2025:HHC:36080

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 8072 of 2025
Decided on 29th October 2025

M/s RK Products through its proprietor Smt. Kusum Mahajan

…Petitioner

Versus

The Chairman Himachal Pradesh Micro Small Facilitation Council Shimla and others

…Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

[1]Whether approved for reporting? Yes

For the petitioner: **Mr. Varun Rana, Advocate.**

For the respondents: **Respondent No.1 ex parte.**

Mr. Pranjal Munjal, Advocate, for respondent No.2.

Ajay Mohan Goel, Judge *(Oral)*

By way of this petition, the petitioner has assailed order dated 16.12.2024, passed by the Micro and Small Enterprises Facilitation Council, in terms whereof, the Reference made by the petitioner under Section 18(1) of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as "the MSMED 2006 Act,") has been rejected by holding that the same was time barred.

2. Brief facts necessary for the adjudication of this petition are that the petitioner submitted a Reference Petition before the Council under Section 18(1) of the 2006 Act against the present respondent for recovery of an amount of Rs.2,55,96,949/- alongwith interest for delayed payments. According to the petitioner, it had supplied goods to the respondents w.e.f. 13.02.2012 to 06.06.2016 and claimed that the payment in lieu of said supplies was delayed beyond the stipulated period as was prescribed in Section 16 of the 2006 Act by the respondents. After the receipt of the said reference, the proceedings were conducted by the Council in the matter, in which, the reference was contested by the respondents herein, including on the ground that the same was barred by limitation.

3. In terms of the impugned order, the Council has dismissed the reference by returning the findings that the reference claim filed by the claimant before the Council is in the nature of a suit filed before the Civil Court, in which, parties are required to agitate their matter diligently and, therefore, law of limitation which is applicable to the claim before the Civil Court is also applicable to the claims filed before the Council. The

Council has further held in the impugned order that the litigation before the Council is like a suit before the Civil Court and, therefore, the question of limitation can be raised as a preliminary issue. The Council relied upon the judgment of the Hon'ble Supreme Court in Silpi Industries versus Kerala State Road Transport Corporation (2021)18 SCC 790, and has observed that as in terms of Article 137 of the Limitation Act, 1963, the applicable limitation period to file a case is three years from the date of cause of action and since the 2006 Act, is silent on the limitation period, therefore, the applicable period of limitation shall be three years. The Council further observed in the impugned order that as the claimant had approached the Council after a delay of almost eight years, the reference was hopelessly barred by limitation. The Council held that public policy underlines that the principles of limitation were salutary and it is well settled that respondents against whom claims are made should be in a position to justify their stand with records and in case the claims were made decades after the transaction took place, then, respondents may not be in a position to defend themselves with records.

4. Feeling aggrieved, the petitioner has approached this Court by way of the present petition.

5. Learned counsel for the petitioner submitted that the impugned order is not sustainable in the eyes of law as the Council has completely misdirected itself by dismissing the reference petition for want of limitation. Learned counsel submitted that the Council has erred in holding that it was akin to a Civil Court without appreciating that there are no traps of a Court as far as a Council is concerned, while it deals with a matter in terms of Section 18(1) or 18(2) of the 2006 Act. He submitted that in terms of the law declared by the Hon'ble Supreme Court of India, there is no power vested in the Council to throw a reference out on the ground of limitation and Hon'ble Supreme Court has held that even a time barred reference has to be considered for the purpose of conciliation by the Council for the reason that conciliation is not an adjudicatory process and conciliation is only where there is consensus between the parties and the same can also be in a time barred manner. He referred to the judgment of the Hon'ble Supreme Court in M/s Sonali Power Equipment Pvt. Ltd. versus Chairman

Maharashtra State Electricity Board, Mumbai and others, 2025 INSC 864 in support of his contention.

6. On the other hand, learned counsel for the respondent submitted that there is no infirmity in the order passed by the Council for the reason that as admittedly the claim of the petitioner was time barred, the Council rightly rejected it. Learned counsel also relied upon the judgments of the Hon'ble Supreme Court in M/s Sonali Power Equipment Pvt. Ltd. versus Chairman Maharashtra State Electricity Board, Mumbai and others (supra) as well as M/s Silpi Industries versus Kerala State Road Transport Corporation in support of his contention.

7. I have heard learned counsel for the parties and have also carefully gone through the impugned order as well as other documents on record.

8. Before proceeding further, it is relevant to mention at this stage that this Court is only considering as to whether a reference filed before a Council can be rejected by it on the ground of limitation or not. This Court is not adjudicating upon anything more except this moot issue.

9. Section 18 of the 2006 Act, provides for reference to the Micro and Small Enterprises Facilitation Council. Sub-section (1) thereof provides that 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 of the Act, make a reference to the Micro and Small Enterprises Facilitation Council. In terms of Sub-Section (2) thereof, on receipt of a reference under sub-section (1), the Council shall either conduct conciliation in the matter itself or seek the assistance of any Institution or Centre providing alternate dispute resolution services by making a reference to such an Institution or Centre, for conducting the conciliation. Sub-section(3) of Section 18 of the 2006 Act thereafter provides that where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any Institution or Centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 shall then apply to the dispute as if the arbitration

was in pursuance of an arbitration agreement referred to in sub-section(1) of Section 7 of the Arbitration and Conciliation Act.

