

Chief Justice's Court

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 DEFECTIVE No. - 146 of 2024

Appellant :- M/S Standard Niwar Mills

Respondent :- Government of India Ministry of Home Affairs
Procurement Wing Jaisalmer House

Counsel for Appellant :- Sudeep Harkauli

Counsel for Respondent :- A.S.G.I., Vivek Kumar Singh

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

Order on C.M. Delay Condonation Application No.02 of 2024

1. After hearing counsel for the parties on the delay application seeking condonation of delay, for the reasons indicated in the application supported by an affidavit, the same is allowed.
2. The delay in filing the appeal is condoned.

Order on Appeal

1. Heard Sri Sudeep Harkauli, learned counsel for the appellant and Sri Vivek Kumar Singh, learned counsel for respondent.
2. This appeal is directed against order dated 01.02.2024 passed by Commercial Court, Kanpur Nagar, whereby the petition filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') against the award dated 16.07.2015, signed on 09.09.2015, passed by the Micro, Small and Medium Enterprises Facilitation Council (for short 'the Council'), has been dismissed.
3. The appellant had approached the Council by raising claim on 14.05.2012, claiming a sum of Rs.40,17,889/- as principal and Rs.3,25,59,035/- as interest under the Micro, Small and Medium Enterprises Development Act, 2006 (for short 'the Act of 2006'). Before the Council, objections were raised pertaining to the claim being barred by limitation, wherein the respondent indicated that the petition has been

filed after about 14 years from 2001 and the delay in filing the claim cannot be condoned and the same deserves to be dismissed.

4. The Council, by its award dated 16.07.2015 on the issue whether the Reference was barred by the provisions of Limitation Act, 1963, came to the conclusion that admittedly the matter related to payment during the period of year 1998 to the year 2001 and the Reference has been made on 26.12.2012 and apparently, the same was barred by limitation and consequently, dismissed the Reference.

5. Feeling aggrieved, application under Section 34 of the Act was filed before the Commercial Court. Before the Commercial Court, the respondent raised objections pertaining to maintainability of the Reference before the Council and reiterated the objections that the claim was barred by limitation. A rejoinder was filed, *inter alia*, indicating that the Council had the jurisdiction to deal with the matter and that as the respondent had acknowledged the liability of payment of claim from 05.09.2010 onwards upto 17.01.2014 in writing, the claim was within limitation.

6. The Commercial Court, by its impugned order, raised three issues for determination pertaining to the jurisdiction of the Council to hear the matter, whether the claim was barred by limitation and whether the award was liable to be set aside.

7. On the issue of jurisdiction, the Commercial Court came to the conclusion that the agreement was entered into in the year 1998 and the appellant got registered as MSME on 18.12.2010 and at the time when the supply under the contract was over, it was not registered under the Act of 2006 and as such, it could not have taken the benefit of the Act of 2006. On the issue of limitation, it was found that the supply was made in the year 1998, 1999 and the last supply was made on 14.01.2000 and the claim was filed with the Council in the year 2012, based on which it was

found that the claim was barred by limitation and consequently, dismissed the application filed under Section 34 of the Act.

8. Learned counsel for the appellant made submissions that the Commercial Court was not justified in holding that the Council had no jurisdiction to deal with the issues on account of the fact that the supply was made prior to the registration of appellant under the Act of 2006. Further submissions were made that specific plea pertaining to acknowledgement was raised before the court on the aspect of limitation. However, the same has not at all been considered, resulting in rendering an incorrect finding and, therefore, the order impugned deserves to be quashed and set aside.

9. Learned counsel emphasized that the appellant was registered as a small scale industry under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (for short 'the Act of 1993'), which is reflected from the certificate produced in the paper book and in terms of Section 32 of the Act of 2006, the appellant was entitled to take benefit of its registration under the Act of 1993. Further submissions have been made that under the proviso to Section 8 of the Act of 2006, it is at the discretion of the small scale industry to obtain registration and even if the registration was not obtained, still it could apply under the provisions of Section 18 of the MSME Act and, therefore, determination made by the Commercial Court in this regard has no substance.

10. It was reiterated that on account of acknowledgement by the respondent, as indicated, the claim was within limitation and, therefore, the judgement impugned deserves to be set aside.

11. Learned counsel appearing for the respondent contested the submissions made. It was emphasized that the registration under the Act of 2006 was necessary prior to the supply of the goods and once the supply has been prior to the registration, the proceedings before the

Council were not maintainable. It was further submitted that admittedly the last supply was made by bill dated 14.01.2000 and the claim has been raised in the year 2012 before the Council and, therefore, the claim was *ex-facie* barred by limitation and has rightly been rejected by the Council and upheld by the Commercial Court and, therefore, the appeal deserves dismissal.

12. We have considered the submissions made by counsel for the parties and perused the material available on record.

13. A perusal of the award made by the Council would reveal that the aspect pertaining to the jurisdiction of the Council was not raised before the Council and the Council had framed issue pertaining to limitation and came to the conclusion that the same was barred by limitation. A perusal of the material placed on record, including the application, which has been made before the Council, reveals that the bills pertaining to supply of tents started from 13.05.1998 and the last bill is dated 14.01.2000. Neither in the form nor in the application made before the Council, any averment pertaining to the claim being within limitation was made. The respondent, in its objections, raised specific plea pertaining to the claim being barred by limitation, to which apparently no rejoinder was filed. In the petition filed under Section 34 of the Act, when again objection was raised by the respondent pertaining to the claim being barred by limitation, the following response was indicated:-

"2. That the petitioner inter-alia pleaded that the respondent has been acknowledging the liability of payment of the claim of the petitioner right from 05.09.2010 onward upto 17.01.2014 in writing under the letters issued to the petitioner by the respondent, which are Annexures 2 to 2/9. It is significant to mention that the issue of limitation was never raised by respondent and it depends upon the evidence and facts involved in a particular case."

14. A perusal of the above response would reveal that the appellant relied on the aspect that the acknowledgement was made from 05.09.2010 onwards upto 17.01.2014 in writing. Admittedly, once the last supply was

made on 14.01.2000, the cause of action to the appellant arose on that date, even if the supplies made from 13.05.1998 to 14.01.2000 are taken by way of that running/current account.

15. The plea raised pertaining to the acknowledgement admittedly is of the year 2010 onwards i.e. 05.09.2010 upto 17.01.2014.

16. Section 18 of the Limitation Act reads as under:-

"18. Effect of the acknowledgement in writing.- (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.

(2) Where the writing containing the acknowledgement is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.—For the purposes of this section,—

(a) an acknowledgement may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."

(emphasis supplied)

17. A perusal of the above provision would reveal that for taking advantage of acknowledgement for the purpose of extension of limitation, it is *sine qua non* that the acknowledgement must take place within the period of limitation. Admittedly, the limitation in the present case, based on the last bill dated 14.01.2000, would expire in the year 2003 and the acknowledgement, as claimed, is dated 05.09.2010 i.e. after the expiration of the limitation and, therefore, the appellant could not take benefit of the

said purported acknowledgements and consequently, the finding recorded by the Council as well as the Commercial Court regarding the claim being barred by limitation, cannot be faulted.

18. Coming to the aspect pertaining to the jurisdiction of the Council to deal with the matter, as on merits, it has been found that the claim was *ex-facie* barred by limitation, the said question pertaining to the jurisdiction remains academic only and, therefore, we leave the said question open to be decided in an appropriate case.

19. In view of the above discussions, there is no substance in the appeal. The same is, therefore, dismissed.

Order Date :- 30.7.2024

RK/SL

(Vikas Budhwar, J)

(Arun Bhansali, CJ)