

1. Leave granted.

I. Introduction:

2. The issue arising in the present appeals are whether the provisions of the Limitation Act, 1963¹ are applicable to conciliation and arbitration proceedings initiated under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006². Further, even if the Limitation Act is not applicable, whether a supplier can recover a time-barred debt by taking recourse to the remedies provisioned under Section 18 of the MSMED Act. In the order impugned before us in the present appeals, a full bench of the High Court has held that the Facilitation Council cannot entertain time-barred claims for conciliation, and that the provisions of the Limitation Act are applicable to arbitration proceedings under the MSMED. On considering the statutory scheme and provisions of the MSMED Act, the Arbitration and Conciliation Act, 1996³, and the Limitation Act, along with the precedents of this Court as well the submissions of the parties, we have partly allowed the present appeals as follows. We have upheld the decision of the High Court

¹ Hereinafter "Limitation Act".

² Hereinafter "MSMED Act".

³ Hereinafter "ACA".

to the extent of the Limitation Act being applicable to arbitration proceedings under the MSMED Act and have provided our reasons for the same. With respect to conciliation proceedings on the other hand, we are of the opinion that they do not attract the applicability of the Limitation Act. Further, there is no legal bar in the Limitation Act, the MSMED Act, the ACA, or the legal precedents laid down by this Court that proscribes conciliation with respect to time-barred debts.

II. *Brief Facts:*

3. The appellants are small-scale industries registered with the District Industries Centre, Nagpur. The appellants supplied transformers to respondent no. 1 under various purchase orders between 1993 to 2004. Due to delay in payments, the appellants filed references in 2005-06 before the Industry Facilitation Council established under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993⁴. The 1993 Act came to be repealed by the MSMED Act, 2006⁵, and the proceedings initiated by the appellants were taken up by the Micro

⁴ Hereinafter "1993 Act".

⁵ Section 32 of the MSMED Act, which reads:

"32. Repeal of Act 32 of 1993.—(1) *The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 is hereby repealed.*
(2) *Notwithstanding such repeal, anything done or any action taken under the Act so repealed under sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of this Act.*"

and Small Enterprises Facilitation Council⁶ under the MSMED Act.

3.1 By its award dated 28.01.2010, the Facilitation Council allowed the appellants' claims and awarded interest on the delayed payments.

3.2 Respondent nos. 1 and 2 challenged the award under Section 34 of the ACA, and deposited the requisite amount under Section 19 of the MSMED Act. This was allowed by the Commercial Court by order dated 26.10.2017 and it set aside the award on the ground that the claims were barred by limitation, against which order the appellants filed appeals under Section 37 of the ACA before the High Court.

III. *High Court order dated 24.08.2018:*

4. On taking up these appeals under Section 37, the division bench referred the issue of applicability of Limitation Act to proceedings under the MSMED Act to a larger bench. It took note of a coordinate bench's decision in *M/s. Delton Electricals v. MSEDCL*⁷ wherein the High Court found that the law of limitation applies to claims filed before the Facilitation Council. The High

⁶ Hereinafter "Facilitation Council".

⁷ Commercial Appeal No. 38/2017, judgment dated 31.08.2017.

Court took a different view and referred the issue to a larger bench for the following reasons:

4.1 In *Delton's* case, the Court held that by virtue of Section 2(4) of the ACA, which excludes the applicability of Section 43 of the ACA to statutory arbitrations, the Limitation Act was inapplicable to arbitrations under the MSMED Act. However, analysing the issue from a different perspective and interpreting the term “amount due” in the scheme of the MSMED Act, the High Court relied on this Court’s decision in *State of Kerala v. V.R. Kalliyankutty*⁸ and held that “amount due” does not include a time-barred debt. On this basis, the High Court therein set aside the award of the Facilitation Council that allowed time-barred claims as being violative of public policy.

4.2 In the order dated 24.08.2018, the division bench doubted the correctness of the interpretation of “amount due” in *Delton's* (supra) case as various aspects were not considered by the Court therein, and it framed 9 issues for consideration by a larger bench. The relevant portion with the issues framed is extracted hereinbelow:

“46. We find that in Deltons case, this Court was not required to look into cardinal issues which may have made some difference on the outcome. Those issues are -

⁸ (1999) 3 SCC 657.

A. Whether in view of a more comprehensive scheme in MSMED Act and improvement made by it over Act no. 32 of 1993, the jurisdiction of Civil Court is taken away by 2006 Act?

B. Whether an incongruous situation perceived in paragraph 71 of its judgment by the Division Bench in Delton case (supra) can emerge due to reading of Section 6 of Act no. 32 of 1993, (not in force) and Section 18 of the MSMED Act?

C. Whether the period of limitation runs from the appointed date only to find out limitation for cause of action to approach Council under Section 18 of 2006 Act?

D. Whether Section 21 of 1996 Act has any relevance in the scheme of Section 18 of the MSMED Act?

E. Whether the peculiar provisions like “thrice the bank rate of interest”, interest compounded monthly, direction to mention principal, interest and amount unpaid in balance sheet by buyer, step by step approach adopted in Section 18 and overriding effect in Section 24 of the 2006 Act, all are sufficient to exclude the applicability of the Limitation Act, 1963?

F. Whether the mention of “unpaid amount” in balance sheet of the buyer must include “time barred” claims?

G. What is the legislative intent in mandating the mention of “unpaid amount” or even time-barred recoveries separately?

H. Whether such disclosure of “unpaid principal amount” or the “compound interest quantum” separately gives rise to the fresh or repeated annual causes of action for recovery of the principal and/or interest amount?

I. Whether the present controversy need to be viewed independent of the Act No. 32 of 1993?”

IV. Impugned order:

5. By judgment dated 20.10.2023, a full bench of the High Court framed the following issues for its consideration:

“(1) Whether the provisions of Indian Limitation Act, 1963 are applicable to conciliation proceedings initiated and conducted under Section 18 (1) & (2) of MSMED Act, 2006?

(2) Whether the provisions of Indian Limitation Act, 1963 are applicable to arbitration proceedings under Section 18(3) of MSMED Act, 2006?”

5.1 Taking up the second question on the applicability of the Limitation Act to arbitration proceedings under Section 18(3) of the MSMED Act, the High Court proceeded as follows. Relying on this

Court's decision in *Silpi Industries*⁹ and *Mahakali Foods*¹⁰ and the overriding effect of the MSMED Act as provided under Section 24 therein, the High Court held that Sections 15 to 23 of the MSMED Act will override Section 2(4) of the ACA. The language of Section 18, which commences with a non-obstante clause, fortifies this position. Therefore, the conduct of arbitration under the MSMED Act will be guided by Section 18(3), which makes the entirety of the ACA, including Section 43, applicable to arbitrations under the MSMED Act. Further, the Court noted that taking an alternative view would permit time-barred and stale claims to be raised in arbitration under the MSMED Act, which is contrary to the purpose and object of the statute to provide speedy remedy to the supplier to recover his claims. The Court also analysed the scheme of the MSMED Act and observed that the statute prescribes time-limits for payment under Section 15, provides for a penal rate of interest in case of default under Section 16, and also provides a time-limit for the Facilitation Council to decide the reference under Section 18(5). The prescription of such timelines shows that the legislature did not intend for time-barred claims to be raised in arbitration under Section 18(3). Finally, the High Court rejected

⁹ *Silpi Industries v. Kerala SRTC*, (2021) 18 SCC 790.

