



**IN THE COURT OF THE LXXXVIII ADDL. CITY CIVIL &
SESSIONS JUDGE (EXCLUSIVE COMMERCIAL COURT):
BENGALURU CITY. (CCH-89)**

Dated this the 1st day of October, 2026

Present:

**Sri Vijaya Kumar Rai, B.Com., LL.B.,
LXXXVIII Addl.City Civil & Sessions Judge,
Bengaluru**

Com.A.P.No.103/2023

PETITIONER

Department Of State Education
Research And Training,
No.4, 100ft Ring Road,
Banashankari 3rd Stage,
Bengaluru-560 085
Represented by its
Director.
(By Sri.Aditya Vikram Bhat,
Addl.Advocate General)

VS.

RESPONDENTS

1. M/s Puthur Infotech Private Limited,
No.55, 1st Floor, 5th Cross,
Banaswadi Main Road,
Bangalore – 560043.
(By Sri.Adinath Narde and
Smt.Revathy Adinath Narde,
Advocates)

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2. Mr.Justice L.Narayana Swamy,
Former Chief Justice of
High Court of Himachal Pradesh,
Arbitrator, Arbitration & Conciliation
Center,
Khanija Bhavan,
Race Course Road,
Bengaluru-560 001.

Date of Institution of the petition	14.08.2023		
Nature of the suit (suit on pronote, suit for declaration & Possession, Suit for injunction etc.)	Challenging the Arbitral Award dated 26.05.2023 and additional award dated 12.06.2023 passed in Arbitration Case No. 4/2022		
Date of commencement of recording of evidence	-		
Date on which judgment was pronounced	01.10.2026		
Total Duration	Year/s	Month/s	Day/s
	03	01	27

(Vijaya Kumar Rai)
LXXXVIII Addl.City Civil &
Sessions Judge, Bengaluru.

J U D G M E N T

The petitioner has filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the Arbitral Award dated 26.05.2023 and additional award dated 12.06.2023 passed in Arbitration Case No. 4/2022, whereby the learned Sole Arbitrator partly allowed the claim of Respondent No.1 and rejected the counter-claim filed by the petitioner. By the said award, the learned Sole Arbitrator directed the petitioner to pay a sum of ₹7,75,17,356/- along with interest at the rate of 18% per annum and a further sum of ₹1,27,90,319/- along with interest @ 6% p.a., besides ₹5,00,000/- towards legal fee and ₹1,00,000/- as miscellaneous expenses. Subsequently, by an Additional Award dated 12.06.2023, the learned Sole Arbitrator directed the petitioner to issue an NOC and hand over the original bank guarantee documents to the claimant.

2. The petitioner was Respondent No.1 before the Arbitral Tribunal, while Respondent No.1 herein was the claimant. For the sake of convenience, the parties shall be referred to by their respective ranks before the Arbitral Tribunal.

3. The facts, in brief, which led to the filing of the claim petition before the Arbitral Tribunal and the present petition, are as follows:

4. The claimant is a company registered under the provisions of the Companies Act, 1956, and is engaged in the business of Information Technology Infrastructure Support and One Stop Office Solution. The claimant is a small and medium enterprise within the meaning of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the “MSMED Act”) and claims to have registered itself under the MSMED Act in the year 2008.

5. Respondent (petitioner herein) is a Government body popularly known as DSERT, i.e., Department of State Education Research and Training. It is an academic wing of the Department of Public Instructions and aims at providing academic leadership in school education as well as improving the quality of education provided in primary and secondary schools in the State.

6. In the year 2013, Respondent called for a tender dated 14.06.2013 for an Annual Maintenance Contract of UPS systems with batteries, MFD printers and LCD projectors for

1,763 Government High Schools and 2,633 aided High Schools, totalling 4,396 schools in Karnataka, under the Information Communication Technology Phase-III Project. The claimant, being the successful bidder, was allotted the Annual Maintenance Contract and a work order was issued on 02.04.2014.

7. The initial term of the MOU was from 15.04.2014 to 14.04.2015. The total contract value for the initial period of one year was ₹7,19,53,728/-, out of which the respondent paid ₹5,07,21,374/-. The claimant contended that it had provided services in respect of the balance amount of ₹2,12,32,354/-, out of which an amount of ₹83,42,035/- was duly certified. Despite submission of invoices for an amount of ₹83,42,035/-, the respondent failed to make payment. According to the claimant, there were no complaints or issues concerning the services rendered by it and it had satisfactorily performed its obligations under the contract. Despite issuance of several reminders, the respondent failed to make payment. Consequently, the claimant, being an MSME, approached the MSME Council in Case No.69/2018 seeking redressal of its grievance. Upon failure of the conciliation proceedings, the matter was referred to arbitration. The claim

petition was accordingly instituted seeking payment of the principal sum of ₹83,42,035/-, compounded interest thereon amounting to ₹6,91,75,321/-, recovery of the balance amount of ₹1,27,90,319/- with interest, and damages of ₹1,50,00,000/-.

