

THE HONOURABLE SMT JUSTICE P.MADHAVI DEVI

WRIT PETITION Nos.27376 and 27381 of 2021

COMMON ORDER:

In both these Writ Petitions the petitioner is seeking a Writ of Prohibition to quash the proceedings initiated by the respondent No.2 before the respondent No.1 vide MSEFC-Case Nos. TS/09/S/RGY/00328 & TS/09/S/RGY/00329, as being barred by limitation as held by the Hon'ble Supreme Court in the case of Shilpi Industries Vs. Kerala State Road Transport Corporation, reported in 2021 SCC Online SC 439 and to pass such other order or orders.

2. Brief facts leading to the filing of the present writ petitions are that the respondent No.2 has filed an application before the respondent No.1 under Section 18 of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006. On issuance of notice to the petitioner herein, the petitioner has filed its counter taking a preliminary objection that the claim petition was barred by limitation and therefore, the respondent No.1 ought not to have entertained the said application. To the said counter affidavit, respondent No.2 has also filed its reply

affidavit. The grievance of the petitioner is that without adjudicating on the preliminary objection raised by the petitioner about the applicability of Limitation Act, the respondent No.1 is proceeding with the matter. Therefore, the petitioner has filed the present writ petition seeking quashing of the proceedings vide MSEFC-Case Nos.TS/09/S/RGY/00328 & TS/09/S/RGY/ 00329.

3. Learned counsel for the petitioner submitted that according to the claim petition filed by the respondent No.2, he is seeking payment for the supply of goods during the years 2009 & 2010. It is submitted that the respondent No.2 has kept quite all along and filed the claim petition only in the year 2020 by filing an application under Section 18 of the MSMED Act, 2006. He has further drawn the attention of this Court to the counter filed by the petitioner herein before the MSME Council, wherein at Para-5 of the said counter it was stated that “an objection has been taken that no cause of action has arisen for filing of the present petition and that the alleged cause of action is created and concocted for the purpose of filing the petition and also that the petition is barred by limitation and therefore, the petition is liable to be dismissed”.

4. Learned counsel for the petitioner submitted that the application filed by the petitioner before the respondent No.1 is in the nature of the Suit filed before the Civil Court and the law of limitation which is applicable to the claims before the Civil Court is also applicable to the claims filed before the Council. It is submitted that the respondent No.2 has filed reply affidavit giving the details of the alleged payments due to them and has relied upon the FAQ's and Answers thereto provided by the respondent No.1 and particularly in Question No.38 wherein it is mentioned that "no limitation is applicable in arbitration by Council, but delay and laches principle is applicable and supplier sleeping over his legal rights cannot get assistance of Council". He submitted that the respondent No.2 is taking shelter of the said reply to claim that the petition is maintainable and that the law of limitation is not applicable before the Council.

5. Learned counsel for the petitioner also placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **Shilpi Industries Vs. Kerala State Road Transport**

Corporation¹, wherein the Hon'ble Apex Court has considered the issue and held that the Limitation Act would apply to Arbitration under MSMED Act, 2006 as well. The learned counsel for the petitioner therefore, sought a Writ of Prohibition or to quash the proceedings before the respondent No.1.

6. Learned counsel for the respondent No.2 submitted that there was no limitation for raising a dispute or making a reference to the respondent No.1 under the MSMED Act and even as per the judgment of the Hon'ble Supreme Court in the case of **Shilpi Industries (cited supra)**, the limitation period would be applicable to arbitration proceedings under Section 18(3) and not for making reference under Section 18(1) of the Act. He submitted that the Hon'ble Supreme Court in the cases of **GTPL Hathway Limited Vs. Strategic Marketing Private Limited** in Special Civil Application No.4524 of 2019, decided on 20th April, 2020 has held that in the orders passed by an Arbitration Tribunal during the pendency of arbitration proceedings, cannot be challenged or interfered with in a writ petition filed under Articles 226 and 227 of Constitution of India. He further relied upon the decision of the Hon'ble

