



**IN THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)**

**WRIT APPEAL No.135 OF 2022**

M/S Siotia Steels Limited, a small scale industry unit and having its Office at 15 Jai Narayan Road, Fancy Bazar, Guwahati – 781001, represented by its Director Sri Bhagwati Prasad Siotia.

**.....Appellant**

**-Versus-**

1. NBCC (India) Limited, (formerly known as National Building Construction Corporation Limited), a Government of India Enterprise, Lodhi Road, New Delhi – 110003, represented by its Deputy General Manager, HRM and duly authorised Officer.

2. The State of Assam, represented by the Commissioner of Industries & Commerce, Udyog Bhawan, Bamunimaidam, Guwahati – 781021.

3. The Micro Small Enterprises Facilitation Council, Bamunimaidam, Guwahati – 781021, to be served through the Director of Industries, Assam, Guwahati, Udyog Bhawan, Bamunimaidam, Guwahati – 781021.

4. The Union of India, to be represented by the Secretary, Ministry of Industry, Government of India, Udhog Bhawan, New Delhi – 110001.

**.....Respondents**

**- B E F O R E -**  
**HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI**  
**HON'BLE MR. JUSTICE KARDAK ETE**

For the Appellant(s) : Mr. S.P. Roy, Advocate.  
Ms. V. Ray, Advocate.  
Ms. P. Agarwala, Advocate.

For the Respondent(s) : Mr. A. Thakur, Advocate and Ms. J.R. Thakur,  
Advocate for respondent No.1.

: Mr. N. Kalita, Advocate on behalf of Mr. A.  
Kalita, Advocate for respondent Nos.2 & 3.

: Ms. L. Devi, Advocate on behalf of Mr. R.K.D.  
Choudhury, Deputy Solicitor General of India  
for respondent No.4.

Date of Hearing : 18.06.2024.

Date of Judgment : 21.06.2024.

**JUDGMENT & ORDER (CAV)**

**(Vijay Bishnoi, CJ)**

Heard Mr. S.P. Roy, learned counsel for the appellant. Also heard Mr. A. Thakur, learned counsel appearing for the respondent No.1; Mr. N. Kalita, learned counsel appearing on behalf of Mr. A. Kalita, learned standing counsel, Industries & Commerce Department for respondent Nos.2 & 3 and Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K.D. Choudhury, learned Deputy Solicitor General of India for respondent No.4.

**2.** This writ appeal is filed by the appellant assailing the judgment & order dated 03.12.2018 passed by the learned Single Judge in WP(C) No.3959/2018, whereby the learned Single Judge, while allowing the writ petition filed on behalf of the respondent NBCC (India) Limited, has set aside the minutes of the meeting dated 12.03.2018 of the Micro & Small Enterprises Facilitation Council (hereinafter to be referred as "Council").

**3.** The brief facts of the case are that the Chief Project Manager of the respondent NBCC (India) Limited had invited sealed quotations from manufacturers/suppliers for supply of steel and cement vide Notice Inviting Tender (NIT) dated 29.01.1993. Pursuant to the said NIT, the appellant had submitted its quotation and the said quotation of the appellant was accepted. The NBCC (India) Limited had placed supply orders to the appellant for supply of steel at different worksites on various dates running from 16.02.1993 to 31.03.1993. As per the appellant, the steel was supplied by it to the NBCC (India) Limited, however, it had failed to make payment to the appellant despite repeated communications sent to it.

**4.** Ultimately, the appellant has filed a Money Suit being Money Suit No.192/2000 in the Court of the learned Civil Judge No.1, Kamrup at Guwahati claiming payment of the unpaid dues and interest on delayed payment from the NBCC (India) Limited. The said Money Suit was dismissed by the learned Civil Judge No.1, Kamrup at Guwahati vide judgment dated 12.07.2007.

**5.** Being aggrieved with the same, the appellant has preferred an appeal before this Court, which was registered as RFA No.13/2008, however, the same was also dismissed vide judgment & order dated 26.05.2015.

**6.** Soon thereafter, the appellant has filed an application before the Council under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter to be referred as the "MSME Act, 2006") for realization of the unpaid dues, which includes the principal amount for material supplied to the NBCC (India) Limited, price escalation, local freight charges and interest on delayed payment. The said claim of the appellant was allowed and the Council has directed the respondent NBCC (India) Limited to make payment of the principal and local freight charges with interest payable to the appellant in its meeting held on 12.03.2018.