8. The respondent entered appearance and filed its statement of objections as well as counter-claim. The respondent admitted that the claimant was the lowest bidder and that the contract had been entrusted to it. However, it was contended that the claimant had failed to perform its obligations in accordance with the tender document and the memorandum of undertaking. By furnishing details of the alleged violations, the respondent contended that the claimant had derived exorbitant benefits under the contract and was liable to repay the illegal gains, which had caused loss to the State exchequer. The respondent admitted that the total contract value was ₹7,19,53,728/- and that a sum of ₹5,07,21,374/- had been paid. It was contended that the remaining amount had not been paid because the services rendered by the claimant were not satisfactory. The respondent further contended that the claim petition was barred by limitation, since the contract had come to an end in

April 2015, whereas the claimant had instituted the proceedings only in July 2018.

9. In the counter-claim, the respondent contended that during verification of the earlier documents, the final set of invoices amounting to ₹65.78 lakhs was received from the service provider for payment on 20.11.2015 and notices regarding non-performance were issued on 4.10.2016, 14.12.2016 & 07.02.2017. Furnishing details of the defaults allegedly committed by the claimant, the respondent contended that, when opinions were called for from the district authorities regarding the performance of the service provider, 11 districts, namely Tumkur, Ramanagara, Shivamogga, Chitradurga, Kodagu, Mandya, Mangaluru, Haveri, Chamarajanagar, Ballari and Hassan, had submitted non-satisfactory reports. These 11 districts comprised 1,684 schools.

10. It was stated that the said districts had reported dissatisfaction with the services rendered by the service provider and that the field survey reports certified by the school authorities recorded several instances where problems were yet to be rectified or had not been attended to. Accordingly, it was contended that there had been complete

violation of the contractual obligations and that the conduct of the claimant was mischievous, resulting in loss which was required to be recovered to the extent of ₹4.34 crores. The respondent, while reiterating that the claim made by the claimant was barred by limitation, sought a counter-claim of ₹4,34,00,000/- with interest at the rate of 18% per annum from 20.02.2017 till the date of realisation.

11. The learned Arbitral Tribunal, rejecting the objection of the respondent, partly allowed the claim petition and awarded a sum of ₹7,75,17,356/- with interest at the rate of 18% per annum and a balance amount of ₹1,27,90,319/- with interest at the rate of 6% per annum. The Arbitral Tribunal further directed the respondent to pay ₹5,00,000/- towards legal fees and ₹1,00,000/- towards miscellaneous expenses incurred by the claimant towards the arbitrator's fee. The counter-claim was rejected.

12. Being aggrieved by the impugned award, the learned Additional Advocate General appearing for the respondent, Sri Aditya Vikram Bhat, seriously assailed the award, principally on the ground that, despite a specific objection having been raised with regard to limitation, the Arbitral Tribunal neither framed an issue nor considered the question of limitation. He

pointed out that, out of the amounts claimed under 17 invoices, except one invoice, all the other invoices were prior to 07.08.2018, a fact which had not been considered by the Arbitral Tribunal, and therefore the award suffered from patent illegality.

13. It was further contended that the claimant had neither registered itself nor obtained the requisite registration certificate as contemplated under Section 2(n) of the MSMED Act, 2006, and therefore was not entitled to claim interest, which aspect had also been ignored by the Arbitral Tribunal. With regard to rejection of the counter-claim, learned Additional Advocate General contended that although Section 18 of the MSMED Act, 2006 is applicable only to the supplier, as contemplated under Section 17 of the said Act, the Arbitral Tribunal had erroneously held that adjudication of the respondent's claim before the MSME Council was mandatory. It was also pointed out that, although the Arbitral Tribunal had framed two additional issues while passing the award, those additional issues had not been considered or answered in the award, and hence the award was liable to be set aside.

14. On the other hand, learned counsel appearing for the claimant, Smt. Revathy Adinath Narde, strongly refuted the

arguments advanced by the learned Additional Advocate General. She contended that there was no proper pleading raising the issue of limitation before the Arbitral Tribunal. She further contended that the respondent had not even filed an application seeking framing of an issue with regard to limitation and that no such contention had been raised in the petition filed before this Court under Section 34 of the Arbitration and Conciliation Act, 1996.

15. It was argued that statutory arbitration arising from proceedings before the MSME Council stands on a different footing and that the question of limitation could not be raised for the first time at the appellate stage. Learned counsel further contended that the period of limitation for approaching the MSME Council would not commence 45 days from the date of the invoice, but only when the claim under the invoice was rejected. She drew the attention of the Court to various documents to contend that the claim of the claimant remained under active consideration of the respondent and, therefore, limitation would commence only upon refusal, particularly when there were continuous promises and consideration of the claimant's claim.

16. With regard to the counter-claim, learned counsel justified the award by contending that the buyer was also required to approach the MSME Council and, therefore, the Arbitral Tribunal had rightly rejected the counter-claim. The learned counsel appearing for the parties have filed their respective written synopses of arguments.

17. The following points arise for consideration:

1. Whether the impugned Arbitral Award suffers from patent illegality for non-consideration of the defence of limitation raised by the respondent?

2. Whether the claim made by the claimant was barred by limitation?

3. Whether the finding of the Arbitral Tribunal that the respondent should have adjudicated its claim before the MSME Council, before raising the claim before the Arbitral Tribunal, and the consequent rejection of the counter-claim, suffers from patent illegality?

