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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.203 OF 2017
IN
ARBITRATION PETITION NO.499 OF 2003
WITH
NOTICE OF MOTION (L) NO.2545 OF 2014
WITH
NOTICE OF MOTION (L) NO.1213 OF 2013
WITH
NOTICE OF MOTION (L) NO.288 OF 2015
WITH
NOTICE OF MOTION (L) NO.2235 OF 2016

The Maharashtra Small Scale Industries Development Corporation Ltd. having its registered office at Krupanidhi, 9, Walchand Hirachand Marg, Mumbai 400 001 … Appellant

Versus

Snehadeep Structures Pvt. Ltd.
A company incorporated under the Companies Act, 1956 having its registered office at 23, Pushpakunj Commercial Complex, 3rd Floor, Radas Peth, Central Bazar Road, Nagpur 440 010 … Respondents

Mr.Zubin Moris a/w Nirav Shah and Anuj Jaiswal i/by Little & Co. for the Appellant.
Dr. Milind Sathe, Senior Counsel a/w Mr. Girish Godbole i/by Mr. Jaydeep Deo for the Respondents.

CORAM : A.S. OKA & P.N. DESHMUKH, JJ.

DATE ON WHICH SUBMISSIONS WERE HEARD : 6th FEBRUARY, 2018

DATE ON WHICH JUDGMENT IS PRONOUNCED : 26th MARCH, 2018

JUDGMENT (PER A.S. OKA, J.):-

1 As noted in order dated 10th July, 2017, the regular Bench presided over by the Hon'ble Shri Justice Naresh H. Patil is unable to hear this Appeal. Therefore, as per the general standing order issued by the Hon'ble the Chief Justice, the Appeal will have to be heard by this Bench. Only in view of the order of the Apex Court dated 9th January, 2015 that we have given out of turn priority to the hearing of this Appeal filed in the year 2013.

2 This Appeal arises out of a Petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "the Arbitration Act"). The arbitral proceedings arose out of a claim made by the respondent for grant of interest under the provisions of the Interest of Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (for short "the Interest Act").

3 With a view to appreciate the factual and legal controversy, a reference to few factual aspects will be necessary. The respondent has been duly registered as a Small Scale Industrial Unit. The respondent is having a certificate to that effect issued by the Government of

Maharashtra through the Directorate of Industries on 28th August, 1989. The appellant is the Maharashtra Small Scale Industrial Development Corporation Limited which is an undertaking of the Government of Maharashtra. The Maharashtra State Electricity Board (for short "MSEB") issued a work order to the appellant for supply, transportation, providing laying and testing of ash disposal pipelines for Part-B for Chandrapur Thermal Power Station at Chandrapur. The work order was issued on 27th March, 1995. On the basis of the work order, a supply order was issued by the appellant to the respondent on 30th March, 1995. According to the case of the respondent, the supply order was implemented by the respondent. It is alleged that inspite of the fact that goods were delivered in various consignments in excellent condition and were received by MSEB, the appellant failed and neglected to make payment of the price of the said goods as agreed within 10 days from the submission of the bills. The respondent relied upon the provisions of the Interest Act and in particular Sections 2(c), 3, 4, 7, 9 and 10. It is the case of the respondent that under the Interest Act, it is the statutory liability of the appellant to pay interest as provided in Section 4 of the Interest Act. Reliance is placed on the Government Resolution dated 6th August, 1997 which according to the respondent provides that the appellant is liable to pay interest on overdue amount. As the interest was not paid, the respondent by its Advocate's notice dated 21st December, 2001 called upon the appellant to refer the dispute to the arbitration as provided in clause 27 of the supply order. There was some dispute regarding the appointment of an arbitrator between the parties. Ultimately, by consent of the parties, the learned Single Judge of this Court by order dated 21st June, 2002 appointed a retired Judge as the sole Arbitrator. A statement of claim was filed by the respondent before the Arbitrator claiming interest amount of Rs.78,19,540.73 together with interest thereon @ 24% on the said amount from the date of filing of the statement of claim. Reply, rejoinder and sur-rejoinder were filed before the learned Arbitrator. It was contended by the appellant that the terms and conditions of the contract between the appellant and MSEB were binding on the respondent. It was contended that MSEB was a necessary and proper party to the arbitral proceedings. Apart from other contentions raised on merits, it was contended that for the first time, the respondent made a claim for interest on 21st December, 2001 which was barred by limitation.

