

CWP No.4497 of 2012

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.4497 of 2012
Date of decision: 08.04.2016

M/s Gats Financial Reconstructors Ltd.

....Petitioner

Versus

Director of Industries cum Chairman, Industrial Facilitation Council,
Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?
- 2) To be referred to the Reporters or not ?
- 3) Whether the judgment should be reported in the Digest ?

Present: - Mr. Naresh Jain, Advocate, for the petitioner.
Mr. S.S. Chandumajra, Addl. A.G., Punjab.
Mr. Saurabh Goel, Advocate, for respondent No.3.
Mr. Nitin Jain, Advocate, for respondent No.4.

PARAMJEET SINGH DHALIWAL, J.

Instant writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of certiorari for quashing the order dated 03.11.2014 (Annexure P-14) passed by respondent No.1 – Director of Industries-cum-Chairman, Industrial Facilitation Council, Punjab, vide which the reference regarding interest on delayed payment filed by the petitioner under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (for short 'MSMED Act'), has been declined.

Brief facts of the case, as averred in the writ petition, are that petitioner is a public limited company governed by the provisions of the

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Companies Act. Petitioner-company is registered vide registration No.030092101392 with the Department of Industries and Commerce, Punjab, and is engaged in the business of financial services/financial consultancy services. Petitioner being an enforcement agent had been working with M/s Indian Overseas Bank. Due to withholding of payments by different branches of Indian Overseas Bank, petitioner filed references with respondent No.1 – Director of Industries-cum-Chairman with respect to disputes pertaining to each branch on 11.07.2011 (Annexure P-5 to P-8). Vide letter dated 19.08.2011 (Annexure P-10) respondent No.1 sought clarification from the Ministry of Micro, Small and Medium Enterprises, New Delhi, as to whether the petitioner is covered under the provisions of the MSMED Act. Vide order dated 03.11.2011 (Annexure P-14) respondent No.1 declined the references regarding payment of interest on delayed payments made by the petitioner in view of the advice given by the Ministry of Micro, Small and Medium Enterprises, New Delhi. Hence, this writ petition.

Pursuant to notice of motion, respondents appeared through their counsel and filed their respective written statements.

In their written statement, respondents No.1 and 2 have averred that as per the advice given by the Government of India, Ministry of Micro, Small and Medium Enterprises, New Delhi, services assigned by the State Bank of India and other banks, namely, Indian Overseas Bank etc. to the petitioner are not the same for which the enterprises memorandum was issued by the concerned District Industries

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Centre. Further the services assigned to the service provider by the Bank are not covered in WTO list under the 'Financial Service' category. Therefore, the application of the petitioner for interest on delayed payments under the MSMED Act has rightly been rejected by respondent No.1.

In its written statement, respondent No.3 has averred that petitioner got the acknowledgement of entrepreneurs memorandum for the activity of 'Financial Services; for a specific purpose of financial consultancy. However, petitioner is involved in the activity of securitization and reconstruction of financial assets which is neither a financial consultancy nor a financial service rather it is an assistance to an institution rendering financial service. As per Section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, for the function of securitization and reconstruction, registration with Reserve Bank of India is mandatory, which the petitioner has failed to show.

Respondent No.4 in its written statement has averred that claim of interest has been on the services rendered by the petitioner in the year 2004-05 onwards. The services for which the petitioner has raised a claim do not fall within the ambit of Entrepreneur Memorandum dated 28.05.2010 (Annexure P-4) issued by respondent No.1 in favour of the petitioner. All the references have been filed after a huge delay on same date i.e. 11.07.2011. All the bills raised by the petitioner pertain to the services rendered by it prior to obtaining registration by the

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petitioner as a micro enterprise. There cannot be any retrospective application of benefits arising out of the said registration.

I have heard the learned counsel for the parties at length and perused the record.

I am not required to deal with the contentions raised by the learned counsel for the petitioner because admittedly petitioner had made references (Annexures P-5 to P-8) which relate to October, 2005. The petitioner got registered vide registration certificate number 030092101392 dated 28.05.2010 (Annexure P-4). The applications for reference were moved on 11.07.2011 and 16.08.2011. The MSMED Act has been enacted by the Parliament for facilitating the promotion, development and enhancing competitiveness of micro, small and medium enterprises and matters connected therewith or incidental thereto in the year 2006. It received the assent of the President on 16.06.2006 and came into force w.e.f. 18.07.2006 in terms of Section 1 (2) of the MSMED Act. Section 20 of the MSMED Act provides for establishment of Facilitation Council. Under Section 26 of the MSMED Act, the State Government is entitled to appoint such officers and employees for the purpose of Act. Under Section 30 of the MSMED Act, appropriate Government has power to make Rules to carry out the provisions of the MSMED Act. The State Government has framed the Rules and accordingly Facilitation Council has been set up.

Now the question arises whether in the present case the provisions of the MSMED Act will apply for the acts done prior to

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coming into force of the MSMED Act and whether the benefit of provisions of the MSMED Act can be given to the petitioner for the services rendered prior to its registration?

The perusal of record reveals that reference relates to October 2005 when the MSMED Act was not in force so question of applicability of the provisions of the MSMED Act retrospectively does not arise as the Act came into force w.e.f. 18.07.2006 so question of answering the reference does not arise. Furthermore the provisions of the MSMED Act cannot be made applicable for the services done prior to the registration of the petitioner with the respondents No.1 and 2. Otherwise also the services assigned to the petitioner service provider are not covered in the WTO list under the financial services category (Annexure R1 Colly). Respondents No. 1 and 2 have declined reference after receiving advice from the Government of India. The petitioner is required to prove by cogent evidence that it has been authorised by the concerned bank i.e. Indian Overseas Bank for providing financial consultancy services. Learned counsel for the petitioner has failed to show any document authorising the petitioner by the concerned bank for the services for which it claims interest on delayed payment, in these circumstances elaborated reasons were not required to be given for declining reference.

In view of above, petition is dismissed with no order as to costs.

However petitioner will be at liberty to file fresh reference with respondent No. 1 as well as Ministry of Micro, Small and Medium

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Enterprises, New Delhi along with all relevant documents. The concerned Facilitation Council being a quasi-judicial authority shall pass speaking order with regard to acceptance or rejection of the reference.

(Paramjeet Singh Dhaliwal)
Judge

April 08, 2016
R.S.