

**Case :-** WRIT - C No. - 35190 of 2023

**Petitioner :-** M/S Neeraj Potato Preservation And Food Products Pvt.Ltd.

**Respondent :-** U.P. Micro Small And Medium Enterprises Facilitation Council And 2 Others

**Counsel for Petitioner :-** Mushir Khan

**Counsel for Respondent :-** C.S.C

**Hon'ble Mahesh Chandra Tripathi, J.**

**Hon'ble Prashant Kumar, J.**

**(Per Hon. Mahesh Chandra Tripathi, J.)**

1. Heard Shri Amit Saxena, learned Senior Counsel assisted by Shri Mushir Khan, learned counsel for the petitioner and Shri Manish Goyal, learned Addl. Advocate General assisted by Shri Fuzail Ahmad Ansari, learned Standing Counsel for the State respondents.

**Facts of the case**

2. M/s Neeraj Potato Preservation and Food Products Pvt. Ltd. (in short "the petitioner company") is in the business of running cold storage at Shivrajpur. The farmers of that area grow crops and use the petitioner's facility for storage of their potatoes and other crops and for this purpose the company charges rent/ fees (for the services provided) for keeping the crop in cold storage facility. When the farmers come to take back their crop, they pay the charges according to the period of storage and area occupied in petitioner's cold storage. The respondent nos.2 and 3 are the farmers, who had used the services of the petitioner's cold storage. They had stored their potatoes to be sold in the market at a suitable time. While the produce of the farmers is kept in cold storage, the farmers sometimes need financial assistance towards the input cost needed for fresh sowing, which may be provided by the petitioner company. Accordingly, the respondent nos.2 and 3, who needed financial assistance to sow their next crop took a loan from the

petitioner company of Rs.4,09,022/-. It seems that the respondent nos.2 and 3 did not pay back the loan to the petitioner. The petitioner, claiming itself to be Micro, Small and Medium Enterprises (MSME) registered under the Micro, Small and Medium Enterprises Development Act, 2006 (in short "MSMED Act") had filed a claim petition before the 'U.P. Micro, Small and Medium Enterprises Facilitation Council, Kanpur Nagar' (in short "the Council") on 24.12.2020, which was registered as Claim Petition No.105 (127) of 2021 for the recovery of the principal amount of Rs.4,09,022/- along with interest at the rate of 18% per annum, as provided under the MSMED Act, which came out to be Rs.2,26,851/-, so the total claim was of Rs.6,35,873/-.

3. In the said proceeding, notices were issued to the respondents on 19.7.2021 calling them for settlement and to appear on 29.7.2021 for conciliation. It is contended that on 29.7.2021, the petitioner had appeared but the respondents did not appear before the Council, hence the reference could not be decided and the proceeding of Section 76 of the Arbitration and Conciliation Act, 1996 was terminated and the matter was referred for arbitration asking the respondents to file reply within 15 days.

4. It is contended that once the aforesaid case/claim of the petitioner was not being decided, the petitioner approached this Court by preferring Writ-C No.4379 of 2022 (M/s Neeraj Potato Preservation and Food Products Pvt. Ltd. v. U.P. Micro and Medium Enterprises Facilitation Council and Anr.), which was decided on 2.3.2022 directing the Council to decide the claim of the petitioner preferably within three months.

5. In spite of aforesaid direction, once the claim of the petitioner was not decided, the petitioner preferred Contempt Application (Civil) No.7143 of 2022 (M/s Neeraj Potato Preservation and Food Products Pvt. Ltd. v. Dr. Raj Shekhar/Chairman of U.P. Micro and Medium Enterprises Facilitation Council), which was decided on 25.11.2022

according three months further time to comply with the Writ Court order.

6. In response to the aforesaid order, the claim of the petitioner was decided by the order impugned. While passing the order impugned, the Council has framed following main issues for adjudication:-

- (1) Whether the Claimant/ Supplier is entitled for the claim of Rs.4,09,022/- as Principal Amount from the Buyer?
- (2) Whether the Claimant/ Supplier is entitled for the claim of Rs.2,26,851/- as interest from the Buyer?.

