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**Supreme Court of India affirms the applicability of Limitation Act  
to arbitration proceedings initiated under the MSMED Act  
M/s Silpi Industries etc. v. Kerala State Road Transport Corp. and Anr.**

<b>Citation</b>	<b>2021 SCC OnLine SC 439</b>
<b>Date</b>	<b>29 June 2021</b>
<b>Court</b>	<b>Supreme Court of India</b>
<b>Coram</b>	<b>Hon'ble Mr. Justice Ashok Bhushan, Hon'ble Mr. Justice R. Subhash Reddy</b>

## 1. Facts and Procedural History

- 1.1. The present case involved two different appeals between different sets of parties that arose for consideration before the Hon'ble Supreme Court of India ("**Supreme Court**"). Looking into the common legal issues involved in the appeals, the Supreme Court clubbed the appeals, and addressed the pertinent questions of law in both cases by way of a common judgment.

### A. Proceedings in Civil Appeal Nos. 1570-1578 of 2021

- 1.2. The Kerala State Road Transport Corporation ("**Respondent I/Buyer**") invited tenders for supply of thread rubber for tyre-rebuilding. M/s. Silpi Industries ("**Appellant I/Seller**") was given purchase orders by Respondent I with a clause that 90% of the total purchase price was payable on supply of materials and the remaining 10% would be paid subject to performance of materials.
- 1.3. Upon failure of Respondent I to pay the 10% balance amount, Appellant I approached the Industrial Facilitation Council [constituted under the erstwhile Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 ("**IDPASC Act**")], currently subsumed under the Micro, Small and Medium Enterprises Development Act, 2006 ("**MSMED Act**")], wherein conciliation proceedings failed. Thus, the dispute was referred to arbitration under the provisions of the Arbitration and Conciliation Act, 1996 ("**1996 Act**") in accordance with section 18(3) of the MSMED Act. The Respondent raised counter claims. Several issues arose in the matter before the arbitrator including the applicability of the Limitation Act and maintainability of counter claims in an arbitration proceeding initiated under the MSMED Act.
- 1.4. The arbitration award was passed in favour of Appellant I, which was sought to be set-aside by Respondent I. Upon dismissal of the Section 34 application, Respondent I approached the Hon'ble High Court of Kerala in appeal ("**High Court**") under Section 37 of the 1996 Act. The High Court held that the Limitation Act, 1963 ("**Limitation Act**") applies to arbitrations under the 1996 Act arising out of the MSMED Act and remanded the matter back for fresh consideration.

### B. Proceedings in Civil Appeal Nos. 1620-1622 of 2021

- 1.5. M/s Khyaati Engineering ("**Appellant II/Seller**") entered into a contract with Prodigy Hydro Power Pvt. Ltd. ("**Respondent II/Buyer**") for supply and installation of hydro-mechanical equipment. Appellant II claimed to have executed the entire contract, but Respondent II refused to make the payments. Accordingly, Appellant II filed a claim petition before the Facilitation Council ("**Council**"). Though Respondent II appeared before the Council, it also invoked the arbitration clause in the contract and nominated its arbitrator, however due to failure of Appellant II to nominate its arbitrator, Respondent II filed an application under Section 11(6) of the 1996 Act before the High Court of Judicature at Madras.
- 1.6. This application was opposed by Appellant II, and it was contended that proceedings had already been initiated before the Council. However, Respondent II submitted that the Council had been constituted primarily to deal with disputes raised by the supplier and did not have jurisdiction over counterclaims of the buyer. The High Court of Madras allowed the application of the Respondent and appointed the second arbitrator.
- 1.7. Appellant II being aggrieved with the Madras High Court's order, filed an appeal before the Supreme Court challenging the same.

## 2. Issues

- 2.1. Whether the provisions of the Limitation Act are applicable to arbitration proceedings initiated under Section 18(3) of MSMED Act?
- 2.2. Whether counter claim is maintainable in such arbitration proceedings?

## 3. Contentions of Sellers before the supreme Court

- 3.1. Sellers raised objection to the maintainability of buyer's claims and submitted that the MSMED Act only envisages to protect the interests of sellers, and if counter claims of buyers were allowed it would amount to expanding the scope of the enactment beyond the statutory mandate.
- 3.2. It was further contended that the benefit of the MSMED Act to an "unpaid seller" could not be rendered otiose and the benefit of a statutory body set up to hear the seller's claims cannot be denied merely because of buyer's counterclaims.
- 3.3. Appellant II submitted that if the Council's jurisdiction was ousted, then the requirements that the buyer must comply with, e.g., requirement of deposit of 75% of the decree/award amount by the buyer in case they want to apply to set-aside the same, will be rendered redundant. Further, it was submitted that when the conciliation is failed, for further proceedings, provisions of the Arbitration and Conciliation Act, 1996 are made applicable as if there is an agreement between the parties under sub-section (1) of Section 7 of the 1996 Act, as such there is no reason for not allowing counter claim by the buyer. A specific reference was made to Section 23(2A) of the 1996 Act.

## 4. Judgment of the Hon'ble Supreme Court

### A. Background of the MSMED Act

- 4.1 The Hon'ble court stated that MSMED Act repealed the IDPASC Act in 2006 and was enacted to aid and facilitate the development and competitiveness of micro, small and medium enterprises ("MSME's"). The MSMED Act was a comprehensive Central enactment that was aimed at filling the gaps identified in the IDPASC Act.
- 4.2 The Supreme Court further noted that from the Statement of Objects and Reasons of both legislations, it became clear that the IDPASC Act was confined only to delay in payments owed to small-scale/ancillary undertakings; however, the MSMED Act covered all kinds of MSME's, dealt with the liability of a buyer and provided a mechanism in case of default under Chapter V of the Act (covering Sections 5 to 19).