**7.** Being aggrieved with the same, the NBCC (India) Limited has preferred the aforementioned writ petition, which came to be allowed by the learned Single Judge vide the impugned judgment & order dated 03.12.2018. The operative portion of the impugned judgment read as under:-

*"13. The letter dated 05.04.2018 and the extract of the meeting minutes dated 12.03.2018, clearly show that no conciliation was affected between the parties, with regard to the dispute raised by the respondent No. 3. Further, the very fact that a direction has been issued by the Council during a meeting in the office chamber of the Commissioner of Industries & Commerce, Assam clearly shows that the issue raised by the respondent No. 3, with regard to non-payment of his alleged dues has not been decided by way of arbitration, under the provisions of the Arbitration &*

*Conciliation Act, 1996. It is settled law that where a power is given to do a certain thing in a certain way, they must be done in that way or not at all. All other methods of performance are forbidden. The facts, as stated above, show that the Council could not have issued the orders/directions to the petitioner, in violation of Section 18 of the 2006 Act. Accordingly, as the Council did not have the power to issue directions for payment of money in the manner it has done, without a source of power being in existence for the same, the Council's orders/directions passed are without jurisdiction and are arbitrary.*

14. *Besides the above, the claim of the petitioner having been rejected by the Civil Court and the High Court earlier, this Court finds that the direction passed by the Council in its meeting minutes dated 12.03.2018, in the office chamber of the Commissioner of Industries & Commerce, Assam is not sustainable. Accordingly, the same is set aside.*

15. *Writ Petition is accordingly allowed."*

8. Mr. S.P. Roy, learned counsel for the appellant has vehemently argued that the impugned judgment passed by the learned Single Judge is against the settled principle of law and the same is not liable to be sustained. Therefore, he prays that the impugned judgment may be set aside.

It is argued that any order passed by the Council, while exercising powers under Section 18 of the MSME Act, 2006, is liable to be challenged by way of filing an application under Section 19 of the MSME Act, 2006. It is contended that in view of availability of alternative remedy, the learned Single Judge was not supposed to exercise the powers under Article 226 or 227 of the Constitution of India. In support of the above contention, the learned counsel for the appellant has placed reliance on the decision of the Hon'ble Supreme Court rendered in **S.B.P. & Co. -Vs- Patel Engineering Limited & Anr.**, reported in **(2005) 8 SCC 618**.

9. It is further argued by Mr. S.P. Roy, learned counsel for the appellant that as per Section 19 of the MSME Act, 2006, no application for setting aside any decree, award or any order made by the Council can be instituted, unless the person challenging the same has deposited 75% of the amount in terms of the decree, award or the order. In the present case, the respondent NBCC (India) Limited, while challenging the minutes of the meeting of the Council, has not deposited 75% of the amount awarded and in such circumstances, the learned Single Judge ought not to have entertained the writ petition filed by the NBCC (India) Limited. In support of the above contention, learned counsel for the appellant has placed reliance on the decision of the Hon'ble Supreme Court rendered in **Goodyear India Limited -Vs- Norton Intech Rubbers (P) Limited & Anr.**, reported in (2012) 6 SCC 345 and a decision of the Division Bench of this Court rendered in Writ Appeal No.714/2005 (**Oil & Natural Gas Corporation Limited & Anr. -Vs- The Government of Assam & Ors.**) decided on 30.01.2009.

10. Mr. S.P. Roy, learned counsel for the appellant has further argued that the learned Single Judge has allowed the writ petition filed on behalf of the NBCC (India) Limited on 2(two) counts – firstly, that the procedures provided under Section 18 of the MSME Act, 2006 has not been followed by the Council while drawing the minutes of the meeting dated 12.03.2018, and, secondly, the claim of the appellant regarding unpaid dues has already been rejected by the Civil Court as well as by this Court earlier. It is contended that this Court was not

supposed to decide whether the claim of the appellant was maintainable before the Council or not and it was only for the Council to take a decision on that aspect. In support of the above contention, the learned counsel for the appellant has placed reliance on the decision of the Hon'ble Supreme Court rendered in ***Secur Industries Limited -Vs- Godrej & Boyce MFG Co. Limited & Anr.***, reported in ***(2004) 3 SCC 447***.

