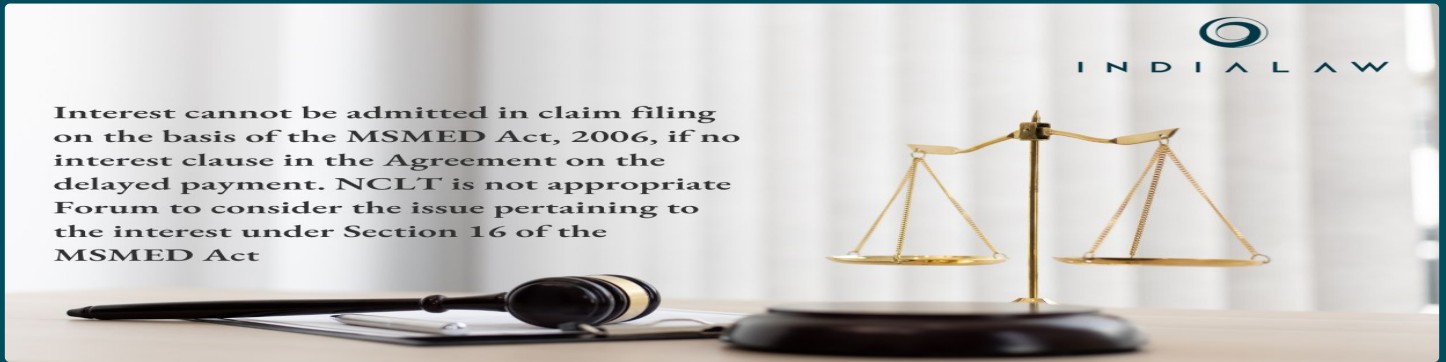




CIVIL

Interest cannot be admitted in claim filing on the basis of the MSMED Act, 2006, if no interest clause in the Agreement on the delayed payment. NCLT is not appropriate Forum to consider the issue pertaining to the interest under Section 16 of the MSMED Act

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The Hon'ble NATIONAL COMPANY LAW APPELLATE TRIBUNAL

Principal Bench, New Delhi, comprising of *Mr. Justice Ashok Bhushan (Chairperson)* and *Mr. Barun Mitra (Technical Member)*, in a recent appeal in the matter of Vedic Projects Pvt. Ltd. Vs. Shri Sutanu Sinha (RP) vide its Order dated 12.11.2024, held that NCLT is not appropriate Forum to consider the issue pertaining to the interest, claimed by the Appellant under Section 16 of the MSMED Act. The RP has admitted the entire principal amount, which was due to the Corporate Debtor and admission of principal amount of Rs.10,36,47,148/- is not under dispute. The RP has to consider the claim and verify the claim as per the claim submitted by an Operational Creditor. The Sub-contract Agreement and other materials, which have been submitted by Appellant, were examined and the RP could admit the claim only to the principal amount. There being no clause in the Agreement to include the interest on the delayed payment, the Hon'ble National Company Law Appellate Tribunal while dismissing the Appeal upheld the order passed by the NCLT.

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Facts of the Case

The case of the Appellant (Vedic Projects Pvt. Ltd.) was that the Appellant and Corporate Debtor had entered into a Sub-contract Agreement dated 16.06.2010 whereby the Corporate Debtor assigned the Applicant for the construction work of Kabrai Feeder Channel starting from Arjun Reservoir, which the Corporate Debtor availed from the Irrigation Department, Govt. of U.P. The Appellant claimed to have raised bill from 30.06.2010 to 27.09.2014 for an amount of Rs.41,53,95,348/-, against which an amount of Rs.10,36,47,148/- was yet to be paid by the Corporate Debtor to the Appellant. The RP initially admitted claim of only Rs.2,76,67,940/-. An application was filed by the Appellant before the Adjudicating Authority, objecting to the amount of claim admitted.