4. Whether the finding of the Arbitral Tribunal that the claimant was an MSME suffers from patent illegality?

5. What order?

The answer to the Point No.1 to 3 in the Affirmative, Point No.4 in the Negative and Point No.5 is as hereunder:

REASONS

18. **Point Nos.1:** The principal ground of challenge raised by the Respondent to the impugned Award is that the claim was ex facie barred by limitation. It is contended that, notwithstanding the specific plea of limitation expressly raised before the Arbitral Tribunal, the Tribunal has failed to consider or address the said defence and has not recorded any finding whatsoever on the issue of limitation. Consequently, the grant of relief in respect of a claim that was barred by limitation renders the impugned Award contrary to the fundamental policy of Indian law. Learned Additional Advocate General appearing for the respondent has contended that since limitation goes to the maintainability of the claim, the learned Arbitrator was required to adjudicate the said issue and non-consideration of such a threshold defence has a direct bearing upon the validity of the award. He has also contended that the plea of limitation was consistently pressed even before the Facilitation Council. In this regard, reliance is placed upon the order dated 11.06.2020 passed by the MSME Council in case No.69/2018, which records that, in the objection statement dated 14.11.2019, the respondent had raised the contention of the limitation in detail.

19. Per contra, this contention is seriously opposed by the claimant primarily on the ground that there was no proper pleading with regard to limitation. But, in para No.2 and 13 of the statement of defense filed by the respondent, a specific defence of limitation was raised which is as follows:

“2. At the outset, the above claim petition filed by the claimant is not maintainable either on law or on facts. The above case is barred by limitation and also this Hon'ble Counsel do not have jurisdiction to entertain this petition. The same is liable to be dismissed in limine.....

13. It is submitted that, above petition is barred by limitation since the contract ended in April 2015. The claimant has filed this petition in July 2018. Hence, the above petition is liable to be dismissed."

20. Even in the counter-claim, the respondent has repeated the plea of limitation in page No.3 and 15. It is extracted for ready reference:

Page No.2: "At the outset, the above claim petition filed by the claimant is not maintainable either on law or on facts. The above case is barred by limitation."

In page No.15, it was stated:

"it is submitted that the above petition is barred by limitation since the contract ended in April 2015. The claimant has filed this petition in July 2018.

Hence, the above petition is liable to be dismissed."

21. Section 23 of the Arbitration and Conciliation Act, 1996, provides for filing of the statement of claim and defence. The claimant is required to state the facts supporting its claim, the points at issue and the relief or remedy sought, while the respondent is required to state its defence in respect of the claim, unless the parties have otherwise agreed as to the required elements of those statements.

22. In the present case, although paragraph No.2 of the statement of defence merely states that the case is barred by limitation, paragraph No.13 contains a specific averment that the claim is barred by limitation since the contract ended in April 2015 and the claimant instituted the proceedings only in July 2018. The same defence was reiterated in the counter-claim.

23. It is also well settled that, insofar as limitation is concerned, the requirement of pleading has to be considered liberally. Having regard to the aforesaid circumstances, this Court is of the considered opinion that there was sufficient pleading with regard to the defence of limitation raised by the respondent. Therefore, the contention of the claimant that

there was no proper pleading regarding limitation cannot be accepted.

24. It is not in dispute that the Arbitral Tribunal neither framed an issue with regard to limitation nor considered the question of limitation anywhere in the award. It is true that framing of issues is not mandatory in arbitral proceedings. However, when a specific defence was raised that the claim was barred by limitation, there was an obligation on the part of the learned Arbitrator to consider the defence and record an appropriate finding.

25. As rightly contended by learned counsel appearing for the claimant, it appears that the respondent did not insist upon framing of an issue on limitation or seriously advance arguments on the said issue. However, such omission on the part of the respondent does not absolve the Arbitral Tribunal of its obligation to consider the question of limitation when the defence had specifically been raised.

26. In paragraph No.35 of the award, the Arbitral Tribunal has specifically recorded that the respondent had contended that the claim petition was barred by limitation since the contract had ended in April 2015 and the claim

petition had been filed only in July 2018. The observation made by the Arbitral Tribunal in paragraph No.35 of the award is extracted for ready reference:

"Further it is the contention of the respondent that the above petition is barred by limitation, as the contract ended in April 2015. The claimant has filed the present petition in July 2018. Hence, the above petition is liable to be dismissed on the ground of delay and laches."

27. The aforesaid observation clearly demonstrates that the Arbitral Tribunal was conscious of the defence of limitation raised by the respondent, yet it failed to consider the same and record any finding thereon.

28. Learned counsel appearing for the claimant contended that, since the plea of limitation was not seriously advanced during the proceedings, the respondent had waived its right to object to the award on that ground. In this regard, reliance was placed upon Section 4 of the Arbitration and Conciliation Act, 1996. However, in the considered opinion of this Court, Section 4 cannot be invoked in the facts of the present case, since there was a specific pleading regarding limitation in the statement of defence and the Arbitral Tribunal itself had referred to the said defence in paragraph

No.35 of the award. Therefore, the contention that the respondent had waived its right to object and was barred from raising the plea of limitation in the present proceedings cannot be accepted.

