

Allahabad High Court

M/S Hameed Leather Finishers vs M/S Associated Chemical ... on 11 October, 2013

Bench: V.K. Shukla, Suneet Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Court No. - 39

Case :- WRIT - C No. - 52747 of 2013

Petitioner :- M/S Hameed Leather Finishers

Respondent :- M/S Associated Chemical Industries Kanpur Pvt. Ltd. & Another

Counsel for Petitioner :- Vivek Mishra, A. G. Karunakar, V. C. Mishra

Counsel for Respondent :- Nikhil Agrawal

Hon'ble V. K. Shukla, J.

Hon'ble Suneet Kumar, J.

M/S Hameed Leather Finishers through its Proprietor/ Partner Abdul Hameed has approached this Court for following relief:

a) Issue a writ, order or direction in the nature of CERTIORARI to call for the record of the case and to quash the Injunction Proceeding No. 25/11 (M/s Associated Chemical Industries Kanpur Pvt. Ltd. Vs. Hameed Leather Finishers) pending before the Learned District Judge Kanpur Nagar for Execution of the Award dated 08.11.2010 passed by the U.P. Micro and Small Enterprises

Facilitation Council U.P. Kanpur for execution of which, the Execution proceedings are pending.

b) Issue a writ, order or direction in the nature of MANDAMUS commanding the respondent not to proceed with against the petitioner attaching the property of the petitioner, in lieu of the execution proceeding.

c) Issue any other and further writ, order or direction which this Court may deem fit and proper under the facts and circumstances of the case"

Brief background of the case is that M/s Associated Chemical Industries Kanpur Private Limited Kanpur Nagar registered with Small Scale Industry came up with the case that it has supplied chemical to Abdul Hameed and Irshad Alam partner of M/s Hameed Leather Finishers Gajju Purwa district Kanpur Nagar and the said buyer in question did not pay the outstanding amount to the tune of Rs. 1,44,28,932.00/- (ONE Crore Forty Four Lacs Twenty Eight Thousand Nine Hundred Thirty Two) only, as principal amount and interest amount to the tune of Rs. 31,19,735.75.00/- (THIRTY one lacs Nineteen Thousand Seven Hundred Seventy Two & Seventy Five paise) only. Notice has been sent to the incumbents representing the petitioners to ensure payment of aforesaid amount in lieu of supplies and receipt of chemical in question by them. The request of ensuring payment went unheeded and then the supplier. Respondent No. 1, invoked the forum as provided for under The Micro, Small and Medium Enterprises Development Act, 2006, Section 16 by moving complaint before U.P. Micro and Small Enterprises Facilitation Council, Kanpur.

On the said complaint in question being moved before the U.P. Micro and Small Enterprises Facilitation Council, U.P. at Kanpur, same was registered as Case No. IFC No. 01/2008 (M/s Associated Chemical Industries (Kanpur) Pvt. Ltd. Kanpur Vs. M/s Hameed Leather Finishers Kanpur). Council concerned took cognizance of the matter and notice has been issued to the defendant of the aforesaid proceeding in question i.e. the petitioner and the in the said proceeding in question two written submissions have been filed and the defence was sought to be taken that chemical supplied by the M/s Associated Chemical Industries Kanpur were not up to the mark and was sub-standard quality and in effect contrarily they were liable to be compensated. Thereafter it is reflected that reply has been filed to the said written statement. U.P. Micro and Small Enterprises Facilitation Council, U.P. at Kanpur on 08.11.2010 keeping in view the provisions as contained under Sections 15 and 16 of the Micro, Small and Medium Enterprises Development Act, 2006 passed award in favour of M/s Associated Chemical Industries Kanpur Private Limited Kanpur Nagar categorically recording finding that supplies have been made and the same has been duly received by the petitioners, and the amount in question had not been paid, even after receiving the supplies. The theory of sub-standard supply has also been considered and not accepted keeping in view the provisions of Section 2(B) of Act 2006.

Petitioner after the said award in question has been passed at the said point of time of proceeded to move application under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 numbered as Case No. 11/70 of 2011 and in the said proceeding in question at no point of time pre-requisite deposit of 75% has been made and court of District Judge Kanpur accorded time for deposit of pre-requisite amount in question of the total amount awarded in the award in question,

the petitioner was directed to comply with the mandatory provision of Section 19 of 2006 Act by 25.03.2013 failing which his objection would not be entertained.

