

Limitation Act Does Not Apply To Conciliation Proceedings Under MSMED Act: Supreme Court of India

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Introduction

The Supreme Court, in a recent decision in *Sonali Power Equipments Pvt. Ltd. v. Chairman, Maharashtra State Electricity Board, Mumbai*¹, has held that the Limitation Act, 1963 ("**Limitation Act**") does not apply to conciliation proceedings between parties under the Micro, Small and Medium Enterprises Development Act, 2006 ("**MSMED Act**"). In this article, we examine the facts of the matter and the findings rendered by the Supreme Court.

Brief Facts

The appellants are small-scale industries registered with the District Industries Centre, Nagpur. Between 1993 and 2004, the appellants supplied transformers to the first Respondent, the Maharashtra State Electricity Board, under various purchase orders. However, due to delayed payments, the appellants filed references between 2005 and 2006 before the Industry Facilitation Council under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993. After the enactment of the MSMED Act, the Micro and Small Enterprises Facilitation Council continued hearing these cases.

On 28.01.2010, the Facilitation Council passed an award in favour of the appellants, awarding interest on delayed payments. Respondents challenged this award under Section 34 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") and paid the required amount under Section 19 of the MSMED Act. On 26.10.2017, the Commercial Court set aside the award, ruling the claims to be time-barred. The appellants then filed appeals under Section 37 of the Arbitration Act before the High Court.

A Division Bench of the High Court referred the matter to a larger bench, questioning the correctness of earlier rulings on the applicability of the Limitation Act, 1963, to MSMED proceedings. A Full Bench decided the matter on 20.10.2023 ("**Impugned Order**"). It held that while the Limitation Act applies to arbitration under Section 18(3) of the MSMED Act, it does not apply to conciliation under Sections 18(1) and 18(2). However, even if the limitation law is not directly applicable to conciliation, time-barred (dead or stale) claims cannot be entertained.

¹ Civil Appeal Nos. 9524-9532 of 2025 arising out of SLP (C) Nos. 6912-6920 of 2024.

Issues

The moot propositions before the Supreme Court were as follows:

- (i) Whether the Limitation Act applies to conciliation proceedings under Section 18 of the MSMED Act, and even if not, whether time-barred debts can be referred to conciliation?
- (ii) Whether the Limitation Act applies to arbitration proceedings under Section 18 of the MSMED Act, and whether time-barred debts can be referred to arbitration?

The case of the Appellants

The appellants submitted that Section 43 of the Arbitration Act, which provides for the applicability of the Limitation Act to arbitral proceedings, is excluded by virtue of Section 2(4) of the Arbitration Act in the context of statutory arbitrations. Since the MSMED Act does not expressly provide for the applicability of the Limitation Act, the appellants contended that same cannot be read into the proceedings under Section 18 of the MSMED Act. The appellants also argued that the Limitation Act applies to Courts and not to quasi-judicial bodies.

It was next submitted that Section 22 of the MSMED Act requires buyers to disclose outstanding dues in their financial statements. Such disclosure, the appellants argued, amounted to an acknowledgement of liability under Section 18 of the Limitation Act, thereby extending the limitation period. A failure to comply attracts penal consequences under Section 27 of the MSMED Act.

The appellants further submitted that the MSMED Act was enacted to protect vulnerable suppliers who may delay initiating proceedings out of fear of losing business. It was further submitted that excluding time-barred claims from conciliation would defeat the purpose of Section 25(3) of the Indian Contract Act, 1872, which allows parties to promise payment of time-barred debts.

The case of the Respondents

The respondents argued that Section 18(3) of the MSMED Act incorporates the Arbitration Act into the statutory framework by establishing a legal fiction that treats MSMED arbitrations as if they are conducted under an agreement pursuant to Section 7(1) of the Arbitration Act. Therefore, all provisions of the Arbitration Act, including Section 43, would apply to MSMED arbitrations.

The respondents further submitted that Section 2(4) of the Arbitration Act only excludes applicability of Section 43 of the Arbitration Act in cases where a special statute prescribes its own limitation regime. Since the MSMED Act does not do so, the general provisions of the Limitation Act continue to apply through the Arbitration Act.

It was submitted that the scheme and intent of the MSMED Act do not indicate any exclusion of limitation law. It was also contended that Section 22 of the MSMED Act is a disclosure requirement to ensure transparency in financial reporting and not intended to extend or revive limitation periods under law.