7. While deciding the first issue, the Council opined that it has jurisdiction to decide the matter only for delayed payments in lieu of cooling & preservation services provided to customers. As per the Udyog Aadhar Registration Certificate of the claimant, the activities being done by the claimant, are related to warehousing and support activities, warehousing and storage, warehousing of refrigerated (cold storage). The claimant failed to produce any such document, which inspires the confidence of the Council regarding the arrear of rent/ services of Cold Storage, provided to the respondents by the claimant (petitioner), which is still due on the respondents.

8. The Council has observed that the opinion/ report of Lead District Manager (L.D.M.) regarding the issue of re-finance service makes it clear that if the claimant company has provided loan against the products stored in its cold storage and the list of such borrowers, along with the receipts of their products, has been made available to the bank, only then the Council may entertain the claim petition otherwise not. The claimant has failed to produce any such document as mentioned in the opinion/ report of L.D.M. As such the Council opined that as per the provisions of MSMED Act, 2006, it has no jurisdiction to decide the matter for recovery of loan / financial services and other recovery matters and in such circumstances the Council cannot act beyond its jurisdiction. It was also observed that the claimant may

approach for other alternate legal remedies for recovery of loan/ financial services.

9. While deciding the second issue, the Council observed that the claimant is not entitled to receive any interest from the respondent as there is no principal amount of delayed payment due on the respondents. Accordingly, the claim/ reference of the petitioner was dismissed by the order impugned.

10. Aggrieved by the said order, the petitioner had preferred the instant writ petition with following prayers:-

*“(i) Issue a writ, order or direction in the nature of certiorari to quash/ set aside the impugned order made on 29.07.022 signed on 14.08.2023 passed by the Chairman of Divisional Micro and Small Enterprises, Facilitation Council, Kanpur.*

*(ii) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondent authorities to consider and recover the loan/ financial service as per the provision of MSMED Act.*

*(iii) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondent authorities to decide the case of petitioner’s company consider the loan/ financial service which comes under the jurisdiction of Facilitation Council as per the MSMED Act.”*

### **Arguments of the petitioner**

11. Learned Senior Counsel for the petitioner has vehemently argued that the order impugned is not sustainable in the eyes of law. He has submitted that Section 22 of the U.P. Regulation of Cold Storage Act, 1976 (in short “the Act, 1976”) has given the right to Company to offer service of finance to individuals, who are doing business/ work (agricultural produce), hence the petitioner is entitled and authorised to offer service of finance to the farmers. He has also submitted that after the enforcement of MSMED Act, the cold storage service stands included under the MSMED Act vide notification dated 5.11.2014 issued by Government of India and the recovery of petitioner’s services of finance shall be permissible in view of Section 24 (overriding effect) of the MSMED Act and as such the finding given under the impugned order is not sustainable and contrary to law.

12. Learned Senior Counsel appearing for the petitioner has contended that, in the process of preservation of potato, the company

charges rent against the potato stored by farmers as well as interest on advance loan provided to the farmers. The farmers are required to deposit the rent/ advance loan and interest on rent/ advance loan at the time to take away their potato. Sometimes, looking into the financial position of the farmers, the unpaid balance of the farmers is carried forward and is adjusted in the coming financial year. It is contended that the bank as well as the Act, 1976 both permit the petitioner to provide short terms finance to farmers in order to meet expenses and there is amicable agreement between the petitioner and the farmers.

13. It is also submitted that the company is not doing prime lending and the company is offering amicable service to the farmers for sowing the crops for which a separate agreement was also executed by the company with farmers as per the Contract Act, 1972. The service of finance was rendered by the petitioner and the farmer is liable to pay the loan amount and interest as prescribed to the petitioner company. Since the petitioner is registered MSME, as per the provisions of MSMED Act, the Council had the jurisdiction to adjudicate the dispute.

