

- v. The award was challenged by KSRTC by way of petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**). As the petition came to be dismissed, KSTRC appealed under Section 37 of the Arbitration Act before the Kerala HC.
- vi. In the appeal under Section 37, the Kerala HC held that the Limitation Act was applicable to arbitration proceedings conducted under the MSMED Act. The court also held that counterclaims and set offs were maintainable in such arbitration proceedings. Aggrieved by these findings, Silpi filed a Special Leave Petition (**SLP**) before the SC.

3. **M/s Khyaati Engineering v. Prodigy Hydro Power Pvt. Ltd.**

- i. M/s Khyaati Engineering (**Khyaati**) and Prodigy Hydro Power Pvt. Ltd. (**Prodigy**) had entered into a contract for supply and installation of hydro-mechanical equipments. Disputes arose when Prodigy allegedly failed to make payments. While Khyaati claimed that it was entitled to be paid, Prodigy presented certain counterclaims.
 - ii. Khyaati filed its claim before the Council. However, Prodigy filed a petition before the Madras HC under Section 11(6) of the Arbitration Act, praying for the appointment of a second arbitrator to decide upon the disputes that had arisen. Prodigy pleaded that the Council had been constituted primarily to deal with the disputes that were raised by the supplier and did not envisage filing of counterclaim by the non-MSME party to the contract. Thus, according to Prodigy it could seek appointment of an arbitrator under Section 11(6) of the Arbitration Act. The Madras HC allowed the petition filed by Prodigy. Aggrieved by the same, Khyaati filed a SLP before the SC.
4. The SC tagged the SLPs together and framed two common issues (i) Whether the provisions of Limitation Act are applicable to arbitration proceedings initiated under Section 18(3) MSMED Act? and (ii) Whether counterclaim is maintainable in such arbitration proceedings?

FINDINGS OF THE SUPREME COURT

5. The SC considered the provisions of the MSMED Act, namely Section 18(2) and 18(3). Under the former, conciliation is to be conducted in accordance with Part III of the Arbitration Act. Under the latter, if the conciliation fails, parties are to be referred to arbitration under the provisions of the Arbitration Act as if the reference was made pursuant to an arbitration agreement referred under Section 7(1) of the Arbitration Act.
6. The SC held that since Section 43 of the Arbitration Act, makes the provisions of the Limitation Act applicable to arbitration proceedings under the Arbitration Act, by virtue of the applicability of the Arbitration Act to the MSMED Act, the Limitation Act was also *ipso facto* applicable to the arbitration proceedings under Section 18(3) of the MSMED Act.
7. The SC also held that a counterclaim was maintainable in arbitration proceedings under Section 18(3) of the MSMED Act. While doing so, two primary reasons were provided by SC:
 - i. Pursuant to Section 18(3) of MSMED Act, the Arbitration Act is applicable to arbitration proceedings under the MSMED Act. Since Section 23(2A) of the Arbitration Act provides for filing counterclaim and set-off, the SC held that this would also apply to arbitration proceedings under the MSMED Act.
 - ii. SC further observed that if the buyer is not allowed to make a counter claim in the proceedings arising out of claims made by the MSME seller, it may lead to parallel proceedings and conflicting findings in various fora. Thus, if the buyer is permitted to maintain counterclaims in a different forum, he may well avoid the jurisdiction of the Council through a fallacious plea, thereby depriving the MSME seller of the benefits of the MSMED Act.
8. Although this does not seem to have been an issue referred to the SC, the SC observed that for an enterprise to seek the benefit of provisions of MSMED Act, the enterprise should have registered under the provisions of the MSMED Act as on the date of entering into the contract. The court even considered a scenario where supplies had partly been made prior to obtaining the registration and held that the seller could not claim the benefits of the MSMED Act for such supplies. The SC went so far as to say that by merely filing the memorandum under Section 8(1) of the MSMED

Act, the seller does not acquire the legal status of an MSME retrospectively. Thus, the SC stated that benefits of registration are only prospective.

ANALYSIS

9. The SC has settled the law on applicability of the Limitation Act to arbitration proceedings under the MSMED Act without much fuss and rightly so. More importantly, in permitting counterclaims to be maintainable in arbitration proceedings under the MSMED Act, the SC has clarified the law of the land and ensured that recalcitrant buyers do not deprive a seller of the benefits of the MSMED Act. It also enables buyers to maintain genuine counterclaims in the arbitration proceedings under the aegis of the Council.
10. On the other hand, the SC's observations on registration only prospectively conferring benefits under the MSMED Act are bound to stoke new debates. Significantly, there are far more unregistered MSMEs in India as compared to registered MSMEs and thus the impact is sure to be far and wide.

We hope you have found this information useful. For any queries/clarifications please write to us at insights@elp-in.com or write to our authors:

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