4 The learned Arbitrator made an award directing the appellant to pay a sum of Rs.78,19,540.73/- to the respondent with interest thereon @ 10% per annum from the date of statement of claim till the date of award and further interest at the same rate from the date of award till payment and/or realisation. The said award was subjected to a challenge by the appellant by filing a Petition under Section 34 of the Arbitration Act. By the impugned judgment and order dated 3rd May, 2013 the Arbitration Petition was dismissed by the learned Single Judge. Being aggrieved by the said order of the learned Single Judge that the present Appeal has been preferred by the appellant.

5 The first contention raised by the learned counsel appearing for the appellant is that MSEB is a necessary and proper party to the arbitral proceedings. The second contention is that the appellant is not a buyer within the meaning of the Interest Act. The third submission is that the claim was barred by limitation. The learned counsel appearing for the appellant has taken us through the provisions of the Interest Act and in particular clause (c) of Section 2, Sections 3, 4 and 6. He submitted that under the said Act, the liability to pay interest is of the buyer. He submitted that the supply order issued by the appellant to the

respondent incorporates the terms and conditions of the agreement between the appellant and MSEB. He submitted that admittedly the goods and services have been received by MSEB and not by the appellant. He relied upon the condition No.25 of the supply order which lays down that the goods will have to be supplied to the consignee (MSEB) and that the price of the goods delivered and accepted by the consignee, when received from the consignee will be paid to the respondent – supplier by the appellant. He submitted that even clause 33 of the supply order makes it very clear that the liability to pay will be of MSEB. He relied upon a decision of the learned Single Judge of this Court in the case of *Dattatraya Borgaonkar Vs. Maharashtra Small Scale Industries Development Corporation and Ors*[1]. He submitted that the learned Single Judge has considered the decision of the Apex Court in the case of *Assam Small Scale Industries Development Corporation and Ors. Vs. M/s. J.D. Pharmaceutical and Ors*[2]. He would, therefore, submit that as held by the learned Single Judge, the appellant cannot be held liable to pay interest to the respondent under the Interest Act. His submission is that the buyer within the meaning of the Interest Act is MSEB and not the appellant and in any

1 2015(6) Mh.L.J 182
2 AIR 2006 SC 131

case, MSEB was a necessary and proper party to the arbitral proceedings.

6 On the aspect of limitation, he submitted that clause 25 of the supply order makes it clear that the appellant was to pay the amount to the respondent as and when received from MSEB. He submitted that clause 9.0.2 of the contract between the appellant and the MSEB dealing with bills is very relevant. He submitted that as provided therein, the bill amount was required to be paid within 10 days from the presentation of the bill. He submitted that the last of the bill submitted by the respondent was of 31st July, 1998. Hence, the last date for payment of the said bill was 9th or 10th August, 1998. He submitted that 10th August, 1998 is the date agreed upon in terms of Section 4 of the Interest Act. He urged that the claim for the interest amount was made for the first time in December, 2001 which was barred by limitation. He submitted that both the learned Arbitrator and the learned Single Judge have erroneously held that a final bill was prepared on 12th November, 1999. No such bill is in existence. He submitted that the statement of claim proceeds on the footing that final bills were submitted on 12th November, 1999 and therefore, the claim

was within limitation. He submitted that in absence of any such final bill of 12th November, 1999 the claim for interest was ex-facie barred. He, therefore, submitted that the Appeal be allowed.