10. Hon'ble Supreme Court of India in M/s Silpi Industries versus Kerala State Road Transport Corporation (supra), while adjudicating on the issue as to whether the provisions of the Limitation Act should apply to the arbitral process undertaken in terms of Sub-section(3) of Section 18 of the 2006 Act, has been pleased to hold that the applicability of the Limitation Act, 1963 to the arbitration proceedings initiated under provisions of the 2006 Act, shall be there. Hon'ble Supreme Court further went on to hold that the provisions of the Limitation Act, 1963 will apply to arbitration covered by Section 18(3) of the 2006 Act. Therefore, as far as the issue of the applicability of the law of limitation to the arbitral proceedings which may be commenced under Section 18(3) of the 2006 Act is concerned, the same is no more res-integra and in terms of the law laid down by the Hon'ble Supreme Court of India, the provisions of the Limitation Act will apply to the arbitration covered by Section 18(3) of the 2006, Act, which arbitration can

be undertaken either by the Council or by any Institution or Centre to which the Council may refer the dispute for the purpose of arbitration.

11. However, herein we are dealing with an issue in terms whereof, a reference filed by the petitioner under Sub-section(1) of Section 18 of the 2006 Act, has been dismissed by the Council for want of limitation.

12. Having carefully perused the provisions of the 2006 Act, as also the judgment of the Hon'ble Supreme Court in M/s Sonali Power Equipment versus Chairman Maharashtra State Electricity Board Bombay (supra), this Court has no hesitation in holding that the order passed by the Council, in terms whereof, the reference made by the petitioner has been dismissed on the ground of limitation, is perverse and not sustainable in the eyes of law.

13. In fact, this Court fails to understand as to how the Council went on to observe and hold that a reference filed before it was like a matter filed before a Civil Court. By no stretch of imagination, the Council constituted under the 2006 Act is comparable to a Civil Court at all. It is just a statutory

Council which has to perform the duties which have been encompassed upon it under the provisions of the 2006 Act and it cannot enshrine upon itself the powers which are conferred upon a Civil Court under Section 9 of the Code of Civil Procedure. These nuances of law should be well understood and respected by such like Council before they start delivering orders to the effect that they are akin to a Civil Court.

14. Having said that, at this stage, this Court would like to refer to the judgment of the Hon'ble Supreme in M/s Sonali Power Equipment versus Chairman Maharashtra State Electricity Board Bombay (supra) wherein Hon'ble Supreme Court has been pleased to hold that neither the Limitation Act applies to conciliation proceedings under Section 18(2) nor time-barred claims are excluded from such conciliation. Hon'ble Supreme Court has been pleased to hold in the said judgment that the supplier's right to recover the principal amount and interest subsists even after the expiry of the limitation period and he may recover the same through a settlement agreement arrived at through conciliation by the Facilitation Council under Section 18(2) of the 2006 Act. In case such settlement is not

reached between the parties and the conciliation proceedings are terminated for this reason, then, the matter must be referred to arbitration as per Section 18(3) of the 2006 Act. Hon'ble Supreme Court thus, distinguished between the function of the Council under Section 18(2) and Section 18(3) of the 2006 Act by holding that as far as conciliation proceedings are concerned even time barred claims could be settled through the process of conciliation and as far as Section 18(3) of the 2006 Act was concerned, the same applied to arbitration by the Facilitation Council. Hon'ble Supreme Court further held in this judgment that while Section 18(2) of the 2006 Act, has done away with the requirement of consent for conciliation as provided in Section 61 of the Arbitration and Conciliation Act and statutorily mandates the Facilitation Council and parties to explore conciliation for dispute resolution, the ultimate outcome of conciliation remains entirely dependent on the parties. Sections 65 to 81 of the Arbitration and Conciliation Act apply to conciliation proceedings under the 2006 Act as per Section 18(2) thereof and the parties must be agreeable to the terms of settlement. Hon'ble Supreme Court

went on to hold that the conciliator cannot, and must not, coerce the parties to agree to certain terms or settle the dispute. Ultimately, if the parties are not willing to amicably settle the dispute, either or both of them can terminate the conciliation proceedings as per Section 76 of the Arbitration and Conciliation Act and, therefore, conciliation cannot be termed as a “coercive” process. Hon’ble Supreme Court also held that merely because conciliation was mandatory this does not mean that the parties are required to settle the dispute. They may choose to terminate conciliation and avail the remedy of arbitration provided in Section 18(3), wherein, they can raise all defences available to them in law and considering that conciliation is non-adjudicatory process by nature and is rather based on negotiation, compromise, and settlement by the parties, it is not necessary that the defence of limitation be available to the parties in this process.

15. Thus, in terms of the law declared by the Hon’ble Supreme Court in Sonali Power Equipment (supra) as far as a Reference is concerned, which obviously can be conciled in terms of sub-Section 2 of Section 18 of the 2006, Act, the same

cannot be thrown out by a Council for want of limitation. The principle of limitation is not attracted as far as Section 18(1) or 18(2) of the 2006 Act, are concerned, though this law is attracted when it comes to sub-Section (3) of Section 18 thereof. In the present case, as the petitioner was non-suited by the Council by throwing out the Reference on the ground of limitation, said rejection of the reference of the petitioner by the Council in the light of above discussion, is not sustainable in the eyes of law.

16. Accordingly, in light of the findings returned hereinabove, this petition is allowed. Order passed by the Council dated 16.12.2024 is quashed and set aside. Council is directed to take on board the Reference made by the petitioner and to make an endeavor for the conciliation of the matter between the parties in accordance with law.

17. Pending miscellaneous applications, if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

October 29, 2025
(Vinod)