**11.** It is further contended by Mr. S.P. Roy, learned counsel for the appellant that though the appellant has filed a Money Suit for recovery of the unpaid dues in the Civil Court and the said Suit was dismissed, the same cannot be treated as a bar in filing the proceedings before the Council under the provisions of the MSME Act, 2006, because the said Civil Court has no jurisdiction to entertain and adjudicate the claim of the appellant in view of the fact that in respect of the interest on delayed payments, only the Industry Facilitation Council constituted under the provisions of the Interest on Delay Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (hereinafter to be referred as "1993 Act") or the Council constituted under the MSME Act, 2006 had the jurisdiction to adjudicate such claims. It is contended that it is a settled position that where a Court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing and any such decree passed by a Court having no jurisdiction is *non est*. In support of the above contention, the learned counsel for the appellant has placed reliance on the decision of the Hon'ble Supreme Court rendered in ***Harshad***

***Chiman Lal Modi -Vs- D.L.F. Universal Limited & Anr.,***  
reported in ***(2005) 7 SCC 791.***

**12.** Mr. S.P. Roy, learned counsel for the appellant has further submitted that the writ petition was filed on behalf of the NBCC (India) Limited through one Shri Balraj Singh claiming himself to be the Deputy General Manager (HRM) of the respondent NBCC (India) Limited but not by any shareholder or Director. It is contended that the said Shri Balraj Singh was not authorized by the NBCC (India) Limited for filing the writ petition and as such, the said writ petition was filed by an unauthorized person. It is contended that in absence of any resolution of the Board of Directors of the respondent NBCC (India) Limited authorizing Shri Balraj Singh to file the aforesaid writ petition, the same cannot be entertained. In support of the above contention, the learned counsel has placed reliance on the decision of the Hon'ble Supreme Court rendered in ***State Bank of Travancore -Vs- Kingston Computers (I) Private Limited,*** reported in ***(2011) 11 SCC 524.***

The learned counsel for the appellant has, therefore, prayed that the impugned judgment & order passed by the learned Single Judge may be set aside and the writ petition filed by the NBCC (India) Limited be ordered to be dismissed.

**13.** Per contra, Mr. A. Thakur, learned counsel appearing for the respondent No.1 NBCC (India) Limited has vehemently opposed the appeal and has supported the impugned judgment & order passed by the learned Single Judge.

Learned counsel appearing for the respondent NBCC (India) Limited has argued that once the claim preferred on

behalf of the appellant for the unpaid dues has been rejected by the Civil Court as well as by this Court, it was not open for the appellant to move an application before the Council under Section 18 of the MSME Act, 2006. It is submitted that since the claim filed by the appellant for the unpaid dues has already been rejected by the Civil Court, the Council has no jurisdiction to entertain the application filed by the appellant claiming the unpaid dues. It is further contended that the learned Single Judge has not committed any illegality in recording a finding that the Council, while directing the respondent NBCC (India) Limited for making payment of unpaid dues and the interest on the delayed payment, has not adhered to the procedure followed under Section 18 of the MSME Act, 2006.

**14.** It is further contended by Mr. A. Thakur, learned counsel appearing for the respondent NBCC (India) Limited that the argument raised by the learned counsel for the appellant that the respondent NBCC (India) Limited has to file an application under Section 19 of the MSME Act, 2006 for setting aside the order of the Council, has no merit because the impugned minutes of the meeting passed by the Council cannot be treated as an order passed under Section 18 of the MSME Act, 2006. It is contended that in fact when the Council has not passed any order, while following the procedure laid down under Section 18 of the MSME Act, 2006, the respondent NBCC (India) Limited cannot be forced to move an application under Section 19 of the MSME Act, 2006.

Learned counsel for the respondent NBCC (India) Limited has further argued that it is a classic case of forum

shopping because earlier the appellant has relegated itself to the jurisdiction of the Civil Court and when the Civil Court has dismissed its claim for unpaid amounts, it has filed the application before the Council and in the facts and circumstances of the case, the same cannot be allowed. The Council has entertained the time barred claim of the appellant ignoring the decree passed by the Civil Court and in such circumstances, the learned Single Judge has not committed any illegality in interfering with the matter and allowing the writ petition.

The learned counsel for the respondent NBCC (India) Limited has, therefore, prayed that the impugned judgment & order is not liable to be interfered with and the appeal filed by the appellant is liable to be dismissed.

**15.** We have heard the learned counsel appearing for the parties.

**16.** The facts which are not in dispute are that the appellant has supplied certain goods, i.e. steel, to the respondent NBCC (India) Limited in the year 1993. It raised a claim for unpaid dues and delayed interest as per the provisions of the 1993 Act by filing a Money Suit in the Court of the learned Civil Judge No.1, Kamrup at Guwahati. The said Money Suit filed by the appellant was dismissed on 12.07.2007 against which the appellant has preferred a RFA before this Court, which also came to be dismissed by this Court on 26.06.2015. Thereafter, the appellant has filed an application before the Council under Section 18 of the MSME Act, 2006.

