

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 7066 OF 2022

(Balvindersingh S/o Jagatsingh Saggi

Vs.

M/s. Shree Steel Casting Pvt. Ltd., Thr. Its Managing Director
 Mr. Manoj Maheshwari)

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Akshay A. Naik, Advocate for the Petitioner.

CORAM: AVINASH G. GHAROTE, J.

DATED : 14th NOVEMBER, 2022.

Heard Mr. Naik, learned counsel for the petitioner, who contends, that though the liabilities are imposed upon the partnership firm M/s Saggi Ispat a registered partnership firm, as per the certificate issued by the Registrar of firms, Nagpur (page 65), the petitioner had already retired as a partner of the firm with effect from 01.04.1997, and therefore, was not liable for the dues of the firm, which according to the respondent have been incurred on account of transaction done during the period from 02.01.2011 to 17.08.2011. The certificate issued by the Registrar of firms (page 65) *prima-facie* demonstrates this position.

2. The second contention, relying upon the judgment of the Hon'ble Apex Court in *Gujarat State Civil Supplies Corporation Ltd. Vs. Mahakali Foods Pvt. Ltd. (Unit 2) and Another, 2022 SCC OnLine SC 1492*, is

that on the date when the respondent was registered under the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter to be referred as the “MSMED Act”), by submitting a Memorandum under Section 08 of the MSMED Act, which was 17.05.2012, the same was subsequent to the date of the transaction and therefore, the respondent did not fall within the definition of supplier as defined in Section 2(n) of the MSMED Act, in light of which the provisions of the MSMED Act were not attracted. In ***Gujarat State Civil Supplies Corporation Ltd.*** (supra), while considering this position, the Hon’ble Apex Court has held as under:

“31. One of the submissions made by the Ld. Counsels for the Buyers was that if the party Supplier was not the “supplier” within the meaning of Section 2(n) of the MSMED Act, 2006 on the date of the contract entered into between the parties, it could not have made reference of dispute to Micro and Small Enterprises Facilitation Council under Section 18(1) of the MSMED Act, 2006 and in such cases, the Council would not have the jurisdiction to decide the disputes as an arbitrator.

33. Following the above-stated ratio, it is held that a party who was not the “supplier” as per Section 2(n) of the MSMED Act, 2006 on the date of entering into the contract, could not seek any benefit as a supplier under the MSMED Act, 2006. A party cannot become a micro or small enterprise or a supplier to claim the benefit under the MSMED Act, 2006 by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods or rendering services. If any registration, is obtained subsequently, the same would have the effect

prospectively and would apply for the supply of goods and rendering services subsequent to the registration. The same cannot operate retrospectively. However, such issue being jurisdictional issue, if raised could also be decided by the Facilitation Council /Institute/ Centre acting as an arbitral tribunal under the MSMED Act, 2006.”

3. The fact that the transaction is between the duration 02.01.2011 and 17.08.2011 is spelt out from the averments in the reference No. 108/2015 filed by the respondent (para 3 page 70) and the fact that the Memorandum was submitted on 17.05.2012 is spelt out from the averment in page 80 of the petition under Section 18 of the MSMED Act. Considering this, a *prima-facie* case for interference is made out.

4. Issue notice to the respondent for final disposal of the matter at the stage of admission itself, returnable on **29.11.2022**.

5. Till the returnable date, there shall be ad interim stay in terms of prayer clause (c), insofar as the present petitioner is concerned.

6. It is made clear, that the execution proceeding can proceed against the other judgment debtor/s.

7. Steno copy is granted.

JUDGE