29. Learned counsel appearing for the claimant strongly relied upon the decision of the Bombay High Court in *Vimal G. Jain v. Vortex Financial Services Pvt. Ltd., Pune*, 2007 SCC OnLine Bom 116; the decision of the Madhya Pradesh High Court in *Umashankar Mishra v. Union of India*, 2024 SCC OnLine MP 7203; the decision of our Hon'ble High Court in *National Highways Authority of India v. Raghuram Suvarna and Another*, ILR 2022 KAR 2892; and the decision of the Jammu and Kashmir High Court in *Sher-E-Kashmir Institute of Medical Sciences, through its Director v. Siemens Pvt. Ltd.*, 2025 SCC OnLine J&K 1098. Relying upon the aforesaid decisions, it was vehemently contended that, although in ordinary proceedings the question of limitation may be raised at any stage, insofar as an arbitral award is concerned, in the absence of a plea of limitation having been raised before the Arbitrator, a party cannot raise such a plea for the first time before the Court. It was further contended that the plea of limitation has to be raised at the earliest opportunity by the

party resisting the claim and that, if such a plea is not raised at the initial stage within the time prescribed under Section 16(2) of the Arbitration and Conciliation Act, it would be deemed to have been waived in terms of Section 4 of the said Act. It was also contended that the question of limitation being a mixed question of law and fact cannot be adjudicated at a subsequent stage.

30. There is no dispute with regard to the aforesaid legal position. However, as already observed, in the present case the respondent specifically raised the defence of limitation in its statement of defence as well as in the counter-claim. The Arbitral Tribunal was fully aware of the said defence and, despite referring to it in paragraph No.35 of the award, failed to record any finding thereon or assign any reasons. Such grave omission goes to the root of the matter. The Arbitral Tribunal, despite specifically referring to the defence of limitation, completely failed to adjudicate the same. This, in the considered opinion of this Court, constitutes patent illegality and amounts to breach of the principles of natural justice.

31. One of the contentions raised by learned counsel appearing for the claimant is that the defence of limitation was not raised in the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, and therefore, in the absence of a specific challenge on this ground, this Court need not consider the argument. It is true that when an appeal is filed against a decree, Order XLI Rule 2 of the CPC requires the grounds of objection to the decree appealed from to be set forth concisely under distinct heads in the memorandum of appeal. However, a petition under Section 34 of the Arbitration and Conciliation Act, 1996, is not an appeal. Section 34 of the Arbitration and Conciliation Act does not mandate that each distinct ground of challenge must necessarily be set out in the manner contemplated by Order XLI Rule 2 of the CPC. Section 34(2)(a) of the Arbitration and Conciliation Act, 1996, provides that an arbitral award may be set aside by the Court if the party making the application establishes the grounds prescribed in Section 34(2) of the Act. Therefore, this Court is unable to accept the contention of learned counsel appearing for the claimant that the respondent was required to specifically formulate and argue this ground in the petition filed under Section 34 of the

Arbitration and Conciliation Act, 1996.

32. Insofar as the applicability of the Limitation Act, 1963 to the arbitral proceedings is concerned, the Hon'ble Supreme Court, in *Sonali Power Equipments Pvt. Ltd. v. Chairman, Maharashtra State Electricity Board, Mumbai and Others*, 2025 SCC OnLine SC 1467, after framing specific points for consideration, concluded that although 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, whereas the Limitation Act applies to arbitration proceedings under Section 18(3) of the MSMED Act. Therefore, it is now clear that although the Limitation Act does not apply to conciliation proceedings, it applies to arbitration proceedings under Section 18(3) of the MSMED Act.

33. In view of the specific defence of limitation raised by the respondent, the Arbitral Tribunal was required to record a finding with regard to limitation. The Arbitral Tribunal has ignored this vital issue. The omission to record a finding on limitation is a fundamental defect which goes to the root of the matter and renders the award patently illegal for non-consideration of the defence raised by the respondent. Such

omission also amounts to violation of the principles of natural justice. The award is consequently in contravention of the fundamental policy of Indian law and opposed to the principles of natural justice on account of non-consideration of the material defence raised by the respondent. Hence, Point No.1 is answered in the affirmative.

34. **Point No.2:** In view of the finding recorded on Point No.1 that the impugned award suffers from patent illegality on account of the Arbitral Tribunal's failure to consider the material defence raised by the respondent, the award is liable to be set aside on that ground alone. However, learned counsel appearing for the parties have fairly submitted that, notwithstanding the failure of the Arbitral Tribunal to consider the defence of limitation, this Court, while exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996, is not precluded from examining the question of limitation and recording a finding thereon. When the arbitral tribunal has not at all recorded any finding with regard to the limitation, in the opinion of the court, this Court is well within the jurisdiction conferred upon it under Section 34 of the Arbitration and Conciliation Act, 1996, to examine and record a finding on the question of limitation, particularly

for the purpose of effectively and completely adjudicating the dispute and determining the sustainability of the impugned arbitral award.

35. The contention of the respondent is that the bar of limitation is ex facie apparent from the documents produced by the claimant itself. In this regard, learned Additional Advocate General has drawn the attention of the Court to Exhibit P27, being the claimant's own tabular statement calculating the interest, wherein the due date of each of the 17 invoices forming the subject matter of the claim, aggregating to a principal amount of ₹83,42,035/-, has been specifically set out. It has been pointed out that, except in the case of one invoice, the due dates of all the remaining invoices fell prior to 30.05.2015. It has further been pointed out that the reference under Section 18 of the MSMED Act, in Case No.69/2018, was filed only on 07.08.2018, as is borne out by Exhibit P3. The table containing the particulars of the invoices in Exhibit P27, which has also been reproduced in the order of the MSME Council dated 11.06.2020 at Exhibit R127, clearly discloses not only the dates of the respective invoices but also the interest claimed by the claimant for a period exceeding three years in respect of 16 out of the 17

invoices.