7 The learned senior counsel appearing for the respondent submitted that both the learned Arbitrator and the learned Single Judge have interpreted the terms and conditions of the contract and by no stretch of imagination, the said interpretation can be said to be perverse. He would, therefore, submit that considering the limited scope of Section 34 of the Arbitration Act, the learned Single Judge could not have interfered with the view taken by the learned Arbitrator on the interpretation of the contract as it is correct and in any case, it is a possible interpretation.

8 The learned Senior Counsel relied upon a decision of the Division Bench of this Court in the case of *M/s. F. Ranchoddas and Co. Vs. M/s. Nathamal Hirachand and Co*[3]. He submitted that even assuming that the contract provides that the appellant will pay the bill amount to the respondent as and when it receives from MSEB, the absolute liability of the appellant to pay the bill amount continues. He submitted

3 [1950] ILR 144 Bom

that the phrase “as and when received” cannot be interpreted to mean “if received”. He relied upon the decision of the learned Single Judge of this Court in the case of *M/s. Agnel Infine Pvt. Ltd. Vs. M/s. Echjay Industries Ltd*[4]. He relied upon what is held in paragraph 17 of the said decision. He submitted that the Award of the learned Arbitrator holds that final bill was prepared by the appellant and the amount was paid on 19th November, 1999 to the respondent. He submitted that the final bill may not be on record but the fact remains that the bills were finalised by the appellant on 12th November, 1999 and certain amount was paid on the very day. Relying upon the decision of the learned Single Judge in the case of Agnel Infine Pvt. Ltd., he would urge that the legislature intended to extend the benefit of extension of period of limitation when payment is made by a debtor to a creditor irrespective of whether payment is made towards principal amount or payment is made towards interest. He submitted that the starting point of limitation for paying interest may be the expiry of 10 days from the bill but the said period was extended by virtue of payment of final bill made by the appellant on 12th November, 1999. He submitted that arbitral proceedings were initiated by the respondent within a period of three

4 2007(2)All M.R 530

years. He relied upon the decision of V. Gopala Gowda, J. in the case of *Shanti Conductors Pvt. Ltd. and another Vs. Assam State Electricity Board and Ors.*[5] and in particular paragraph 53 thereof. He submitted that though the other learned Judge has delivered a separate judgment he has not disagreed with the finding recorded in paragraph 54. Lastly, he invited our attention to the decision of the Apex Court in the case of *Associate Builders Vs. Delhi Development Authority*[6]. He submitted that the learned Arbitrator after considering the material before him and after interpreting the provisions of the agreement between the parties has come to a possible conclusion. He submitted that the learned Arbitrator has not travelled out of his jurisdiction. The view taken by him is not against the express provisions of the contract. Therefore, the learned Single Judge could not have substituted his own views in place of the views of the learned Arbitrator.

9 We have given careful consideration to the submissions. We have carefully gone through the decisions relied upon by the learned counsel. Broadly, there are three issues which arise in this Appeal. The first is whether the appellant can be held to be a buyer within the meaning of Section 2(c) of the Interest Act. The second question is

5 (2016) 15 SCC 13
6 (2015) 3 SCC 49

whether the claim for interest made by the respondent was barred by limitation. The third question is whether MSEB was a necessary and proper party.

10 On the basis of the tenders invited by MSEB, the purchase order was issued on 27th March, 1995 to the appellant for supply, transportation, providing laying and testing of ash disposal pipelines for part – B at Chandrapur thermal power station at Chandrapur. On the basis of the said work order, supply order was issued by the appellant to the respondent on 30th March, 1995. Supply order specifically refers to the purchase order issued by MSEB to the appellant. The supply order issued by the appellant specifically mentions the name of the Chief Engineer of MSEB as Consignee. The first page of supply order specifically incorporates the terms and conditions in the purchase order issued to the appellant by MSEB. A copy of the purchase order was annexed to supply order. The respondent is described as the supplier in the supply order. Clause 8 of the supply order issued to the respondent provides that delivery of goods shall be made on behalf of the appellant to the consignee (in the present case the consignee is 'MSEB'). Clause 25 is material which reads thus :-