¹⁰ *Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd.*, (2023) 6 SCC 401.

the appellants' contention that the decisions in *Silpi Industries* (supra) and *Mahakali Foods* (supra) are per incuriam and held that the same are binding on it.

5.2 With respect to conciliation under Sections 18(1) and 18(2) of the MSMED Act, the Court noted that there is no provision that extends the Limitation Act to conciliation proceedings. It also noted that conciliation is mandated under the MSMED Act when a reference is made before the Facilitation Council, and Section 18 has done away with the requirement of consent for conciliation that is required under the ACA. In case conciliation fails, the Facilitation Council can take up the dispute for arbitration or refer it to an institution or centre. Further, taking into account the purpose and object of the MSMED Act to provide a more robust mechanism for recovery of "amount due" to the supplier, the Court held that the MSMED Act does not create any "special right" in favour of the supplier and the right of recovery of the amount is the same as available under common law. In this light, it relied on this Court's decisions in *V.R. Kalliyankutty* (supra) and *A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd.*¹¹ to hold

¹¹ (2016) 3 SCC 468, hereinafter "*Lanco*". These were subsequently followed in *B.K. Educational Services Pvt. Ltd. v. Parag Gupta and Associates*, (2019) 11 SCC 633, which is also referred and cited by the High Court.

that “amount due” does not include a time-barred, stale and dead claim. It also noted that if this were the legislative intent, there must be a specific provision enacted to this effect. Further considering the compulsory nature of statutory conciliation, the buyer must be allowed to take the defence of limitation. Hence, although the Limitation Act does not apply to conciliation proceedings, the Facilitation Council cannot entertain a dead or stale claim.

5.3 In this light, the High Court answered each of the issues raised in paragraph 46 of the division bench’s order (extracted hereinabove) as follows:

Issue A: The MSMED Act does not debar the jurisdiction of the civil court and only provides an alternative, speedy mechanism under Section 18 for recovery of money with a higher rate of interest.

Issue B: An incongruous situation as contemplated in *Delton* (supra) arises. If the limitation provisions are not applied to conciliation and arbitration under Section 18 of the MSMED Act, it would lead to an incongruous situation where a suit before the civil court for recovery of money would be rejected

on the ground of limitation but the same can be claimed under Section 18 a number of years after the supply.

Issue C: Limitation commences from the date provided under Section 15 of the MSMED Act.

Issue D: Section 21 of the ACA does not have relevance as conciliation and arbitration are statutorily provided under Section 18 when a supplier makes a reference before the Facilitation Council.

Issue E: Section 22 of the MSMED Act mandates the buyer to make entries in its books of account to ensure that the remedy under Section 18 is a speedy remedy, and therefore supports the plea that the Limitation Act applies.

Issues F and G: Section 22 does not have the effect of permitting dead and stale claims, and the concept of a continuing cause of action cannot be stretched to “*an absurd point of time, where its enforcement would make it an engine of oppression and not of providing justice to one*”.

Issue H: The purpose and object of Section 16 read with Sections 22 and 23 is to dissuade the buyer from delaying payments but not to be used as a tool for oppression by the

supplier by letting time lapse and inflating the claim by charging interest for that period before the Facilitation Council. The charging of interest under Section 16 does not amount to a fresh cause of action at the end of every month, for then there would be no time limit within which the supplier is required to raise his claim.

Issue I: Considering the scheme of the 1993 Act and the MSMED Act, 2006, the latter provides a more robust recovery mechanism by reducing timelines for payments, providing for higher interest, and a timeline for conciliation and arbitration. However, the basic provisions remain the same and hence, what has been considered and held in respect of provisions under the 1993 Act will hold good in respect of the MSMED Act, unless a contrary intention appears from the language of the MSMED Act.

V. Submissions:

6. We have heard Dr. Abhishek Manu Singhvi and Mr. Jayant Bhushan, learned senior counsels for the appellants and Mr. Shikhil Suri, learned senior counsel for the respondents, as well as perused the written submissions of the parties. The submissions advanced on behalf of the appellants are as follows:

6.1 The decision of this Court in *Silpi Industries* (supra) that has held that the Limitation Act is applicable to arbitration proceedings under Section 18 of the MSMED Act is per incuriam for two reasons: first, Section 2(4) of the ACA that excludes the applicability of Section 43 of the ACA to statutory arbitrations was not brought to the notice of the Court, and second, the Court relies on another decision in *Lanco* (supra), which is itself per incuriam as it is directly contrary to an earlier coordinate bench decision in *T.N. Generation & Distribution Corpn. Ltd. v. PPN Power Generating Co. (P) Ltd.*¹²

6.2 Relying on Section 2(4) of the ACA, it is submitted that Section 43, which provides for the applicability of limitation provisions in arbitral proceedings, does not apply to statutory arbitrations. Further, the Limitation Act only applies to courts, and not to quasi-judicial bodies or tribunals. Hence, in view of Section 2(4), Limitation Act cannot be extended to arbitrations under the MSMED Act. Further, there is no provision under the MSMED Act providing for the applicability of the Limitation Act to proceedings under it.

¹² (2014) 11 SCC 53, hereinafter "*TANGEDCO*".

6.3 Section 22 of the MSMED Act mandates the buyer to disclose in its books of accounts the principal amount and interest due thereon that remains unpaid to any supplier. It is submitted that such an entry in the balance sheet or financial statement of the buyer reflecting the unpaid sum is an acknowledgement of debt and extends the period of limitation as per Section 18 of the Limitation Act. Contravention of this requirement is punishable under Section 27 of the MSMED Act.

6.4 The MSMED Act has been enacted with the object of protecting suppliers, and the onus is on the buyers to make payments. Suppliers often do not raise complaints or claims in the fear that it would jeopardise future business with the buyer. No injustice would be caused to the buyer if Limitation Act is not applicable.

6.5 Finally, with respect to conciliation proceedings, it is submitted that the same is to provide an opportunity to parties to explore an amicable settlement. If time-barred claims cannot be referred to conciliation, it would render Section 25(3) of the Indian Contract Act, 1872¹³ otiose, which enables parties to agree to pay time-barred debts. Further, the MSMED Act creates substantive

¹³ Hereinafter "Contract Act".

rights beyond establishing a mechanism for speedy recovery. Hence, the decisions in *V.R. Kalliyankutty* (supra) and *Lanco* (supra) do not apply.

