

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No.36795 OF 2022

Between:

M/s Resurgent Power Projects Ltd.

... **Petitioner**

And

The State of Telangana & others

... **Respondents**

JUDGMENT PRONOUNCED ON: 03.06.2024

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

MRS. JUSTICE SUREPALLI NANDA

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**WRIT PETITION No.36795 OF 2022**

% 03.06.2024

Between:

M/s Resurgent Power Projects Ltd

... **Petitioner**

And

\$ The State of Telangana & others

... **Respondents**

< **Gist:**

> **Head Note:**

! Counsel for the Petitioners : Mr K.Rajendran

^ Counsel for the Respondent No.1 & 2 : G.P. for Industries

^ Counsel for the Respondent No.3 : Mr K.Pratik Reddy

? Cases Referred:

1. (2005) 8 SCC 618
2. (2007)5 SCC 38
3. (2011) SCC Online MP 5993
4. (2022)7 SCC 429
5. (2023) 6 SCC 401
6. (2022) 1 SCC 75
7. W.P.No.34612 of 2022, dated 12.12.2022
8. W.P.No.16331 of 2019, dated 20.01.2020

HON'BLE MRS JUSTICE SUREPALLI NANDA**WRIT PETITION No.36795 OF 2022****ORDER:**

Heard Mr. K. Rajendran, the learned counsel appearing on behalf of the petitioner, Mr. K.Pratik Reddy appearing on behalf of the 3rd respondent and the learned Government Pleader for Industries appearing on behalf of Respondent Nos.1 and 2.

2. The petitioner approached the court seeking prayer as under:

"to issue a Writ Certiorari, or any other appropriate Writ, Order or Direction call for the records pertaining to and in connection with the Award dated 25.03.2022 in Case No.454/IFC/Mdl-Mlg/2019 passed by Respondent-2 including the records constituting/ composition of Resp.-2 and declare Respondent-2 Council and the Award as illegal, ultra-vires being capricious, perverse, without any authority of law, in gross violation of principles of natural justice, gross abuse of power and unconstitutional being violative of Articles 14, 19, of the Constitution of India besides being opposed to all canons of equity, justice and fair play and grant such other or further relief(s) as this Hon'ble Court may deem just, fit and proper in the circumstances of the case, in the interest of justice."

3. PERUSED THE RECORD :

A) The counter and vacate petition has been filed on behalf of the 3rd Respondent – Para Nos. 4, 6, 7, 8, 9, 10 and 11 of the counter affidavit read as follows :

“4. The present Writ Petition is only filed to get away from the mandatory requirement of depositing 75% of the awarded amount by the Petitioner. If Section 34 was invoked, the Petitioner ought to have deposited 75% of the awarded amount which is now avoided by invoking the Jurisdiction of this Hon'ble Court.

6. The Respondent No. 3 filed an application before the Respondent No. 2 under Section 18(1) of MSME Act seeking an award against the Petitioner for payment of an amount of Rs. 44,17,200/- as the same remained unpaid under purchase order dated 07.01.2016 for supply of Lift Double Girder Box Type EOT Crane with erection and commissioning. The following dates are crucial to determine the present Writ Petition.

S.No.	Date	Events
1	24.02.2020	Claim of the Respondent No.3 was admitted by Respondent No.2 and notice was issued to Petitioner.

7. In view of the above facts it is evident that:

a. Ample opportunity was given to the Petitioner and the award was not passed ex-parte;

- b.** The Petitioner failed to appear for conciliation despite being put to the notice and therefore Respondent No. 2 was compelled to proceed with arbitration;
- c.** Despite giving opportunity to file Defense Statement with documents on the date of final hearing, the Petitioner chose not to file the same.
- d.** The Respondent No. 2 has recorded all contentions raised by all parties and at Para 16 has given its reasons for rejecting the contentions of the Petitioner. Specifically, it was held that:

"16 **i.** The Respondent's objections with regard to the claimant unit status under Micro / Small enterprises category, with regard to making the end user of goods supplied i.e., M/s. Jeppiaar Power Corporation Pvt. Ltd as Respondent, and with regard to LC issue and supply of goods after scheduled delivery period are not proved as he has not furnished any supportive documents and the claimant had denied and answered all the issues raised by the Respondent along with supportive documents.

ii. The claimant submitted statement of accounts, IT returns, e-way bills, LR Copies, goods transporters consignments notes acknowledged by Respondent in support of his claim."