> "25. **The price of the goods delivered and accepted by the**

> **consignee and when received from the consignee will be paid to the supplier by the Corporation subject to deductions of advances, if any, paid by the Corporation and the service charges and other moneys payable to the Corporation by the supplier.** No advance payment will be made for any supply of the goods unless otherwise agreed to by the Corporation."
>
> (emphasis added)

11 Thus, it is provided that the price of the goods, delivered and accepted by MSEB and when received from MSEB will be paid to the respondent by the appellant. It is true that this term does not mean that the appellant was liable to pay the amount only if it was received from MSEB. However, the respondent is put to notice that the bill amount payable to the respondent will come from MSEB. Clause 30 provides that the respondent shall not be entitled to make any claim under the supply order for price or damages against MSEB. Clause 33 provides that the respondent has agreed that since the appellant is a State Government Promotion Agency and is not the ultimate consumer, the appellant shall not be held liable under the Government of India Act for payment of interest of delayed payment by the purchaser. We must note here that clause 30 and 33 do not have much significance as the interest claimed by the respondent was specifically under the Interest Act and therefore, the issue to be decided is whether the appellant is liable to pay interest under the provisions of the Interest Act.

12 In view of clause 25 above, it will be necessary to make a reference to the purchase order issued by MSEB to the appellant and the clause therein regarding payment of amount. Clause 9.0.2 deals with the bills which reads thus :-

> “9.0.2.Bills
>
> **A bill shall be submitted by the contractor each month on or before the date fixed by the Engineer-in-charge for all the works executed in the previous month and the Engineer-in-charge shall take over or cause to be taken the requisite measurements for the purpose of having the same verified and the claim so far as it is admissible shall be adjusted, if possible, within ten days from the presentation of the bills,** if the contractor does not submit the bill within the time fixed as aforesaid, the Engineer-in-charge may depute a subordinate to measure up the said work in the presence of the contractor of his duly authorised agent whose countersignature to the measurement list shall be sufficient warrant and the Engineer-in-Chief/ charge may prepare a bill from such list which shall be binding on the contractor in all respects.
>
> The payment break up of the items, M.S. Pipes, sleeve couplings, cast besalt lined bends, tees, drain pieces, laterals, fixing valves, M.S. Slip on flanges, blank flanges shall be as under.
>
> i) 95% of the value of the items, less the advance paid to the extent of the materials utilised on the work. On completion, of erection including clamping, fixing, coupling, etc. on the supports (without any further break up of payments).
>
> ii) 3% of the value of the items on successful completion of Hydrostatic testing of the entire pipe line after erection.
>
> iii) 1% on handing over and commissioning of the entire work.
>
> iv) 1% alongwith the final bill.”

13 Thus, clause 9.0.2 contemplates that the bill amount is required to be paid within 10 days from the presentation of the bills. The last 1% amount was made payable along with the final bill. It will be necessary to make a reference to the statement of claim filed by the respondent before the Arbitrator. Paragraph 6 thereof quotes clause 9.0.2 of the purchase order which we have quoted above. In paragraph 10 of the statement of claim, it is specifically pleaded thus :-

> "10. The claimant states that as per the terms and conditions of the said contract, the claimant was entitled to receive full payment of 100% of the Bill amount within 10 days of the submission of the bills. The Respondent was liable to make the full payment of the price of the goods sold by the claimant to the respondent and delivered to M.S.E.B. Inspite of the fact that the said goods were delivered in various consignments in excellent condition and were received by M.S.E.B., the Respondent failed and neglected to make payment of the price of the said goods as agreed within the stipulated time from the date of delivery and delayed the payments from time to time."
>
> (emphasis added)