7. On behalf of the respondents, it is submitted that:

7.1 The language Section 18(3) of the MSMED Act provides for the applicability of the ACA to arbitrations under it *as if* the arbitration was in pursuance of an arbitration agreement under Section 7(1) of the ACA. Hence, the statutory fiction places arbitration under the MSMED Act on the same footing as those under the ACA and incorporates the entirety of the ACA, including Section 43.

7.2 Section 2(4) of the ACA addresses situations where statutes mandating arbitration prescribe their own limitation periods, and then the applicability of Section 43 of the ACA is excluded. However, when such statutes do not prescribe any such limitation period, Section 2(4) cannot preclude the applicability of limitation law to such arbitrations.

7.3 This Court's decision in *Lanco* (supra) is not per incuriam as it took note of the decision in *TANGEDCO* (supra) and held that the issue of limitation was not examined in detail therein.

7.4 Further, it is clear from the statutory framework and intent of the MSMED Act that the intent was not to exclude the applicability of the Limitation Act. Rather, the applicability of limitation laws complements the scheme of the MSMED Act for speedy dispute resolution. Further, a contrary interpretation would create an anomalous position where claims barred by law can be revived by approaching a different forum.

7.5 Finally, Section 22 of the MSMED Act that requires disclosure of the unpaid amount in the buyer's balance sheet is to promote transparency and accountability in financial reporting, rather than alter or extend statutory limitation periods.

VI. *Issues:*

8. Upon perusing the impugned order, we find that the full bench set out two issues, namely the applicability of limitation law to arbitration proceedings and conciliation proceedings respectively under the MSMED Act. However, in its conclusion, the High Court proceeded to answer several other issues that were referred to it by the division bench's order dated 24.08.2018 (paragraph 46). There are several questions of law arising therein, such as whether the jurisdiction of civil courts is ousted by the MSMED Act, commencement of the limitation period, extension of

the limitation period, and applicability of decisions rendered in the context of the 1993 Act. These issues do not directly arise for our consideration in the present appeals and the parties' submissions have been confined to the two legal issues framed by the full bench, as well as brief submissions on the effect of Section 22 of the MSMED Act. In this light, we will confine our examination to the two issues that have been formulated and answered by the High Court and while doing so, we will also briefly deal with Section 22 of the MSMED Act. We may reformulate the issues arising in the present appeals 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? Further, what is the effect of disclosure of the unpaid amount in the buyer's financial statements as mandated under Section 22 on extending the limitation period?

VII. *Relevant statutory provisions:*

9. Before we analyse each issue, it would be relevant to understand the statutory scheme and interplay of the Limitation Act, ACA, and the MSMED Act.

10. Section 3 of the Limitation Act provides that when a suit, appeal, or application is filed after the prescribed period of limitation as per the Schedule, the same shall be dismissed even if limitation is not set up as a defence. The calculation of the limitation period is subject to Sections 4 to 24 of the Limitation Act.¹⁴ Further, Section 29(2) of the Limitation Act makes its provisions applicable to special or local laws when they prescribe a different period of limitation than what is provided in the Schedule. In such a situation, Section 3 will apply as if such period were prescribed in the Schedule, and Sections 4 to 24 will apply to the extent that they are not impliedly or expressly excluded by the local or special law.¹⁵

¹⁴ The relevant portion of Section 3 of the Limitation Act is:

“3. Bar of limitation.— (1) *Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.”*

¹⁵ Section 29(2) of the Limitation Act reads:

“29. Savings.—

(2) *Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions*

11. Coming to the ACA, Section 2(4) deals with the applicability of Part I of the ACA to statutory arbitrations. It provides that all the provisions of Part I, *except Sections 40(1), 41 and 43*, shall apply to arbitrations under other enactments *as if such arbitration were pursuant to an arbitration agreement and as if such other enactment were an arbitration agreement*, except insofar as the provisions of Part I are inconsistent with the other enactment or rules made thereunder. Section 2(4) is extracted for ready reference:

“2. Definitions.—

(4) This Part except sub-section (1) of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.”

12. Arbitration agreement is defined in Section 7 of the ACA as an agreement to submit disputes which have arisen or which may arise between parties in respect of a defined legal relationship, whether contractual or not, to arbitration.¹⁶

contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.”

Although the expression used in the provision is “expressly excluded”, this Court has consistently interpreted the same to include implied exclusions. See *Hukumdev Narain Yadav v. Lalit Narain Mishra*, (1974) 2 SCC 133, para 17; *Union of India v. Popular Construction*, (2001) 8 SCC 470, paras 8-11; *Commissioner of Customs and Central Excise v. Hongo India Pvt Ltd*, (2009) 5 SCC 791, para 35.

¹⁶ Section 7 defines an arbitration agreement and sets out the mandatory requirements of an arbitration agreement. The relevant portion is:

13. Further, Section 43(1) provides for the applicability of the Limitation Act to arbitral proceedings. It reads:

“43. Limitations.—*(1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in court.”*

14. Part III of the ACA deals with conciliation of disputes. Section 67 therein provides for the role of the conciliator, and is extracted for ready reference:

“67. Role of conciliator.—*(1) The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
(2) The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.
(3) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.
(4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.”*

15. Sections 68 to 72 deal with the procedural aspects of conciliation, such as administrative assistance, communication, disclosure of information, cooperation of parties, and submission of suggestions. Section 73 provides for a signed and written

“7. Arbitration agreement.—*(1) In this Part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.”*

settlement agreement, which shall be final and binding on the parties. It reads:

“73. Settlement agreement.— (1) *When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.*

(2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement.

(3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.

(4) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.”

(emphasis supplied)

16. Section 74 provides that such settlement agreement shall have the same status and effect as an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under Section 30 of the ACA.

17. Finally, Section 76 provides for termination of the conciliation proceedings in various circumstances: (i) signing of the settlement agreement by the parties, (ii) written declaration by the conciliator that efforts at conciliation are no longer justified, (iii) written declaration of the parties to the conciliator that conciliation proceedings are terminated, or (iv) written declaration of a party to the other party and conciliator that conciliation proceedings are

terminated. Hence, conciliation is terminated when the parties arrive at and sign the settlement agreement. It can also be terminated at the behest of the conciliator or one or both parties, when there is no settlement, by way of a written declaration.

Section 76 of the ACA reads:

“76. Termination of conciliation proceedings.— *The conciliation proceedings shall be terminated—*

(a) by the signing of the settlement agreement by the parties, on the date of the agreement; or

(b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or

(c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or

(d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.”