Accepted position is that petitioner has failed to comply with the aforesaid directives by making pre-requisite deposit of 75% amount and accordingly District Judge, on 02.04.2013 has rejected the said application in question. During the interregnum period it is reflected that execution case No. 25 of 2011 for executing the aforesaid award in question has been filed. Therein petitioner has proceeded to move an application with the prayer to correct the amount so computed, to remand the matter under Section 18 (5) of Act, 2006 to decide review application, and time for deposit of 75% be extended and the said application in question has also been rejected on 29.08.2013 clearly mentioning therein that objection filed under Section 34 of the Arbitration & Conciliation Act has been decided and application has not force and accordingly same is rejected. Executing court has proceeded to mention that there is already a direction of this Court to decide execution matter within six months, and accordingly writ of attachment to Amin be issued. Petitioner at this juncture is before this Court and most surprising feature of the writ petition is that Award in question dated 08.11.2010 passed by Facilitation Council as well as order dated 02.04.2013 passed by District Judge, Kanpur on application under Section 19 of Act, 2006 has been permitted to attain finality and validity of the same has never been questioned and even validity of the order passed on 29.08.2013 rejecting application 27(C 2) has not been questioned and straight away prayer has been made to quash the execution proceeding.

Sri V.C. Mishra, Senior Advocate appearing with Sri A.G. Karunakar, Advocate, has assailed the validity of the execution proceeding initiated under the provision of Micro, Small and Medium Enterprises Development Act, 2006 on three grounds:-

(i) In the present case U.P. Micro and Small Enterprises Facilitation Council U.P. at Kanpur, the authority who has proceeded to decide the matter has got no authority to decide the matter, inasmuch as till date no declaration has been made in consonance with the provision as contained under Section 20 of the Micro, Small and Medium Enterprises Development Act, 2006 by the State Government by publishing Notification to establish one or more Micro and Small Enterprises Facilitation Councils, in view of this entire proceedings so undertaken by said Council is nothing but nullity, and as such no credibility should be attached to the same.

(ii) In the facts of present case proceedings under the provision as contained in Micro, Small and Medium Enterprises Development Act, 2006 could not have been undertaken for the simple reason that M/s Associated Chemical Industry Private Limited has not at all been registered under Section 8 of the aforesaid Act, 2006, in view of this it cannot be accepted as a "supplier" as such this is a glaring case of usurpation of jurisdiction by the council concerned, and according entire proceedings are per se bad.

(iii) M/s Associated Chemical Industries Kanpur Pvt. Ltd. has not at all approached the Council with clean hands and actually has played fraud by suppressing page no. 2 of the certificate issued by Directorate of Industries in regard to registration as a Small Scale Industry Unit, wherein the products Sulphonated Oil (Turkey Red Oil) upgrade fish oil, Fat Liquor for Leather and Lexlite

Auxiliaries upgraded have been deleted from the purview of the said registration certificate whereas no such Fat Liquor for Leather was even purchased by the petitioner, as such even on this score entire proceedings are without jurisdiction.

Countering the said submission, Sri Nikhil Agarwal, Advocate, appearing for M/s Associated Chemical Industries Kanpur Pvt. Ltd submitted that relief as has been claimed by the petitioner cannot be accorded by any means as petitioner at no point of time has ever questioned the validity of the award and same has been permitted to attain finality and once award in question has become final then execution proceeding as has been sought to be questioned cannot be questioned and coupled with this all the issues as are being raised before this Court are totally devoid of substance, on the face value of the statutory provisions, that holds the field in question and which are applicable/attracted in the facts of present case, as such writ petition in question as it has been framed and drawn deserves to be dismissed.

Sri Ram Krishna, Chief Standing Counsel has toed the same line of argument, as has been taken by private respondent no. 1, and submits that this is an adversarial litigation, settled by competent forum.