36. It has been contended by the learned Additional Advocate General, that, while calculating the interest component in Exhibit P27 on the basis of the period of delay, extending to several thousand days, the claimant itself has recorded the delay in respect of each of the 17 invoices, ranging from a minimum of 2,344 days to a maximum of 2,801 days, i.e., from approximately six years and five months to more than seven years and seven months, calculated up to 30.04.2022. It has been specifically contended that the delay in respect of 16 out of the 17 invoices exceeded three years and that the very foundation of the claimant's claim for interest amounting to ₹6,91,75,321/- rests upon invoices which were allegedly payable and due, notwithstanding the expiry of the prescribed period of limitation.

37. As rightly contended by the learned Additional Advocate General, the entire claim of the claimant is founded upon the 17 invoices raised by it and particularised in Exhibit P27, the calculation sheet. All the 17 invoices were raised during the years 2014 and 2015. The dates of the invoices, the respective due dates and the period of delay have been specifically set out by the claimant in Exhibit P27. For ready

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reference, the details of the calculation made by the claimant in Exhibit P27 are reproduced below:

“Interest Calculation

Sl. No.	Bill Date	Due Date	upto April 22	Delay in days	Amount
1	15-04-2015	30-05-2015	30-04-2022	2527	1129420
2	15-10-2015	29-11-2015	30-04-2022	2344	386964
3	15-01-2015	01-03-2015	30-04-2022	2617	279152
4	15-04-2015	30-05-2015	30-04-2022	2527	421108
5	15-01-2015	01-03-2015	30-04-2022	2617	495164
6	15-04-2015	30-05-2015	30-04-2022	2527	490624
7	15-10-2014	30-05-2015	30-04-2022	2709	665516
8	15-01-2015	29-11-2014	30-04-2022	2617	652228
9	15-01-2015	01-03-2015	30-04-2022	2617	257032
10	15-01-2015	01-03-2015	30-04-2022	2617	1230764
11	15-01-2015	01-03-2015	30-04-2022	2617	366576
12	15-01-2015	01-03-2015	30-04-2022	2617	203684
13	15-07-2014	29-08-2014	30-04-2022	2801	270644
14	15-07-2014	29-08-2014	30-04-2022	2801	414945
15	15-10-2014	29-11-2014	30-04-2022	2709	521964
16	15-01-2015	01-03-2015	30-04-2022	2617	109108
17	15-04-2015	30-05-2015	30-04-2022	2527	447142
	Total Amount				8342035
	Interest Amount				69175321
	Net Amount				77517356

”

38. The contents of Exhibit P27 constitute the basis of the claim made by the claimant. It is also not in dispute that the parties had not agreed upon any specific date for payment. In the aforesaid circumstances, Section 15 of the MSMED Act, 2006, assumes significance. The said provision stipulates that where any supplier supplies goods or renders services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between them in writing or, where there is no such agreement, before the appointed day. The proviso further stipulates that, in no case, shall the period agreed upon in writing between the supplier and the buyer exceed 45 days from the day of acceptance or the day of deemed acceptance.

39. It is significant that, in the aforesaid table extracted from Exhibit P27, the claimant itself has calculated the due date as falling immediately after the expiry of 45 days from the date of the respective invoice, as reflected in the column relating to the due date. Under Article 18 of the Limitation Act, 1963, the period of limitation prescribed for a suit for the price of work done is three years, commencing from the date when the work is done. Where, however, the claim is founded upon a breach of contract, the prescribed period of limitation

is likewise three years and commences from the date on which the contract is broken. Thus, there can be no dispute that the period of limitation applicable to the claim in question is three years.

40. As already noticed, even according to Exhibit P27, out of the 17 invoices, the amounts covered by 16 invoices had fallen due prior to 30.05.2015. Only the invoice at Serial No.2 was dated 15.10.2015, and the amount covered by the said invoice fell due on 29.11.2015.

41. The next question that arises for consideration is as to when the proceedings were instituted. Exhibit P3 is the communication issued by the MSME Council, Bengaluru, dated 20.10.2021, together with the complete proceedings in Case No.69/2018 relating to the application filed by the claimant under Section 18 of the MSMED Act, 2006. The proceedings of the MSME Council dated 30.09.2021, particularly paragraph No.4 thereof, specifically record that the claimant had filed an application under Section 18 of the MSMED Act, 2006, on 07.08.2018, seeking recovery of the amount together with interest, and had submitted an application on the MSME Samadhan Portal on 31.07.2018. In this regard, the specific averment contained in the

proceedings of the MSME Council dated 30.09.2021, at Exhibit P3, is extracted for ready reference:

"In this regard the petitioner company had filed an application dated 07.08.2018 under Section 18 of MSMED Act 2006 before this council for recovery of principal of=00 totaling to ₹2,50,50,193=00 for the delayed period from the respondent company. The petitioner has also filed application on 31.07.2018 in MSME Samadhan Portal. "

42. The contents of the proceedings of the MSME Council and the date on which the application was filed by the claimant are not in dispute. Consequently, the claimant raised the claim for the first time on 31.07.2018 and not at any point prior thereto. The said application was admittedly filed after the expiry of three years from the respective due dates of the invoices shown at Serial Nos.1 and 3 to 17 in Exhibit P27. In these circumstances, this Court is constrained to hold that, out of the 17 invoices, the claims in respect of 16 invoices were already barred by limitation when the claimant first approached the MSME Council in respect of its grievance.