18. Finally, Chapter V of the MSMED Act that deals with delayed payments to Micro and Small Enterprises is relevant for our purpose. Section 15 imposes obligations on the buyer¹⁷ in respect of timelines for payment to the supplier¹⁸ as follows- on or before

¹⁷ Buyer is defined under Section 2(d) of the MSMED Act as:

“2. Definitions.— *In this Act, unless the context otherwise requires,—*

(d) “buyer” means whoever buys any goods or receives any services from a supplier for consideration;”

¹⁸ Supplier is defined under Section 2(n) of the MSMED Act as:

“2. Definitions.— *In this Act, unless the context otherwise requires,—*

(n) “supplier” means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, 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);

the date agreed upon between the parties in writing, provided that the same does not exceed 45 days from the day of acceptance or the day of deemed acceptance¹⁹, or where there is no agreement in this behalf, before the “appointed day”²⁰. Section 15 of the MSMED Act reads:

“15. 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 exceed forty-five days from the day of acceptance or the day of deemed acceptance.”

19. Section 16 of the MSMED Act provides that when the buyer fails to make the payment as required under Section 15, he shall be liable to pay *compound interest with monthly rests* for the period stipulated therein, *at 3 times the bank rate notified by the Reserve*

(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;”

¹⁹ See Section 2(b) of the MSMED Act.

²⁰ Appointed day is defined under Section 2(b) of the MSMED Act as:

“2. Definitions.— *In this Act, unless the context otherwise requires,—*

(b) “appointed day” means the day following immediately after the expiry of the period of fifteen 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 rendering of services; or

(b) where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen 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 fifteen 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;”

Bank. The rate of interest prescribed under Section 16 shall override any agreement with the supplier in this behalf and any other law in force for the time being. Section 16 of the MSMED Act reads:

“16. 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 15, 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 compound interest with monthly rests 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 three times of the bank rate notified by the Reserve Bank.”

20. Section 17 provides for recovery of “amount due”, which includes the interest provided thereon under Section 16. It reads:

“17. Recovery of amount due.—
For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.”

21. Section 18, which falls for our interpretation, provides the remedies for recovery of the “amount due” calculated under Section 17. While we will deal with the interpretation of its sub-sections in more detail at a later stage, it is relevant to note the following about the remedial mechanism: *first*, any party to a dispute with regard to the amount due can make a reference before the Facilitation Council; *second*, the Facilitation Council shall, on receipt of such reference, conduct conciliation or refer the dispute for conciliation to an institution or centre; *third*, such conciliation

shall be conducted as per Sections 65 to 81 of the ACA as if the conciliation is initiated under Part III of the ACA; *fourth*, in case of failure and termination of conciliation without any settlement, the Facilitation Council shall either take up the dispute for arbitration or refer it to any institution or centre for arbitration; *fifth*, the provisions of the ACA shall apply to the dispute as if the arbitration was pursuant to an arbitration agreement; *sixth*, notwithstanding any other law, the Facilitation Council can act as a conciliator and arbitrator in the dispute when the supplier is located in its jurisdiction; and *seventh*, the reference shall be decided within 90 days of it being made. Section 18 is extracted below for ready reference:

“18. Reference to Micro and Small Enterprises Facilitation Council.— (1) *Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.*

(2) *On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.*

(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 sub-section(1) of section 7 of that Act.*

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.”

22. Section 19 stipulates a pre-deposit requirement for filing an application under Section 34 of the ACA to set aside the award. Section 20 provides for establishment of the Facilitation Council and Section 21 provides for its composition.

23. Section 22 mandates the buyer to disclose the unpaid amount along with interest in its annual statement of accounts.²¹ Section 23 provides for the treatment of the interest amount under taxation laws. Section 24 provides for the overriding effect of Sections 15 to 23 as follows:

²¹ Section 22 of the MSMED Act reads:

“22. Requirement to specify unpaid amount with interest in the annual statement of accounts.— Where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts, namely:—

- (i) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;*
- (ii) the amount of interest paid by the buyer in terms of section 16, along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;*
- (iii) the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this Act;*
- (iv) the amount of interest accrued and remaining unpaid at the end of each accounting year; and*
- (v) the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under section 23.”*

“24. Overriding effect.— *The provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.*”

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

24. In light of the above statutory provisions, we will decide the first issue of whether the Limitation Act applies to conciliation proceedings under Section 18(2) of the MSMED Act, and even if not, whether time-barred claims can be referred to conciliation.

25. Conciliation has not been defined per se under the ACA or the MSMED Act. Hence, it would be relevant to refer to decisions where the term has fallen for consideration and has been interpreted by this Court. In *State of Punjab v. Jalour Singh*,²² a 3-judge bench determined the meaning and scope of conciliation in the context of the powers of the Lok Adalats under the Legal Services Authorities Act, 1987. Similarly, in *United India Insurance Co. Ltd. v. Ajay Sinha*²³, this Court relied on the role of the conciliator under Sections 67 and 73 of the ACA to explain conciliation as a dispute resolution mechanism. Finally, in *Afcons Infrastructure Ltd. & Anr. v. Cherian Varkey Construction Co. (P) Ltd.*

²² (2008) 2 SCC 660.

²³ (2008) 7 SCC 454.

& Ors.²⁴, this Court explained conciliation as an ADR remedy under Section 89 of the CPC. The following features of conciliation can be culled out from these decisions as well as the statutory provisions:

- i. Conciliation is not an adjudicatory or judicial process where the conciliator hears the parties and decides a dispute.²⁵
- ii. The parties to the conciliation resolve their disputes through settlement, whose terms may be arrived at with the assistance of the conciliator. The role of the conciliator is to guide and assist the parties in arriving at a compromise or settlement²⁶, make proposals for settlement²⁷, formulate the terms of settlement or assist the parties in doing so,²⁸ and reformulate the terms of settlement based on the observations of the parties.²⁹
- iii. The conciliator must be guided by the principles of independence, impartiality, objectivity, justice, equity, fair play, fairness, and confidentiality, and must also consider

²⁴ (2010) 8 SCC 24.

²⁵ *Jarlour Singh* (supra), para 8; *Afcons Infrastructure Ltd.* (supra), para 35.

²⁶ Section 67(1) of the ACA; *Jarlour Singh* (supra), para 8.

²⁷ Section 67(4) of the ACA.

²⁸ Section 73(1) of the ACA; *Jarlour Singh* (supra), para 8; *United India Insurance Co. Ltd.* (supra), paras 22-23.

²⁹ *ibid.*

the rights and obligations of the parties, trade usages, and business practices between the parties. He must also take into account the wishes of the parties and the need for speedy settlement of dispute.³⁰ The parties must also cooperate with the conciliator in good faith and endeavour to comply with the conciliator's requests.³¹

- iv. Finally, the terms of the settlement that are recorded in a settlement agreement must be signed by the parties and it shall be final and binding on them.³² The same is enforceable as an arbitral award.³³

26. Section 18(2) of the MSMED Act provides that conciliation must be conducted as per Sections 65 to 81 of the ACA. On perusing these provisions of the ACA, as well as the provisions of the MSMED Act, it is clear that there is no provision that extends the applicability of the Limitation Act to conciliation proceedings. Further, neither Section 29(2) nor any other provision of the Limitation Act has the effect of extending its application to conciliation proceedings. On the other hand, it is a settled position

³⁰ *ibid*; Sections 67(2) and (3), Section 75 of the ACA.

