

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

MONDAY, THE 12TH DAY OF JUNE 2023 / 22ND JYAISHTA, 1945

WP(C) NO. 3327 OF 2021

PETITIONER:

M/S.SHREYAS MARKETING, HAVING ITS OFFICE AT 39/582B,
'SUDHARMA', MONASTERY ROAD, ERNAKULAM PIN 682 011,
ERNAKULAM VILLAGE, KANAYANNUR TALUK, ERNAKULAM DISTRICT,
REP.BY ITS MANAGING PARTNER D. ANAND KUMAR PAI,
AGED 57 YEARS, SON OF SHRI.M.DAMODARA PAI.

BY ADVS.
N.K.SUBRAMANIAN
SRI.M.RISHIKESH SHENOY

RESPONDENTS:

- 1 MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL
MSEFC BANGALORE, DIRECTORATE OF MICRO, SMALL AND MEDIUM
ENTERPRISED, 49, KHANIJA BHAVAN, SOUTH BLOCK, GROUND FLOOR,
RACE COURSE ROAD, BENGALURU, KARNATAKA, PIN 560 001,
REPRESENTED BY ITS CHAIRPERSON.
- 2 LATTUPALLI VINAY REDDY, FLAT NO.28/1A, DODDAKALLASANDRA,
KANAKAPURA ROAD, NEAR KUMARANS SCHOOL, DODDAKALLASANDRA BLOCK,
BANGALORE, BENGALURU URBAN, KARNATAKA 560 003.

BY ADVS.
SRI.B.RAMACHANDRAN, CGC
LATHEEF P.K.
JAYAKRISHNAN P.K. (K/3009/2022)
RAGEEBA SHAHUL(K/2747/2022)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12.06.2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CR**VIJU ABRAHAM, J.****W.P.(C) No.3327 of 2021**Dated this the 12th day of June, 2023**JUDGMENT**

The above writ petition is filed challenging Ext.P1 intimation issued by the 1st respondent. Petitioner is a partnership firm dealing with the marketing and distribution of various branded products. Petitioner received Ext.P1 intimation dated 21.05.2021 issued by the 1st respondent, the Facilitation Council established by the Karnataka State Government as per Section 21 of the Micro, Small and Medium Enterprises Development Act, 2006 (in short, "Act 2006"). The allegation in Ext.P1 is that the petitioner has failed to make payment of an amount of Rs.77,21,127/- due to the 2nd respondent towards the materials supplied, despite the demand being made. Ext.P1 has been issued based on an application preferred by the 2nd respondent and by Ext P1, petitioner was intimated to pay the amount due to the 2nd respondent, who is the supplier of goods. Earlier, the 2nd respondent has sent Ext.P2 lawyer notice demanding the said amount, to which Ext.P3 reply notice was sent

by the petitioner refuting the demand and claim, and making a counter demand for an amount of Rs.1,38,50,972/- which is the amount due from the 2nd respondent. Later, Ext.P4 demand notice was also sent by the petitioner to the 2nd respondent. Petitioner submits that Ext.P1 has been styled as an intimation which is not contemplated as per the provisions of the Act 2006. Petitioner relying on Ext.P5, Rules framed by the Government of Karnataka invoking powers under Section 30 read with Sub-section (3) of Section 21 of the Act 2006, especially Rule 4(5), contended that each reference or application made by the aggrieved person (in this case the 2nd respondent) to the Facilitation Council shall also be simultaneously sent to the buyer or buyers against whom the reference is directed. Going by Section 4(6), the Chairperson of the Council, on receipt of such reference or application, shall cause the buyer to furnish his detailed response to the reference within 15 days of the receipt of the reference by the buyer and only after examining the reference and the buyer's response and on being satisfied prima facie that it is a case of delayed payment, place the matter before the Council for the next meeting. It is thereafter that the Council shall conduct conciliation. Petitioner would contend that none of these procedures as contemplated in Ext.P5 rules have been followed in as much as before

issuance of Ext.P1, no copy of the reference or application submitted by the 2nd respondent was served on the petitioner nor the response from the petitioner on the reference or application was sought by the Chairman of the 1st respondent Council. Therefore, there is serious procedure lapse in the matter of the issuance of Ext.P1, is the contention of the petitioner.

2. When the matter came up for consideration before this Court on earlier occasion, all further proceedings based on Ext.P1 was stayed as per the order dated 09.02.2021. The 2nd respondent has filed a petition as I.A.No.1 of 2023 seeking to vacate the interim order granted by this Court in which a specific contention has been taken that this Court has no jurisdiction to entertain the above writ petition in as much as only the High Court of Karnataka has territorial jurisdiction to entertain a challenge against Ext.P1 intimation. Further, a detailed counter affidavit was also filed by the 2nd respondent in which it is contended that as per the provisions of the Act 2006, the first step on a reference of a dispute between the supplier and buyer is to undertake a conciliation effort by the Facilitation Council and that is what is done by the Council by the issuance of Ext.P1 intimation. The learned counsel appearing for the 2nd respondent would further contend that Ext.P1 is only an advice given by the 1st respondent Facilitation Council to the parties to conciliate and settle

the dispute for their mutual benefit and satisfaction, before proceeding any further and that Ext.P1 cannot be challenged either in law or on facts.