14. It is further submitted that if the order impugned is not set aside, it will set up a very wrong precedent, inasmuch as if the farmers after taking the loan does not pay back, then the petitioner will have no efficacious remedy to recover the same, which would lead the petitioner company to insolvency.

15. It is also argued that the order impugned can not be challenged under Section 34 of the Arbitration and Conciliation Act, 1996 and the position of the petitioner is very different as more than 84 cases of the petitioner of same nature are pending before the Council and the Council had passed the order impugned without following the rule of jurisdiction. The company is at the verge of closure and only legal question is involved in the present matter as to whether the service of finance rendered by the petitioner would be covered under the MSMED Act or not. The petitioner has given all particulars with regard to genuineness of the claim in the present case but the Council has ignored

the same. The petitioner is a company doing the work for the welfare of the farmers but the respondents and such other farmers are blocking the money of the petitioner as such the petitioner is not being able to settle the loan amount of the bank or advance financial assistance to other farmers, who are in need. On one hand, the petitioner is disbursing the financial assistance to the farmers and on the other hand it is not able to recover the same and as such the order impugned is not justified.

16. It is also argued that the cold storage business is a regulated business and the Act, 1976 provide for complete mechanism as to how the cold storage services are to be provided. The statement of objects and reasons discloses that the State Government was conscious of the fact that cold storages have to run smoothly and efficiently so as to mitigate the hardships of agricultural producers and hence proper control in regulation of cold storage business is necessary for public interest. The Act provides for due remedies to the farmers and balances the right of the licensee by providing the right to retain lien upon the goods so long as the charges fixed by the Government are not paid and the discharge receipt is not issued, where the period of delivery is over.

**Arguments of the respondent/State** PEOPLE OF THE PEOPLE

17. On the other hand, learned Addl. Advocate General has vehemently opposed the writ petition and submitted that the order impugned has been passed strictly in accordance with law and there is no infirmity in it. He submitted that in the present matter the controversy is as to whether the loan/ financial services will be covered under the Cold Storage Services and will be falling within the jurisdiction of the Council so as to be adjudicated as per the procedure contemplated under the MSMED Act.

18. He submitted that as per the Udyog Aadhar Memorandum Certificate of the petitioner, the petitioner has been registered for the following services:-

- Warehousing and support activities for transportation.

- Warehousing and storage
- Warehousing of refrigerated (cold storage).

19. He submitted that the Council has rightly arrived at a conclusion that the petitioner has not been registered for any financial services under the MSMED Act, therefore, the Council did not possess the jurisdiction to enter into reference in terms of Section 18 of the Act, leaving it open for the petitioner to pursue the other legal remedies available to it. There was no infirmity in the impugned order passed by the Council that no recovery can be made by any instrumentality under MSMED Act unless and until the petitioner registers itself for financial services under the MSMED Act by submitting a memorandum to that effect and that too prospectively.

20. He further submitted that the order impugned has rightly been passed and no interference is required in the matter. In support of his submissions, he has placed reliance on the judgments in **Silpi Industries Etc. v. Kerala State Road Transport Corporation & Anr.**, (2021) 18 SCC 790; **Kannauj Cold Storage & Ors. v. State of U.P. & Ors.**, 1989 ALL.L.J. 689; **National Seeds Corporation Ltd. v. M. Madhusudhan Reddy & Anr.**, 2012 (2) SCC 506; **M/s Chakor Cold Storage & Ors. v. District Consumer Dispute Redressal Forum & Ors.**, 2020 (10) ADJ 400; **M/s Chandel Cold Storage v. State Consumer Disputes Redressal Commission, U.P. & Ors.**, Misc. Single No.5743 of 2010 dt. 17.5.2019; **M/s Chotey Lal Cold Storage & Allied Ind. v. State of U.P. & Ors.**, 2012 (1) ADJ (LB) 528; **State of U.P. & Anr. v. Satya Narain Kapoor (Dead) by Lrs. & Ors.**, (2004) 8 SCC 630; **Kantaru Rajeevaru (Sabrimala Temple Review-5J) v. Indian Young Lawyers Association through its General Secretary & Ors.**, (2020) 2 SCC 1 and **Spencer & Company Ltd. & anr. v. Vishwadarshan Distributors Pvt. Ltd. & Ors.**, 1995 (1) SCC 259.