³¹ Section 71 of the ACA.

³² Section 73(2) and Section 74 of the ACA; *Jarlour Singh* (supra), para 12; *Afcons Infrastructure Ltd.* (supra), para 38.

³³ See Section 74 of the ACA read with Section 30 of the ACA.

that the Limitation Act only applies suits, appeals, and applications filed before courts.³⁴ Conciliation being an out-of-court and non-adjudicatory process of dispute resolution, the Limitation Act cannot be extended to it.

27. This position of law has been recognised by the High Court in its impugned order as well, in that it has held that the Limitation Act does not directly apply to conciliation proceedings. However, the High Court adopted a different approach and interpreted the term “amount due” referred in Sections 17 and 18 of the MSMED Act to hold that time-barred claims are not included, and hence cannot be referred to conciliation under Section 18(2). In doing so, the High Court primarily relied on this Court’s decision in *V.R. Kalliyankutty* (supra), and its reliance in *Lanco* (supra). We will now examine the legality and correctness of the High Court’s reasoning and decision by contrasting the present case with the reasoning in *V.R. Kalliyankutty* (supra).

28. In *V.R. Kalliyankutty* (supra), a 3-judge bench of this Court examined whether time-barred claims of the State Financial Corporation and banks can be recovered through recourse to the mechanism under the Kerala Revenue Recovery Act, 1968. For this

³⁴ *M.P. Steel Corpn. v. CCE*, (2015) 7 SCC 58, paras 11-32.

purpose, the Court interpreted the term “amount due” appearing in Section 71 of that Act, and whether it would include time-barred claims.³⁵ The Court held that “amount due” refers to an amount which the creditor has a right to recover, and does not include a time-barred debt.³⁶ The Court considered that the Act only provides a special procedure for speedy recovery of these amounts that the creditor can use instead of filing a civil suit. It also noted that the Act did not enlarge the existing right of recovery, but only provisioned a different process for recovery.³⁷ This process of recovery is also a judicial process and is coercive in nature.³⁸ Hence, the Court held that the same would attract the law of limitation.³⁹ It also observed that the application of limitation law would advance the public interest of the Act, i.e., speedy recovery of amounts.⁴⁰

29. The question before us is whether the decision in *V.R. Kalliyankutty* (supra) would apply while interpreting “amount

³⁵ *ibid*, para 8.

³⁶ *ibid*, para 8.

³⁷ *ibid*, para 16.

³⁸ *ibid*, paras 16 and 17.

³⁹ *ibid*, para 17.

⁴⁰ *Ibid*, para 14. It is relevant to note that *V.R. Kalliyankutty* (supra) has been doubted by a division bench of this Court in *K.P. Khemka v. Haryana SIIDC*, (2024) 8 SCC 391 on the point of whether the Kerala Revenue Recovery Act created a distinct right of recovery. While the legal principle and law laid down in *V.R. Kalliyankutty* (supra) has not been doubted, its application to the statutory provisions has been referred to a three-judge bench. See *K.P. Khemka* (supra), para 35 onward.

due” in the context of conciliation proceedings under Section 18(2) of the MSMED Act. Considering the non-adjudicatory and non-coercive nature of conciliation that we have explained above, we are of the opinion that this decision does not apply in the present context for the following reasons:

29.1 One of the considerations of this Court in *V.R. Kalliyankutty* (supra) was that the recovery process under the Kerala Revenue Recovery Act was a judicial process, and it would hence attract the law of limitation. However, as we have explained above, conciliation is not an adjudicatory or judicial process.

29.2 While Section 18(2) of the MSMED Act does away with the requirement of consent for conciliation as provided in Section 61 of the ACA and statutorily mandates the Facilitation Council and parties to explore conciliation for dispute resolution, the ultimate outcome of conciliation remains entirely dependent on the parties. Sections 65 to 81 of the ACA apply to conciliation proceedings under the MSMED Act as per Section 18(2). The parties must be agreeable to the terms of settlement. The conciliator cannot, and must not, coerce the parties to agree to certain terms or settle the dispute. Ultimately, if the parties are not willing to amicably settle the dispute, either or both of them can terminate the conciliation

proceedings as per Section 76 of the ACA. Hence, conciliation cannot be termed as a “coercive” process, which was another consideration of the Court in *V.R. Kalliyankutty* (supra).

30. For these reasons, the recovery process considered in *V.R. Kalliyankutty* (supra) can be said to stand on a different footing than conciliation under Section 18(2) of the MSMED Act read with Sections 65 to 81 of the ACA. Hence, the decision is inapplicable to the present context. The High Court did not consider these aspects of the matter, and rather relied on the compulsory nature of conciliation under Section 18(2) as well as the object of speedy recovery under the MSMED Act to hold that time-barred claims cannot be referred to conciliation. As we have already explained, merely because conciliation is mandatory does not mean that the parties are required to settle the dispute. They may choose to terminate conciliation and avail the remedy of arbitration provided in Section 18(3), wherein they can raise all defences available to them in law. Considering that conciliation is non-adjudicatory by nature and is rather based on negotiation, compromise, and settlement by the parties, it is not necessary that the defence of limitation be available to the parties in this process.

31. There is yet another reason why time-barred claims must not be excluded from conciliation under the MSMED Act. It is a settled position of law that the statute of limitation only bars the remedy, but does not extinguish the underlying right, which in this case is the right to recover the unpaid amount and interest thereon. The right to recover of the creditor/supplier and the corresponding liability of the debtor/buyer to repay the amount subsists even after the expiry of the limitation period. The creditor can recover a time-barred debt, other than through remedies through a court of law, such as by adjusting payments from the debtor made without direction on how it must be appropriated,⁴¹ recovering the amount from a surety/ guarantee, or enforcing lien or security.⁴² Further, the parties may also enter into a contract for repayment of a time-barred debt, which is recognised under Section 25(3) of the Contract Act.⁴³

⁴¹ See Section 60 of the Contract Act, which allows the debtor to apply such payment, at his discretion, to any lawful debt actually due and payable to him from the debtor, whether or not its recovery is time-barred under limitation law.

⁴² *Bombay Dyeing & Mfg. Co. Ltd. v. State of Bombay*, AIR 1958 SC 328, para 12; *Punjab National Bank v. Surendra Prasad Sinha*, 1993 Supp (1) SCC 499. para 5; *Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Ltd.*, (2021) 20 SCC 200, para 13.