3. Heard the learned counsel appearing on both sides.

4. The 2nd respondent has taken a specific contention that this Court has no jurisdiction to adjudicate the writ petition in as much as only the High Court of Karnataka has jurisdiction to entertain the same. The learned counsel appearing for the petitioner relying on Article 226(2) of the Constitution of India would contend that this Court has jurisdiction to entertain the above writ petition in as much as the part of the cause of action arose within the jurisdiction of this Court notwithstanding that the seat of the 1st respondent Council is not within the territorial jurisdiction of this Court. Petitioner submits that the 2nd respondent has supplied goods to him in Kerala, which forms part of the cause of action, thereby giving jurisdiction for this Court to entertain the above writ petition.

5. In view of the rival contentions raised, I deem it appropriate that the question as to whether this Court has territorial jurisdiction to entertain the writ petition has to be decided at the first instance. Learned counsel for the petitioner relying on the judgment of this Court in ***Lakshmanan v. Union of India (2020 (3) KLT 745)*** submitted that by incorporation of Article 226(2) by the Constitution (42nd) Amendment Act,

1976, the jurisdiction of the High Courts was enlarged by conferring the High Courts with the power to issue writs, directions or orders to any Government, authority or person, if the cause of action for the exercise of such power had arisen, wholly or in part, within the territorial limits of that High Court, even if the seat of such Government or authority or the residence of such person is not within those territories. On the basis of the said judgment in **Lakshmanan's** case supra, it is the contention of the petitioner that since the goods have been supplied by the 2nd respondent to the petitioner in Kerala, this Court assumes jurisdiction to entertain the writ petition.

6. To consider the issue involved, it is profitable to scan through the relevant provisions of the Act, 2006. Chapter V deals with delayed payments to micro and small enterprises. Section 15 mandates that when a supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day. Section 17 of the Act, 2006, specifies that for any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under Section 16 of the Act. Section 18 deals with reference to

the Micro and Small Enterprises Facilitation Council, which mandates that 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 and the Council on receipt of such reference 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 shall apply to such a dispute. The said Section further mandates that if the conciliation initiated is not successful and terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 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 the said Act. Sub-Section (4) of Section 18 of the Act 2006 speaks about the jurisdiction of the Facilitation Council, which reads as follows:

"18. Reference to Micro and Small Enterprises Facilitation Council.-

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(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.

xxxx xxxx xxxx xxxx"

(underline supplied)

Going by Section 18(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. Sub-section (4) of Section 18 starts with a *non-obstante* clause and specifically provides that for resolution of a dispute referred to in Section 18, only the Facilitation Council located in the place where the supplier's business is located alone will have jurisdiction to entertain a claim, unlike in Civil Procedure Code, specifically Section 20 of the Code, which provides various territorial jurisdiction for filing a suit which includes the place where the defendant resides or a part of the cause of action has arisen. Section 24 specifically provides for an overriding effect which provides that the provisions of Sections 15 to 23 of the Act 2006, shall have effect notwithstanding anything inconsistent

therewith contained in any other law for the time being in force. On the basis of the above-quoted provisions, it is without any doubt that only the Facilitation Council in Karnataka, where admittedly the supplier, the 2nd respondent herein, is located, has jurisdiction to entertain a proceedings under the Act 2006. Section 18 of the Act 2006, further provides that for the conciliation proceedings or the arbitration proceedings initiated as per the said Act, the provisions of Arbitration and Conciliation Act, 1996 will apply. Section 34 of the Arbitration and Conciliation Act, 1996 deals with the filing of an application for setting aside the arbitral award. Section 2(e) of the Arbitration and Conciliation Act, 1996 defines "court" as; in the case of an arbitration other than international commercial arbitration, the principal civil court of original jurisdiction in the district shall have jurisdiction to entertain an application for setting aside the arbitral award. The 1st respondent Facilitation Council is situated in the State of Karnataka and the courts in Karnataka, including the High Court of Karnataka is exercising territorial jurisdiction over the said Council. As discussed above, a complaint could be filed only before a Facilitation Council located within the area of operation of the Supplier, in the present case before the 1st respondent. An award passed under the Act can only be challenged before the jurisdictional civil court in the district where the

arbitration proceedings is initiated or going on. Therefore, in as much as Sections 18 and 24 of the Act 2006 specifically excludes the applicability of any other law, in the matter of territorial jurisdiction to file a complaint before the Facilitation Council and further mandates that it should be filed before the Facilitation Council where the supplier is located, I am of the opinion that the substantial part of the cause of action has taken place within the jurisdiction of the Karnataka High Court. The Apex Court in ***National Textile Corporation Ltd and Others v. Haribox Swal Ram and Others, (2004) 9 SCC 786***, while considering the question of territorial jurisdiction of the High Court to entertain a writ petition, has held that each and every fact pleaded in the writ petition does not ipso facto lead to the conclusion that those facts give rise to the cause of action within the Court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. The Apex Court in ***Nawal Kishore Sharma v. Union of India and Others, (2014) 9 SCC 329*** has held that the meaning of cause of action as given under Section 20(c) of Code of Civil Procedure, 1908 shall be assigned to "cause of action" for the purpose of Article 226(2) of the Constitution of India. The supply of goods to the petitioner who is situated or doing business in Kerala was canvassed by the petitioner to contend