**ANALYSIS**

21. Heard rival submissions, perused the record as well as respectfully considered the judgments cited at Bar. In the present matter, three issues are to be adjudicated, which are as follows:-

- (i) whether the loan/ financial services will be covered under the Cold Storage Services; and
- (ii) whether the petitioner has been registered for any financial services under the MSMED Act.
- (iii) Whether the present writ petition is maintainable or not.

22. With regard to **first issue** as to whether the financial services will be covered under the Cold Storage Services, we first need to look into the definition of 'cold storage'. The term 'cold storage' has been defined under Section 2 (c) of the Act, 1976, which provides:-

(c) **“cold storage”** means an enclosed chamber insulated and mechanically cooled by refrigeration machinery to provide refrigerated condition to agricultural produce stored therein, but does not include refrigerated cabinets and chilling plants having a capacity of less than 100 cubic meters.

23. For the purposes of providing cold storage services a license is to be issued inasmuch as cold storage services are regulated within the State of U.P., which is evident from perusal of Section 5 of the Act, 1976, as under:-

“5. On and after such date as the State Government may, by notification appoint in that behalf, no person shall carry on the business of storing any agricultural produce in a cold storage under and in accordance with the terms and conditions of a licence granted under this Act.”

24. Section 22 of the Act, 1976 lays down as to what should be the rate of interest charged by the cold storage, in case they provide financial assistance to the farmers. Section 22 of the Act, 1976 reads as follows:-

“22. If any money is lent by the licensee to a hirer against the goods stored by some hirer in the cold storage, the rate of interest, in no case, shall be higher than one-half of one percent annum simple



interest over the current rate of interest charged by the State Bank of India, at the time of the loan, for like purposes in respect of advances made by it against goods pledged in its favour.”

25. The admitted facts of the present case are that the loan advanced to the hirer/ farmer by the licensee was not in terms of Section 22 of the Act, 1976 as nowhere it has been stated in the writ petition that the loan so advanced was lower than one half of one percent per annum simple interest over the current rate of interest charged by the State Bank of India. Infact the loan was advanced @ 18% per annum, which is much higher than the rate of interest charged by the State Bank of India.

26. Moreover, the loan advanced was not against the goods pledged in favour of the petitioner company but with a bond that if the payment is not done, the farmer undertakes to deposit his goods in the next agricultural year also in the cold storage of the petitioner. Hence, Section 22 of the Act, 1976 does not come into play.

27. For the purposes of MSMED Act and to provide financial services under Section 22 of the Act, 1976 the petitioner ought to have the registration under the MSMED Act, 2006 for ‘financial activity’, which admittedly could not be explained by the petitioner. The petitioner having not been registered under the MSMED Act for financial activity and there being a private agreement between the petitioner and the contesting respondents, the petitioner could not have sought a recovery for an alleged loan purportedly granted under Section 22 of the Act, 1976 by taking aid of the provisions contained under MSMED Act.

28. As per Section 45 of the Act, 1976, the Government was authorised to make Rules. In pursuance of this power granted under the Act, 1976, the ‘U.P. Regulation of Cold Storage (Licensing) Rules, 1976’ (in short “the Rules, 1976”) was framed. Rule 3 of the Rules, 1976 provides for the terms and conditions of the license and Rule 6 of the Rules, 1976 provides for specification of a cold storage. The term ‘condition and the specification of the cold storage’ together with the definition clauses constitute the cold storage services and, therefore,

cold storage services have been properly structured under the U.P. Enactment read with modified subordinate legislation of Uttar Pradesh. Grant of loan is not incidental to a cold storage services, which is explicit from bare perusal of the definition clauses, the licence, terms and conditions and specification of cold storage. Therefore, cold storage service and credit facilities by pledging the produce stored in the cold storage are two different services, which are not directly linked with each other. Therefore, the grant of loan will not be covered under cold storage services.