⁴³ Section 25(3) of the Contract Act reads:

“25. Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law.—An agreement made without consideration is void, unless—

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for

32. A settlement agreement for a time-barred claim arrived at between the buyer and supplier through conciliation under Section 18(2) is precisely in the nature of a contract recognised and declared valid under Section 25(3) of the Contract Act. It is clear that although certain remedies are no longer available in law to the creditor once the limitation period expires, the creditor can adopt other methods, including contractual agreements, to recover time-barred debts. Conciliation as a dispute-resolution process only facilitates the parties in arriving at such a contract or settlement agreement. Hence, it is not correct to exclude time-barred claims from being settled through conciliation under Section 18(2) of the MSMED Act. The High Court did not fully appreciate this aspect and rather relied on the object of speedy recovery to arrive at its conclusion. In doing so, it lost sight of the forest for the trees and entirely foreclosed a beneficial mechanism made available to the supplier under the MSMED Act, and more generally recognised in law, to recover the amounts due to him even if they are time-barred.

33. For the foregoing reasons, we conclude that neither the Limitation Act applies to conciliation proceedings under Section

the law for the limitation of suits. In any of these cases, such an agreement is a contract.”

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). In case such settlement is not reached between the parties and the conciliation proceedings are terminated for this reason, the matter must be referred to arbitration as per Section 18(3), which we will deal with presently.

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

34. The next issue falling for our consideration is whether the Limitation Act applies to arbitration by the Facilitation Council under Section 18(3), and whether time-barred claims can be referred to arbitration. At this very stage, it is necessary to take note of this Court's decision in *Silpi Industries* (supra), which the High Court relied on to hold that time-barred claims cannot be referred to arbitration.

35. In *Silpi Industries* (supra), the Court was faced with a similar fact-situation wherein the suppliers initially approached the Industrial Facilitation Council under the 1993 Act for recovery of

time-barred claims. As conciliation failed, the claims were decided by the Facilitation Council under the MSMED Act and it made arbitral awards in favour of the suppliers. The buyer/respondent therein challenged the award under Sections 34 and 37 of the ACA, wherein the High Court held that the Limitation Act is applicable to arbitration claims under the MSMED Act. In the suppliers' appeals, this Court considered the issue of whether the provisions of the Limitation Act apply to arbitration proceedings initiated under Section 18(3) of the MSMED Act,⁴⁴ which is the very issue arising for our consideration.

35.1 The Court took note of the statement and objects of the MSMED Act and the scheme for recovery of delayed payments under Chapter V, specifically Sections 15 to 18.⁴⁵ It then relied on Section 43 of the ACA, which extends the applicability of the Limitation Act to arbitration proceedings. Since Section 18(3) of the MSMED Act mandates arbitration upon failure of conciliation, and makes the provisions of the ACA applicable as if there were an arbitration agreement between the parties, this Court held that Section 43 of the ACA is also applicable.⁴⁶

⁴⁴ *Silpi Industries* (supra), para 17.1.

⁴⁵ *ibid*, paras 24-25.

⁴⁶ *ibid*, paras 26-27.

35.2 This Court also affirmed the High Court's reliance on the decision in *Lanco* (supra) to hold that the Limitation Act is applicable to arbitration proceedings under Section 18(3).⁴⁷ The relevant portions of the decision are extracted below:

“25. With regard to the first issue, namely, applicability of Limitation Act, 1963 to the arbitration proceedings initiated under the provisions of Micro, Small and Medium Enterprises Development Act, 2006, we need to notice certain relevant sections of the Act. As per Section 15 of the said Act, where supplier supplies any goods or renders any services to any buyer, the buyer shall make payment on or before the agreed date between the parties in writing or where there is no agreement, before the appointed day. Section 16 deals with date from which and rate of interest payable in the event of not making the payment. The recovery mechanism for the amount due is covered by Sections 17 and 18 of the said Act. If any party has a dispute with regard to amount due under Section 17, a reference is required to be made to the Micro and Small Enterprises Facilitation Council. On such reference, the Council is empowered to conduct conciliation in the matter or seek assistance of any institution or centre providing alternate dispute resolution services by making a reference to such institution for conducting conciliation. If the conciliation is not successful, as contemplated under Section 18(2) of the said Act, same stands terminated under Section 18(3) of the said Act. Thereafter, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 are made applicable as if the arbitration was in pursuance of arbitration agreement between the parties, under sub-section (1) of Section 7 of the 1996 Act.

*26. Applicability of the Limitation Act, 1963 to the arbitrations is covered by Section 43 of the 1996 Act. The High Court, while referring to abovesaid provisions and the judgment of this Court in *A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd.* has held that the Limitation Act, 1963 is applicable to the arbitrations covered by Section 18(3) of the 2006 Act. 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. When the settlement with regard to a dispute between the parties is not arrived at under Section 18 of the 2006 Act, necessarily, the Micro and Small Enterprises Facilitation Council shall take up the dispute for arbitration under Section 18(3) of the 2006 Act or it may refer to institution or centre to*

⁴⁷ *ibid*, paras 26-27.

provide alternate dispute resolution services and provisions of the Arbitration and Conciliation Act, 1996 are made applicable as if there was an agreement between the parties under sub-section (1) of Section 7 of the 1996 Act.”

36. The learned senior counsels on behalf of the appellants have made two submissions regarding the correctness of *Silpi Industries* (supra), which otherwise lays down the law on this exact issue. The first is that the Court therein did not consider the effect of Section 2(4) of the ACA, which explicitly excludes the applicability of Section 43 to statutory arbitrations, while arriving at its decision. The second is that the decision in *Lanco* (supra), relied on by the Court, is per incuriam as it is contrary to an earlier, coordinate bench decision in *TANGEDCO* (supra). We will now consider each of these submissions in some detail, and while doing so, will also provide our reasoning for why the Limitation Act must be held applicable to arbitration proceedings under Section 18(3) of the MSMED Act.

37. We will first deal with the argument regarding applicability of Section 43 of the ACA to arbitrations under Section 18(3) of the MSMED Act. The significance of Section 43 of the ACA has been explained by this Court in *Consolidated Engineering Enterprises v.*

*Principal Secretary Irrigation Department*⁴⁸ as making the provisions of the Limitation Act, which are otherwise only applicable to proceedings before courts, applicable to arbitrations.⁴⁹ Without the enactment of Section 43, the Limitation Act would not extend to claims filed before arbitral tribunals.⁵⁰

38. It is in this light that we must consider the interplay of Section 2(4) of the ACA with the provisions of the MSMED Act. If the applicability of the provisions of Part I of the ACA is determined as per Section 2(4), it is an inevitable conclusion that Section 43 will not apply to such arbitrations, and consequently, the Limitation Act will also not apply.

