



C.R.P.No.1910 of 2022
and C.M.P.No.9727 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.10.2022

DELIVERED ON : 31.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.1910 of 2022

and

C.M.P.No.9727 of 2022

Solar Designs Private Limited,
Represented by its Managing Director,
A.A.K.Apath Sakaayem,
No.1, 'A' Wing, 3rd Floor,
Parsn Manor,
No.602, Anna Salai,
Chennai - 600 006.

... Petitioner

Vs.

M.M.C.Doortech Services Private Limited,
No.22, 6th Cross Street,
Trustpuram, Kodambakkam,
Chennai - 600 024.

... Respondent

Prayer : Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal order dated 11.06.2021 passed in MSEFC/CR/230/2019 on the file of the Micro, Small and Medium Enterprises, Chennai Region.



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For Petitioner : Mr.K.Sharath Chandran
Mr.T.M.Mano
For Respondent : Mr.B.Leelesh Sundaram

ORDER

The present petition is filed against the impugned award dated 11.06.2021 passed by the Micro, Small and Medium Enterprises (MSE) Facilitation Council, Chennai Region in MSEFC/CR/230/2019. It is essential to go into the facts of the case before taking a decision on the validity of the said award by the MSE Facilitation Council.

2.In brief the facts are as follows:

The respondent company is engaged in the business of supply and installation of dorma fittings and registered as a MSME under the MSMED Act, 2006 possessing Udyog Aadhaar No. TN02D0154606. They had supplied dorma fittings to the petitioner company vide two invoices DSI-1035 and DSI-336 dated 13.11.2013 for which the payment of Rs.2,53,332/- was not forthcoming. The respondent company appealed to the MSE Facilitation Council for early settlement of the outstanding dues on 25.09.2019. The council after hearing the counsels of both the



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parties on different dates decided that the respondent company was entitled to recover the principal amount of Rs.2,53,332/- along with the interest at the rate of three times the bank rate as stipulated in Sections 15 & 16 of MSMED Act, 2006 from the date of invoice till the date of settlement. This award was dated 11.06.2021. Hence, the present Civil Revision Petition challenging the award.

3.Heard Mr.K.Sharath Chandran & Mr.T.M.Mano, learned counsels appearing for the revision petitioner and Mr.B.Leelesh Sundaram, learned counsel appearing for the respondent.

4.The learned counsel appearing for the present revision petitioner contended that the impugned award dated 11.06.2021 was in itself null and void as the respondent company was not a registered MSME unit as on the date of the invoices i.e. 13.11.2013 and was registered under MSMED Act, 2006 only on 12.08.2019 and therefore the MSE Facilitation Council had no jurisdiction to adjudicate the dispute. Secondly, it was pointed out that the aspect of limitation makes



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the claim time barred. A claim petition made in 2019 for dues in 2013 is clearly time barred and the MSE Facilitation Council was not empowered to defy Section 3 of the Limitation Act, 1963.

5.Per contra, learned counsel for the respondent would contend that registration of the unit under Section 8 of MSMED Act, 2006 was not mandatory and there are clear rulings on the same. He also emphasized that once the petitioner's company subjected itself to MSE Facilitation Council's proceeding the aspect of maintainability has no relevance and hence the petition is liable to be dismissed. He relied on the judgment of the High Court of Delhi at New Delhi in *M/s.Ramky Infrastructure Private Vs. Micro and Small Enterprises Facilitation Council & Another*, wherein it was held that the MSMED Act, 2006 is a beneficial legislation and therefore cannot be used against the MSME Supplier Registration of the unit was also only optional and not compulsory as stipulated in the Act.



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6. Analysing the arguments put forth in the claim petition, it can be deciphered that the two invoices remained unpaid for long despite several reminders and therefore, the respondent company had approached the council for early settlement of the dues.

7. This revision petition rests on two important aspects one is the maintainability and the other is the limitation. Let us first deal with the maintainability issue. Whether registration of the supplier as a MSME unit under Section 8 of the MSMED Act, 2006 is mandatory to seek relief under the Act. In this context the learned counsel for the petitioner has relied on the decision in "*Vaishno Enterprises Vs Hamilton Medical AG and Another*" reported in 2022 SCC Online SC 355 wherein the Hon'ble Apex Court had held that

"15. It is not in dispute that the contract/agreement between the appellant and the respondent has been executed on 24.08.2020. Therefore, the laws of India applicable at the time of contract/agreement shall be applicable and therefore the parties shall be governed by the laws of India prevailing/applicable at the time when the contract was



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executed. It is admitted position that the date on which a contract/agreement was executed i.e. on 24.08.2020 the appellant was not registered MSME. Considering the relevant provisions of the MSME Act more particularly Section 2(n) read with Section 8 of the MSME Act, the provisions of the MSME Act shall be applicable in case of supplier who has filed a memorandum with the authority referred to in sub-section (1) of Section 8. Therefore, the supplier has to be a micro or small enterprise registered as MSME, registered with any of the authority mentioned in sub-section (1) of Section 8 and Section 2(n) of the MSME Act. It is admitted position that in the present case the appellant is registered as MSME only on 28.08.2020. Therefore, when the contract was entered into the appellant was not MSME and therefore the parties would not be governed by the MSME Act and the parties shall be governed by the laws of India applicable and/or prevailing at the time of execution of the contract. If that be so the Council would have no jurisdiction to entertain the dispute between the appellant and the Respondent no. 1, in exercise of powers under Section 18 of the MSME Act. Therefore, in the aforesaid peculiar facts and circumstances of the case, more particularly the terms of



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the Agreement, the order passed by the learned Single Judge confirmed by the Division Bench holding the Council would have no jurisdiction with respect to Respondent No. 1 is not required to be interfered with."