29. With regard to **second issue** as to whether the petitioner has been registered for any financial services under the MSMED Act, we have to first see the objects and reasons as well as the relevant provisions of MSMED Act, which are enumerated as under:-

**“Statement of Objects and Reasons**

Small scale industry is at present defined by notification under section 11b. of the industries (development and regulation) Act, 1951. Section 29B of the Act provides for notifying reservation of items for exclusive manufacturing in the small Scale Industry Sector. Except for these two provisions, there exists no legal. Framework for this dynamic and vibrant sector of the country's economy. Many expert groups or committees appointed by the government from time to time as well as the small scale industry sector itself have emphasized the need for An Comprehensive Central Enactment to Provide an Appropriate Legal Framework for the Sector to Facilitate Its Growth and Development. Emergence of a large services sector assisting the small scale industry in the last two decades also warrants a composite view of the sector, encompassing both Industrial units and related service entities. The world over, the emphasis has now been shifted from "industries" to "enterprises". Added to this, a growing need is being felt to extend policy support for the small enterprises so that they are enabled to grow into medium ones, adopt Better and higher levels of technology and achieve- higher productivity to remain competitive in a fast globalisation area. Thus, as in most developed and many developing countries, it is necessary in India too, the concerns of the Entire Small and Medium Enterprises Sector Are addressed and the sector is provided with a single legal framework. As of now, the medium industry or enterprise is not even defined in any law.

2. In view of the above-mentioned circumstances, the bill aims at facilitating the promotion and development and enhancing the competitiveness of small and medium Enterprises and learns to-

(a) Provide for Statutory Definitions of "Small Enterprise" and "Medium Enterprise":

(b) Provide for the Establishment of a National Small and Medium Enterprises Board, a high-level forum consisting of stakeholders for

participative review of and making recommendations on the policies and programmes for the development of small and medium enterprises;

(c) provide for classification of small and medium enterprises on the basis of investment in plant and machinery, or equipment and establishment of an Advisory Committee to recommend on the related matter;

(d) empower the Central Government to notify programmes, guidelines or instructions for facilitating the promotion and development and enhancing the competitiveness of small and medium enterprises;

(e) empower the State Governments to specify, by notification, that provisions of the labour laws specified in clause 9(2) will not apply to small and medium enterprises employing upto fifty employees with a view to facilitating the graduation of small enterprises to medium enterprises;

(f) make provisions for ensuring timely and smooth flow of credit to small and medium enterprises to minimise the incidence of sickness among and enhancing the competitiveness of such enterprises, in accordance with the guidelines or instructions of the Reserve Bank of India;

(g) empower the Central and State Governments to notify preference policies in respect of procurement of goods and services, produced and provided by small enterprises, by the Ministries, departments and public sector enterprises;

(h) empowering the Central Government to create a Fund or Funds for facilitating promotion and development and enhancing the competitiveness of small enterprises and medium enterprises;

(i) empower to prescribe harmonised, simpler and streamlined procedures for inspection of small and medium enterprises under the labour laws enumerated in clause 15, having regard to the need to promote self-regulation or self-certification by such enterprises;

(j) prescribe for maintenance of records and filing of returns by small and medium enterprises with a view to reduce the multiplicity of often-overlapping types of returns to be filed;

(k) make further improvements in the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 and making that enactment a part of the proposed legislation and to repeal that enactment.”