14 Thus, this is the understanding of the contract by the respondent was that each bill was payable within 10 days from its presentation. In the reply filed by appellant, there is no specific denial of paragraph 10. Paragraph 12 of the statement of claim of the respondent shows that the claim is only for interest and that also

specifically under the Interest Act. As far as the limitation is concerned, in paragraph 26, the respondent – claimant has stated thus :-

> "26. **The Claimant states that its claim in respect of interest on delayed payment charges vis-a-vis the supply order no.950989 is within limitation as it must be appreciated that the payments made from time to time are running bills and the final bills in respect of each of these supply orders have been submitted and paid only in the year 12.11.99.** In other words with respect to the supply orders, the bills are submitted phase-wise and the payments are also received on these running bills in a piecemeal manner. That apart, the Respondent Corporation vide its letter dated 5th February, 2002 has specifically acknowledged the Claimant will get the outstanding dues after receipt of the same from the M.S.E.B. It may further be appreciated that a narration of the facts in the abovementioned paragraphs would indicate that the Claimant has been diligently pursuing its legal remedies post the "Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertaking Act, 1993", and has been made to run from pillar to post because of the attitude of Respondent Corporation as also the M.S.E.B."
>
> (emphasis added)

15 Thus, according to the case of the respondent, final bills dated 12th November, 1999 were submitted. Admittedly, there is no evidence to show that any such final bill was drawn on 12th November, 1999 or was served upon the appellant. Going by the chart appended to the statement of claim, the last bill issued by the respondent is of 31st July, 1998. Thus, the bill amount ought to have been paid by 10th August, 1998. The chart shows that the bill amount was paid on 12th November, 1999.

16 On this background, the first question which needs to be addressed is regarding the status of the appellant as a buyer. Clause (c) of Section 2 of the Interest Act reads thus:

> "c) buyer" means **whoever buys any goods or receives any services from a supplier** for consideration;"

Sections 3,4 and 6 of the Interest Act are material which read thus:

> "3. **Liability of buyer to make payment.**- **Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor 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 one hundred and twenty days from the day of acceptance or the day of deemed acceptance.
>
> 4. **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 3, 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 interest 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 one and half time of prime Lending Rate charged by the State Bank of India.**
>
> (emphasis added)
>
> Explanation.- For the purposes of this section," Prime Lending Rate" means the Prime Lending Rate of the State Bank of India which is available to the best borrowers of the bank."

> **"6. 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 Faciliation 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 and Conciliation Act, 1996 (26 of 1996) shall apply to such dispute as if the arbitration or conciliation were pursuant to an arbitration agreement referred to in sub- section (1) of section 7 of that Act."

(emphasis added)

The learned counsel appearing for the appellant relied upon a decision of the learned Single Judge in the case of *Dattatray s/o Shankarrao Borgaonkar Vs. Maharashtra Small Scale Industries Development Corporation Ltd. and Ors*. This was a case where the present appellant was a defendant in the suit filed by the appellant before this Court. A suit for recovery was filed against the appellant which was partly decreed. The present appellant preferred an Appeal in which there were cross-objections filed by the original plaintiff. Both the appeal and cross-objections were dismissed. The original plaintiff preferred a Second Appeal as he was aggrieved by grant of future interest @ 6% instead of 22% per annum. The contention of the appellant before this Court was that no amount of interest ought to have been granted by the trial Court as well as the Appellate Court as the Interest Act is not applicable to the appellant. It was contended before this Court that the appellant was neither a manufacturer nor a supplier. It was contended that the appellant was not a buyer within the meaning of the Interest Act. This Court considered the decision of the Apex Court in the case of *Assam Small Scale Industries Development Corporation Ltd. and Ors. Vs. J.D. Pharmaceuticals and Another*. In the work order issued to the plaintiffs there was clause 25 which is more or less identical to clause 25 of the purchase order in the present case. In paragraph 22 of the decision of the learned Single Judge, he adverted to clause 25. Paragraph 22 reads thus :-