Findings of the Supreme Court

At the outset, the Supreme Court referred to Section 29(2) of the Limitation Act, which states that the provisions of Section 3 and Sections 4 to 24 of the Limitation Act would be applicable to special or local laws when they prescribe a different limitation period than the schedule. Section 3 will apply as if such period were prescribed in the schedule. Sections 4 to 24 of the Limitation Act will, however, apply only if they are not expressly or impliedly excluded by the special law.

Section 2(4) of the Arbitration Act provides for the application of Part I of the Arbitration Act to arbitrations under other enactments, unless inconsistent with those laws. Section 43(1) of the Arbitration Act provides that the Limitation Act applies to arbitrations just as it applies to court proceedings.

Whether time-barred claims can be referred to conciliation under Section 18(2) of the MSMED Act?

The Supreme Court noted that since conciliation under the MSMED Act is an out-of-court, non-adjudicatory dispute resolution process, it cannot be governed by the Limitation Act. The Apex Court observed that there is no legal provision that extends the Limitation Act's scope to cover conciliation processes. Specifically, neither Section 29(2) nor any other section of the Limitation Act broadens its application to these proceedings.

The Supreme Court clarified that just because conciliation is mandatory, it doesn't mean the parties are obliged to settle the dispute. It emphasised that conciliation is inherently non-adjudicatory, relying on negotiation, compromise, and settlement by the parties. Consequently, the defence of limitation cannot be taken in conciliation proceedings.

The Supreme Court noted that the High Court was not right in applying *State of Kerala v. V.R. Kalliyankutty*² to conciliation proceedings under Section 18(2) of the MSMED Act as conciliation is not adjudicatory in nature.

The Supreme Court conclusively held that neither the Limitation Act applies to conciliation proceedings under Section 18(2) nor are time-barred claims excluded from such conciliation. The supplier's right to recover the principal amount and interest thereon subsists even after the expiry of the limitation period, and he may recover the same through a settlement agreement arrived at through conciliation by the Facilitation Council under Section 18(2) of the MSMED Act.

2 (1999) 3 SCC 657.

Whether time-barred claims can be referred to arbitration under Section 18(3) of the MSMED Act?

The Supreme Court observed that arbitration under Section 18(3) does attract the Limitation Act, as Section 43 of the Arbitration Act is applicable. The court held that "*a reading of Section 43 itself makes it clear that the Limitation Act, 1963 shall apply to the arbitrations, as it applies to proceedings in court.*"

The Apex Court opined that Section 18(3) of the MSMED Act will prevail over Section 2(4) of the Arbitration Act. There is a clear legislative intent that the provisions of the MSMED Act will have an overriding effect in case of inconsistency, which is evidenced by the non-obstante clause in Section 18 and the express language in Section 24 of the MSMED Act.

The Supreme Court observed that it is a well-established principle of law that the limitation period only bars the remedy, but does not extinguish the underlying right. It noted that a settlement agreement for a time-barred claim reached between the buyer and supplier through conciliation is essentially a contract recognised and declared valid under Section 25(3) of the Contract Act.

The Court clarified that the judgment in *A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd*³ rightly applies the principle in *V.R. Kalliyankutty* to hold that time-barred claims are not recoverable through judicial/quasi-judicial processes unless provided by statute.

In view of the above, the Supreme Court answered the issues as follows:

"(i) *The Limitation Act does not apply to conciliation proceedings under Section 18(2) of the MSMED Act. A time-barred claim can be referred to conciliation as the expiry of limitation period does not extinguish the right to recover the amount, including through a settlement agreement that can be arrived at through the conciliatory process.*

(ii) *The Limitation Act applies to arbitration proceedings under Section 18(3) of the MSMED Act. The applicability of the provisions of ACA to such arbitrations is determined as per Section 18(3) and other provisions of the MSMED Act, as these are special laws, rather than by Section 2(4) of the ACA, which is under a general law. Further, the extension of the limitation period on the basis of disclosure under Section 22 of the MSMED Act must be examined on a case-to-case basis.*"

The Supreme Court therefore partly allowed the appeal and upheld the High Court's decision on the applicability of the Limitation Act to arbitration proceedings under the MSMED Act.

3 (2016) 3 SCC 468.

Comments

The Apex Court's reasoning stands true to the settled principle that '*limitation bars the remedy and not the right*'. By holding that even time-barred claims may be referred to conciliation, the Supreme Court has opened doors for MSMEs to negotiate and voluntarily settle claims even if they no longer fall within the limitation.

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