It is to be noticed that the claim for the unpaid dues and interest on delayed payment was rejected by the Court of the learned Civil Judge No.1, Kamrup at Guwahati on merits while holding that the appellant has supplied material to the NBCC (India) Limited on various dates through different delivery challans but from the evidence, it appears that nothing against the said bills was due. A specific finding was recorded by the learned Trial Court that the plaintiff (appellant herein) side has failed to substantiate that an amount of ₹ 23,968/- is due and payable to the plaintiff. The Civil Court has also rejected the claim of the appellant of price escalation and freight charges as well as the interest on the delayed payment. The said findings of the Trial Court has been affirmed by the this Court in RFA No.13/2008, decided on 26.06.2015, and this Court has additionally also held that the Money Suit filed by the appellant claiming unpaid dues and the interest on delayed payment was barred by limitation.

**17.** Even if it is assumed that the Civil Court has no jurisdiction to adjudicate the claim of the appellant regarding the unpaid dues as well as the interest on delayed payment and the said claim was required to be adjudicated only by the Industry Facilitation Council constituted under the provisions of the 1993 Act or the Council constituted under the MSME Act, 2006, then also the appellant is not entitled to get any relief because no such application for making such reference was ever made by the appellant before the Industry Facilitation Council or the Council constituted under the MSME Act, 2006 within limitation. Though under the provisions of the 1993 Act

or under the MSME Act, 2006 no limitation is prescribed for moving an application for making a reference, however, it is settled that where the Limitation Act does not expressly provide for limitation for moving an application, Part-II - Third Division of the Schedule appended to the Limitation Act gets attracted.

The Hon'ble Supreme Court in ***Asia Resorts Limited -Vs- Usha Breco Limited***, reported in ***(2001) 8 SCC 710***, while dealing with Article 137 of the Limitation Act has held as under:

*“15. There is not much controversy that the residuary Article 137 of the Limitation Act applies so far as the period of limitation is concerned for an application under Section 20 of the Arbitration Act, 1940. The residuary Article 181 of the Limitation Act, 1908 was replaced by Article 137 in the Limitation Act, 1963. Earlier, Article 181 was applicable only in respect of application to be filed under the Civil Procedure Code. This article was replaced by Article 137 in the Limitation Act, 1963 in a modified form. By insertion of Article 137, it cast a wider net so as to include any application for which no period of limitation was provided elsewhere in that division. The third division of the Limitation Act, 1963 deals with various applications to be filed under various special statutes. The definitions of “applicant” and “application” are also inserted in the Limitation Act, 1963. Therefore, it is clear that the intention of the legislature was to provide a residuary article prescribing period of limitation for filing petitions and applications under the various special laws. ....”*

(Emphasis Supplied)

**18.** Thereafter, the Hon'ble Supreme Court in the case of ***Minerals & Metals Trading Corporation of India Limited - Vs- Ocean Knight Maritime Company Limited & Ors.***, reported in ***(2012) 5 SCC 420*** has held as under:-

*“12. The Limitation Act does not expressly provide for limitation for an application under Sections 5, 11 and 12 of the 1940 Act. In this view of the matter, Part II, Third Division of the Schedule gets attracted. This part has title “Other Applications” and it has only one article, namely, Article 137 which reads as follows:*

*‘Part II – Other Applications*

|      | <i>Description of application</i>                                                                      | <i>Period of limitation</i> | <i>Time from which period begins to run</i> |
|------|--------------------------------------------------------------------------------------------------------|-----------------------------|---------------------------------------------|
| 137. | <i>Any other application for which no period of limitation is provided elsewhere in this division.</i> | <i>Three Years</i>          | <i>When the right to apply accrues.’</i>    |

*The above article is a residuary provision in respect of the applications. It prescribes the period of three years for an application for which no period of limitation is provided elsewhere in the Limitation Act. The period of three years commences when the right to apply accrues.”*

**19.** Admittedly, the appellant has not moved any application under Section 18 of the MSME Act, 2006 within the period of 3(three) years from the date when the cause of action accrues to it. Hence, the claim of the appellant for unpaid dues and interest on delayed payment before the Council was time barred.

It is also to be noticed that as per Section 18 of the MSME Act, 2006, the Council was required to conduct conciliation proceedings in the matter but in the present case, the learned Single Judge has rightly observed that no such conciliation proceedings were initiated by the Council.

**20.** Taking into consideration the above facts and circumstances of the case, we do not find any case for interference.

So far as the arguments of the learned counsel for the appellant regarding the maintainability of the writ petition before the learned Single Judge is concerned, we need not go into the same as we have already held that the claim of the appellant raised before the Council was time barred.

**21.** In view of the above discussions, we do not find any merit in this writ appeal and the same is, therefore, dismissed.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**