The Adjudicating Authority directed the Appellant to sit with the IRP regarding the claim. The IRP rejected the entire amount due and payable with respect to interest. Thereafter, Appellant filed an application where the Appellant has prayed for a direction to learned RP to admit the claim of the Appellant to the tune of Rs.23,42,42,554/-. The RP objected that there is no clause of payment of interest on delayed payment in the Sub-contract Agreement entered in 16.06.2010. The Adjudicating Authority by the impugned order rejected the application stating that the claim of the applicant Vedic is an Operational Debt as per Section 5(21) of the I&B Code. It is apparent that definition under Section 5(21) does not include any provision of 'interest' with the 'debt'.

Issues Involved

Whether the Resolution Professional can reject the claim of the Appellant which is based on the entitlement of the interest, the Appellant being MSME?

Whether the NCLT has jurisdiction to consider the issue pertaining to interest claimed by the Appellant under Section 16 of the MSMED Act?

Contentions of the Parties

By the Appellant- (Vedic Projects Pvt. Ltd.)

The Appellant submitted that the Adjudicating Authority has failed to consider the fact that Appellant is a MSME, to whom money was due and payable by the Corporate Debtor ("CD") since 2016, which was withheld by the CD. The Adjudicating Authority failed to consider the fact that Section 16 of the MSMED Act specifically provides interest to the MSME unit for any outstanding amount.

By the Respondent- (Shri Sutanu Sinha -RP)

The Respondent refuting the submissions of learned Counsel for the Appellant submitting that in the Sub-contract Agreement entered between Corporate Debtor and the Appellant, there was no Clause for any payment of interest. The sub-contractor was only entitled for payment of his bills and sub-contractor was not entitled for any interest on the amount of the invoice. It is submitted that the RP, who only exercise administrative functions, as a facilitator, could not have admitted the claim of interest as filed by the Operational Creditor and entire principal amount having been admitted by the RP. The RP further pleaded that no Agreement of interest has been reflected in financial statements of the CD. As far as the interest component claimed by Applicant of Rs.13,05,95,406/- is concerned, the Respondent submits that the same has been rejected in view of the absence of any clause for payment of interest on delayed payment under the Sub-Contract Agreement.

Findings of the Learned NATIONAL COMPANY LAW TRIBUNAL

The Learned National Company Law Tribunal held that concerning the Section 16 of MSMED Act, which caters to that where any buyer fails to make payment of the amount to the supplier, 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 of India. The Adjudicating Authority were of the view that this is not the appropriate forum to consider the issue pertaining to the interest as claimed by the Applicant under MSMED Act. In terms of the view above, the Adjudicating Authority considered opinion that the RP, having an administrative and facilitative role under the I&B Code and its Regulations, has not committed any error by rejecting the interest amount from the principal amount as nowhere in the agreement or work order mentions the clause of payment of interest.

Findings of the Hon'ble NATIONAL COMPANY LAW APPELLATE TRIBUNAL, Principal Bench

the Hon'ble National Company Law Appellate Tribunal held that claim of the Appellant is based on the entitlement of the interest, the Appellant being MSME. The learned Counsel for the Appellant has relied on Section 16 of the MSMED Act. regarding claim under the MSME, the Adjudicating Authority has observed that NCLT is not appropriate Forum to consider the issue pertaining to the interest, claimed by the Appellant under Section 16 of the MSMED Act. The RP has admitted the entire principal amount, which was due to the Corporate Debtor and admission of principal amount of Rs.10,36,47,148/- is not under dispute. The RP has to consider the claim and verify the claim as per the claim submitted by an Operational Creditor. The Sub-contract Agreement and other materials, which have been submitted by Appellant, were examined and RP could admit the claim only to the principal amount. There being no clause in the Agreement to include the interest on the delayed payment, we do not find any error in the order of the Adjudicating Authority, refusing to accept the claim of the Appellant towards interest on the operational debt, which was claimed by the Appellant.

Thus, the Hon'ble National Company Law Appellate Tribunal do not find any error in the order of the Adjudicating Authority and upheld the order passed by the Learned National Company Law Tribunal.