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SUPPLIER IN MSMED ACT

LEGAL INTELLIGENCE
SERIES
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IN THE MATTER OF

***M/S Ramky Infrastructure Private Limited v. Micro and Small Enterprises
Facilitation Council & Anr.***

W.P.(C) 5004/2017 & CM No. 21615/2017 | Delivered on 04.07.2018

In the High Court of Delhi at New Delhi.

***RATIO: Even if an entity has not filed a Memorandum as required under
Section 8(1) of the MSMED Act, it would still be treated as a supplier under
Section 2(n) of the MSMED Act if it falls within the definition of the
micro/small enterprise.***

FACTS

The Petitioner (hereinafter referred to as "RIPL") and the Respondent no. 2 (hereinafter referred to as "GCIL") entered into a contract whereby RIPL awarded civil work relating to Anoxic Tank and Pipe Line etc., at RIPL's project at Delhi International Airport, to GCIL.

RIPL issued two work orders in the later part of the year 2009. GCIL claims that it completed the civil works as awarded to it on 10.12.2010.

Further, GCIL claimed that besides the initial work, it also carried out further work of the value of Rs. 6,09,61,727/- against which Rs. 5,85,26,685/- was paid by RIPL.



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RIPL failed to pay the balance amount and thus, GCIL made a reference to the Medium and Small Enterprises Facilitation Council (hereinafter referred to as "Council") under Section 18 of the Act, claiming a sum of Rs. 1,91,71,260/- including interest, as due and payable by RIPL.

The Council scheduled hearings for Conciliation proceedings. The conciliation proceedings failed as the parties could not reach an amicable solution and the matter was thus referred to the **Delhi International Arbitration Centre ("DIAC")**.

As a legal strategy, RIPL also filed an application under Section 16 of the Arbitration and Conciliation Act, 1996 before the Arbitral Tribunal and same was also dismissed.

The present petition was thus filed by RIPL against the reference made to DIAC by the Council mainly on 2 issues:

ISSUES

1. Whether RIPL was given enough opportunity to be heard and whether principles of natural justice were followed.
2. Whether it was mandatory for a small/medium enterprise (GCIL, in this case) to file the Memorandum under Section 8(1) of the Act in order to fall within the definition of a supplier under Section 2(n) of the Act.

HIGH COURT'S OBSERVATIONS AND FINDINGS

As for the first issue, it was claimed by RIPL that it did not receive the notices for the meetings held on 08.09.2015 and 09.10.2015.

However, there was no dispute that representatives of RIPL had attended the meeting held on 12.02.2016. On



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the said date, RIPL was given an opportunity to file a reply.

RIPL failed to do so and claimed that it did not have a copy of the documents submitted by GCIL and, therefore, was unable to file a response. This contention was not considered persuasive by the Court.

In the event, RIL did not have the necessary documents, it was always open for RIL to demand the same. However, no communication had been produced on record whereby RIPL had made any such demand on GCIL or the Council.

Representatives of RIPL also attended the meeting held on 10.03.2016, which was adjourned at the request of RIPL. RIPL was once again directed to file a reply within a period of ten days.

Representatives of RIPL also attended the next conciliation meeting, which was held on 05.04.2016. On the said

occasion, RIPL sought further time to settle the disputes amicably.

However, on 17.10.2016, the Council decided to terminate the conciliation proceedings and refer the disputes to DIAC.

Thus, Court held that RIPL's contention that the reference to DIAC was made in violation of the principles of natural justice is wholly unwarranted and in bad faith.

Dealing with the second issue, it was observed by the Court that Section 18(1) of the Act does not refer to a reference being made by a supplier. Instead it enables any party to a dispute to make a reference to the Council. However, the dispute must be one which is in regard to any amount due under Section 17 of the Act.

The provisions of Section 17 of the Act have to be read in conjunction



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with Section 15 and 16 of the Act.

Thus, the obligation contemplated under Section 17 of the Act relates to the liability of a buyer and is only with respect of goods supplied or services rendered by a 'supplier'.

A supplier is defined to mean a micro or small enterprise, which has filed a Memorandum with the authority and includes three other types of entities as indicated in the three clauses of Section 2(n) of the Act.

The Court relied on the definition of 'supplier' as per Section 2(n):

"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 enterprises"

There was no dispute in the present case that CGIL falls within the definition of the micro/small enterprise and would be classified as such even at the time of execution of the contract awarded by RIPL. **The only dispute was that GCIL had not filed a Memorandum as required under Section 8(1) of the Act.**



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The Court observed that the two limbs of Section 2(n) of the Act are required to be read to exhaust all categories.

The second limb, which specifies additional three categories to fall within the definition of the term 'supplier', which is in fact in addition to the category of small and medium enterprises that have filed the Memorandum under Section 8(1) of the Act.

Thus, the term 'supplier' as defined under Section 2(n) of the Act must be read to comprise of four categories: **(i) micro or small enterprises that have filed the Memorandum under Section 8(1) of the Act; (ii) National Small Industries Corporation; (iii) Small Industries Development Corporation of a State or a Union territory; and (iv) a company co-operative society, trust or a body engaged in selling goods produced by micro or small enterprises or**

rendering services provided by such enterprises.

The judgment of the Supreme Court in the case of *Thalappalam Service Cooperative Bank Limited and Others* was relied upon by the Court and it was held that there is no dispute that GCIL would fall within the definition of micro/small enterprise even at the material time when it had executed the contract with RIPL.

GCIL is a company and the services provided by GCIL are clearly services rendered by a micro/small enterprise and, therefore, GCIL being engaged in supply of services rendered by a micro/small enterprise would fall within the fourth category of entities that are included as a 'supplier': that is, a company, co-operative society, trust or a body engaged in selling goods produced by micro or small enterprises or rendering services provided by such enterprises.



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It is not necessary for such entities to have filed the Memorandum under Section 8(1) of the Act.

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CONCLUSION

The ratio which evolves is as below:

- i) Once a party has become a part of the proceedings and has appeared on several occasions, it cannot take the stand that it was not heard or the principles of natural justice were not followed.**
- ii) For a supplier to be governed under the MSMED Act, it is not mandatory to file the Memorandum under Section 8(1) of the Act. If it fulfills the conditions under the second limb of the Section 2(n), it would be considered as a supplier under the MSMED Act.**

*The content is purely an academic analysis under “**Legal intelligence series**.”*

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