39. Section 18 of the MSMED Act provides for arbitration by the Facilitation Council in the following terms. Sub-section (1) commences with a non-obstante clause and provides for reference of a dispute regarding the amount due under Section 17 to the Facilitation Council. While Section 18(2) mandates conciliation, Section 18(3) deals with the eventuality of failure of settlement. It provides that when the conciliation stands terminated without a settlement, the matter must be referred to arbitration *and the*

⁴⁸ (2008) 7 SCC 169.

⁴⁹ *ibid*, paras 23, 45; *My Preferred Transformation & Hospitality Pvt. Ltd. v. M/s Faridabad Implements Pvt. Ltd.* 2025 INSC 56, paras 10-11.

⁵⁰ *ibid*.

provisions of the ACA shall apply as if the arbitration is in pursuance of an arbitration agreement under Section 7(1) of the ACA. It is clear that there is a statutory deeming fiction that the arbitration under the statute is to be considered as being pursuant to an arbitration agreement.⁵¹ It is also relevant to note that Section 24 of the MSMED Act provides for the overriding effect of Sections 15 to 23 notwithstanding anything inconsistent in any other law for the time being in force.

40. Section 2(4) of the ACA also employs a similar device of deeming statutory arbitrations as being pursuant to an arbitration agreement, as if the other enactment is an arbitration agreement. By doing so, it extends the applicability of Part I of the ACA to such arbitrations, except certain provisions including Section 43 and except insofar as the provisions of the ACA are inconsistent with the other enactment or rules thereunder. Two things are relevant to note here: *first*, by default, Section 2(4) extends Part I of the ACA, except Sections 40(1), 41, and 43, to statutory arbitrations; and *second*, Section 2(4) itself provides for the overriding effect of the special law in case of inconsistency with its provisions.

⁵¹ See *Mahakali Foods* (supra), para 43.

41. There is a clear and apparent conflict in the manner in which the provisions of the ACA are made applicable – while Section 2(4) provides for the exclusion of Section 43 to statutory arbitrations, Section 18(3) provides for the applicability of all the provisions of the ACA as would apply if there were an arbitration agreement, which includes Section 43. We are of the opinion that Section 18(3) of the MSMED Act will prevail over Section 2(4) of the ACA. 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 from the non-obstante clause in Section 18 and the express language in Section 24. The language of Section 2(4) itself also supports this overriding effect of the special law. The same has also been recognised and affirmed by this Court in *Mahakali Foods* (supra), wherein the Court considered the purpose and object, statutory scheme, and sequence of enactment of the ACA and the MSMED Act to arrive at the conclusion that the MSMED Act is a special law that will prevail over the provisions of the ACA, which is a general law.⁵²

42. For these reasons, we are of the opinion that the applicability of the ACA to arbitrations under the MSMED Act is not determined

⁵² *ibid*, paras 33-42.

by Section 2(4) of the ACA, and is rather determined as per Section 18(3) of the MSMED Act. Pursuant to the deeming fiction ingrained in the language of Section 18(3), the arbitration conducted thereunder would attract the provisions that are otherwise applicable when there is an arbitration agreement. This includes Section 43, thereby making the Limitation Act applicable to arbitral proceedings under the MSMED Act.

43. In this light, although the Court in *Silpi Industries* (supra) did not consider Section 2(4) while arriving at its decision, we have provided our reasons for why it will not be applicable. The submission by the appellants that *Silpi Industries* (supra) is per incuriam on this ground is therefore rejected and the applicability of the Limitation Act to arbitrations under Section 18(3), by virtue of Section 43, is affirmed.

44. We will now briefly consider the second contention regarding *Lanco* (supra) being per incuriam and contrary to *TANGEDCO* (supra), thereby rendering its reliance in *Silpi Industries* (supra) as incorrect. It is relevant to note that *Lanco* (supra) and *TANGEDCO* (supra) arise in the context of the Electricity Act, 2003 and the applicability of the Limitation Act to arbitrations conducted thereunder.

45. In *TANGEDCO* (supra), a dispute regarding payments under a Power Purchase Agreement (PPA) was raised before the State Electricity Regulatory Commission, which allowed the same and held that the Limitation Act does not apply to claims under the Electricity Act. It is also relevant to note that the PPA contained an arbitration clause, which is governed by English law and provided that the arbitration shall be conducted in England. While considering various submissions, this Court held that the issue of delay and laches *did not arise* in the facts of the case.⁵³ It also rejected the contention of the appellant therein that the Limitation Act would have applied had the matter been referred to arbitration, by holding that this situation also does not arise as the State Commission decided the dispute itself.⁵⁴ It then proceeded to observe that *even if the matter were referred to arbitration*, Section 43 of the ACA would not apply and consequently, the Limitation Act would not apply, due to Section 2(4) of the ACA.⁵⁵ However, the Court finally noted that in any case, the arbitration clause is governed by English Law and hence the applicability of Section 43, which is under Part I, does not arise.⁵⁶

⁵³ *TANGEDCO* (supra), para 64.

⁵⁴ *ibid*, para 65.

⁵⁵ *ibid*, paras 65-66.

⁵⁶ *ibid*, para 69.

46. It is therefore clear that the issue of limitation as well as the interpretation of Section 2(4) and the applicability of Section 43 of the ACA to statutory arbitrations under the Electricity Act did not directly arise for consideration in *TANGEDCO* (supra). This has also been noted by this Court in *Lanco* (supra)⁵⁷, wherein the issue directly falling for the Court's consideration was whether the Limitation Act applies to actions instituted before the State Commission under the Electricity Act.⁵⁸ The Court noted that the Limitation Act does not ordinarily apply to proceedings before quasi-judicial bodies or tribunals⁵⁹. However, applying the principle in *V.R. Kalliyankutty* (supra), the Court held that Electricity Act does not create a new right to claim amounts that are barred by limitation. An amount that is not ordinarily recoverable by filing a regular suit, on account of being barred by limitation, cannot be entertained in exercise of judicial powers by the State Commission. The Court also considered that there is no conflict between the provisions of the Limitation Act and the Electricity Act, in which context it examined the effect of Sections 174 and 175 of the Electricity Act. Ultimately, the Court concluded

⁵⁷ *Lanco* (supra), paras 16, 28.

⁵⁸ *ibid*, para 9.1.

