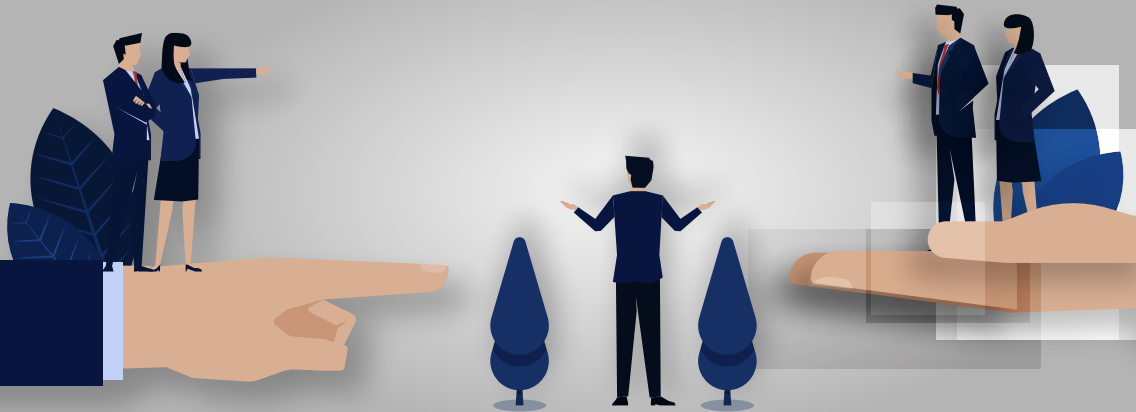


July 2021



Supreme Court clarifies applicability of Limitation Act and maintainability of counter claim in arbitration proceedings initiated under Section 18(3) of MSMED Act¹

Brief Facts

The Appellants, M/s Silpi Industries (“**Silpi**”) and M/s Khyaati Engineering (“**Khyaati**”), filed two separate appeals before the Supreme Court (“**Court**”) against the judgments/orders passed by the High Court of Kerala and the High Court at Madras respectively.

The brief facts in Silpi’s case are that Silpi filed the present appeal against the judgment passed by the High Court of Kerala (“**Impugned Judgment**”) under Section 37 of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”), which held that: (i) provisions of the Limitation Act, 1963 (“**Limitation Act**”) are applicable to arbitration proceedings initiated under the Micro, Small and Medium Enterprises Development Act, 2006 (“**MSMED Act**”); and (ii) in view of Section 23(2A) of the Arbitration Act, a counter claim is maintainable in arbitration proceedings commenced under the MSMED Act.

The brief facts in Khyaati’s case are that Khyaati filed a claim petition before the Micro and Small Enterprises Facilitation Council (“**Council**”) constituted under the MSMED Act for resolution of contractual disputes with Prodigy Hydro Power Pvt. Ltd. (“**Prodigy**”). Pursuant to the Council issuing a notice, Prodigy filed an application under Section 11(6) of the Arbitration Act before the High Court at Madras for appointment of a second arbitrator. Khyaati opposed this application on the ground that it had already approached the Council for resolution of the disputes and that Prodigy can file its counter claim in these proceedings. Prodigy contended that the Council had been constituted to only deal with disputes raised by suppliers and that the Council cannot hear a counter claim filed by a buyer. The High Court at Madras allowed Prodigy’s application and appointed the second arbitrator on the ground that the MSMED Act only deals with the claims of the seller and given that the buyer cannot

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make a counter claim, proceedings before the Council cannot be proceeded with (“**Impugned Order**”).

Issues

Issue (i): Whether the provisions of the Limitation Act are applicable to arbitration proceedings initiated under Section 18(3) of the MSMED Act?

Issue (ii): Whether a counter claim is maintainable in such arbitration proceedings?