In order to appreciate the arguments as has been advanced by the parties, this Court proceeds to take note of the fact that earlier for protecting the interest of the Small Scale and Ancillary Industrial undertakings and for the matters connected therewith or incidental thereto to see that payment is ensured in time and the interest on delayed payments is also ensured in time, an Act known as Small Scale and Ancillary Industrial Undertakings Act, 1993 (Act No. 32 of 1993) has been enforced. Under the aforesaid act in question Section 3 talks of liability of buyer to make payment; Section 4 provides date from which and rate at which interest is payable; Section 5 provides for liability of buyer to pay compound interest; Section 6 deals with recovery of amount due; Section 7 talks about Appeal; Section 7A deals with establishment of Industry Facilitation Council and clearly proceeds to mention that the State Government may, by notification in the Official Gazette, establish one or more Industry Facilitation Councils at such places exercising such jurisdiction and for such areas, as may be specified in the notification; Section 7B talks about composition of Industry Facilitation Council; Section 7C deals with laying of rules before the State Legislature and Section 10 clearly proceeds to mention that provisions of said Act will have overriding effect. Section 11 deals with Repeal and saving.

Said Act of 1993 in question has been repealed vide sub-section (1) of Section 32 by the Micro, Small and Medium Enterprises Development Act, 2006 and new Act in the name of The Micro, Small and Medium Enterprises Development Act, 2006, HAS been framed with the object to make further improvements in the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertaking Act, 1993 and further 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. The Micro, Small and Medium Enterprises Development Act, 2006 contains saving clause in the shape of Sub-Section (2) of Section 32, which opens with a non-obstante clause that notwithstanding such repeal, anything done or any action taken under the Act so repealed under Sub-Section (1) shall be deemed to be have been done or taken under the

corresponding provisions of this Act.

In order to answer the issues, as has been sought to be raised relevant provision of the Micro, Small and Medium Enterprises Development Act, 2006, Sections 2(D), 2(E), 2(N), 8, 15, 16, 17, 18, 19, 20, 21, 24, 32 are being reproduced:

2(D) "buyer" means whoever buys any goods or receives any services from a supplier for consideration;

2 (e) "enterprise" means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 or engaged in providing or rendering of any service or services;

2 (n) "supplier" means a micro or small enterprise, which has filed a memorandum with the authority referred to in clause (a) of sub-section (1) of section 8, and includes,-

(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956;

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956;

(iii) any company, cooperative society, society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;

Section 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, 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 or 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 Entrepreneurs' 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).

Section 15. Liability of buyer to make payment- Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefore 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:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

Section 16.-DATE from which and rate at which interest is payable-Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

Section 17. Recovery of amount due-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.

Section 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 it to 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.

Section 19. Application for setting aside decree, award or order- No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case subject to such conditions as it deems necessary to impose.

Section 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.

Section 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 Enterprise Facilitation Council.

(3) The composition of the Micro and Small Enterprise 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.

Section 24. Over-riding effect-The provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Section 32. Repeal of Act (1) The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (32 of 1993) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Act so repealed under sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of this Act.

In exercise of the powers conferred by Section 30 read with Sub-Section (3) of Section 21 of the Micro, Small and Medium Enterprises Development Act 2006, the rules namely The Uttar Pradesh State Micro and Small Enterprises Facilitation Council Rules 2006 have been framed.

Rule 3, deals with appointment of members. For ready reference Rule 3 is being extracted below:

Rule 3- Appointment of MEMBERS-(1)- The Government shall appoint the representatives, specified in clauses (ii), (iii) or (iv) of sub-section (I) of Section 21 of the Act, as members of the Council.

(2) When a member of the council dies or resigns or is deemed to have resigned or is removed from office or becomes incapable of acting as a member, the Government may by notification in the Gazette appoint a person to fill that vacancy.

On the parameters of the aforesaid provision, it has to be seen, as to whether in the absence of any notification under Section 20 of the Micro Small and Medium Enterprises Development Act, 2006 being there of establishing one or more Micro and Small Enterprises Facilitation Councils the decision which has been so taken by the Facilitation Council at Kanpur constituted under Notification made under Section 7A of the Act No. 32 of 1993 can be said to be a valid exercise.



