

Neutral Citation No. - 2024:AHC-LKO:30672-DB

Chief Justice's Court

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 29 of 2024

Appellant :- M/S Docket Care Systems Thru Partner Pankaj Kumar Agarwal

Respondent :- M/S Hariwill Electronics India Pvt. Ltd. Thru. M.D.

Counsel for Appellant :- Sri Sudeep Kumar, Sri Madhusudan Srivastava and Ms. Radhika Varma Advocates.

Counsel for Respondent :- Sri Suryansh Narula and Sri Amit Yadav, Advocates.

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Hon'ble Arun Bhansali, Chief Justice

Hon'ble Jaspreet Singh, J.

1. This appeal is directed against the order dated 12th March, 2024 passed by Commercial Court, Court No. 2, Lucknow whereby the petition filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 has been dismissed for failure to pre-deposit the amount to the extent of 75% in terms of provisions of Section 19 of the Micro Small and Medium Enterprises Development Act, 2006 (for short, 'Act of 2006').

2. The appellant aggrieved of the award dated 07th October, 2023 passed by the MSME Council, filed petition under Section 34 of the Arbitration and Conciliation Act, 1996 before the Commercial Court, Lucknow. Along with the petition, an application seeking waiver of pre-deposit as required under Section 19 of the Act of 2006 was filed. The application seeking waiver came to be dismissed by order dated 19th February, 2024 inter-alia relying on the judgment of Hon'ble Supreme Court in **Tirupati Steels Vs. Shubh Industrial Component and Another; (2022) 7 SCC 429.**

3. The Court while dismissing the application, directed the appellant to deposit the 75% of the awarded amount within three weeks and ordered that failing which the Misc. Case shall stand dismissed by itself. On the

same day, i.e. 19th February, 2024, another order was passed based on the determination already made indicating deposit of the 75% of the awarded amount within a period of three weeks and failure thereof would result in dismissal of the pending proceedings.

4. When the matter came up before the Commercial Court on 12th March, 2024, an application was attempted to be filed by the appellant seeking further time to deposit the amount in compliance of the order dated 19.02.2024 wherein it was indicated that the applicant has applied for loan/overdraft from the Bank which is still under process and therefore four weeks' time may be granted for doing the needful in terms of the order dated 19.02.2024. Reliance was placed in this regard on judgments in **Goodyear India Ltd. Vs. Norton Intech Rubbers Pvt. Ltd. and Another; 2012 (6) SCC 345** and **Gujarat State Disaster Management Authority Vs. Aska Equipments Ltd. 2022 (1) SCC 61**. However, it is submitted that the application was not even received/entertained by the Commercial Court and on 12th March, 2024, the impugned order was passed inter-alia noticing the fact that 75% of the awarded amount has not been deposited and consequently dismissed the petition.

5. Learned counsel for the appellant made submissions that the order passed by the Commercial Court on 19.02.2024 directing the deposit within a period of three weeks and on failure the proceeding shall stand dismissed and the order dated 12.03.2024 dismissing the same as a consequence of non-deposit are ex-facie incorrect and against settled law. It was emphasized that while passing the order dated 19.02.2024 granting three week's time, there was no occasion to order that in case of failure, the

proceeding shall stand dismissed.

6. Further, as laid down by the Hon'ble Supreme Court in the case of **Goodyear India Ltd. (Supra)** and **Gujarat State Disaster Management Authority (supra)**, the Commercial Court had the jurisdiction to extend the time and even grant installments for payment of the amount of pre-deposit, however, even the application which was sought to be made by the appellant on 12th March, 2024 was not entertained and the appeal had been dismissed leading to a failure of justice in so far as the appellant is concerned.

7. Submissions have been made that the appellant is prepared to deposit the 75% of the awarded amount within a period of one week from today, therefore, the order impugned may be set aside and the appellant may be granted an opportunity to do the needful.

8. The learned counsel for the respondents made submissions that the filing of the application seeking waiver itself was contrary to the law laid down by the Hon'ble Supreme Court and the same has rightly been dismissed by the Commercial Court and sufficient time was granted for deposit of the amount and as in the first instance itself order was granted that on account of failure to deposit the amount, the proceedings would stand dismissed, only a natural consequence has happened on 12th March, 2024 and therefore, no interference is required in the order impugned.

9. We have considered the submissions made by learned counsel for the parties and have perused the material available on record. There is no dispute on the legal proposition regarding the mandatory nature of

provisions of Section 19 of the MSME Act of 2006 wherein the appellant was required to deposit 75 % of the awarded amount by way of pre-deposit for the Court to entertain the petition under Section 34 of the Act of 1996. However, the application seeking waiver was filed and therefore the same was rightly rejected by the Commercial Court on 19.02.2024, however, while passing the order dismissing the application seeking waiver, while granting time to deposit the amount, the further directions that on failure to deposit the said amount within the period indicated the proceedings shall stand dismissed by itself, in our firm opinion was wholly unwarranted.

10. While passing the said order, the Commercial Court had deprived itself to exercise powers under Section 19 of the MSME Act, 2006, which empowers the Court to impose such conditions as it deems necessary and the said part of the provision has been interpreted by Hon'ble Supreme Court in the case of **Good Year India Ltd. (Supra)** wherein it has been observed that the expression in the manner directed by such court would in its opinion indicate the discretion given to the Court to allow the pre-deposit to be made, if felt necessary, in installments also. Which view has been followed in the case of **Gujarat State Disaster Management Authority (Supra)**.

11. When on 12th March, 2024 i.e. on completion of three weeks' period from 19th February, 2024 , the matter came up before the Commercial Court, strangely enough, the application seeking extension of time, was even refused to be received/entertained by the Commercial Court, which action also cannot be countenanced.

12. Be that as it may, as now the appellant is prepared to deposit the 75%

of the awarded amount within a period of one week, the order dated 19th February, 2024 (to the extent of peremptory nature of the order) and 12th March, 2024 and the consequential dismissal of the petition, cannot be sustained.

13. Consequently, the appeal is **allowed**. The order dated 19th February, 2024 to the extent, it has been ordered that failure to deposit the amount within a period of three weeks will result in dismissal of the proceedings and order dated 12th March, 2024 dismissing the proceedings are set aside. The Misc. Civil Case No. 2 of 2024 is restored to its original number. The appellant shall deposit 75 % of the awarded amount by 29th April, 2024. It is made clear that in case the needful is not done by the appellant by 29th April, 2024, the Commercial Court would be free to pass appropriate order in accordance with law. The parties shall appear before the Commercial Court on 29th April, 2024.

Order Date :- 19.04.2024
Asheesh/Vipul

(Jaspreet Singh, J.) (Arun Bhansali, CJ.)