Judgment

Issue (i): The Court held that provisions of the Limitation Act are applicable to arbitration proceedings initiated under Section 18(3) of the MSMED Act. This is because: (i) Section 18(3) of the MSMED Act makes provisions of the Arbitration Act applicable to arbitration proceedings initiated under the said clause as if there is an agreement between the parties under Section 7(1) of the Arbitration Act; and (ii) it is apparent from a reading of Section 43 of the Arbitration Act that the Limitation Act applies to arbitrations, as it applies to proceedings in court. The Court concurred with the view taken by the High Court of Kerala, which rightly relied on **Andhra Pradesh Power Coordination Committee & Ors. v. Lanco Kondapalli Power Ltd. & Ors.**² to hold that the Limitation Act is applicable to arbitration proceedings initiated under Section 18(3) of the MSMED Act.

Issue (ii): The Court held that a counter claim is maintainable in arbitration proceedings initiated under the MSMED Act as: (i) Section 18(3) of the MSMED Act clearly states that provisions of the Arbitration Act are made applicable to arbitration proceedings initiated under the MSMED Act; and (ii) Section 23 of the Arbitration Act expressly allows for filing of a counter claim. In holding the aforesaid, the Court *inter alia* opined that if a counter claim filed by the buyer is not allowed, then it may result in conflicting findings by various forums inasmuch as the seller may approach the Council for resolution of disputes under the MSMED Act whereas the buyer may approach the civil court or any other forum with a claim on the same issue. Additionally, the Court held that even if there is an arbitration agreement between the parties, a seller covered under the MSMED Act can certainly approach the Council for resolution of disputes and such arbitration agreement is to be ignored in light of the statutory obligations and mechanism provided under the MSMED Act.

Analysis

The Court’s decision has brought clarity on the application of provisions of the Limitation Act to arbitration proceedings initiated under the MSMED Act, thereby providing certainty to parties to ascertain if the claims instituted by them are within the time limits prescribed under the Limitation Act.

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As regards the issue of maintainability of a counter claim in arbitration proceedings initiated pursuant to the provisions of the MSMED Act, the decision has brought much needed clarity by holding that a counter claim is maintainable, given the divergent views taken by the High Court at Madras and the High Court of Kerala in the aforesaid appeals. Additionally, the decision will ensure that parties do not institute any parallel proceedings in relation to the same claim, which may result in conflicting findings by various forums.

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1 Authored by Anirudh Das, Partner and Satya Jha, Associate; *M/s Silpi Industries v. Kerala State Road Transport Corporation*, Civil Appeal Nos. 1570-1578 of 2021 and *M/s Khyaati Engineering v. Prodigy Hydro Power Pvt. Ltd.*, Civil Appeal Nos. 1620-1622 of 2021, Supreme Court of India, 2021 SCC OnLine SC 439, judgment dated 29 June 2021.

Coram: R. Subhash Reddy and Ashok Bhushan, JJ.

2 (2016) 3 SCC 468.

PRACTICE AREA EXPERTS

Pallavi Shroff

Managing Partner and
National Practice Head Dispute Resolution
+91 98100 99911
E: pallavi.shroff@AMSShardul.com

Rishab Gupta

Partner
+91 98217 80313
E: rishab.gupta@AMSShardul.com

Binsy Susan

Partner
+91 96500 80397
E: binsy.susan@AMSShardul.com

Gauhar Mirza

Partner
+91 70423 98844
E: gauhar.mirza@AMSShardul.com

Tejas Karia

Partner and Head, Arbitration Practice sub-group
+91 98107 98570
E: tejas.karia@AMSShardul.com

Siddhartha Datta

Partner
+91 90070 68488
E: siddhartha.datta@AMSShardul.com

Aashish Gupta

Partner
+91 98189 19857
E: aashish.gupta@AMSShardul.com

Shruti Sabharwal

Partner
+91 98107 46183
E: shruti.sabharwal@AMSShardul.com

Anirudh Das

Partner
+91 98100 98329
E: anirudh.das@AMSShardul.com

Ila Kapoor

Partner
+91 98717 92737
E: ila.kapoor@AMSShardul.com

Smarika Singh

Partner
+91 97170 98075
E: smarika.singh@AMSShardul.com

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