

SUPREME COURT OF INDIA

REPORTABLE

Bench: Justices Sanjiv Khanna and Dipankar Datta

Date of Decision: 5th March 2024

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2024

(arising out of SLP(C) No. 12063 OF 2018)

SNEHADEEP STRUCTURES PVT. LIMITED ...APPELLANT(S)

VERSUS

**MAHARASHTRA SMALL SCALE INDUSTRIES DEVELOPMENT
CORPORATION LTD. ...RESPONDENT(S)**

Legislation:

Sections 2(b), (c), (f), 3, 4, 5 of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993

Companies Act, 1956

Section 144 of the Code of Civil Procedure, 1908

Arbitration and Conciliation Act, 1996

Subject: Civil appeal involving interpretation of provisions under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, and contractual obligations related to payment terms and interests.

Headnotes:

Applicability of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 - In contracts between buyer and supplier, the buyer must make payments within a timeframe, not exceeding 120 days from the day of acceptance or deemed acceptance - Interest chargeable after this period as per Sections 3 and 4 of the Act - Proviso to Section 3 limits payment date to a maximum of 120 days regardless of the contract terms. [Paras 3, 6-8, 14]

Definition of 'appointed day', 'buyer', and 'supplier' under the 1993 Act - Explanation of these terms critical for determining the start date for calculating interest on delayed payments - Amendments to include National Small Industries Corporation and State Industrial Development Corporations under 'supplier' definition. [Para 4, 5]

Arbitral award dated 30.06.2003 set aside by High Court - Sections 3 to 5 of the 1993 Act require ascertaining the appointed day, acceptance day, or deemed acceptance day for interest calculations - Further proceedings to determine these facts and the consequent interest payable under the Act. [Paras 13, 14]

Consideration of compound interest under Section 5 of the Act - Compound interest treated separately from the principal amount - Need for clarification on whether compounded interest is to be considered as principal for future calculations. [Para 15]

Restitution and enforcement of security by MSSIDCL - MSSIDCL entitled to enforce security or seek restitution under Section 144 of the Code of Civil Procedure, 1908, for payments made to SSPL. [Para 16]

Appeal dismissed without costs - Pending applications, if any, stand disposed of. [Para 17]

Referred Cases:

J U D G M E N T

Leave granted.

2. We have heard learned Senior Advocate appearing for the appellant – Snehadeep Structures Pvt. Limited¹ and the Respondent Maharashtra Small Scale Industries Development Corporation Ltd.²

3. During the course of the hearing, our attention was drawn to Sections 3, 4 and 5 of the Interest on Delayed Payments to Small Scale and Ancillary

Industrial Undertakings Act, 1993³. For the sake of convenience, the said Sections are reproduced below: -

“3. Liability of buyer to make payment.- Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall

- 1 For short, “SSPL”.
- 2 For short, “MSSIDCL”.
- 3 For short, “1993 Act”.

exceed one hundred and twenty days from the day of acceptance or the day of deemed acceptance.

4. Date from which and rate at which interest is payable.- Where any buyer fails to make payment of the amount to the supplier, as required under section 3, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay interest to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at one-and-half time of Prime Lending Rate charged by the State Bank of India.

Explanation.- For the purposes of this section,

"Prime Lending Rate" means the Prime Lending Rate of the State Bank of India which is available to the best borrowers of the bank.

5. Liability of buyer to pay compound interest. Notwithstanding anything contained in any agreement between a supplier and a buyer or in any law for the time being in force, the buyer shall be liable to pay compound interest (with monthly interest) at the rate mentioned in section 4 on the amount due to the supplier.”

4. We would also reproduce the definition clauses (b), (c) and (f) to Section 2, which are applicable, unless the context otherwise requires. The same read thus: -

(b) "appointed day" means the day following immediately after the expiry of the period of thirty days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier; *Explanation.*-For the purposes of this clause,-

(i) "the day of acceptance" means,-

(a) the day of the actual delivery of goods or the ending of services; or

(b) where any objection is made in writing by the buyer regarding, acceptance of goods or services within thirty days from the day of the delivery, of goods or the rendering of services, the day on which such objection is removed by the supplier;

(ii) "the day of deemed acceptance" means, where no objection is made in writing by the buyer regarding acceptance of goods or services within thirty days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services;

(c) "buyer" means whoever buys any goods or receives any services from a supplier for consideration;

xxx /xxx

(f) "supplier" means an ancillary industrial undertaking or a small scale industrial undertaking holding a permanent registration certificate issued by the Directorate of Industries of a State or Union territory and includes,-

(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956)."

5. The *proviso* to Section 3, and the amendment to Section 2(f) to include the addition of National Small Industries Corporation and the Small Industries Development Corporation of a State or a Union Territory to the definition of

“supplier”, were incorporated by Act No. 23 of 1998 with effect from 10.08.1998.