> "22. In Exhibit-128, the terms and conditions governing the supply order are mentioned. None amongst the parties, has placed before me any such agreement between the supplier plaintiff and the Corporation defendant, similar to the one as was signed by the supplier and the Corporation defendant, similar to the one as was signed by the supplier and the Corporation in the Assam case (supra). Clause 25 which is the part of the terms and conditions mentioned in Exhibit – 128, reads as under :-
>
> "T**he price of the goods delivered and accepted by the consignee and when received from the consignee will be paid to the supplier by the Corporation** subject to the deductions of advances, if any, paid by the Corporation and the service charges and other monies payable to the Corporation by the supplier. No advance payment will be made for any supply of the goods unless otherwise agreed to by the Corporation."
>
> Similarly, clause No.29 reads as under :-
>
> "The Corporation and/or consignee may inspect the goods at

various stages from time to time at their discretion. However, approval of the goods by the consignee shall be final and binding on the supplier."

Clause 32 reads as under :-

"Corporation at its discretion may consider the request of the supplier and release appropriate amount against this order as an advance against the bank guarantee in the prescribed format as also release of 90% payment of the invoice value against submission of receipted delivery challan in the prescribed format."

Clause 34 reads as under :-

"**It is agreed by the supplier that since the Corporation is a State Government promotional agency and is not the ultimate consumer of the goods purchased vide this supply order, Corporation shall not be held liable under the Government of India Act, 1993 for payment of interest on the delayed payments to the Units by the purchasers.**"

(emphasis supplied)

17 Thus, clauses 25 and 29 of the supply order before the learned Single Judge were identical with the clauses in the supply order in the case in hand. Thereafter, in paragraph 25, he proceeded to consider Sections 3 to 6 of the Interest Act. In paragraphs 31 and 32, the learned Single Judge held thus :-

"31. It is apparent from the above observations of the trial Court that it has totally misdirected itself by not considering the scope and ambit of section 6 of the 1993 Act. **Merely because the work order as received by the defendant from the buyer was forwarded to the plaintiff by placing a purchase order (Exhibit – 128), would not mean that the defendant stepped into the shoes of the buyer.** As observed hereinabove, in the absence of an Act, Scheme and an Agreement between the supplier and the Corporation, as was the case before the Apex Court in the Assam case (supra), section 6 will have to be strictly followed.

32. The trial Court lost sight of the fact that the terms and conditions mentioned in the purchase order (Exhibit – 128) read with section 6 of the 1993 Act, mandated that the supplier should initiate a civil suit for recovery against the buyer. **Ultimately, the outstanding monies as well as interest will have to be recovered from the buyer in view of the fact that the defendant Corporation was in effect an agency which endeavoured to promote the cause and business of the plaintiff. So also, the phraseology used in section 6 is "the amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of section 4 and section 5, shall be recoverable by the supplier from the buyer by way of a suit.....", thereby mandating that the supplier shall recover the amount from the buyer.**"

18 Now, coming back to the case in hand, in the statement of claim a reference is made to the purchase order dated 27th March, 1995 issued by MSEB to the appellant. The terms and conditions of the said purchase order have been specifically incorporated in the supply order issued by the appellant to the respondent. MSEB is described therein as the consignee. The supply order incorporates the terms and conditions of the purchase order dated 27th March, 1995 placed by MSEB with the appellant. It provides that the delivery was to be made by the respondent on behalf of the appellant to the consignee (MSEB). As stated earlier, clause 25 provided that price of the goods delivered and accepted by the consignee will be paid by the appellant to the