Accepted position is that under Section 20 of the Micro Small and Medium Enterprises Development Act, 2006, the State Government has not at all proceeded to issue any fresh Notification notifying the establishment of Facilitation Council and to the contrary taking recourse of the provision as contained under Sub-Section (2) of Section 32, and taking aid of Section 24 of General Clauses Act, as Notification has already been made by the State Government in the past Notifying the Facilitation Council under Section 7A of 1993 Act, it has been submitted that U.P. Micro and Small Enterprises Facilitation Council, U.P. at Kanpur so notified is already there and it has all the authority to decide the matter falling under Chapter V of 2006 Act, wherein Section 15 provides for the liability of buyer to make payment on or before the date agreed upon by the parties, and when there is no agreement, before the appointed day, and both these dates are not supposed to go beyond 45 days. Section 16 in the event of buyer failing to make payment, provides for the date from which and rate at which interest is payable. Section 17 provides that buyer will have to pay amount as is provided under Section 16. Section 18 talks of reference of Micro and Small Enterprises Facilitation Council. Provisions of Arbitration and Conciliation Act, 1996 has been made applicable. Time frame has also been provided for. Section 19 talks of moving an application for setting aside award, with a condition of making deposit of 75% of the awarded amount, failing which such an application cannot be entertained. Section 20 empowers State Government to establish one or more Facilitation Council, to be specified by Notification. Section 21 provides for composition of Micro and Small Enterprises Facilitation Council. Section 24 talks of over-riding effect Section 32 (1) mentions that interest on delayed payment to Small Scale Ancillary Industrial Undertakings Act 1993 is hereby repealed. Sub-Section (2) of Section 32 bereft of the repeal provides that anything done or any action taken under the Act, so repealed under Sub-Section (1) shall be deemed to have been done or taken under the corresponding provision of this Act i.e 2006 Act, and accordingly there is a Facilitation Council, and there is no requirement of making Notification for establishing Facilitation Council.

Section 6 and Section 24 of the General Clauses Act, 1897 are also looked into at this stage:

"Section 6. Effect of repeal. -- Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

Section 24. Continuation of orders, etc., issued under enactments repealed and re-enacted - Where any Central Act or Regulation is, after the commencement of this Act, repealed and re-enacted with or without modification, then unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or bye-law made or issued under the repealed Act or Regulation, shall so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule form or bye-law made or issued under the provisions so re-enacted and when any Central Act or Regulation, which, by a notification under Section 5 or 5A of the Scheduled District Act, 1874 (XIV of 1974), or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re- enacted in such area or part within the meaning of this section."

Apex Court in the case of State of Punjab Vs. Harnek Singh reported in 2002(3) SCC 481 has proceeded to mention that Section 24 of the General Clauses Act deals with the effect of repeal and re-enactment of an Act and the object of the section is to preserve the continuity of the notifications, orders, schemes, rules or bye-laws made or issued under the repealed Act unless they are shown to be inconsistent with the provisions of the re-enacted statute. Anything duly done or suffered thereunder, are used by legislature and saving clause, is intended with the object that unless different intention appears, the repeal of an Act would not effect. The General Clauses Act has been enacted to avoid superfluity and repetition of language in various enactments. The object of this Act is to shorten the language of Central Acts, to provide as far as possible, for uniformity of expression in Central Acts, by giving definition of series of terms in common use, to state explicitly certain convenient rules for the construction and interpretation of Central Acts, and to guard against slips and oversights by importing into every Act certain common form clauses, which otherwise ought to be inserted expressly in every Central Act. In other words the General Clauses Act is a part of every Central Act and has to be read in such Act unless specifically excluded. Even in cases where the provisions of the Act do not apply, courts in the country have applied its principles keeping in mind the inconvenience that is likely to arise otherwise, particularly when the provision made in the Act are based upon the principles of equity, justice and good conscience.

Apex Court in the same case of State of Punjab Vs. Harnek Singh reported in 2002(3) SCC 481 has considered in great detail for applicability of the Section 6 and Section 24 of the General Clauses Act and has held that Section 24 of the General Clauses Act, are specifically applicable to the repealing and re- enactments statue, and its exclusion has to be specific and cannot be inferred by twisting the language of the enactments. It has also been mentioned therein that once contention as has been raised by the petitioner is accepted, it would render the provision of the 1988 redundant, inasmuch as appointments notifications, orders, schemes, rules bye-laws made or issued under the repealed Act would be deemed to be non-existent making impossible the working of the re-enacted law

impossible. The provisions of the 1988 Act are required to be understood and interpreted in the light of the provisions of the General Clauses Act including Sections 6 and 24 thereof.

