

**(SHOW CAUSE NOTICE BEFORE ADMISSION)
IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
(SPECIAL ORIGINAL JURISDICTION)**

TUESDAY, THE NINTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FOUR

:PRESENT:

**THE HONOURABLE SRI JUSTICE NINALA JAYASURYA
WRIT PETITION NO: 595 OF 2024**



Between:

M/s.Engineering Projects (India) Ltd., (A Govt. of India Enterprise) Southern Regional Office 3D, EC Chambers, 92, G.N.Chetty Road T.Nagar, Chennai - 600017 rep. by its Deputy General Manager, Hyderabad (sro@engineeringproects.com)

Petitioner

AND

1. The Andhra Pradesh Micro and Small Enterprises Facilitation Council, (APMSEFC) (Established under Section 20 of Micro, Small and Medium Enterprises Development Act, 2006) at Mangalagiri
2. M/S. Devi Engineering and Constructions Pvt. Ltd, Plot No.20, Flat No.GI, IVY Grand Ground Floor, Narasanna Nager, Surya Rao Peta, Kakinada - 533 003 informdec@vahoo.co.in 9246424111

Respondents

WHEREAS the Petitioner above named through his Advocate Sri K SRINIVASA RAO presented this Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ or order or direction more particularly one in the nature of Writ of Mandamus to declare the action of the 1st Respondent in initiating proceedings vide No. 21 C/IFC/2021/967 dated 28.08.2021 in pursuance of Claim Application filed by the 2nd Respondent under Section 18(1) of Micro, Small and Medium Enterprises Development Act 2006 as highly illegal, arbitrary and without jurisdiction and in violation of Articles 14 and 300A of Constitution of India and issue consequential directions to the 1st Respondent not to proceed further in adjudication of the dispute in Reference No. 21 C/IFC/2021/967 dated 28.08.2021 .

AND WHEREAS the High Court upon perusing the petition and affidavit filed herein and upon hearing the arguments of Sri K SRINIVASA RAO Advocate for the Petitioner, directed issue of notice to the Respondent No.2 herein to show cause as to why this WRIT PETITION should not be admitted.

You viz:

M/S. Devi Engineering and Constructions Pvt. Ltd, Plot No.20, Flat No.GI, IVY Grand Ground Floor, Narasanna Nager, Surya Rao Peta, Kakinada - 533 003 informdec@vahoo.co.in 9246424111

are be and hereby directed to show cause either appearing in person or through an Advocate, as to why in the circumstances set out in the petition and the affidavit filed therewith(copy enclosed) this WRIT PETITION should not be admitted on or before 06.02.2024, on which date the case stands posted for hearing.

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings in Reference No. 21 C/IFC/2021/967 dated 28.08.2021 before the 1st Respondent, pending disposal of WP No. 595 of 2024, on the file of the High Court.

IA NO: 2 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay the operation of Order dated 22.11.2023 passed in Case No. 21C/IFC/2021/967 by the 1st Respondent, pending disposal of WP No. 595 of 2024, on the file of the High Court.

The Court made the following: ORDER

“Heard Mr.K.Srinivasa Rao, learned counsel for the petitioner, who made submissions with reference to the various contentions raised in the writ petition. He contends that though a specific plea was taken in the counter filed in the Claim Petition before the respondent No.1 that the respondent No.2 was not registered as Micro/Small/Medium Enterprise by the date of Letter of Intent dated 12.2.2013 or the Work Order dated 21.2.2023 and that the respondent No.2 was registered under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (for short, “the Act”) on 20.11.2015 and as such the respondent No.1 has no jurisdiction, the respondent No.1, without considering the same in proper perspective, vide Orders dated 22.11.2023 passed the interim award directing the petitioner to release the performance bank guarantee of the respondent No.2 to a tune of Rs.88,71,760/-.

Referring to the provisions of the Act i.e., Section 2(n) etc., he submits that the respondent No.2 would not fall within the definition of “supplier”. He also submits that the respondent No.2 failed to comply with the provisions of Section 8(1)(i) and (ii) of the Act, though it was in existence from 2004. Relying on the decision of the Hon’ble Supreme Court in Silpi Industries vs. KSRTC, 2021 SCC OnLine SC 439, he submits that as the respondent No.2 has not obtained registration as on the date of letter of intent, the provisions of the Act cannot be made applicable with retrospective effect and the respondent No.1 had passed the interim award contrary to the settled legal position.

The matter requires consideration, in the light of the contentions raised.

List the matter on 06.2.2024.

Considering the submissions made, there shall be interim stay of all further proceedings in Reference No.21C/IFC/2021/1967, dated 28.8.2021, and there shall be interim suspension of the operation of the Order dated 22.11.2023 passed in Case No.21C/IFC/2021/ 1967.

Issue notice to respondent No.2.

Learned counsel for the petitioner is permitted to take out personal notice on respondent No.2 by registered post with acknowledgement due and file proof of service in the Registry, by the date of next adjournment."

//TRUE COPY//

Sd/- SK. MD. RAFI
ASSISTANT REGISTRAR
SECTION OFFICER

To,

1. The Andhra Pradesh Micro and Small Enterprises Facilitation Council, (APMSEFC) (Established under Section 20 of Micro, Small and Medium Enterprises Development Act, 2006) at Mangalagiri
2. M/S. Devi Engineering and Constructions Pvt. Ltd, Plot No.20, Flat No.GI, IVY Grand Ground Floor, Narasanna Nager, Surya Rao Peta, Kakinada - 533 003 informdec@vahoo.co.in 9246424111(Addressess 1 to 2 by RPAD- along with a copy of petition and memorandum of grounds)
3. One CC to SRI. K SRINIVASA RAO Advocate [OPUC]
4. One spare copy.

psk

HIGH COURT

NJSJ

DATED:09/01/2024

LIST ON 06.02.2024

NOTICE BEFORE ADMISSION

WP.No.595 of 2024

INTERIM STAY