6. On a reading of Section 3 of the 1993 Act, as it stood before the enactment of the *proviso*, the buyer and the supplier could agree upon the date of payment. In case of absence of stipulation with regard to the date of payment, the “appointed day” in terms of Section 2(b) of the 1993 Act, would be the date, on which the payment is due. This is also clear from reading Section 4, which states the date from which interest is payable. As per Section 4, the buyer is liable to pay interest if he fails to pay the amount to the supplier as required by Section 3. *Non-obstante* part of Section 4 only deals with the stipulation in a contract whereby liability to pay interest is barred/prohibited. It does not, in any way, override the contractual clause with regard to the date of payment. In other words, in case the contract states that interest will not be payable even in the case of belated payment, then Section 4 of the Act will come into operation, overriding the negative contractual clause.
7. The effect of the *proviso* to Section 3, made applicable with effect from 10.08.1998, is that the supplier and the buyer may agree by contract on the date of payment, but in no case can the date of payment exceed 120 days from the day of acceptance or the day of deemed acceptance. The terms ‘the appointed date’, ‘the acceptance date’ and ‘the deemed date of acceptance’ have been defined *vide* clause (b) to Section 2 of the 1993 Act.
8. After enactment of the *proviso* to Section 3, the contractual rights of the parties to agree to the date of payment, have been restricted in terms of the said *proviso*. In other words, if the contractual date of payment exceeds 120 days from the day of acceptance or the day of deemed acceptance, interest would be payable for the period beyond 120 days from the day of acceptance or the date of deemed acceptance.
9. When we turn to the facts of the present case, the supply/purchase order dated 30.03.1995 issued by MSSIDCL to SSPL, had stated as under: -

“25. The price of the goods delivered and accepted by the consignee and when received from the consignee will be paid to the supplier by the Corporation subject to deductions of advances, if any, paid by the Corporation and the service charges [*sic*] and other moneys payable to the Corporation by the supplier. No advance payment will be made for any supply of the goods unless otherwise agreed by the Corporation.”

10. The contract had, therefore, postulated and the parties had agreed that MSSIDCL would be liable to pay SSPL only after the goods are delivered and accepted by the consignee, namely, Maharashtra State Electricity Board⁴ and on the payment being received by MSSIDCL from the MSEB.
11. If the *proviso* to Section 3 applies, this contractual clause will get modified in terms of the *proviso* to Section 3, which has fixed the upper time limit for payment to 120 days from the day of acceptance or the day of deemed acceptance. However, the question would arise as to whether the said *proviso* would be applicable to the agreement in question, which was entered into between the parties on 30.03.1995, albeit the *proviso* was enacted and enforced with effect from 10.08.1998.
12. Even if, for the sake of argument, it is to be accepted that the *proviso* to Section 3 would be applicable in respect of supplies or payments due or payable after 10.08.1998, the issue with regard to calculation and computation of interest requires examination and determination of the day of acceptance or the day of deemed acceptance, as interest would be payable only after a period of 120 days from such date.
13. In these circumstances and in view of the aforesaid position, we do not find any good ground and reason to interfere with the conclusion in the impugned judgment passed by the Division Bench of the High Court, setting aside the arbitral award dated 30.06.2003. We would, however, record that the award having been set aside, the provisions of Section 43(4) of the Arbitration and

Conciliation Act, 1996 would come into operation and would accordingly apply.

14. We clarify that MSEB need not be a party to the proceedings, 4 For short, "MSEB".

if any, which may be initiated by SSPL or MSSIDCL. However, any adjudication for payment of interest under Sections 3 to 5 of 1993 Act, including the question relating to application of the *proviso*, would require ascertainment of the appointed date, the date of acceptance or the deemed date of acceptance. To this limited extent, ascertainment of facts with reference to the consignee – MSEB, to whom the goods were supplied by SSPL, is required. By way of Act No.23 of 1998, which came in effect from 10.08.1998, amending clause 2(f), MSSIDCL is to be treated or deemed to be a supplier to MSEB. However, this will not deviate from the fact that MSSIDCL was the buyer under the supply/purchase order dated 30.03.1995 issued by MSSIDCL to SSPL. Equally, the G.O. 2(1)/A/93SSI Bd. and Policy dated 05.05.1993 issued by the Ministry of Industry, Department of SSI, Agro and Rural Industries, Office of the Development Commissioner (Small Scale Industries), has an effect of treating MSSIDCL as a supplier for the purpose of claiming interest from the buyer, that is MSEB, with whom they have entered into a contract for the purpose of the 1993 Act. The liability to pay and the privity of contract in terms of the supply/purchase order dated 30.03.1995 is between MSSIDCL and SSPL. The contractual relationship, rights and obligations inter se MSSIDCL and SSPL do not undergo any change.

15. On the question of liability under Section 5 as well, there is a dispute as it is accepted that the principal amount has been paid. A question would arise whether under Section 5, interest as compounded is to be treated as a principal amount. This aspect has not been considered in the award passed by the sole arbitrator, which has awarded compound interest on the interest

element with monthly rest at 1.5 times the Prime Lending Rate charged by the State Bank of India.

16. We are informed that certain payments were made by MSSIDCL and a substantial amount of over Rs.1.30 crores has been paid to/withdrawn by SSPL. It will be open to MSSIDCL to move an application under Section 144 of the Code of Civil Procedure, 1908 for restitution or execution, as it may be advised. MSSIDCL would be entitled to enforce the security in case SSPL does not pay or refund the said amount.

17. The appeal is dismissed in the above terms. However, there shall be no order as to costs.

Pending application(s), if any, shall stand disposed of.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.