court noted that this would render redundant the very object of the Act which is intended to be beneficial legislation for MSMEs. The Court observed that not allowing a counter claim to be raised before the Council, would also be antithetical to the intent of the Act, which is to promote and safeguard the MSMEs. Further reference was also made to Section 18 (3) of the Act which provides that any arbitration to be initiated shall be conducted as if it were initiated under the provisions of Arbitration and Conciliation Act, 1996; and considering that the 1996 Act permits pleading of both counter claims and set-off, the Supreme Court concluded that counter claims are maintainable before the Council.

The Court has also settled an additional pressing issue of whether the law of limitation would apply to claims made under the Act. The Court once again, by referring to Section 18 (3) of the Act which in turn makes the provisions of the 1996 Act applicable to proceedings, held that the provisions of the Limitation Act, 1963, would consequently apply as well. The Court in reaching this conclusion, placed reliance on Section 43 of the 1996 Act, by which limitation is made applicable to all arbitration proceedings initiated.

The judgment has conclusively settled a range of issues arising out of the MSMED Act, and its interface with the Arbitration & Conciliation Act, 1996. Both suppliers and buyers will gain from this clarity and will be able to structure their agreements and take recourse to any dispute resolution, free of the ambiguity that prevailed.

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