

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Spl. Appl. Writ No. 219/2024

M/s K K Electro Trade, Through Director/authorized
Representative Krishan Kumar Bansal Aged 57 Years Registered
241, Himmat Nagar, Tonk Road, Jaipur (Raj.)

----Appellant

Versus

1. Sushil Agarwal For M/s Balaji Info Lube, 21, Residency
Road, Jodhpur, Rajasthan - 342011
Balajilubes@gmail.com
2. Rajasthan Micro And Small Enterprises Facilitation
Council, Jodhpur Division, District Industries And
Commerce Center, Mini Udhyog Bhawan, New Power
House Road, Jodhpur-342003 E-Mail -
Gmdicjodhpur@gmail.com

----Respondents

For Appellant(s)	:	Mr. Harsh Tikoo
For Respondent(s)	:	Mr. Akshat Verma. Mr. Vipul Dharnia.

**HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE MUNNURI LAXMAN**

Order

20/03/2024

Heard.

2. Mr. Akshat Verma appears for respondent No.1 on advance
copy of the appeal.
3. The issue, which arises for consideration in this appeal,
whether the application filed by the respondent No.1 under
Section 15 of the Micro, Small and Medium Enterprises
Development Act, 2006 (for short, 'the Act') before the Micro

Small Enterprises Facilitation Council (MSEFC) was maintainable under the law.

4. The submission of learned counsel for the appellant is that even according to respondent No.1 it was registered as small scale industry only on 14.12.2016. In view of definition of "supplier" as contained in Section 2(n) of the Act, on the date of entering into contract i.e. 02.09.2016, the respondent No.1 was not registered as small scale industry, therefore, in view of law laid down by Hon'ble Supreme Court in the cases of **Vaishno Enterprises Vs. Hamilton Medical AG and Ors – Civil Appeal No.1892/2022, decided on 24.03.2022, Nitesh Estates Ltd. Vs. Micro and Small Enterprises Facilitation Council of Haryana and Others – Special Leave to Appeal (C) No.26682/2018, decided on 12.08.2022, and Silpi Industries and Others Vs. Kerala State Road Transport Corporation and Others – Civil Appeal Nos.1570-78/2021 decided on 29.06.2021**, no proceedings could be drawn under the Act.

5. Learned counsel for the respondent No.1 places reliance upon the judgment of Hon'ble Supreme Court in the case of **Gujarat State Civil Supplies Corporation Limited Vs. Mahakali Foods Private Limited (Unit 2) and Another [(2023) 6 SCC 401]** to submit that from the date the unit is registered as small scale industry, the supplies made thereafter shall be treated as supplies made, for the purposes of the Act, as supplies made as small scale unit, and therefore, it would be covered under the definition of "supplier" under Section 2(n) of the Act and the application would be maintainable under Section 15 of the Act.

6. Prima facie, we are of the that in view of the decision of the Hon'ble Supreme Court in the cases of **Vaishno Enterprises (supra)**, **Nitesh Estates Ltd. (supra)** and **Silpi Industries (supra)**, the application would not be maintainable.
7. Therefore, taking into consideration the very aspect of maintainability of the application, we are inclined to entertain this appeal, even though the appellant has an alternative remedy of filing application under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the award.
8. List this case for final disposal in the last week of April, 2024.
9. Till the next date of hearing, execution pursuant to the impugned award shall remain in abeyance.

(MUNNURI LAXMAN),J

(MANINDRA MOHAN SHRIVASTAVA),CJ