On the provisions as contained under the General Clauses Act, and looking into the language and object of the 1993 Act as well as that of 2006 Act, it is clearly manifested that under both the Act, Section 7A of 1993 Act, talks of establishment of Industry Facilitation Council and similarly Section 20 of 2006 Act, also talks of establishment of Facilitation Council, as both proceed to provide remedial forum to supplier. There is no apparent conflict or inconsistency in between the two enactment. The provisions of Section 20 of 2006 Act, has accordingly to be interpreted in the light and spirit of the provisions of Section 24 of General Clauses Act, which specifically deals with the effect of repeal and re-enactment of Act, with the avowed object of preserving the continuity of notifications/orders/schemes/rules or bye-laws, unless they are shown to be inconsistent. Sub-Section (2) of Section 32 of 2006 Act, reiterates the spirit of Section 24 of General Clauses Act, once it specifically proceeds to mention, that anything done or any action taken under the Act, so repealed under sub-Section (1) shall deemed to have been done or taken under the corresponding provisions of 2006 Act. Section 20 of 2006 Act is corresponding provision of Section 7A of earlier 1993 Act which has been so repealed, and as already mentioned above both are not at all inconsistent, as such the Notification, wherein Facilitation Council has been established at Kanpur on 22.01.2010, same shall be deemed to have been established under 2006 Act. Once the earlier notification stands preserved, the net effect of the same is that as Facilitation Council, U.P. at Kanpur has been constituted for the whole of Uttar Pradesh vide Notification dated 22.01.2000 same shall be considered to have authority to act as an arbitrator or conciliator, then to say that Facilitation Council, U.P. at Kanpur has no jurisdiction cannot be accepted. Facilitation Council has been constituted under Notification dated 22.01.2000 same will be treated to be Micro and Small Enterprises Facilitation Council constituted under Section 20 of the 2006 Act and till fresh Notification is not issued to establish new Facilitation Council, for the same area said Facilitation Council, shall continue to function. In view of this, Facilitation Council established under Notification dated 22.01.2000 by virtue of Section 7A of 1993 Act, Section 20 and Section 32(2) of 2006 Act and Section 24 of General Clauses Act, shall continue to function and there is no lack of jurisdiction whatsoever and accepting the argument as has been advanced by petitioner would amount to rendering the provisions of Section 7A of 1993 Act; Section 20 and 32 (2) of 2006 Act and Section 24 of General Clauses Act, redundant and against the spirit of statutory provisions.

Coupled with this in the present case in exercise of authority vested under sub-section (1) of Section 21 of 2006 Act read with Rule 3 of the Uttar Pradesh State Micro and Small Enterprises Facilitation Council Rules 2006 the State Government has nominated the members vide Government Order dated 07.03.2007 followed by Government Order dated 16.08.2007 and 30.08.2010. Once such is that factual situation that U.P. Micro and Small Enterprises Facilitation Council is there at Kanpur and State Government conscious of this fact that there exists a notified Council, for the whole of State of Uttar Pradesh, vide Government Order dated 22.01.2000 in its wisdom has not thought of establishing any other Council, in its place and has permitted the old system continuing, which is not at all in conflict with the new system, then once as per Rules members have been nominated then arguments as has been advanced before this Court that there is gross violation of Section 20 of the Micro, Small and Medium Enterprises Development Act, 2006 cannot be accepted, on this score

also.

Reliance placed by petitioner on the judgement of this Court, in the case of Godrej & Boyce Manufacturing Company Limited Vs. Secure Industries Limited and another , FAFO No. 2485 of 2009, decided on 24.01.2013 will also not at all come to the rescue or reprieve of the petitioner, as the said case in hand has been decided on its own peculiar characteristic, as in the said case award was made and signed on 19.06.2007, and the Members, who had proceeded to sign the award have been nominated itself on 16.08.2007. In such a situation and in such a background as new Council had signed the award before it could be constituted and notified, same has not at all been approved of and accordingly FAFO has been allowed. Here as already noted above, there is no such challenge made that award in question has been passed prior in time and Members of Council have been nominated subsequently. The first submission so raised is accordingly answered in negative, and this Court holds that Facilitation Council at Kanpur, has full authority and jurisdiction to decide the matter.