43. Learned counsel appearing for the claimant, however, vehemently contended that there had been continuous and

repeated assurances on the part of the respondent to make payment and, therefore, the claim could not be regarded as barred by limitation. In support of the said contention, learned counsel drew the attention of the Court to various communications exchanged between the parties.

44. It is true that several communications were exchanged between the parties. It was contended that, in none of the said communications, did the respondent deny its liability. However, for the purpose of saving limitation, mere non-denial of liability is of no consequence. The period of limitation does not commence from the date of denial of liability; rather, it commences from the date on which the amount becomes due. Therefore, mere non-denial of liability cannot, by itself, constitute a valid ground for extending the period of limitation or excluding the period during which limitation runs.

45. This Court has also examined whether the correspondence between the parties constitutes an acknowledgment of debt within the meaning of Section 18 of the Limitation Act. In order to attract the provisions of Section 18, there must be an acknowledgment of liability in writing, made before the expiry of the prescribed period of limitation.

Although the correspondence exchanged between the parties indicates that the respondent had assured the claimant that its claim would be considered, there was no acknowledgment of the debt or liability as such. None of the communications relied upon by the claimant contains any acknowledgment by the respondent of the liability asserted by the claimant. A mere assurance that the claim would be considered, therefore, does not fall within the ambit of Section 18 of the Limitation Act and cannot be treated as an acknowledgment of debt so as to extend or renew the period of limitation. This contention, accordingly, cannot be accepted.

46. Learned counsel appearing for the claimant specifically relied upon Exhibit P25, being the communication dated 30.01.2018, and Exhibit P26, being the proceedings presided over by the then Principal Secretary, Dr. Shalini Rajanish. Even upon consideration of the aforesaid documents, this Court finds that they amount, at the highest, to an assurance that the claim would be considered and do not constitute an acknowledgment of debt within the meaning of Section 18 of the Limitation Act.

47. It is trite that, once the period of limitation has commenced, the same cannot be extended except in

accordance with a legally recognised mode, including a valid acknowledgment of debt satisfying the requirements of Section 18 of the Limitation Act. None of the communications relied upon by the claimant constitutes such an acknowledgment. Consequently, the claims in respect of the 16 invoices shown at Serial Nos.1 and 3 to 17 of Exhibit P27 cannot be brought within the prescribed period of limitation.

48. Learned counsel appearing for the claimant placed strong reliance upon the decision of the Hon'ble Himachal Pradesh High Court in *Controller of Stores, Northern Railway v. CBM Industries Pvt. Ltd. and Another*, 2025 SCC OnLine HP 5936 to contend that when the claim of the claimant was under consideration, the period of limitation begins to run from the date of refusal. In the said case, the Hon'ble High Court held that, upon issuance of a communication dated 02.09.2015, a fresh cause of action accrued in favour of the petitioner to initiate arbitral proceedings, irrespective of the date on which the materials had been supplied. The Hon'ble High Court specifically took note of the fact that, on every occasion, the buyer had assured the petitioner that payment would be released and that it was only on 02.09.2015 that the liability was denied for the first time. The Hon'ble Himachal

Pradesh High Court further observed that, there was a ongoing investigation by CBI on the allegation of fraud, until the closure report was filed, the investigation against the buyer, contractor and other railway officials remained pending and that, in the circumstances, there was otherwise no occasion for the claimant to file a reference petition before the MSEFC under Section 18 of the MSMED Act. Immediately after the filing of the closure report, the claim petition came to be filed. In this regard, the Hon'ble Himachal Pradesh High Court observed as follows:

"Though on every occasions petitioner assured that payment would be released, however, on 02.09.15, for the first time denied any liability and stated that it is not fit case for releasing the payment. With the issuance of communication dated 02.09.2015, fresh cause of action came to be accrued in favour of the petitioner to initiate arbitration proceedings.".....

The Hon'ble High Court further observed:

"Since till filing of the closure report, investigation against the respondent no. 1 as well as other railway official was in progress, there was otherwise no occasion for the respondent to file reference petition before MSEFC under Section 18 of the MSMED Act."

49. The aforesaid decision is distinguishable on its facts. The observations therein proceeded on the basis that there was an acknowledgment of liability and an assurance to make payment, coupled with the fact that an independent investigation was pending. Further, the question as to whether the Arbitral Tribunal had considered the issue of limitation did not arise for consideration in that case. Accordingly, the observations made in the said decision do not advance the case of the claimant in the facts and circumstances of the present case.

50. Learned counsel appearing for the claimant also placed reliance upon the judgment of the Hon'ble Supreme Court in *Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd.*, (2020) 2 SCC 455. In the said decision, the Hon'ble Supreme Court merely held that the question of limitation was required to be considered by the Arbitrator and could not ordinarily be adjudicated in a petition under Section 11 of the Arbitration and Conciliation Act, as the issue of limitation involved a mixed question of fact and law. There is no dispute with the aforesaid legal proposition. However, the said decision has no application to the issue arising for consideration in the present case and

does not assist the claimant in establishing that its claim was within the prescribed period of limitation. Accordingly, this Court holds that the claims made in respect of the 16 invoices detailed at Serial Nos.1 and 3 to 17 of Exhibit P27 are barred by limitation. Consequently, Point No.2 is answered in the affirmative.