- (e)** After giving its reasons and recording that documentary evidence and arguments are examined, the claim of Respondent No. 3 is allowed.

8. All of the above clearly demonstrate that the procedure established under the MSME Act is followed and since no documentary evidence is produced by the Petitioner, after giving reasons, the award was passed.

9. After the award, the Respondent No. 3 filed an Execution Petition before High Court Bench, Chennai vide EP No.57 of 2023.

10. At this stage, the above Writ Petition is filed on two grounds:

a) The Respondent No. 2's constitution is contrary to law and therefore the award is without Jurisdiction and nullity;

b) Procedure under Section 18 of MSME Act is not followed.

11. None of the above two grounds are made out in the present Writ Petition since the Council is validly constituted and the provisions of Section 18 are followed which is evident from the above facts. Assuming but not admitting that the award is without Jurisdiction and nullity, even the said issue must be adjudicated in appropriate proceedings before the appropriate forum under Section 34 of the 1996 r/w Section 19 of MSME Act and not under Writ Jurisdiction.

B) The learned counsel appearing on behalf of the 3rd

Respondent mainly puts-forth the following submissions :

a) The award passed by Respondent No. 2 is neither illegal nor ultra-vires the provisions of MSME Act.

b) All the allegations put forth by the petitioner require factual adjudication and the same have been dealt by the respondent No.2 in the Award, and the petitioner is aggrieved by the same, the only remedy is to file appropriate application under Section 34 of the 1996 Act read with Section 19 of MSME Act.

c) Repeated notices were given to the Petitioner and the Petitioner chose to appear only on the last date of hearing. Despite the actions of the Petitioner, the Respondent No. 2 has given ample opportunity to the Petitioner.

d) The council is validly constituted as evident from the award itself and therefore the issue which was already raised by the Petitioner before the Respondent No. 2 cannot be raised at this stage in the present proceedings.

e) There is no violation of the provisions of MSME Act or 1996 Act or the rules made therein more particularly in the facts of the present case wherein the Petitioner failed to appear despite being put on notice.

f) This Respondent states that the notice required under the provisions of MSME Act were served on the petitioner and therefore, there is no violation of principles of natural justice.

g) The award is neither illegal nor ultra-vires the provisions of MSME Act and the petitioner indeed has alternate

remedy to initiate appropriate proceedings under Section 34 of the 1996 Act r/w Section 19 of MSME Act.

h) The owner i.e. Jeppair Power Corporation Private Limited is not a necessary party in the present case. However, assuming but not admitting that it is a necessary party, the same shall be adjudicated under Section 34 of 1996 Act.

i) There is effective alternative remedy where all the issues raised in the present writ petition can be adjudicated by the competent Court under Section 34 of the 1996 Act.

C) The interim order of this Court dated 23.09.2022 granted in favour of the Petitioner is extracted here under:

“Learned Government Pleader of Industry and Commerce takes notice on behalf of the 1st respondent.

Notice to respondent Nos.2 and 3.

Personal notice is permitted.

List on 19.10.2022.

Prima facie, the impugned award dated 25.03.2022 in Case No.454/IFC/Mdl-Mlg/2019 passed by the 2nd respondent is in violation of the procedure laid down under Micro, Small and Medium Enterprises Development Act, 2006 and also Arbitration and Conciliation Act, 1996. Therefore, the matter requires examination.

Hence, there shall be interim suspension of impugned Award dated 25.03.2022 passed by the 2nd respondent.

DISCUSSION AND CONCLUSION:

4. A bare perusal of the record indicates that the present writ petition has been under Article 226 of the Constitution of India challenging an Award issued under Section 18 of the MSMED Act and the primary objection of the petitioner is that the Award suffers from inherent lack of jurisdiction. This Court opines that an objection with respect to jurisdiction must also be raised in an appropriate proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 and not under Article 226.

5. This Court opines that whatever might be the objection, including an objection with respect to jurisdiction can only be raised in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 and not under Article 226 of the Constitution of India.