respondent when it is received from the consignee. Admittedly, the delivery was made by the respondent to the consignee – MSEB. Clause 33 of the supply order clearly specifies that the appellant is not the ultimate consumer under the supply order as it is a promotional agency of the State Government. It is in this context that the issue whether the respondent is a buyer will have to be considered and decided. We have already referred to various provisions of the Interest Act. Buyer is defined in Clause (c) of Section 2. It defines buyer as one who buys any goods or receives any services from a supplier for consideration. In the present case, the person buying goods is MSEB. In the supply order, the respondent is described as supplier. The delivery is received by MSEB. It is the MSEB which received services. This fact is made clear from various clauses in the purchase order placed with the respondent. Clause 25 provides that the price will be ultimately paid by MSEB. Clause 33 suggests that the appellant being a promotional agency is acting as facilitator and the ultimate consumer of the goods is someone else (MSEB). That is the reason why the terms of the supply order issued by MSEB to the appellant have been incorporated in the purchase order issued by the appellant to the respondent. It is the MSEB which has purchased the goods for the consideration paid by it and has also received services for the consideration paid by it. The supplier is the respondent. Therefore, as per clause (c) of Section 2, the buyer was MSEB and not the present appellant.

19 From the statement of objects and reasons of the Interest Act, it is apparent that the intention of the legislature was that prompt payment of money by buyers should be statutorily ensured and that mandatory provision for payment of interest on the outstanding money in case default should be made. It is provided that the buyers, if required under the law to pay interest, would refrain from withholding payment to Small Scale and Ancillary Industrial undertakings. As per the supply order issued by the appellant to the respondent, the fact that MSEB is the buyer was made known to the respondent. The payment was to come from MSEB was also a condition in the supply order issued to the respondent. Therefore, we have no hesitation in holding that the buyer within the meaning of clause (c) of Section 2 of the Interest Act was MSEB and not the present appellant. No doubt, clause 30 provides that supplier will not be entitled to make any claim under supply order for price or damages against the consignees. However, the claim of the respondent is under a statute (the Interest Act) and in particular under

Section 3 read with Section 6 thereof which creates absolute liability in the buyer to make payment of interest. Therefore, notwithstanding the clauses in the supply order, the respondent could have claimed interest under the Interest Act only against MSEB.

20 Now, coming to the impugned Judgment of the learned Single Judge, we find that in clause (f) of paragraph 28 the learned Single Judge has held thus :-

> "(f) Turning to definition of Section 2(c) of the Interest Act, a Buyer has been defined as one who buys goods or receives any services from a Supplier, for consideration. Therefore, on the face of it, one who receives either goods or services will be considered as Buyer, who will be liable to pay interest under the provisions of the Interest Act."

21 In clause (g), the learned Single Judge has held that :-

> "(g) The language of Section 2(c) is clear and unambiguous. The Interest Act being enacted for the purpose of protection of small scale industries, the Act will have to be viewed from the perspective of the small scale industries, for it is the small scale industries who needed intervention of the legislation to expedite timely payment from the Buyer. **Therefore, in the eyes of such small scale industries, the person/body who receives goods and services from them and who in turn makes the payment would be the one liable to pay interest to them for delayed payment. It is not the concern of the small scale industries, for the purposes of this Act, what arrangement Buyer has with any third party, with whom such small scale industries have no privity of contract. The goods are supplied by such small scale industries to a Buyer and if such such small scale industries do not get their payment in time,**

> **the Buyer will have to pay interest. The Petitioner was always a Buyer under the Interest Act.** By way of an amendment in the year 1998, the Petitioner was merely included in the ambit of Suppler so as to empower the Petitioner to lay its claim against the parties such as MSEB. Therefore, there is nothing perverse or illegal in the approach of the learned Arbitrator in considering that as per the interpretation of section 2(c) the Petitioner will have to be treated as a Buyer."
>
> (emphasis added)

22 We find that the learned Single Judge in the impugned Judgment has proceeded on the footing that the appellant has received goods and services and therefore, the appellant is the buyer. The learned Single Judge has also ignored that the payment of consideration was to come not from the appellant but from the MSEB. Thus, the view taken by the learned Single Judge is contrary to the terms of the supply order which incorporates the terms of purchase order issued by MSEB. Perusal of the award of the Arbitrator shows that he has completely overlooked the fact that the goods and services were received by MSEB and not by the appellant. In fact, in paragraph 30 of the Award, the learned Arbitrator has erroneously held that the goods were supplied by the respondent to the appellant. In fact, he has repeatedly observed that the goods are received by the appellant. He has referred to the fact that consideration is paid by the appellant. However, we must note here that clause (c) of Section 2 has nothing to

do with payment of consideration. The emphasis is on the person buying the goods and receiving services from a supplier.