Now coming to the second argument which has been so advanced that M/s Associated Chemical Industry Private Limited has not at all been registered under Section 8 of the aforesaid Act, 2006, as such its claim as a "supplier" was not at all entertainable.

Petitioner at the point of time when he has proceeded to advance the said argument has failed to take note of the definition of "supplier" under Section 2(N) of the 2006 Act wherein it has been mentioned that "supplier" means a micro or small enterprise, which has filed a memorandum with the authority referred to in clause (a) of sub-section (1) of section 8, and includes (i)the National Small Industries Corporation, being a company, registered under the Companies Act, 1956; (ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956; (iii) any company, cooperative society, society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;

Section 2(N) clearly proceeds to mention that an incumbent who has filed a memorandum with the authority referred to in sub-section (1) of Section 8 has to be accepted as a supplier and in addition to the same the National Small Industries Corporation, being a company, registered under the Companies Act, 1956; and the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956; any company, cooperative society, society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services have also been included therein, then to say that "supplier" would bring within its hold only such micro or small enterprise, who have filed memorandum with the authority referred to in sub-section (1) of Section 8 cannot be accepted in the facts of case. By using the word "includes" the legislature clearly intended to enlarge the meaning of expression "supplier". The word "includes" is generally used as a word of extension, wherein the meaning of word and phrase is extended when it is said to include things that would not properly form within its ordinary connotation, as per the Apex Court in the case of the South Gujrat Roofing

Tiles Manufacturer Association Vs. State of Gujrat, AIR 1997 SC 90. The word "includes" is often issued in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of statute. When it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but all those things which the interpretation clause declares that they shall include, as per the judgement of Apex Court in the case of CIT, Andhra Pradesh Vs. M/s Taj Mahal Hotel, AIR 1972 SC 168. Petitioner deliberately and intentionally has tried to leave out the words "and includes", and the reason for making such an observation is that in the body of writ, Section 2(N) has been quoted at page 17 of paper book but entire relevant provision, starting from "and includes" upto the end has been left out. Similarly at page 18 of paper book, Section 18 (4) has also been referred to by mentioning that Council will have jurisdiction to act upon matter or dispute between supplier registered under the Act and buyer situated and located any wherein the country. Section 18 (4) has intentionally been wrongly quoted, as therein no where words supplier registered under the Act has been mentioned, rather same provides that Council 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 any where in India. In calculated manner the entire text of Section 2(N) starting from and "includes" has been left out and in Section 18(4) deliberately in place of "located" word "registered" has been inserted.

For the purposes of 2006 Act, a company constituted under law and engaged in selling goods produced by micro or small enterprises has to be accepted as supplier and once there is dispute in between buyer and supplier and supply has been made and the amount has not at all been paid then in view of this to say that as there was no registration of memorandum under sub-section (1) of Section 8, Facilitation Council has got no authority to decide said dispute cannot be accepted in the facts of the case and accordingly issue no. 2 is also answered in negative.

Now coming to the last argument which has been so advanced on behalf of petitioner that certificate has been issued by Directorate of Industries in regard to registration as a Small Scale Industry Unit, wherein the products Sulphonated Oil (Turkey Red Oil) upgrade fish oil, Fat Liquor for Leather and Lexlite Auxiliaries upgrades subsequently have been deleted from the purview of the said registration certificate and as such Respondent no. 1 had no authority to manufacture the same and even sale has been shown to be effectuated within the collusion of his staff.