**“8. Memorandum of micro, small and medium enterprises-**

(1) Any person who intends to establish,--

(a) a micro or small enterprise, may, at his discretion; or

(b) a medium enterprise engaged in providing or rendering of services may, at his discretion; or

(c) a medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), shall file the memorandum of micro, small or, as the case may be, of medium enterprise with such authority as may be specified by the State Government under sub-section (4) or the Central Government under sub-section (3):

Provided that any person who, before the commencement of this Act, established--

(a) a small scale industry and obtained a registration certificate, may, at his discretion; and

(b) an industry engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), having investment in plant and machinery of more than one crore rupees but not exceeding ten crore rupees and, in pursuance of the notification of the Government of India in the erstwhile Ministry of Industry (Department of Industrial Development) number S.O. 477(E), dated the 25th July, 1991 filed an Industrial Entrepreneur's Memorandum,

shall within one hundred and eighty days from the commencement of this Act, file the memorandum, in accordance with the provisions of this Act.

(2) The form of the memorandum, the procedure of its filing and other matters incidental thereto shall be such as may be notified by the Central Government after obtaining the recommendations of the Advisory Committee in this behalf.

(3) The authority with which the memorandum shall be filed by a medium enterprise shall be such as may be specified, by notification, by the Central Government.

(4) The State Government shall, by notification, specify the authority with which a micro or small enterprise may file the memorandum.

(5) The authorities specified under sub-sections (3) and (4) shall follow, for the purposes of this section, the procedure notified by the Central Government under sub-section (2).”

#### **18. Reference to Micro and Small Enterprises Facilitation Council-**

(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.

**20. Establishment of Micro and Small Enterprises Facilitation Council-**

The State Government shall, by notification, establish one or more Micro and Small Enterprises Facilitation Councils, at such places, exercising such jurisdiction and for such areas, as may be specified in the notification.

**21. Composition of Micro and Small Enterprises Facilitation Council.—**

(1) The Micro and Small Enterprise Facilitation Council shall consist of not less than three but not more than five members to be appointed from among the following categories, namely:—

(i) Director of Industries, by whatever name called, or any other officer not below the rank of such Director, in the Department of the State Government having administrative control of the small scale industries or, as the case may be, micro, small and medium enterprises; and

(ii) one or more office-bearers or representatives of associations of micro or small industry or enterprises in the State; and

(iii) one or more representatives of banks and financial institutions lending to micro or small enterprises; or

(iv) one or more persons having special knowledge in the field of industry, finance, law, trade or commerce.

(2) The person appointed under clause (i) of sub-section (1) shall be the Chairperson of the Micro and Small Enterprises Facilitation Council.

(3) The composition of the Micro and Small Enterprises Facilitation Council, the manner of filling vacancies of its members and the procedure to be followed in the discharge of their functions by the members shall be such as may be prescribed by the State Government.

30. The preamble of the MSMED Act shows that it is an Act to provide for facilitating the promotion, development and enhancing the activities of Micro, Small and Medium Enterprises and for matters connected therewith or incidental thereto. It will be apt to quote relevant extract of the prefatory note to the enactment:-

“Whereas a declaration as to expediency of control of certain industries by the Union was made under Section 2 of the Industries (Development and Regulation) Act, 1951;

And whereas it is expedient to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto.”

31. Section 8 of the MSMED Act provides for memorandum of micro, small and medium enterprises and states that whoever wishes to set up a micro, small or medium enterprise will have to file a memorandum with such authority as may be specified by the State Government or the Central government as the case may be. Sub-section (3) and sub-section (4) of Section 8 delegates the power upon the

Central Government and the State Government respectively specifying the authorities through notification, which will be accepting the memorandum. Under Section 8 (2) different sector and industries have been classified.


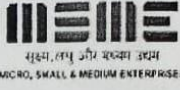




32. Once the services provided by the petitioner is not registered under the MSMED Act, Facilitation Council established under the Act, will be divested of jurisdiction to entertain any such dispute arising out of any service not registered under MSMED Act. In such a situation, the MSMED Act will not be applicable as per Section 18 of the Act.