23 The entire Award proceeds on the footing that the appellant has received the goods and services therefore, is liable to pay interest. Therefore, the view taken by the learned Arbitrator on the interpretation of Section 2(c) is such that the same could not have been taken at all. The interpretation put by the learned Single Judge in the impugned Judgment cannot be a possible interpretation. The only conclusion which could have been drawn was that the appellant is not the buyer within the meaning of the Interest Act. Therefore, interest was not payable by the appellant under the Interest Act. In this case, the illegality committed by the learned Arbitrator goes to the root of the matter. It is a case of patent illegality as the appellant could not be a buyer within the meaning of the Interest Act. Therefore, it is not necessary for us to specifically decide the issue whether MSEB was a necessary party.

24 Now, coming to the issue of limitation, it is true that in the Award of the learned Arbitrator as well as in the impugned judgment

there is a reference to final bills dated 12th November, 1999. It is also an admitted position that neither such bills are produced on record nor any evidence is adduced to show that bills were finalised by the appellant on 12th November, 1999. We have perused the charts annexed to the statement of claim of the respondent filed before the Arbitrator. It records that there were 31 running bills out of which last one was issued on 31st July, 1998. The chart indicates that against the said bill, a sum of Rs.51,35,536/- was paid on 12th November, 1999. The same chart shows that the second last bill was issued on 1st February, 1998 which was cleared in three installments. The last one of which was paid on 31st August, 1998. Therefore, in the chart appended to the statement of claim of the petitioner it is stated that as far as the second last bill of 1st February, 1998 is concerned, the delay was for a period of 13th February, 1998 to 31st January, 1998. The same chart shows that as far as the last bill of 31st July, 1998 is concerned, the period of delay was from 11th August, 1998 till 12th November, 1999. The cause of action for claiming interest arose in case of each bill after expiry of a period of 10 days from the date of the bill. The second last bill dated 1st February, 1998 was in the sum of Rs.66,36,382/- which was paid on 31st August, 1998. Even going by the said chart appended to the statement of claim, the cause of action for claiming interest under Section 3 of the Interest Act arose on 13th February, 1998. As stated earlier, the claim was not made till December, 2001.

25 On conjoint reading of Sections 19 and 20 of the Limitation Act, 1963 read with Article 25 thereof, as the payment of last bill dated 31st July, 1998 was made on 12th November, 1999, the period of limitation shall stand extended by a period of three years from 12th November, 1999. The period started running from 10th August, 1998. That is the reason why the claim for interest on the bill amount of bill dated 31st July, 1998 will be within limitation.

26 However, as held earlier, the appellant cannot be said to be a buyer within the meaning of the Interest Act and therefore, the respondent was not entitled to claim interest under the Interest Act against the appellant. The entire claim which was granted by the learned Arbitrator is based only on the Interest Act. Only on this ground, the Appeal must succeed and we pass the following order :-

ORDER

(i) The impugned Judgment and Order dated 3rd May, 2013 and the Award dated 30th June, 2003 are hereby quashed and set aside;

(ii) The Appeal is accordingly allowed;

(iii) Considering the facts of the case, the parties are left to bear their own costs;

(iv) It will be open for the appellant to withdraw the amount deposited by it in this Court with interest accrued thereon. However, the withdrawal shall not be allowed for a period of three months from today.

(P.N. DESHMUKH, J) **(A.S. OKA, J)**