



January 2025

Hon'ble Supreme Court of India observes that it must specify whether a judgment is passed as a decision *inter se* parties or binding precedent

The Hon'ble Supreme Court of India ("Supreme Court")¹ in a recent judgement dated January 10, 2025, in **NBCC (India) Ltd. vs. State of West Bengal and Ors.**,² referred the issue of whether a Micro, Small and Medium Enterprises ("MSME") can refer a dispute to the Micro and Small Enterprises Facilitation Council ("Facilitation Council") under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 ("MSME Act") regarding execution of a contract which was entered when the said MSME was not registered as an MSME under Section of the MSME Act? to a bench consisting of 3 (three) Hon'ble Judges of the Supreme Court.

The Supreme Court observed that the question of law under consideration in the present matter was not formulated, discussed and decided in any other judgment of the Supreme Court, including the 2 (two) substantive judgments under the MSME Act, i.e. *Silpi Industries vs. Kerala State Road Transport Corporation.*, (2021) 18 SCC 790 ("**Silpi Industries Judgments**") and *Gujarat State Civil Supplies Corporation Limited vs. Mahakali Foods Private Limited*, (2023) 6 SCC 401 ("**Mahakali Foods Judgment**"). The Supreme Court further observed that:

1. the Supreme Court performs twin functions of decision making and precedent-making. Every judgment or order passed by the Supreme Court in disposing of appeals is not intended to be a binding precedent under Article 141 of the Constitution of India ("**Constitution**"). However, as every judgment or order of the Supreme Court is considered as a binding precedent by the High Courts and the Subordinate Courts, it is necessary for the Supreme Court to state whether a particular decision is to resolve the dispute *inter se* parties and provide finality or whether the judgment is intended to be a binding precedent under Article 141 of Constitution; and
2. Section 18 of MSME Act is not restrictive and is a remedy for the resolution of disputes, and as such, it is kept open-ended to enable 'any party' to refer the dispute to seek redressal.

Brief facts

1. Dispute arose between M/s Saket Infra Developers Private Limited ("**Saket Infra**" / "**Enterprise**") and National Buildings Construction Corporation ("**NBCC**") in respect payments to be made by NBCC to Saket Infra for 4 (four) contracts entered between for construction projects at different locations in West Bengal. These contracts were entered before November 19, 2016, when Saket Infra filed a memorandum as a small enterprise under Section 8 of the MSME Act.³

¹ HMJ P.S. Narasimha and HMJ Pankaj Mithal

² 2025 SCC OnLine SC 73 (C.A. No. 3705 of 2024)

³ Section 8 - Memorandum of MSME

2. On March 28, 2019, Saket Infra made a reference to West Bengal Facilitation Council for recovery of dues from NBCC. Pursuant to failure of the conciliation proceedings initiated by Facilitation Council under Section 18(2) of the MSME Act, the dispute was referred to arbitration under Section 18(3) of the MSME Act on January 19, 2021. However, NBCC challenged the jurisdiction Facilitation Council under Section 18 of MSME Act on the ground that Saket Infra was not registered under Section 8 of the MSME Act at the time of executing the 4 (four) contracts and, therefore, dispute falls outside the scope of the MSME Act.
3. Consequently:
 - a) NBCC filed Writ Petition before Hon'ble High Court of Calcutta ("**Calcutta HC**") raising the jurisdictional question of the Facilitation Council entertaining reference under Section 18 of the MSME Act;
 - b) the Ld. Single Judge Calcutta HC dismissed NBCC's petition holding that "*the question of jurisdiction can be raised before the Arbitral Tribunal, which shall decide the same before entering into other questions.*";
 - c) the Ld. Division Bench affirmed the Ld. Single Judge's decision holding that all objections, including those relating to maintainability, can be raised and contested before the arbitrator; and
 - d) NBCC challenged the Division Bench judgment before the Supreme Court.

Submissions of the parties

1. NBCC, while relying upon Supreme Court's earlier judgments in Silpi Industries Judgments and Mahakali Foods Judgment, challenged the jurisdiction of Facilitation Council in entertaining the reference under Section 18 of MSME Act on the ground that Saket Infra registered itself after the contracts were executed. Saket Infra cannot avail the remedies under Section 18 of the MSME Act for supplies made prior to filing of Memorandum, since:
 - a) Section 18 provides that '*any party to a dispute*' may make a reference to the Facilitation Council. The said '*dispute*' must be "*with regard to any amount due under Section 17*";
 - b) Section 17 provides that, "*for any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon under Section 16*";
 - c) Section 16 imposes the liability of the buyer to pay interest to the '*supplier*' on the amounts payable to it under Section 15 for the supply of goods and rendering of any services; and
 - d) the expression '*supplier*' mentioned in Sections 15, 16 and 17 is defined in Section 2(n), as "*a micro or small enterprise which has filed a memorandum with the authority referred to in sub-section (1) of Section 8 and includes...*". Thus, a '*supplier*' can only be an enterprise that has filed a memorandum under Section 8 of the MSME Act;
2. Saket Infra contended that the question of maintainability can be raised before the Arbitral Tribunal as directed by the Single Judge and Division Bench of the Calcutta HC.

Issue

The issue that fell for consideration before the Supreme Court was whether an MSME not registered under Section 8 of the MSME Act before the execution of contract can make a reference to the Facilitation Council under Section 18 of MSME Act for dispute resolution?

Analysis and observations of Supreme Court

The Supreme Court after analysis of the statutory provisions of MSME Act was pleased to hold that the Facilitation Council can entertain a reference under Section 18 of the MSME Act also if the Enterprise was initially not registered

under Section 8 of the MSME Act at the time of entering into the contract. In this regard, Supreme Court *inter alia* observed that:

1. Section 18 of MSME Act does not use the expression supplier, instead employs the phrase, “any party to a dispute, may”;
2. definition of the expression ‘supplier’ in Section 2(n) is not confined to a micro or a small enterprise which has filed a memorandum under Section 8 (1) but also includes companies or other entities engaged in selling goods or rendering services by an enterprise; and
3. Section 8 of MSME Act grants a discretion to a micro or a small enterprise in filing a memorandum with the authority.

Conclusion

This judgment further highlights the importance of reading and applying the decisions of the Supreme Court considering the issues which were decided in the facts of the respective cases. The Supreme Court again clarifies that the Supreme Court while adjudicating rights of the parties and resolving the disputes between them embodies a declaration of law which operates as a binding principle for future cases, where facts are substantially same. However, the Supreme Court might not lay down principle of law in every dispute raised before it and there might be judgments wherein the Supreme Court may simply resolve a dispute between *inter se* the parties. Therefore, not every judgment of the Supreme Court is to be read as a binding precedent under Article 141 of the Constitution.

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