

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11684 OF 2017**

M/s.Sovereign Tech Engineering
Services Pvt. Ltd.

... Petitioner

V/s.

State of Maharashtra & Ors.

... Respondents

Mr.E.A.Sasi with Manish Gaikwad and Meghna Khatri for the Petitioner.

Mr.S.L.Babar AGP for the Respondent-State.

**CORAM: UJJAL BHUYAN AND
MADHAV JAMDAR, JJ.**

DATE : 23RD SEPTEMBER, 2021.

P.C:-

Heard Mr.E.A.Sasi, learned Counsel for the Petitioner and Mr.S.L.Babar, learned AGP for Respondent Nos.1 to 4.

2. Insofar Respondent No.5 is concerned, we find that notice was issued to the said Respondent on 20/04/2021. Petitioner has also filed two affidavits of service of notice upon Respondent No.5. We have perused the report of registry dated 22/09/2021. On due consideration and having regard to the affidavits filed by the Petitioner, we treat Respondent No.5 as duly served.

3. Challenge made in this Writ Petition is to the legality and validity of the communication dated 14/06/2017 issued to Petitioner by the Member

Secretary of the Micro, Small and Medium Enterprises Facilitation Council, who is also the Joint Director of Industries, Konkan Region in the office of Deputy Director of Industries, Thane.

4. Issue raised in this Writ Petition is within a narrow compass.
5. At the outset we may advert to the communication dated 14/06/2017 which reads as under :

“With reference to subject cited above, your application received to this Council for recovery of delaying payment. The above said matter was listed before this Council on the date 02.06.2017 for the proceeding under section 18(2) of M.S.M.E.D. Act, 2006.

As per the MSME Act 2006 the MSEFC has jurisdiction to act matter of dispute on delayed payment amount of Principle & Interest. But as per the Scrutiny of the application, your claim is only for the interest amount.

As per Ref.No.2 Council has decided to claim for only interest, this case is not acceptable, so your file is closed, for your reference.”

6. From a perusal of the impugned communication we find that reference was made by the Petitioner under section 18(2) of the Micro, Small and Medium Enterprises Development Act, 2006 (briefly "the 2006 Act") was closed by the Micro, Small and Medium Enterprises Facilitation Council ("Council") on the ground that reference was made by the Petitioner only to claim interest.

7. Without entering into the factual matrix we find that under section 15 of the 2006 Act, buyer has liability to make payment to seller for any supply of goods and services made by the supplier which has to be made within a period of 45 days. Be it stated that Petitioner is registered as supplier under the 2006 Act and he had supplied the goods to Respondent No.5. Payment was made by Respondent No.5 to the Petitioner belatedly.

8. Section 16 provides that if any buyer fails to make payment of the due amount to the supplier as required under section 15, the buyer would have to pay compound interest with monthly rests to the supplier from the appointed day. As per section 17 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.

9. Section 18 deals with reference to the Council. As per section (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, may make a reference to the Council. It is important to note that requirement of sub-section (1) of section 18 is that there must be a dispute between the parties with regard to any amount due under section 17. As we have already noted above, section 17 provides for payment of principal amount together with interest in the event of delay.

10. In the light of the above statutory provision, we are of the view that Respondent Nos.3 and 4 were not justified in closing the reference of the Petitioner filed under section 18(2) of the 2006 Act. A reference under the said provision claiming interest would be maintainable.

11. Accordingly, we set aside and quash the above decision including the communication dated 14/06/2017 and remand the matter back to Respondent Nos.3 and 4 to decide the reference of the Petitioner made under section 18(2) of the 2006 Act expeditiously having regard to the provisions contained in section 18(5) and in accordance with law. We make it clear that we have not expressed any opinion on merits of the case.

12. Writ Petition is disposed of.

[MADHAV JAMDAR, J.]

[UJJAL BHUYAN, J.]