51. **Point No. 3:** The respondent raised a counter-claim before the Arbitral Tribunal for a sum of ₹4,34,00,000/- together with interest, totalling ₹8,57,15,000/-. The Arbitral Tribunal rejected the counter-claim solely on the ground that the respondent had not adjudicated its claim before the MSME Council, which, according to the Tribunal, was mandatory. Though the Arbitral Tribunal, upon consideration of the counter-claim, had framed two separate issues in that regard by order dated 13.02.2023, while passing the award, the said issues were not considered at all. The two issues framed by the learned Arbitral Tribunal 13.02.2023 are as hereunder:

“ISSUES ON THE COUNTER CLAIM”

1. Whether the respondent proves that they are entitled to counter claim amount of Rs.4,34,00,000/-?

2. Whether the respondent proves that they are entitled for 18% interest for the counter claim from 20.02.2017 till payment?

52. The learned Arbitral Tribunal not only failed to address and adjudicate the aforesaid two issues in the impugned Award, but also failed to adjudicate the Counter-Claim on its merits. It neither considered the two issues framed on 13.02.2023 nor assigned any reasons in respect thereof. Once the Arbitral Tribunal had framed the said two issues on 13.02.2023, it was incumbent upon it to advert to those issues in the award and record appropriate findings thereon. On the contrary, in paragraph No.80 of the award, the Arbitral Tribunal observed as follows:

"The respondent has made a counterclaim in the instant case for a sum of ₹4,34,00,000 with 18% interest, totally ₹8,54,15,000 - *which is claimed before the Civil Court in Commercial OS No. 232/2021* and the same has been withdrawn for contesting before the Hon'ble Tribunal. A plain reading of Exhibit P3 order dated 30.09.2021 in Case No. 69 /2018 at para 9, there is a statement made by the respondent that it has a counter claim of ₹2,54,10,064 /- and stated that for legal action, it requested for 4 weeks time. Hence it is very clear that the respondent never adjudicated its claim before the MSME Council which is mandatory as

Arbitration Tribunal can look into the claims only if it is pre-mediation reference to the MSME Council and if the reference to the MSME fails, then only it can be referred to Arbitration, which was done in the instant case."

53. Learned Additional Advocate General seriously assailed the aforesaid reasoning of the Arbitral Tribunal on the ground that the finding is patently illegal and contrary to the scheme of the MSMED Act, as there is no requirement for a buyer to refer an independent counter-claim to conciliation before the MSME Council before raising such counter-claim in arbitration, particularly when Section 23(2-A) of the Arbitration and Conciliation Act expressly permits the making of a counter-claim.

54. Per contra, learned counsel appearing for the claimant sought to justify the aforesaid finding on the ground that, before the Arbitral Tribunal, learned counsel representing the respondent had contended that the claimant was not entitled to claim a sum of ₹1,27,90,319/-, since the said claim had not been pre-mediated before the MSME Council, which, according to the submission, was mandatory. Therefore, according to learned counsel, the same legal position was rightly applied by the Arbitral Tribunal to the

counter-claim raised by the respondent.

55. This Court has carefully considered the rival contentions. As rightly contended by the learned Additional Advocate General, the scheme of the MSMED Act does not require a buyer to refer its independent counter-claim to the MSME Council. Section 18(1) of the MSMED Act permits any party to a dispute to make a reference to the Facilitation Council with regard to any amount due under Section 17. Though Section 18(1) employs the expression “any party to a dispute”, what is material is the subsequent requirement that such reference must be with regard to an amount due under Section 17.

56. Section 17 of the MSMED Act specifically provides for the liability of a buyer to pay the amount due to a supplier in respect of goods supplied or services rendered by the supplier, together with interest. Thus, Section 17 is confined to a claim made by a supplier in respect of goods supplied or services rendered. It does not contemplate an independent counter-claim raised by a buyer.

57. Section 2(n) of the MSMED Act defines the expression “supplier”. According to the said definition, a supplier means

a micro or small enterprise which has filed a memorandum with the authority referred to in sub-section (1) of Section 8. It is, therefore, clear that a pre-arbitration reference to the MSME Council is mandatory in respect of claims made by a supplier falling within the scope of Section 17, and not in respect of an independent claim or counter-claim raised by the buyer. The liability contemplated under Section 17 is one owed by the buyer to the supplier and arises upon the buyer's default in discharging its obligation under Section 15 to make payment within the stipulated period.

58. In this regard, learned Additional Advocate General has rightly placed reliance upon the recent decision of the Hon'ble Madras High Court in *TI Clean Mobility Pvt. Ltd. v. M/s.Senatla Innovative EV Components Pvt. Ltd.*, (Arb.O.P. (Com.D.v.).No.83 of 2026 & Arb.A.Nos.1444 & 1445 of 2025 dated 31.07.2026) wherein the Hon'ble Madras High Court has clarified that the statutory conciliation and arbitration mechanism contemplated under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006, is confined to the recovery of amounts due under Section 17 and does not extend to independent claims. The following observations in the said decision are relevant:

"13. A reading of Section 16 would envisage that on a reference under sub-section (1), the same should be attempted to be reconciled between the parties and that on a failure of reconciliation, arbitration between the parties should be resorted to.

14. A conjoint reading of Section 18 read with Section 17 would indicate that a supplier for the recovery of amount under Section 17 could approach the counsel under Section 18(1) and of on the reference under sub-Section (1), which relates to Section 17 recovery, a conciliation process should be initiated and if there is a failure of conciliation, process of arbitration should be invoked and only in that regard, the provisions of Arbitration and Conciliation Act would be made applicable.