6. Few relevant judgments for adjudication of the present case with the relevant paragraphs are extracted hereunder :

a) The Apex Court in the judgment dated 06.01.2021 in Bhaven Construction Vs. Executive Engineer, reported in (2022) 1 SCC 75, and in particular at para Nos. 25 and 26, observed as under:

“25. The Gujarat Act was enacted in 1992 with the object to provide for the constitution of a tribunal to arbitrate disputes particularly arising from works contract to which the State Government or a public undertaking is a party. A works contract is defined under Section 2(k) of the Gujarat Act. The definition includes within itself a contract for supply of goods relating to the execution of any of the works specified under the section. However, a plain reading of the contract between the parties indicates that it was for both manufacturing as well as supply of bricks. Importantly, a contract for manufacture simpliciter is not a works contract under the definition provided under Section 2(k). The pertinent question therefore is whether the present contract, which is composite in nature, falls within the ambit of a works contract under Section 2(k) of the Gujarat Act. This is a question that requires contractual interpretation, and is a matter of evidence, especially when both parties have taken contradictory stands regarding this issue. It is a settled law that the interpretation of contracts in such cases shall generally not be done in the

writ jurisdiction. Further, the mere fact that the Gujarat Act might apply may not be sufficient for the writ courts to entertain the plea of Respondent 1 to challenge the ruling of the arbitrator under Section 16 of the Arbitration Act.

26. It must be noted that Section 16 of the Arbitration Act, necessarily mandates that the issue of jurisdiction must be dealt first by the tribunal, before the court examines the same under Section 34. Respondent 1 is therefore not left remediless, and has statutorily been provided a chance of appeal. In Deep Industries case, this Court observed as follows:

"22. One other feature of this case is of some importance. As stated hereinabove, on 9-5-2018, a Section 16 application had been dismissed by the learned arbitrator in which substantially the same contention which found favour with the High Court was taken up. The drill of Section 16 of the Act is that where a Section 16 application is dismissed, no appeal is provided and the challenge to the Section 16 application being dismissed must await the passing of a final award at which stage it may be raised under Section 34."

b) The judgment of the Apex Court in Gujarat Civil Supplies Corpn. Ltd Vs. Mahakali Foods (P) Ltd. reported in (2023) 6 SCC 401 and in particular at para Nos. 68, 69, and 70 read as under:

"68. The appeal is directed against the judgment and order dated 20-1-2020 passed by the High Court of Judicature at Bombay, whereby the High Court dismissed the writ petitions filed by the appellants (original writ petitioners) holding that the party aggrieved by the order passed by the Arbitral Tribunal has to challenge the same in accordance with the provisions of the Arbitration Act, 1996. In the said case, the present Respondent 1 IBEX Integrated Business Express Pvt. Ltd. (original Respondent I supplier) had approached the Facilitation Council for the recovery of its dues against the appellants. The appellants appeared before the Council and raised a preliminary objection with regard to the maintainability of the reference on the ground that there was an arbitration clause contained in the agreement executed between the parties.

69. The said preliminary objection was rejected by the Facilitation Council vide the order dated 20-12-2014. The Council thereafter proceeded further with the reference in which the appellants filed their reply on merits to the claim made by the respondent IBEX, and the Facilitation Council eventually passed an award on 31-3-2017, allowing the said reference filed by the IBEX. Being aggrieved by the said award as well as the earlier order dated 20-12-2014 passed by the Facilitation Council, the appellants approached the High Court by filing two writ petitions. **The High Court dismissed both the petitions vide the impugned order holding that when the Facilitation Council had conducted the arbitration proceedings**

and passed an award, the remedy of the party aggrieved would be to take recourse to Section 34 of the Arbitration Act, 1996.

70. As held earlier, the proceedings before the Facilitation Council/ institute/centre acting as an arbitrator are governed by the Arbitration Act, 1996 and therefore any order passed or award made by such council/institute/centre has to be challenged as per the Arbitration Act. The appeal therefore deserves to be dismissed and is dismissed.

c) The judgment of the Andhra Pradesh High Court in Gulf Oil Corporation Vs. Andhra Pradesh Micro and Small Enterprises Facilitation Council, Vijayawada and another in W.P.No.16331 of 2019, dated 20.01.2020 and in particular at para No. 36, observed as under:

"36. In the recent Full Bench judgment of the Supreme Court in Sterling Industries v. Jayprakash Associates Limited and others (referred supra), the Apex Court while dealing with a similar issue under MSMED Act, referred the earlier judgment of Apex Court in S.B.P. and Co. v. Patel Engineering Ltd, held that writ petition under Article 227 or Article 226 of the Constitution of India is not maintainable against the award passed by an arbitrator. Therefore, the Full Bench of the Apex Court reiterated the principle laid down in S.B.P. and Co. v. Patel Engineering Ltd

(referred supra), where the Court succinctly held that, High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution of India.