⁵⁹ *ibid*, para 28. The Court relied on *M.P. Steel Corpn.* (supra).

that the Limitation Act is applicable to proceedings before the State Commission under the Electricity Act. The relevant portion of *Lanco* (supra) is extracted below:

“30. In such a situation it falls for consideration whether the principle of law enunciated in State of Kerala v. V.R. Kalliyankutty and in New Delhi Municipal Committee v. Kalu Ram is attracted so as to bar entertainment of claims which are legally not recoverable in a suit or other legal proceeding on account of bar created by the Limitation Act. On behalf of the respondents those judgments were explained by pointing out that in the first case the peculiar words in the statute—“amount due” and in the second case “arrears of rent payable” fell for interpretation in the context of powers of the tribunal concerned and on account of the aforesaid particular words of the statute this Court held that the duty cast upon the authority to determine what is recoverable or payable implies a duty to determine such claims in accordance with law. In our considered view a statutory authority like the Commission is also required to determine or decide a claim or dispute either by itself or by referring it to arbitration only in accordance with law and thus Sections 174 and 175 of the Electricity Act assume relevance. Since no separate limitation has been prescribed for exercise of power under Section 86(1)(f) nor this adjudicatory power of the Commission has been enlarged to entertain even the time-barred claims, there is no conflict between the provisions of the Electricity Act and the Limitation Act to attract the provisions of Section 174 of the Electricity Act. In such a situation, on account of the provisions in Section 175 of the Electricity Act or even otherwise, the power of adjudication and determination or even the power of deciding whether a case requires reference to arbitration must be exercised in a fair manner and in accordance with law. In the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation, or taking away a right of the other side to take a lawful defence of limitation, we are persuaded to hold that in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation. We have taken this view not only because it appears to be more just but also because unlike labour laws and the Industrial Disputes Act, the Electricity Act has no peculiar philosophy or inherent underlying reasons requiring adherence to a contrary view.

31. We have taken the aforesaid view to avoid injustice as well as the possibility of discrimination. We have already extracted a part of para 11 of the judgment in State of Kerala v. V.R. Kalliyankutty wherein

the Court considered the matter also in the light of Article 14 of the Constitution. In that case the possibility of Article 14 being attracted against the statute was highlighted to justify a particular interpretation as already noted. It was also observed that it would be ironic if in the name of speedy recovery contemplated by the statute, a creditor is enabled to recover claims beyond the period of limitation. In this context, it would be fair to infer that the special adjudicatory role envisaged under Section 86(1)(f) also appears to be for speedy resolution so that a vital developmental factor — electricity and its supply is not adversely affected by delay in adjudication of even ordinary civil disputes by the civil court. Evidently, in the absence of any reason or justification the legislature did not contemplate to enable a creditor who has allowed the period of limitation to set in, to recover such delayed claims through the Commission. Hence we hold that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court. But in an appropriate case, a specified period may be excluded on account of the principle underlying the salutary provisions like Section 5 or Section 14 of the Limitation Act. We must hasten to add here that such limitation upon the Commission on account of this decision would be only in respect of its judicial power under clause (f) of sub-section (1) of Section 86 of the Electricity Act, 2003 and not in respect of its other powers or functions which may be administrative or regulatory.”

47. In view of the above reading of *TANGEDCO* (supra) and *Lanco* (supra), the following can be concluded: *first*, the issue of applicability of the Limitation Act to statutory arbitrations is not an issue determining the rights and liabilities of the parties in *TANGEDCO* (supra); *second*, the issue of applicability of the Limitation Act to statutory arbitrations does not arise in *Lanco* (supra), and the Court was in fact dealing with whether time-barred claims can be entertained in proceedings before the State Commission; and *third*, after taking note of the decision in *TANGEDCO* (supra), the Court in *Lanco* (supra) provided an alternative reasoning based on the principle of *V.R. Kalliyankutty*

(supra) to hold that the Limitation Act applies to proceedings under the Electricity Act. Hence, we are of the opinion that the decision in *Lanco* (supra) is not per incuriam, and there is no conflict between these judgments. We therefore reject the submission by the appellant on this ground as well.

48. In light of the above reasoning, this Court's decision in *Silpi Industries* (supra) cannot be said to be per incuriam, as has been contended before us. The Court in *Silpi Industries* (supra) considered the issue and conclusively decided that the provisions of the Limitation Act are applicable to arbitration under Section 18(3) of the MSMED Act. We have supplemented the reasoning provided in *Silpi Industries* (supra) by analysing with the interplay of Section 2(4) of the ACA and Section 18 and Section 24 of the MSMED Act. Considering the overriding effect of the provisions of the MSMED Act and the clear language of Section 18(3), we have arrived at the same conclusion as in *Silpi Industries* (supra) that Section 43 of the ACA applies to arbitrations under Section 18 of the MSMED Act, thereby attracting the provisions of the Limitation Act to claims made under the MSMED Act. We answer the second issue accordingly.

49. Before concluding, we will briefly deal with the contention raised by the appellant that even if the Limitation Act applies to arbitration proceedings, the limitation period stands extended due to the disclosure of unpaid amount in the buyer's financial statements as per Section 22 of the MSMED Act. This is based on the application of Section 18 of the Limitation Act, which provides that a fresh period of limitation commences when a written acknowledgement of the liability is signed by the party against whom such right is claimed.⁶⁰

50. To briefly state the law on the issue, we will refer to this Court's decision in *Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal*⁶¹. Here, the issue was the applicability of Section 18 of the Limitation Act when there is acknowledgment of liability in financial statements. Citing various precedents on the issue, this Court reaffirmed the position that an entry in the balance sheet of the debtor would amount to an acknowledgement of liability as per Section 18 of the Limitation Act.⁶² However, it also observed that

⁶⁰ Section 18 of the Limitation Act reads:

“18. Effect of acknowledgment in writing.—(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment 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 acknowledgment was so signed..”

⁶¹ (2021) 6 SCC 366.

⁶² *ibid*, paras 16-17.

it is not uncommon for such entry to have notes annexed, or the auditor's report that must be read along with the balance sheet, that indicate that such entry does not amount to an acknowledgement of debt for reasons stated therein.⁶³ While the law mandates the preparation of the balance sheet, and in our case, the disclosure of the unpaid amount and interest thereon, the entry made therein must be examined on a case-to-case basis to determine whether it amounts to an acknowledgement of debt as per the requirements of Section 18 of the Limitation Act.⁶⁴ It is sufficient to restate this position of law for our purpose.

X. Conclusion:

51. On considering the statutory provisions of the MSMED Act, the ACA, and the Limitation Act, the precedents of this Court, and on the basis of the above reasoning, we have answered the issues arising in the present appeals 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

⁶³ *ibid*, para 21.

⁶⁴ *ibid*, para 35.

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. This is in addition to the reasoning provided in *Silpi Industries* (supra). 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.

52. We therefore partly allow the present appeals arising out of SLP (C) Nos. 6912-6920/2024 and set aside the impugned order dated 20.10.2023 arising in Commercial Appeal Nos. 1-9/2018 before the High Court of Bombay Bench at Nagpur to the extent of applicability of the Limitation Act to conciliation proceedings under the MSMED Act. We have upheld the High Court's decision on the applicability of the Limitation Act to arbitration proceedings under the MSMED Act for the reasons provided hereinabove.

53. Pending applications, if any, stand disposed of.

54. No order as to costs.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[JOYMALYA BAGCHI]

**NEW DELHI;
JULY 17, 2025**