" 15. The said provision therefore cannot be made applicable to a claim made against a supplier who is registered under the either for a failure to supply or for a defective supply that had been made by the supplier. The MSMED Act restricts itself to the scope of recovery of unpaid amount that is liable to be paid by the buyer under Section 15 together with interest under Section 16 alone and not otherwise. The restrictions imposed under Section 18 deals with only the claim under Section 17, which would itself show that the supplier cannot also invoke the provisions of the Section 18 for any relief

that falls outside the scope of Section 17 of the Act. "

59. Therefore, the finding recorded by the Arbitral Tribunal that the respondent was not entitled to maintain its counter-claim in the absence of a pre-mediation reference to the MSME Council is contrary to the scheme of the MSMED Act. This cannot be characterised as a mere erroneous application of law. The finding goes to the very maintainability of the counter-claim. The Arbitral Tribunal has neither adjudicated the counter-claim on its merits nor assigned any reasons with regard to the merits thereof.

60. Though the failure to refer to the two issues framed in relation to the counter-claim on 13.02.2023, by itself, may not go to the root of the matter, the non-consideration of the counter-claim on the ground stated by the Arbitral Tribunal constitutes patent illegality. Consequently, this Court has no other option but to set aside the finding of the Arbitral Tribunal with regard to the maintainability of the counter-claim. Accordingly, Point No.3 is answered in the affirmative.

61. **Point No.4:** It is seriously contended by the respondent that, as on the relevant date, the claimant had neither produced any material nor adduced any evidence to

establish that it was a registered MSME entity and, consequently, that it was entitled to raise a dispute under the MSMED Act and invoke the provisions of Section 16 thereof. In this regard, learned Additional Advocate General brought to the notice of this Court that the Facilitation Council, by its order dated 11.06.2020, had dismissed the claimant's application on the ground that the claimant was not registered as an MSME as on the date of bidding. He has contended that though the said order was subsequently set aside by the Hon'ble High Court, the Hon'ble High Court did not adjudicate upon the question as to whether the claimant was a supplier entitled to claim interest under Section 16 in respect of the transaction in question. It is his case that the said question was left open for determination by the Arbitral Tribunal.

62. It is significant to note that the respondent did not raise this contention in its statement of defence. Whether the claimant was an MSME entity or not is essentially a mixed question of fact and law. Therefore, if the respondent intended to dispute the legal entitlement of the claimant under the MSMED Act, it was incumbent upon the respondent to specifically raise such a defence in its statement of objections.

Since the respondent failed to raise the said objection before the Arbitral Tribunal, the Tribunal was justified in neither framing an issue in that regard nor recording a finding thereon, as rightly contended by learned counsel appearing for the claimant.

63. In arbitral proceedings, Section 4 of the Arbitration and Conciliation Act, 1996, provides for waiver of the right to object. Therefore, when the respondent failed to effectively raise the said defence before the Arbitral Tribunal, this Court, while exercising jurisdiction under Section 34 of the Act, cannot adjudicate upon the issue afresh. Permitting such an exercise would amount to allowing the respondent to raise a ground which it had waived before the Arbitral Tribunal. In view of the foregoing, this Court is unable to find any error or irregularity on the part of the Arbitral Tribunal in not considering the said issue. Accordingly, Point No.4 is answered in the negative.

64. **Point No.5:** In view of the answers recorded on Point Nos.1, this Court holds that the award suffers from patent illegality, insofar as the Arbitral Tribunal failed to consider the principal defence raised by the respondent with regard to limitation. It is well settled that non-consideration of a

material defence amounts to patent illegality. Further, while answering Point No.2, this Court has specifically held that, out of the 17 invoices, the claims in respect of 16 invoices were barred by limitation. Though the claim in respect of one invoice was found not to be barred by limitation, once this Court has recorded a specific finding under Point No.1 that the award suffers from patent illegality, the award cannot be sustained even to the extent of the claim relating to the said one invoice. Apart from this, the award was passed for a lump-sum amount, taking into consideration the claims arising out of all the invoices as well as the interest component. In such circumstances, the claim relating to one invoice cannot be severed from the total amount awarded. In view of the foregoing circumstances, the award passed in favour of the claimant, as well as the rejection of the counter-claim, is liable to be set aside.

65. The Arbitral Tribunal had also passed an Additional Award dated 12.06.2023, directing the respondent to hand over the original bank guarantee documents. Since the said Additional Award was consequential upon and founded upon the main award dated 26.05.2023, once the main award is set aside, the Additional Award is also liable to be set aside.

Accordingly, Point No.5 is answered in the affirmative. Hence, the following

ORDER

The petition filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996, is allowed.

The Arbitral Award dated 26.05.2023 and the Additional Award dated 12.06.2023, both passed by the learned Sole Arbitrator in AC No. 4/2022, are set aside in their entirety.

(Dictated to the Adalat AI, carried out corrections, print out taken by the Stenographer and pronounced in the Open Court on this the **1st day of October, 2026**)

(Vijaya Kumar Rai)
LXXXVIII Addl.City Civil &
Sessions Judge, Bengaluru.

* * * *

**VIJAYA
KUMAR
RAI B**

Digitally signed by
VIJAYA KUMAR
RAI B
Date: 2026.10.01
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