
LIMITATION APPLIES TO RECOVERY PROCEEDINGS UNDER MSMED ACT

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In a recently delivered judgment of *M/s Silpi Industries etc. vs. Kerala State Road Transport Corporation & Anr*, the Hon'ble Apex court of our country delved into the issue as to whether the provisions of Indian Limitation Act, 1963 is applicable to arbitration proceedings initiated under Section 18(3) of Micro, Small and Medium Enterprises Development Act, 2006 ?

The Micro, Small and Medium Enterprises Development Act, 2006 is a beneficial legislation and was enacted to facilitate the promotion and development and enhance the competitiveness of micro, small and medium enterprises being the dynamic and vibrant sector of the country's economy and a need was felt to provide appropriate legal framework for the sector to facilitate its growth and development. Under the new Act, there is a provision for establishment of Board by the Central Government, namely, National Board for Micro, Small and Medium Enterprises. The enterprises were classified under Chapter III of the 2006 Act into micro, small and medium enterprises. Liability of buyer and the mechanism in the event of default is covered by various provisions under Chapter V of the Act. As per Section 15 of the said Act, where supplier supplies any goods or renders any services to any buyer, the buyer shall make payment on or before the agreed date between the parties in writing or where there is no agreement, before the appointed day. Section 16 deals with date from which and rate of interest payable in the event of not making the payment. The recovery mechanism for the amount due is covered by Sections 17 and 18 of the said Act, which further mandates the procedure of conciliation and subsequently arbitration.

The Limitation Act prescribes a time period for bringing claims and bars legal actions after a certain set time period. The Act embodies within the latin maxim '*vigilantibus et non dormientibus, jura subveniunt*' which roughly translates to "the law assists those that are vigilant with their rights, and not those that sleep thereupon". The Act was enacted with the main objective to give effect to the maxim '*interest republicae ut sit finis litium*' which means that the interest of the State requires that there should be a limit to a litigation and also to prevent any kind of disturbance or deprivation of what may have been acquired in equity and justice or

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by way long enjoyment or what may have been lost by a party's own inaction, negligence or laches. The Limitation Act intended to accept that “*controversies are restricted to a fixed period of time, lest they should become immortal while men are mortal.*”

The applicability of Limitation Act, 1963 to the arbitrations is covered by Section 43 (1) of the 1996 Act, which stipulates that the Limitation Act, 1963 “*shall be applicable to arbitrations as it applies to proceeding of the court*”. This entails that the Limitation Act will be applicable to arbitration proceedings in a similar manner as applicable to court proceedings. Thus, the 1996 Act embraced the objective of the Limitation Act by adopting the time restricted approach towards the controversies involved between the parties. This also resonates with the objective of the Arbitration Act, which provides for a non-technical yet a speedier dispute resolution mechanism, by putting an end to the disputes between the parties without going through the strenuous rigors of litigation in a time bound manner.

The Hon'ble Supreme in another matter i.e. ***Andhra Pradesh Power Coordination Committee & Ors. v. Lanco Kondapalli Power Ltd. & Ors.*** [(2016) 3 SCC 468], had the occasion to clarify the position w.r.t. the applicability of the provisions of the Limitation Act, 1963 in the arbitration proceedings initiated under the MSMED Act & it had unequivocally held that the Limitation Act, 1963 is applicable to the arbitrations covered by Section 18(3) of the 2006 Act.

Therefore, the said issue is no more *res integra*. Section 18 of the MSMED Act, encapsulates the provision for settlement in case of dispute between the parties and only when the settlement with regard to a dispute between the parties is not arrived at under Section 18 of the 2006 Act, the Micro and Small Enterprises Facilitation Council takes up the dispute for arbitration under Section 18(3) of the 2006 Act which, for a clearer understanding, states 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 (26 of 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 that Act....*”

A perusal of the express provisions of Section 43 of the Arbitration Act and Section 18 (3) of the MSMED Act, offers a glaring clarity towards the issue at hand. In fact

the Act itself gives a quietus to the issue that was involved in the present case and the Hon'ble court relying upon its earlier precedent on the same question and the express mandate of the MSMED Act, held that in view of the express provision of applying the provisions of the Limitation Act, 1963 to arbitrations as per Section 43 of the Arbitration and Conciliation Act, 1996, the provisions of Limitation Act, will apply to the arbitrations covered by Section 18(3) of the 2006 MSMED Act.

