

2022 LiveLaw (SC) 769

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
INDIRA BANERJEE; J., V. RAMASUBRAMANIAN; J.
September 13, 2022

BAJAJ AUTO LIMITED versus AJANTA PRESS AND MECHANICAL WORKS & ORS.

Micro, Small and Medium Enterprises Development Act, 2006; Section 18, 19 - MSMED Act does not empower the Facilitation Council to review its own decisions - i) that to begin with, the Facilitation Council should conduct conciliation; (ii) that upon failure of conciliation, the dispute is to be arbitrated either by the Facilitation council itself or by an institution to which it is referred; and (iii) that the decision arrived at thereto, constitutes an award. (Para 14-16)

Micro, Small and Medium Enterprises Development Act, 2006; Section 8(1) - MSMED Act is not applicable to transactions which took place even before the Act was enacted and that by taking recourse to Section 8(1) of the Act and filing a memorandum, a person cannot assume the legal status conferred under the Act to claim retrospectively - MSMED Act was not intended to provide a gateway for hopelessly time barred claims. (Para 12,17)

CIVIL APPEAL NO.....OF 2022 (@ Special Leave Petition (Civil) No.1743 of 2020)
WITH CONTEMPT PETITION (CIVIL) NO.236 of 2021

(Arising out of impugned final judgment and order dated 05-11-2019 in WP NO. 3508/2013 passed by the Single Judge of the High Court of Judicature at Bombay, Bench at Aurangabad.)

For Appellant(s) Mr. E. C. Agrawala, AOR

For Respondent(s) Mr. Ashok Arora, Adv. Mr. Aljo K. Joseph, AOR Ms. Shelva K, Adv. Mr. Abhinav P. Dhanodkar, Adv. Dr. Sushil Balwada, AOR Mr. Kaushal Yadav, Adv. Ms. Yashoda Katiyar, Adv. Mr. Nandlal Kumar Mishra, Adv. Mr. Sachin Patil, AOR Mr. Siddharath Dharmadhikari, Adv. Mr. Aaditya A. Pande, AOR Mr. Bharat Bagla, Adv.

ORDER

V. Ramasubramanian, J.

Leave granted.

2. Aggrieved by a common order passed by the High Court of Judicature at Bombay, Aurangabad Bench, in two writ petitions, one filed by the appellant herein and another filed by the 1st respondent herein, setting aside an order passed by the Facilitation Council under The Micro, Small and Medium Enterprises Development Act, 2006 (*hereinafter referred to as the 'MSMED Act'*) and remanding the matter back to the Facilitation Council for a fresh inquiry, the buyer has come up with the above appeal.

3. We have heard Mr. Jaideep Gupta, learned senior counsel appearing for the appellant, Mr. Ashok Arora, learned counsel appearing for the 1st respondent and Mr. Suresh Dhole, learned counsel appearing for the State.

4. Admittedly, the appellant placed two Purchase Orders on the 1st respondent for the supply of washers, respectively on 16.01.1989 and 21.01.1989. Under the Purchase Orders, the appellant was supposed to supply raw material and the 1st respondent was entitled to retain scrap.

5. However, the appellant raised a debit note for Rs.35,000/- on the 1st respondent, towards the differential value of brass scrap generated during the period of supply.
6. It appears that the 1st respondent raised serious objections to the debit note in the year 1998 and after protracted correspondence the appellant made payment of the sum of Rs.35,000/- which represented the value of the debit note, by way of a cheque dated 15.12.2003. According to the appellant, the payment was by way of a settlement. Therefore, the minutes of the settlement were also recorded on 30.04.2004, in which the representative of the appellant and proprietor of the 1st respondent signed.
7. After two years of the aforesaid settlement, the Parliament enacted the MSMED Act, 2006, which came into force on 02.10.2006, vide Notification S.O.1154E dated 18.07.2006.
8. Taking advantage of the new Enactment, respondent no.1 filed a claim before the Facilitation Council, constituted under the said Act, in the year 2009. The Facilitation Council issued notice to the appellant and convened a meeting on 17.02.2009. After considering the rival submissions and the papers presented before them, the Facilitation Council recorded in the minutes of the meeting dated 17.02.2009 that the claim of respondent no.1 was liable to be rejected. The operative portion of the minutes of the meeting of the Facilitation Council dated 17.02.2009 reads as follows:-
“...Having heard to both parties, Chairman informed that decision of council will be conveyed upon observation/scrutiny of papers.
Thereafter, upon observation of the papers and in opinion of all the members, application of Ajant press is rejected as Mr. Mankar has already accepted the Cheque of Rs 35000/- in accordance with the minutes of meeting dated 30.04.2004, this be informed to both parties accordingly.”
9. Challenging the said decision of the Facilitation Council dated 17.02.2009, respondent no.1 filed a writ petition in W.P. No.3508 of 2013 on the file of the Aurangabad Bench of the High Court of Judicature at Bombay. It must be noted here that the writ petition was filed after four years of the decision of the Facilitation Council.
10. Before filing the writ petition, respondent no.1 also moved the Facilitation Council with an application for reconsideration of their decision dated 17.02.2009. Since respondent no.1 kept on hammering the Facilitation Council through his repeated correspondence to various officers of the Government, including the Chief Secretary, the Facilitation Council reviewed its earlier decision and passed an award dated 27.01.2016, directing the appellant to pay a sum of Rs.7,21,512/-, for the period up to 31.12.2015. Future interest at 22% p.a. was also awarded if payments were further delayed.
11. Therefore, aggrieved by the said award dated 27.01.2016, the appellant filed a writ petition in W.P.No.6928 of 2016. This writ petition was taken up along with W.P. 3508 of 2013 filed by respondent no.1 and by a common order dated 05.11.2019, impugned in this appeal, the High Court set aside the original decision dated 17.02.2009 as well as the award dated 27.01.2016 and remanded the matter back to the Facilitation Council. It is against the said order of remand that the appellant is before this Court.
12. At the outset, we are surprised as to how the Facilitation Council could have entertained, in the year 2009, a claim for payment that arose way back in 1989-90, long prior to the enactment of the MSMED Act itself. In **Silipi Industries vs. Kerala State**

