IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C).No. 3618 of 2015 (B)

PETITIONER(S):

MANAGING DIRECTOR,
TAMILNADU STATE TRANSPORT CORPORATION,
KUMBAKONAM LTD, THIRUMAYAM ROAD,
PUTHUKOOTAI-TAMIL NADU, PIN-622 001.

BY ADVS.SRI.SUBHASH CYRIAC
SMTSHEEBA JOSEPH
SRI.BOBBYMATHEW KOOTHATTUKULAM

RESPONDENT(S):

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1. RADHAKRISHNAN UNNITHAN,
MANAGING DIRECTOR,
M/S.RAYAMANDS RUBBERS (PRIVATE) LTD.,
VALIYAVEETTIL VADAKKETHIL, KAPPIL EAST,
KRISHNAPURAM P O, KAYAMKULAM, ALAPPUZHA-690 533.

2. MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL KERALA,
REP. BY ITS CHAIRMAN (DIRECTOR OF INDUSTRIES
& COMMERCE), VIKAS BHAVAN,
THIRUVANANTHAPURAM-695 001.

R1 BY ADVS. SRI.KURIAN GEORGE KANNANTHANAM (SR.)
SRI.TONY GEORGE KANNANTHANAM
SRI.THOMAS GEORGE
R2 BY GOVERNMENT PLEADER SRI.P.P.PADMALAYAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-11-2015, ALONG WITH WPC. 20042/2015, AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 3618 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

P1:-TRUE COPY OF OA NO 29/09 APPLICATION FILED BY THE RESPONDENT BEFORE MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL KERALA

P2:-TRUE COPY OF OBJECTION FILED BY PETITIONER

P3:-TRUE COPY OF THE ORDER IN OA NO 35/06 OF THE MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL KERALA

P4:-TRUE COPY OF THE ORDER IN OA NO 29/09 MICRO AND SMALL ENTERPRISES FACILITATION COUNCIL KERALA

RESPONDENT(S)' EXHIBITS:
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NIL

//TRUE COPY//

P.S.TO JUDGE

Ms**v/**

A.MUHAMED MUSTAQUE, J.

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W.P.(C) Nos.3618, 20042, 20046, 22935 & 30781 of 2015

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Dated this the 11th day of November, 2015

JUDGMENT

These writ petitions are filed challenging the award passed by the Micro and Small Enterprises Facilitation Council Kerala at Thiruvananthapuram. There is no dispute to the fact that the relationship between the parties have to be governed by the Interest on Delayed Payment to Small Scale and Ancillary Industrial Undertakings Act, 1993 (for short, the 'Act 32/1993'). However, the petitioner has a challenge in these writ petitions on being aggrieved by the award passed under the Micro, Small and Medium Enterprises Development Act, 2006 (for short, the 'MSMED Act').

2. The case of the petitioner is two folds. Firstly, the MSMED Act would not apply in this matter. Secondly, the

claim of the party respondent is barred by limitation and therefore, the Arbitration Tribunal has no jurisdiction to pass such an award.

3. Learned senior counsel appearing for the party respondent would point out that the petitioner has a statutory remedy by challenging the award under the Arbitration and Conciliation Act, 1996 (for short, the 'Arbitration Act') read with Section 19 of the MSMED Act. It is further submitted that the petitioner has approached this Court to bypass the rigour of Section 19 of the MSMED Act. It is also submitted that the writ petitions are filed after one year of the award.

4. The transaction is prior to 2006. Admittedly, the award has been passed under the MSMED Act. The petitioner’s case is that at the time of transaction, they are governed by the Act 32/1993 and the same was repealed in the

MSMED Act. Therefore, any award can be passed only in terms of Act 32/1993. It is further submitted that no arbitration proceedings can be initiated in terms of the Act 32/1993 as the same is barred by limitation.