Here in the present case said issue is neither here nor there for the simple reason that precise case of the supplier before Facilitation Council in question has been to the effect that chemical in question has been supplied. Petitioner at no point of time ever disputed this fact that chemicals have not been supplied rather an issue was sought to be created that it was of sub-standard quality. Facilitation Council considered the matter, and has found that supplies of chemicals have been made which is duly supported by documentary evidences showing supplies and receipts in lieu of the same, and the theory of inferior and sub-standard quality has also not been accepted by Facilitation Council. Petitioner is a buyer as he has received goods from supplier for consideration and respondent no. 1 Associated Chemicals Industries Private Limited is a private limited company registered under Indian Companies Act and is registered as small scale industries unit, and has supplied goods manufactured/produced by small enterprises, and admittedly payment has not been made, on demand being made, then certainly there has been a dispute warranting remedy by Facilitation

Council. Associated Chemical Private Limited is engaged in production of goods pertaining to industry specified in the First Schedule to the Industries (Development & Regulation) Act, 1951 wherein chemical has been shown at Serial No. 19 of the said schedule, with various sub-categories. Central Government also in exercise of powers conferred by Sub-section (1) of Section 7 of 2006 Act vide S.O. 1642 (E) dated 29.09.2006 as amended by S.O. 199 (E) dated 16.01.2009 has classified enterprises after having obtained the recommendations of advisory committee under Sub-section (4) of Section 7, has notified the enterprise engaged in the manufacture/ production of goods pertaining to any industry specified in the First Schedule to the Industries (Development & Regulation) Act, 1951 or employing plant and machinery in the process of value addition to the final product having a distinct name, character or use as a small enterprise, where the investment in plant or machinery is more than 25 Lakh but does not exceed 5 Crore and a micro enterprises, where the investment in plant and machinery does not exceed 25 Lakh. Associated Chemical Private Limited has been registered as a small scale industry, engaged in production and supply of chemical, then to say in the facts of the case, that it cannot be treated as supplier within the purview of Section 2 (n) of 2006 Act cannot be accepted in the facts of the case. Averments made by petitioner that number of articles including Fat Liquors relating to which claim had been filed were deleted from the purview of registration, and in connivance of staff claim has been filed, whereas no such supplies had been made, cannot be entertained, once in spite of full opportunity being granted such a plea had never been raised, and especially when on merits Facilitation Council has non-suited the claim of petitioner. Once such is the factual situation that issue as has been sought to be raised has never been raised before the Arbitrator then such an issue cannot be permitted to be raised in the execution proceeding.

Award is not at all at par with decree, and only for the purposes of executing award, it has to be treated as a decree, as per the judgement of Apex Court in the case of Param Singh Patheja Vs. ICDJ Limited 2006 (13) 322. Award becoming final, cannot be challenged in execution proceedings as per the judgement of Apex Court, in the case of Bhanwar Lal Bhandari Vs. Universal Heavy Mechanical hilding Ent; 1999 (1) SCC 588, except in cases where it is nullity. Here as already discussed above, award is not a nullity, having been passed after hearing the parties concerned and there being dispute of payment in between buyer and supplier. In execution proceedings, validity of award as has been sought to be assailed, cannot be permitted to be assailed, as award has been permitted to attain finality, application under section 19 of 2006 Act has been dismissed for non-compliance of deposit of 75%, which is mandatory and cannot be waived as per the judgement of Apex Court in the case Snehdeep Structures (Pvt.) Ltd Vs. MSSIDC, 2010 (3) SCC 34 as well as in the case of Good Year India Ltd. Vs. Norton Inteach Rubber Prioate Ltd. 20012 (6) SCC 345 .

Fact of the matter is that award in question has been permitted to attain finality and in execution proceeding all these road blocks are being sought to be created and that too without making pre-requisite deposit of 75% amount, and sole attempt of the petitioner is to frustrate the very object of Act, 2006 which is a beneficial piece of legislation to ensure time bound relief to supplier of small scale industry of getting their payment in lieu of supplies already made and in view of this pleas raised are without any substance.

Fact of the matter is that there is a award and the said award has been permitted to attain finality and thereafter execution proceedings are ongoing, and endeavour of petitioner is not to make payment of the supplies received, rather to delay the proceedings, then there are no equities in favour of the petitioner and situation in which buyer has placed himself is his own creation, then request of petitioner to quash the execution proceedings cannot be entertained as has been prayed for and same is accordingly dismissed.

(Suneet Kumar, J.)

(V. K. Shukla, J.)

Order Date :- 11.10.2013 Dhruv