



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMO No.301 of 2023

Decided on: 26th June, 2023

M/s Pratap Industries ProductsPetitioner

Versus

M/s Hindustan Construction Company Ltd. ...Respondent

Coram

Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge

¹ *Whether approved for reporting? Yes.*

For the petitioner: Mr. Atul Jhingan, Advocate.

For the respondent: Mr. Janesh Gupta, Advocate.

Jyotsna Rewal Dua, Judge

The challenge in this petition is to order dated 21.12.2022, passed by the learned District Judge, whereby application moved under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (the Act in short) was disposed of.

2. The award was passed by the Arbitrator on 30.10.2021 in reference No. 3/5. Objections under Section 34 of the Arbitration and Conciliation Act, 1996 were preferred by the present respondent against the aforesaid award before

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

the learned District Judge. Alongwith the objections, an application under Section 19 of the Act read with Section 151 of Code of Civil Procedure was also instituted, seeking stay of the implementation/execution of the award dated 30.10.2021. The applicant's (present respondent) contention before learned District Judge was that in compliance of Section 19 of the Act, it had deposited 75% of the total awarded amount. It was further alleged that the present petitioner was proceeding ahead with the execution of the award dated 30.10.2021, hence, prayer was made for staying the execution of the aforesaid award.

The contention of the present petitioner (respondent before the learned District Judge) was that the amount deposited by the present respondent was short of 75% of the awarded amount. It was submitted that the deposit was not in terms of the requirement of Section 19 of the Act, therefore, the respondent was not entitled for the stay of the impugned award.

3. Learned District Judge allowed the application moved by the respondent under Section 19 of the Act vide his order dated 21.12.2022, staying the implementation and

execution of the impugned award dated 30.10.2021 after holding that “as per the record, the applicant has deposited 75% of the award amount in compliance of the said provision.” Aggrieved, against order dated 21.12.2022, recourse to present petition has been made by the petitioner.

4. Learned counsel for the petitioner submitted that petitioner in its reply to the application had brought to the notice of learned District Judge that the deposit made by the present respondent fell short of the requirements under Section 19 of the Act. Without deciding as to whether the amount deposited by the respondent fulfilled the requirement of Section 19 of the Act, learned District Judge could not have assumed that the deposit made by the respondent was actually 75 % of the awarded amount.

5. I have heard learned counsel for the petitioner as well as learned counsel for the respondent. The dispute between the parties is as to whether the deposit made by the respondent before the learned District Judge was in consonance with the requirement of Section 19 of the Act or not. Section 19 of the Act reads as under: -

19. Application for setting aside decree, award or order.—No application for setting aside any decree,

award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case subject to such conditions as it deems necessary to impose.

Hon'ble Apex Court in its decision dated 19.04.2022 rendered in **Civil Appeal No. 2941 of 2022 (M/s Tirupati Steels Vs. M/s Shubh Industrial Component & others)** held that pre-deposit of 75% of the awarded amount under Section 19 of the Act is a mandatory requirement. However, at the same time, considering the hardship which may be projected and the Court being satisfied the pre-deposit may be allowed to be made in installments. Relevant paras of the judgment reads as under:-

4. *The question which is posed for consideration of this Court is, whether, the pre-deposit of 75% of the awarded amount*

as per section 19 of the MSMED Act, 2006, while challenge to the award under section 34 of the Arbitration Act, 1996, is made mandatory or not, is now no longer res integra in view of the decision of this Court in the case of Gujarat State Disaster Management Authority Vs. Aska Equipments Limited, (2022) 1 SCC 61. While interpreting section 19 of the MSMED Act, 2006 and after taking into consideration the earlier decision of this Court in the case of Goodyear (India) Ltd. Vs. Norton Intech Rubbers (P) Ltd.; (2012) 6 SCC 345, it is observed and held that the requirement of deposit of 75% of the amount in terms of the award as a pre-deposit as per section 19 of the MSMED Act, is mandatory. It is also observed that however, at the same time, considering the hardship which may be projected before the appellate court and if the appellate court is satisfied that there shall be undue hardship caused to the appellant/applicant to deposit 75% of the awarded amount as a pre-deposit at a time, the court may allow the pre-deposit to be made in instalments. Therefore, it is specifically observed and held that pre deposit of 75% of the awarded amount under section 19 of the MSMED Act, 2006 is a mandatory requirement. In para 13 of the aforesaid judgment, it is observed and held as under: "13. On a plain/fair reading of Section 19 of the MSME Act, 2006, reproduced hereinabove, at the time/before entertaining the application for setting aside the award made under Section 34 of the Arbitration and Conciliation Act, the appellant applicant has to deposit 75% of the amount in terms of the award as a pre-deposit. The requirement of deposit of 75% of the amount in terms of the award as a pre deposit is mandatory. However, at the same time, considering the hardship which may be projected before the appellate court and if

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the appellate court is satisfied that there shall be undue hardship caused to the appellant-applicant to deposit 75% of the awarded amount as a pre-deposit at a time, the court may allow the pre-deposit to be made in instalments.”

5. *In view of the aforesaid decision of this Court, the impugned order passed by the High Court permitting the proceedings under section 34 of the Arbitration Act, 1996 without insistence for making pre-deposit of 75% of the awarded amount is unsustainable and the same deserves to be quashed and set aside. As observed hereinabove, while passing the impugned order, the Division Bench of the High Court has relied upon an earlier decision of the Division Bench in the case of M/s Mahesh Kumar Singla (supra) which has taken a contrary view. Therefore, the decision of the Division Bench in the case of M/s Mahesh Kumar Singla (supra), which has been relied upon by the Division Bench of the High Court while passing the impugned order, is held to be not good law and is specifically overruled to the extent that it holds that pre deposit of 75% of the awarded amount under section 19 of the MSMED Act, 2006, is directory and not a mandatory requirement.”*

According to the present petitioner, the respondent has deposited an amount of Rs.3618716/- whereas it was required to deposit an amount of Rs.47,94,688/- (75% of the awarded amount). According to learned counsel for the respondent, the deposit made by the respondent satisfies Section 19 of the Act. Learned District

Judge in his impugned order has not discussed as to whether the amount actually deposited by the respondent satisfied the condition of deposit of 75% of the awarded amount or not. The impugned order simply stated that as per record, the respondent had deposited 75% of the awarded amount.

In view of the factual dispute between the parties, it will be appropriate to relegate the parties to learned District Judge for fresh decision of the application moved by the respondent under Section 19 of the Act. Accordingly, the impugned order dated 21.12.2022 is set aside. Learned District Judge Shimla, is directed to decide the application moved by the respondent afresh in accordance with law.

Till the time, the application under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 is decided afresh, the respondent shall not execute the impugned award dated 30.10.2021.

The present petition stands disposed of in the above terms alongwith pending miscellaneous application(s), if any.

Jyotsna Rewal Dua
Judge

June 26, 2023

R.Atal