Road Transport Corporation and Another¹ this Court made it clear that the MSMED Act is not applicable to transactions which took place even before the Act was enacted and that by taking recourse to Section 8(1) of the Act and filing a memorandum, a person cannot assume the legal status conferred under the Act to claim retrospectively. Therefore, the Facilitation Council was wrong in entertaining the claim, even in the first instance, in the year 2009.

13. But fortunately, the entertainment of the claim by the Facilitation Council in the first instance did not result in a serious consequence. The Facilitation Council rejected the claim by its decision dated 17.02.2009, on the ground that a full and final settlement had already been recorded between the parties on 30.04.2004. The said decision was challenged by respondent no.1 herein by way of a writ petition in W.P.No.3508 of 2013, after a period of four years. The writ petition itself could not have been entertained by the High Court for two reasons namely, **(i)** respondent no.1 was guilty of delay and laches; and **(ii)** also the remedy of a writ petition was not the appropriate remedy.

14. During the period between 2009-2013, even when the writ petition was pending, respondent no.1 kept on putting pressure on the Facilitation Council through its correspondence with several Government departments. Eventually the Facilitation Council seems to have buckled under pressure and took up the dispute for reconsideration. The MSMED Act does not empower the Facilitation Council to review its own decisions. But unfortunately, the Facilitation Council reopened the matter and passed a fresh award on 27.01.2016, without any authority. Once the Facilitation Council had rejected the claim of respondent no.1 on 17.02.2009, the same could not have been reopened by the Facilitation Council, without any express power to do so. Every decision of the Facilitation Council is an award. Subsection (3) of Section 18 of MSMED Act reads as follows:-

“(3) 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 to it 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 subsection (1) of section 7 of that Act.”

15. A combined reading of Sections 18 and 19 would show, **(i)** that to begin with, the Facilitation Council should conduct conciliation; **(ii)** that upon failure of conciliation, the dispute is to be arbitrated either by the Facilitation council itself or by an institution to which it is referred; and **(iii)** that the decision arrived at thereto, constitutes an award.

16. In the case on hand, the claim of respondent no.1 was rejected by the Facilitation Council by the decision dated 17.02.2009. Since the claim stood rejected, it was like an award and respondent no.1 ought to have initiated other proceedings to challenge the award. Instead, he chose to put repeated pressure on the Facilitation Council to review its earlier decision. Unmindful of the fact that they have no such power, the Facilitation Council reopened its earlier decision and passed the award. The High Court completely overlooked the inherent lack of jurisdiction on the part of the Facilitation Council to pass the award dated 27.01.2016.

¹ SCC online SC 439

17. What is worse is the fact that the illegality committed by the Facilitation Council in the year 2016 has now received a stamp of approval, by the High Court remanding the matter back to the Facilitation Council. The High Court has failed to examine the powers conferred upon the Facilitation Council. The High Court has also omitted to take note of the fact that MSMED Act was not intended to provide a gateway for hopelessly time barred claims.

18. In view of the above, the appeal is allowed and the impugned order of the High Court is set aside. The W.P.No.3508 of 2019 filed by respondent no.1 herein stand dismissed. Consequently, the C.P No. 236 of 2021 filed by R-2 is also dismissed. Writ Petition No.6928 of 2016 filed by the appellant herein before the High Court of Judicature at Bombay is allowed and the award of the Facilitation Council dated 27.01.2016 is set aside. There will be no order as to costs.

© All Rights Reserved @LiveLaw Media Pvt. Ltd.

*Disclaimer: Always check with the original copy of judgment from the Court website. Access it [here](#)