The Hon'ble Apex Court in Civil Appeal Nos.1620-1622 of 2021 in "*M/s.Khyaati Engineering vs Prodigy Hydro Power Pvt. Ltd*" held that

"By taking recourse to filing memorandum under sub-section (1) of Section 8 of the Act, subsequent to entering into contract and supply of goods and services, one cannot assume the legal status of being classified under MSMED Act, 2006, as an enterprise, to claim the benefit retrospectively from the date on which appellant entered into contract with the respondent. The appellant cannot become micro or small enterprise or supplier, to claim the benefits within the meaning of MSMED Act 2006, by submitting a memorandum under sub-section (1) of Section 8 of the Act. to obtain registration subsequent to entering into the contract and supply of goods and services. If any registration is obtained, same will be prospective and applies for supply of goods and services. Any other interpretation of the provision would lead to absurdity and confer unwarranted benefit in favour of a



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This becomes more relevant in the instant case because the dues of the supplies when settled by the buyer the interest rate applicable is three times the RBI rate which ordinarily did not apply to civil suits involving recovery of money. It can also be seen that the invoices for which the claims were raised were dated 13.11.2013 while the date of registration under the Act was 12.08.2019, roughly after six years.

8.This issue therefore is answered in favour of the revision petitioner. The contention of the learned counsel for the respondent company that the petitioner by merely subjecting to the trial by the MSE, Facilitation Council makes it maintainable is unacceptable. Hence, the petition is not maintainable and the council had no jurisdiction to deal with the dispute under MSMED Act 2006 in the present case.

9.Now the issue of limitation. The Apex Court in Civil Appeal Nos.1620-1622 of 2021 in "*M/s.Khyaati Engineering vs Prodigy Hydro Power Pvt. Ltd*" had categorically ruled that the provisions of the Indian



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Limitation Act 1963 is applicable to the arbitration proceedings under Section 18(3) of MSMED Act 2006. In "*M/s. Silpi Industries etc. vs Kerala State Road Transport Corporation & Anr.*" in Civil Appeal Nos.1570-1578 of 2021 also the Hon'ble Apex Court observed thus "

"Before we deal with the above issues, we need to refer certain background aspects of the Micro, Small and Medium Enterprises Development Act, 2006 and the earlier Act, namely, Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 which was repealed by virtue of Section 32 of the MSMED Act."

"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 "*Andhra Pradesh Power Co-ordination Committee & Ors. etc. vs M/s Lanco Kondapalli Power Limited & Ors.*" the Hon'ble Apex Court held in Civil Appeal No.6036 of 2012 that "*A reading of Section 43 of the Arbitration and Conciliation Act itself makes it clear that the*



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Limitation Act, 1963 shall apply to the arbitrations, as it applies to proceedings in the Court".

10. When the settlement with regard to a dispute between the parties has arisen under Section 18 of the 2006 Act, necessarily, the MSE Facilitation Council shall take up the dispute for Arbitration under Section 18(3) of the 2006 Act or it may refer to institution or centre to provide alternate dispute resolution service and provisions of Arbitration and Conciliation Act, 1996 are made applicable as if there was an agreement between the parties under sub-section (1) of Section 7 of the 1996 Act. Therefore, Limitation Act, 1963 is applicable to the arbitration proceeding under Section 18(3) of the 2006 Act.

11. The MSE Facilitation Council has not discussed or clarified on this issue of limitation. Neither have they gone into the jurisdiction aspect. They have only dealt with another contention of the revision petitioner that the goods mentioned in the two invoices were never ordered by them nor received by them. However the petitioner company



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was not able to produce documentary proof for the same as they claimed that the records were destroyed in the 2015 floods. The council had placed reliance on the 'dishonoured cheques' produced by the respondent company and concluded the matter in favour of the respondent without giving its finding on the limitation aspect. As regards the maintainability aspect there is not even a whisper about it in the entire impugned order.

12.The petition, in the instant case, before the MSE Facilitation Council was filed six years after the actual transaction i.e. the date of invoice. In such circumstances, the claim is time barred and this issue also is answered in favour of the revision petitioner.

13.In the result, the Civil Revision Petition is allowed. The Award passed in MSE Facilitation Council dated 11.06.2021 is set aside. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

.....10.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.



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To

- 1.The Micro, Small and Medium Enterprises, Chennai Region.
- 2.The Section Officer, VR Section, High Court, Madras.

Pre-Delivery Judgment in
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