¹ 2021 SCC Online SC 439

Supreme Court in the case of **M/s.S.B.P. and Co. Vs. M/s.Patel Engineering Limited and Another²**, and the decision in the case of **M/s.Deep Industries Limited Vs. Oil and Natural Gas Corporation³**, that an order passed by an Arbitrary Tribunal during the course of arbitral proceedings, could not be challenged or interfered with, in a writ petition filed under Articles 226 and 227 of Constitution of India. He also relied upon the decision of the Division Bench of this Court dated 16.02.2023 in W.P.No.2358 of 2023 wherein it was held that an award passed by the Facilitation Council under Section 18 of the MSME Act can be questioned under Section 34 of the Arbitration and Conciliation Act, 1996 and therefore, there was an alternative remedy provided under the Act and further that the intervention by the High Court under Articles 226 and 227 of the Constitution of India in an arbitral award is not permissible. He submitted that instead of participating in the proceedings before the respondent No.1, the petitioner has approached this Court and obtained stay order, due to which the respondent No.2 is suffering great hardships.

² (2005) 8 SCC 618

³ 2019 SCC Online SC 1602

7. Having regard to the rival contentions and the material on record, this Court finds that the only issue before this Court is whether the issue of the limitation is applicable to an application filed before the MSME Council and if the MSME Council is required to decide the same before proceeding or before initiating the proceedings under Section 18 of the Act. The issue as to whether the limitation Act would apply to the proceedings, is admittedly a preliminary issue which has to be considered by the MSME Council before proceeding with the Act.

8. It is observed from the answer given to the Question No.38 of frequently asked questions posted on the website of the respondent No.1, "the claims of suppliers who sleep over their rights cannot be entertained". Except for the change of Forum, the litigation before the respondent No.1 is like a Suit before the Civil Court and therefore, the question of limitation can be raised as a preliminary issue. The Hon'ble Supreme Court, in the case of **Shilpi Industries (cited supra)**, has observed that the period of limitation would be applicable to the arbitral proceedings under Section 18(3) of MSME Act. Section 18(1) deals with the reference made to the respondent No.1 for

adjudication of a dispute between the supplier and buyer and Sub Section(2) thereof deals with the Conciliation proceedings thereunder and when the Conciliation proceedings fail or is not found to be successful, then under Sub Section(3), the arbitration proceedings can be initiated.

9. The Hon'ble Supreme Court has made a specific reference to Sub Section (3) of Section 18 to hold that the period of limitation would be applicable to the provisions under Section 34 of the Arbitration and Conciliation Act, 1996. Following the same analogy, this Court observes that the period of limitation would be applicable even while making a reference under Sub Section (1) of Section 18 of the MSMED Act of 2006. Under MSMED Act, the Council is formed to adjudicate the issues arising out of the transactions between the enterprises classified under Section 7 of MSMED Act. Therefore, the Council is only an alternative to the Civil Courts as a Forum for adjudication of disputes between enterprises and hence, the period of limitation which is applicable to the Suits before the Civil Courts would be applicable to the applications to be filed under Sub Section (1) of Section 18 of MSMED Act. When such an objection is taken by the petitioner before the Council, the Council is bound to

consider the preliminary objections of the respondents and take a decision on the same after giving opportunity of hearing to both the parties and thereafter proceed with the Conciliation proceedings under Sub Section (2) of Section 18 of the Act if it is so required.

10. The decisions relied upon by the learned counsel for the respondents are to the effect that the Courts cannot interfere with any decision taken during the arbitral proceedings by the arbitral Tribunal under Section 226 and 227 of Constitution of India. In this case, this Court finds that the challenge is not of any decision or any proceedings during the arbitral proceedings, but is against the inaction on the part of the respondent No.1 in taking a decision on the preliminary objection raised by the petitioner.

11. In view of the same, this Court deems it fit and proper to direct the respondent No.1 to take a decision on the objection raised by the petitioner about the claim being barred by the Act of limitation before proceeding further in accordance with the other provisions of the Act. The respondent No.1 is directed to

pass an order within a period of three (3) weeks from the date of receipt of a copy of the order.

12. Accordingly, the writ petitions are disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in the Writ Petitions, shall stand closed.

JUSTICE P.MADHAVI DEVI

Date: 06.03.2023

Note:

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THE HONOURABLE SMT JUSTICE P.MADHAVI DEVI

W.P.Nos. 27376 and 27381 of 2021

Date: 06.03.2023

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