5. Therefore, the first question to be answered in this case is whether the petitioner is entitled to invoke the MSMED Act. The MSMED Act was enacted in the year 2006. In fact, the MSMED Act has repealed the Act 32/1993. The Act 32/1993 provides for recovery of the amount either by filing a suit or by invoking the provisions of the Arbitration Act. It is appropriate to refer to Section 6 of the Act 32/1993. Section 6 of the Act 32/1993 provides as follows:

> "**Recovery of amount due**:- (1) The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of sections 4 and 5, shall be recoverable by the supplier from the

> buyer by way of a suit or other proceeding under any law for the time being in force.
>
> (2) Notwithstanding anything contained in sub-section(1), any party to a dispute may make a reference to the Industry Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in that sub-section and the provisions of the Arbitration or Conciliation Act, 1996 (26 of 1996) shall apply to such disputes as if the arbitration or conciliation were pursuant to an arbitration agreement referred to in sub-section (1) of section 7 of that Act."

6. The petitioner refers to Section 6(2) submits that in the light of Section 21 of the Arbitration Act, the respondents claim is barred by limitation. According to the petitioner, Section 21 of the Arbitration Act provides for the period of limitation as would apply for commercial transaction. The petitioner refers to Article 137 of the Limitation Act which required the period of limitation as 3 years. Therefore, it is submitted that the party respondent's claim is barred by

limitation as they have approached the Arbitration Tribunal only in the year 2009.

7. It is to be noted that in this case, the award passed under the MSMED Act. Therefore, the legality of the award is passed under the MSMED Act alone need be considered by this Court. Section 17 of the MSMED Act provides as follows:

> "**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."

8. Section 17 of the MSMED Act as above would clearly indicate that the right of recovery is not depend upon the date of transaction but depend upon the right to recover as available on the date of enactment of the MSMED Act. Section 18 of the MSMED Act provides for reference to the Micro and Small Enterprises Facilitation Council to resolve the disputes

between the supplier and the buyer. Section 18 of the MSMED Act reads as follows:-

> "**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 or 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 as if the conciliation was initiated under Part III of that Act.
>
> (3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the

parties, the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 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 jurisdiciton 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."

9. Section 18(2) and (3) would clearly stipulate that the arbitration proceedings have to be concluded as provided

under the Arbitration Act. Thus, any award passed by the Council has to be treated as an award passed by the Arbitration Act. If any award is passed under the Arbitration Act, the remedy of a person aggrieved by the award is to have a recourse under Section 34 of the Arbitration Act. As already noted, Section 17 of the MSMED Act, necessarily, gives power to exercise the jurisdiction by the Council without reference to any date of transaction.

10. In that view of the matter, certainly, the present dispute would fall within the domain of the MSMED Act. Once the dispute falls within the domain of the MSMED Act, any award passed thereon will have to be treated as an award passed under the Arbitration Act. The question of limitation is essentially a mixed question of fact and law.

11. The learned senior counsel appearing for the party respondent would submit that Section 18(1) would clearly indicate the power of the Council to decide, notwithstanding anything contained in the limitation Act. I am not answering this issue obviously for the reason that this is essentially a matter to be challenged in an appropriate manner, as once this Court hold that the Council has jurisdiction, necessarily, all the challenge thereon has to be worked out in the manner provided under the Act and not by any other method. Section 19 of the MSMED Act also would clearly provide that the remedy of the petitioner is to challenge an award and mandates pre-deposit of 75% of the amount.

12. This Court is of the view that the challenge regarding the award is unsustainable before this Court as the remedy of the petitioner is to challenge the same in accordance with the

provisions under Section 34 of the Arbitration Act.

13. Learned senior counsel for the party respondent also placed before me the judgment of this Court in W.P.(C) No.24183/2007 filed by the same writ petitioner, wherein this Court has taken a similar view.

In that view of the matter, these writ petitions are dismissed with liberty to the petitiner to challenge the award, if any, available under law.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE

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