33. Further the National Industrial Classification Data 2008 has formed the basis of providing the codification of accepting the memorandum under the Act. Part-II of detailed structure of NIC 2008 contains different divisions and Codes. Division 52 has been given to warehousing and support activities for transportation. Code 5210 has been given to warehousing and storage and Code 52101 was given to warehousing of refrigerated (cold storage). In none of the said entries, the financial activity is available, which falls under a different Code. Section 'K' deals with financial services and insurance company, which has been given Code '64'.

34. On the basis of Udyog Aadhaar Memorandum Certificate, an enterprise becomes amenable to frame work of MSMED Act. If the registration of an enterprise does not fall in a particular category, the provisions of the MSMED Act will not be applicable for that category. As per the Udyog Aadhar Memorandum Certificate of the petitioner, the petitioner has been registered for the following services:-

- Warehousing and support activities for transportation.
- Warehousing and storage
- Warehousing of refrigerated (cold storage).

35. The Udyog Aadhar Memorandum Certificate of the petitioner (valid til 30.6.2022) has been provided by the State through written submissions. The Udyog Aadhar Memorandum Certificate is reproduced below:-

		भारत सरकार Govt. of India सूक्ष्म, लघु और मध्यम उद्यम मंत्रालय MINISTRY OF MICRO, SMALL & MEDIUM ENTERPRISES						
		उद्योग आधार 		Udyog Aadhaar 				
		Type of Enterprise		Micro	Small	Medium		
		Manufacturing		A	B	C		
		Services		D	E	F		
		UAN		UP43P0019811				
Udyog Aadhaar Memorandum - Online Verification								
Name of Enterprise		M/S NEERAJ POTATO PRESERVATION & FOOD PRODUCTS PVT. LTD.						
Major Activity		Services						
Social Category		OBC						
Location of Plant Details								
SN	Flat/Door/Block No.	Name of Premises/Building Village	Road/Street/ Lane	Area/Locality	City	Pin	State	District
1	N/A	VILLAGE-BHAISAU	POST-BHAISAU	P.S.-SHIVRAJPUR	KANPUR NAGAR	209205	UTTAR PRADESH	KANPUR NAGAR
Enterprise Type		Small						
Mobile No:		87****799		Email:			ha*****ar@gmail.com	
National Industry Classification Code								
SN	NIC 2 Digit	NIC 4 Digit	NIC 5 Digit Code		Activity Type	Added On		
1	52-Warehousing and support activities for transportation	5210-Warehousing and storage	52101-Warehousing of refrigerated (cold storage)		Services	24/09/2018		
Date of commencement		02/02/2007						
DIC Name		KANPUR NAGAR						
State		UTTAR PRADESH						
Applied Date		24/09/2018						
Modified Date		20/11/2020						
This Udyog Aadhaar Memorandum(UAM) Certificate is Valid Till 30/06/2022.								

36. Even as per the claim petition filed by the petitioner, the date of loan is shown to be 9.3.2018, wherein an amount of Rs.4,09,022/- was loaned to the respondent nos.2 and 3. However, the petitioner had made an application on 24.9.2018 for modification of NIC Code in Udyog Aadhaar Card issued by MSME. Hence it is clear that on the date of the loan given by the petitioner, it was not having the registration under required Code as per NIC Data 2008. Hon'ble the Supreme Court in the matter of **Silpi Industries Etc. v. Kerala State Road Transport Corporation & Anr.** (Supra) has held in para 26 as under:-

*"26. Though the Appellant claims the benefit of provisions under MSMED Act, on the ground that the Appellant was also supplying as on the date of making the claim, as provided Under Section 8 of the MSMED Act, but same is not based on any acceptable material. The Appellant, in support of its case placed reliance on a judgment of the Delhi High Court in the case of GE T&D India Ltd. v. Reliable Engineering Projects and Marketing, but the said case is clearly distinguishable on facts as much as in the said case, the supplies continued even after registration of entity Under Section 8 of the Act. In the present case, undisputed position is that the supplies were concluded prior to registration of supplier. The said judgment of Delhi High Court relied on by the Appellant also would not render any assistance in support of the case of the Appellant. In our view, to seek the benefit of provisions under MSMED Act, the seller should have registered under the provisions of the Act, as on the date of entering into the contract. In any event, for the supplies pursuant to the contract made before the registration of the unit under provisions of the MSMED Act, no benefit can be sought by such entity,*