that as part of cause of action has taken place within the territorial jurisdiction of this court, it has jurisdiction to entertain the above writ petition. But unlike in the provisions of the Civil Procedure Code, 1908 giving territorial jurisdiction to various courts based on the place where the defendant resides or the part of cause of action arose, Section 18 of the Act 2006 provides jurisdiction only to the Facilitation Council situated in the place where the supplier is located, i.e., in the present case the council located in the State of Karnataka. In view of the said non-obstante clause in Section 18 of the Act 2006, any order issued by the 1st respondent could be challenged only before the High Court having jurisdiction over the same. In view of the above, I hold that this court has no territorial jurisdiction to entertain a challenge against Ext.P1 intimation issued by the 1st respondent.

7. Even assuming for argument sake that a small portion of the cause of action has arisen within the jurisdiction of this Court in as much as the goods have been supplied to the petitioner who is residing within the jurisdiction of this Court, I am of the opinion that the claim of the petitioner that this Court has jurisdiction to entertain this writ petition has to be rejected based on the doctrine of *forum conveniens*. The seat of the Facilitation Council and the supplier, 2nd respondent herein, is in the State

of Karnataka and any award passed as per Section 18 of the Act 2006 which is deemed to be an award as per the provisions of the Arbitration and Conciliation Act, 1996 is to be challenged before the Principal Civil Court which is also located in the State of Karnataka. Therefore, I am of the opinion that the High Court of Karnataka assumes jurisdiction as the predominant and substantial part of the cause of action indisputably happened within its jurisdiction. The Apex Court in ***Kusum Ingots & Alloys Ltd. v. Union of India [(2004) 6 SCC 254]*** has held that even in cases where a part of cause of action arose within the jurisdiction of a particular High Court and the said court assumed jurisdiction in view of the mandate of Articles 226(2) of the Constitution of India, even in such cases the Court can refuse to exercise its discretionary jurisdiction by invoking the doctrine of *forum conveniens*. Paragraph 30 of the said judgment reads as follows:

“We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.”

The principle of *forum conveniens* was dealt with in detail by the larger bench of the Delhi High Court, in ***M/s.Sterling Agro Industries Ltd. v.***

Union of India & Ors [AIR 2011 Delhi 174] and explained the applicability of the principle of *forum conveniens* and its consequential impact on deciding the territorial jurisdiction of a court. Paragraphs 30 and 32 are relevant which are extracted below:

“ 30. From the aforesaid pronouncements, the concept of forum conveniens gains signification. In Black’s Law Dictionary, forum conveniens has been defined as follows: “The court in which an action is most appropriately brought, considering the best interests and convenience of the parties and witnesses.”

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32. The principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute to be the determining factor compelling the Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of forum conveniens. The Full Bench in New India Assurance Co.Ltd. (supra) has not kept in view the concept of forum conveniens and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the forum conveniens. We are unable to subscribe to the said view.”

The views taken in ***Kusum Ingots & Alloys Ltd's*** case supra and ***M/s.Sterling Agro Industries Ltd's*** case supra were followed by a Division Bench of this Court in ***Jacob v. Inspector General of Police (2022 (4) KLT 855)***. I am of the opinion that the principle of *forum*

conveniens is squarely applicable in the facts and circumstances of the case and therefore on that count also the above writ petition is not maintainable before this Court.

In view of the discussion as above, I hold that this court has no territorial jurisdiction to entertain a challenge against Ext P1 intimation issued by the 1st respondent. On having found so, I am not adjudicating upon the other factual and legal contentions taken by the petitioner challenging Ext.P1, which are left open to be adjudicated in a properly instituted proceedings before a court having jurisdiction to adjudicate the matter.

With the above observations, the writ petition is dismissed.

Sd/-

VIJU ABRAHAM
JUDGE

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APPENDIX OF WP(C) 3327/2021

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF THE 'INTIMATION' DATED 25.1.2021 ALONG WITH THE ANNEXURE I AND II RECEIVED BY THE PETITIONER FROM THE 1ST RESPONDENT BY EMAIL
EXHIBIT P2	TRUE COPY OF THE LAWYER NOTICE DATED 26.10.2020
EXHIBIT P3	TRUE COPY OF THE REPLY NOTICE DATED 12.11.2020 SENT TO THE 2ND RESPONDENT BY THE COUNSEL FOR THE PETITIONER.
EXHIBIT P4	TRUE COPY OF THE LAWYER NOTICE DATED 5.12.2020
EXHIBIT P5	TRUE COPY OF THE KARNATAKA STATE MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL RULES, 2007 WITH THE NOTIFICATION BEARING NO.C1 377 CSC 2006 DATED 7.3.2007.