

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

109+110

**Reserved on : 09.05.2023.
Decided on : 10.07.2023.**

(1) **CWP-9991-2023 (O&M).**

M/s Rex Global Limited, Ludhiana

...Petitioner

Versus

M/s Supreme Rubbers India Ludhiana and another

...Respondents

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(2) **CWP-9994-2023 (O&M).**

M/s Rex Sewing Machine Company Private Limited, Ludhiana

...Petitioner

Versus

M/s Zeno Plast Pvt. Ltd. Ludhiana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

**Present: Mr. Sahir Singh Virk, Advocate,
for the petitioner(s).**

VINOD S. BHARDWAJ. J.

Both the above said writ petitions are being disposed of by a common order as the controversy involved in them is identical.

The brief facts in CWP-9991-2023 relate to raising a challenge to the proceedings instituted before the respondent No.2- District Level Micro and Small Facilitation Council, Ludhiana, on a claim petition/reference No.946 of 2020. It has been averred by the petitioner that it has been falsely embroiled in the claim petition by respondent No.1- M/s Supreme Rubbers India, Ludhiana.

The above claim application has been submitted under Section 18 of the Medium, Small and Medium Enterprises Development Act, 2006 (hereinafter to be referred as the MSMED Act, 2006') based on a contract dated 10.02.2014 for recovery of principal amount of Rs.13,89,500/- and interest of Rs.15,47,907/- thereupon. It is averred that the respondent M/s Supreme Rubbers India, Ludhiana, was registered under the UdyogAadhaar Memorandum Registration Certificate on 06.11.2014. Hence, the contract amongst the parties relates to the period prior to registration of respondent No.1-supplier as a Micro and Small Enterprises under the MSMED Act, 2006. Reliance is placed on the judgment of the Hon'ble Supreme Court in the matter of **M/s Silpi Industries etc. Vs. Kerala State Road Transport Corporation and another etc. and M/s Khyaati Engineering Vs. Prodigy Hydro Power Pvt. Ltd. Civil Appeal Nos.1570-1578, decided on 29.06.2021.** A plea of limitation has also been raised averring that the claim petition is filed only on 06.11.2020 which is after the period of 06 years and 07

months from the date of contract/claim instead of 45 days as provided under Section 15 of the MSMED Act, 2006.

From perusal of the above, it is evident that the petitioner has already entered appearance and has filed his objections with the District Level Micro and Small Facilitation Council, Ludhiana, and no decision has been taken on said objections.

In so far as CWP-9994-2023, filed by 'M/s Rex Sewing Machine Company Private Limited, Ludhiana, is concerned, the petitioner claims to have been wrongly impleaded in the above said claim petition filed by respondent No.1-M/s Zeno Plast Pvt. Ltd., Ludhiana. The claim has been filed in relation to a contract dated 01.04.2016 for recovery of principal amount of Rs.46,10,303/- and interest of Rs.16,66,850/-. It is averred that even though the work order/agreement had been executed between the parties on 01.04.2016, the respondent-claimant got itself registered under the MSMED Act, 2006 on 24.09.2019. Hence, the claim is beyond the purview of the respondent No.2-District Level Micro and Small Facilitation Council as per law laid down by the Hon'ble Supreme Court of India in the matter of **M/s Silpi Industries etc. (supra)**.

It is further averred that the above said claim has been filed after a period of more than 03 years from the date of the contract agreement instead of stipulated period of 45 days under Section 15 of the MSMED Act, 2006, hence barred by limitation. It was further pointed out that the petitioner has already filed his power of attorney before the Facilitation Council on 12.01.2023 and filed the reply/objections. The said objections have not yet been decided by the Facilitation Council.

I have heard learned counsel for the petitioner at length and have gone through the pleadings and the documents appended with the petition.

It is not in dispute that no decision on the objection filed by the petitioner has been taken. The proceedings before the Facilitation Council are at initial stage of conciliation under Section 18 (2) of the MSMED Act, 2006.

The position of law as laid down by the Hon'ble Supreme Court in the matter of *M/s Silpi Industries etc. (supra)* as also in the matter of *M/s Khyaati Engineering (supra)* clearly lays that a claim which relates to a contract prior to the registration of the claimant under the MSMED Act, 2006 cannot be awarded. The matter being at initial stage and the objection having been filed, there is no occasion for this Court to invoke its writ jurisdiction and to prohibit even an institution of an application. The law declared, prohibits award for the said period and not filing of a claim. The objections are required to be put to the claimant and an opportunity ought to be extended to him to rebut the same. A decision is to be taken only thereafter. Issuing a notice on filing of a claim, to the opposite party, cannot by itself be a violation of any vested or accrued right or denial of principles of natural justice. There being no interim or final order having been passed, there is hardly any justification to file a writ and seek interference of the High Court.

The present petitions are hence pre-mature at this stage. The petitioner having already appeared before the Facilitation Council and having raised the above said objection, there can be no presumption that

the Facilitation Council shall not take stock of the objections raised by the petitioner and also the law laid down by the Hon'ble Supreme Court.

The present petitions are accordingly dismissed as premature at this stage. Liberty is, however, granted to the petitioners to take all these objections and/or any such other objection as may be available to them before the Facilitation Council which shall thereafter appropriate orders in accordance with law.

July10, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No