*as contemplated under MSMED Act. While interpreting the provisions of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, this Court, in the judgment in the case of Shanti Conductors Pvt. Ltd. and Anr. etc. v. Assam State Electricity Board and Ors. etc. (2019) 19 SCC 529 has held that date of supply of goods/services can be taken as the relevant date, as opposed to date on which contract for supply was entered, for applicability of the aforesaid Act. Even applying the said ratio also, the Appellant is not entitled to seek the benefit of the Act. There is no acceptable material to show that, supply of goods has taken place or any services were rendered, subsequent to registration of Appellant as the unit under MSMED Act, 2006. By taking recourse to filing memorandum Under Sub-section (1) of Section 8 of the Act, subsequent to entering into contract and supply of goods and services, one cannot assume the legal status of being classified under MSMED Act, 2006, as an enterprise, to claim the benefit retrospectively from the date on which Appellant entered into contract with the Respondent. The Appellant cannot become micro or small enterprise or supplier, to claim the benefits within the meaning of MSMED Act 2006, by submitting a memorandum to obtain registration subsequent to entering into the contract and supply of goods and services. If any registration is obtained, same will be prospective and applies for supply of goods and services subsequent to registration but cannot operate retrospectively. Any other interpretation of the provision would lead to absurdity and confer unwarranted benefit in favour of a party not intended by legislation.*

*(Emphasis supplied)*

37. In the aforesaid case, Hon'ble the Supreme Court has clearly held that any services provided prior to registration of MSMED Act will not get the benefit of MSMED Act. In this case also, the loan was provided on 9.3.2018, whereas, the Code under Chapter V of the Act, 2006 was applied for modification on 24.9.2018 and the same was modified on 20.11.2020, hence the petitioner cannot even take advantage of the same.

38. From the aforesaid, this much is reflected that at the time of disbursement of loan i.e. 9.3.2018 the petitioner was not registered in the category of financial services under the MSMED Act and as such the petitioner is not entitled for any reprieve under the MSMED Act.

39. With regard to **third issue**, whether the present writ petition is maintainable or not, the State counsel had invited attention to the recent judgment passed by Hon'ble the Apex Court in **M/s India Glycols Limited and Another v. Micro and Small Enterprises Facilitation Council, Medchal - Malkajgiri and Others**, Civil Appeal No 7491 of 2023 (Arising out of SLP (C) No 9899 of 2023), wherein Hon'ble the Apex Court had held that the High Court has no jurisdiction to entertain the writ petition against the award passed by the Facilitation Council under the MSMED Act.



40. Learned Senior Counsel appearing for the petitioner repelled the said argument and submitted that the impugned order is not an award, inasmuch as the Facilitation Council has refused to exercise its jurisdiction under the Act and as such the impugned order does not amount to be an award. Therefore, the writ petition is maintainable.

41. Considering the rival submissions qua the third issue, we find that the order impugned, whereby the Facilitation Council had refused to entertain the matter under MSMED Act, as the same was not an award, therefore, the same is amenable under Art.226 of the Constitution of India. Accordingly, against the order impugned, the writ petition is maintainable.

### **Conclusion**

42. In view of the foregoing discussion, once the alleged financial services rendered by the petitioner was not registered at the time of disbursement of the loan under the MSMED Act, then certainly the Facilitation Council, which is established under the MSMED Act, will not be having jurisdiction to entertain any such dispute arising out of any service not registered under the MSMED Act. Therefore, there is no infirmity or illegality in the order impugned so as to warrant interference under Art.226 of the Constitution of India.

43. In view of above, all the issues are decided accordingly. The writ petition sans merit and is **dismissed**.

**Order Date :-** 21.02.2024  
SP/