### B. Applicability of the Limitation Act, 1963 to Arbitrations initiated under the MSMED Act

- 4.3 The Supreme Court noted that in case a dispute arose under Section 17 of the MSMED Act, a reference must be made to the Council. The Council was then to refer the parties to conciliation, and if conciliation proceedings failed, the Council was to refer the dispute to arbitration (either administered by itself or by any institution or centre deemed fit by the Council) under Section 18 of the MSMED Act. In these proceedings, the 1996 Act would apply.
- 4.4 The Supreme Court further observed that High Court correctly placed reliance on the judgment in the case of *Andhra Pradesh Power Coordination Committee*<sup>1</sup> ("AP Power") which dealt with the issue of the applicability of the Limitation Act to arbitrations under Section 18 of the MSMED Act and answered the same in the affirmative. The Supreme

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<sup>1</sup> *Andhra Pradesh Power Coordination Committee & Ors. v. Lanco Kondapalli Power Ltd. & Ors.*, (2016) 3 SCC 468.



Court further held that a perusal of Section 43 of the Limitation Act reveals that it applies to arbitrations, and that the provisions of the 1996 Act apply in the same manner to arbitrations initiated under the MSMED Act as if there exists an agreement between the parties under Section 7(1) of the 1996 Act.

- 4.5 In light of the above, the Supreme Court unequivocally held that the provisions of the Limitation Act apply to arbitrations initiated under Section 18 of the MSMED Act.

**C. Maintainability of counter-claim in arbitration proceedings initiated under the MSMED Act**

- 4.6 The Court held that Section 23 of the 1996 Act will apply which deals with statement of claim and defence. Further, Section 23(2A) will also be applicable which gave a right to the Respondent to submit a counter-claim or plead set-off regarding the claims, as long as the pleas and claims were within the scope of the concerned arbitration agreement.
- 4.7 The Supreme Court observed that Section 23(2A) was inserted via an amendment in 2016. The amendment was introduced to provide for speedy disposal of arbitrations. Thus, the aforementioned section was introduced to give the Respondent an opportunity to either submit a counter-claim or plead set-off. Further, since such a provision has been expressly inserted via amendment, the Court observed that there was no reason for curtailing the rights provided to the Respondent.
- 4.8 The Supreme Court further observed that if it were to disallow buyers from filing counterclaims in proceedings arising out of seller's claims, then it may lead to multiplicity of proceedings and conflicting opinions before various fora. It was also observed that MSMED Act is a special beneficial legislation whereas the 1996 Act is a general law and the statutory arbitration prescribed under the MSMED Act prevails over 1996 Act.
- 4.9 The Supreme Court further observed that at first, the MSMED Act prescribes compulsory conciliation at the first instance. Secondly, should those proceedings fail, the Council or a centre/institution designated by it is to administer arbitration. Thirdly, if the award is passed in favour of the seller, and if it is challenged, 75% of the award amount is to be deposited.
- 4.10 The Supreme Court also observed that the benefits of the MSMED Act's dispute resolution mechanism cannot be denied merely on the ground that counterclaim filed by a buyer is not maintainable. The current situation gives the buyer the option to avoid the Council's jurisdiction (and the MSMED's arbitration mechanism) by raising a counterclaim and dragging the seller to a new arbitral tribunal.
- 4.11 In light of the considerations above, the Supreme Court held that a buyer can make its counter-claim and/or plead set-off in the arbitral proceedings under the MSMED Act itself so as to not defeat the purpose of the MSMED Act, to reduce multiplicity of proceedings and the chance of contrary findings by different fora.
- 4.12 The Supreme Court also placed reliance on the judgment in the case of *Edukanti Kistamma (Dead) through LRs*<sup>2</sup> to hold that a beneficial special statute prevails over a general one. Thus, the Supreme Court held that the MSMED Act shall prevail over the 1996. In light of this, even if an agreement to arbitrate exists between the buyer and the seller, it is to be ignored in favour of statutory arbitration proceedings under the MSMED Act.

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<sup>2</sup> *Edukanti Kistamma (Dead) through LRs. v. S. Venkatarreddy (Dead) through LRs. & Ors.* (2010) 1 SCC 756.

- 4.13 Although the Supreme Court held that counterclaim and set-off are maintainable before statutory authorities under the MSMED Act, it did not extend the benefit of this to Appellant II because on the date of supply of goods and services, Appellant II was not registered, as mandated under Section 8 of the MSMED Act.

## **5. PSL Opinion/Analysis**

- 5.1 This judgment puts to rest significant issues that had created a conundrum regarding the interplay of the MSMED Act and the 1996 Act. *Firstly*, frivolous and time barred claims will be ousted, which goes a long way in reposing faith in enforcement of contracts, ease of doing business in India and curbs the misuse of statutory arbitration process. SMEs constitute a major chunk of economic activity, and many businesses will finally be to write off stale claims from their books. *Secondly*, by affirming the mandatory nature of the dispute resolution mechanism under the MSMED Act, it will prevent buyers from circumventing the jurisdiction of statutory forums. *Lastly*, by allowing the buyer to make a counter claim/plead set-off in the statutorily referred arbitration itself, the Supreme Court has met the objectives of both, the MSMED Act and the 1996 Act, as this avoids multiplicity of proceedings, protects the seller's rights, and ensures speedy resolution of disputes. However, the judgment will adversely affect rights of unregistered entities as it lays down mandatory registration to avail benefits under the MSMED.