Section 37 makes certain orders of the arbitral tribunal are appealable. Under Section 34, the aggrieved party has an avenue for ventilating his grievances against the award including any in-between orders that might have been passed by the arbitral tribunal acting under Section 16 of the Act. The party aggrieved by any order of the arbitral tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The arbitral tribunal is after all, the creature of a contract between the parties, the arbitration agreement, even though if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the arbitral tribunal. It will still be a forum chosen by the parties by agreement.

Therefore, disapproved the stand adopted by the High Court that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution of India and such intervention by the High Courts is not permissible.”

7. The specific objection of the Petitioner with respect to not conducting conciliation before Arbitration and non-issuance of Notice and consequential violation of Section 18 of the MSMED Act, 2006 is answered hereunder :

“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 it to 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.

8. This Court opines that there is no violation of Section 18 of the MSMED Act since the impugned Award dated 25.03.2022 indicates that the petitioner was put to Notice by Respondent No.2 on four occasions i.e., on 24.02.2020, 28.02.2020, 30.09.2020 and 29.01.2021 and even after repeated reminders the Petitioner failed to appear before the 2nd Respondent and on 31.07.2021 since the Petitioner failed to appear on the 5th occasion, the 2nd Respondent

reported that conciliation had failed and posted the matter for Arbitration.

9. The Division Bench of High Court of Madhya Pradesh in the judgment dated 30.12.2021 in Jabalpur Treasure Vs. State of M.P. reported in (2021) SCC Online MP 5993 at para No. 20 observed as under:

"20. So far as the contention regarding non-service of notice to the petitioner in respect of commencement of Arbitration proceedings after the failure of Conciliation proceedings before the Facilitation Committee is concerned, it is found that the petitioner was represented by its counsel on 30-5-2015, 8-10-2015 and 27-4-2016. On 27-4-2016, a detailed reply was also filed by the petitioners but as per the request of the parties, to allow them to discuss if any settlement is possible, they were directed to meet in Indore on 18-5-2016 but no settlement could be arrived at and on the next date of hearing before the Facilitation Council, i.e., on 3-11-2016, the petitioners or their counsel failed to appear before the Council and thus, the final award was passed on 27- 12-2017. It is apparent that after failing to appear before the Facilitation Council, the petitioner is now claiming that proper opportunity of hearing was not given to them which is not tenable and is liable to be rejected. This Court is of the considered opinion that once a notice is served on a party under s. 18 of the MSME Act, it would hold good for Conciliation proceedings as also the Arbitration proceedings

to be taken up by the Facilitation Council, after the Conciliation proceedings have failed and no separate notice is required to be served by the Council for initiation of Arbitration proceedings.

10. A bare perusal of the impugned Award dated 25.03.2022 passed by the 2nd Respondent indicates that the Petitioner failed to appear on 02.09.2021, 22.12.2021 and finally appeared on 28.01.2022, but however, sought 15 days times to file the defence statement, but the Respondent No.2 granted 4 weeks time and even on 28.02.2022 the Petitioner had not filed any defence statement and it only filed a Memo with preliminary objections without any documents. The Respondent No.2 after waiting for more than a year reserved the case for Award, however permitted the Petitioner to file defence along with documents. Therefore since it is evident on record that conciliation had failed since petitioner chose not to appear and ample opportunity was provided to the Petitioner, the pleas of the Petitioner that the 2nd Respondent did not conduct conciliation before arbitration and did not issue notice and thereby there is a violation of Section 18 is legally incorrect. This Court opines that even

assuming that the Petitioner's above submission is valid the same must be adjudicated under Section 34 of the Arbitration and Conciliation Act, 1996. At paragraph No.14 of the judgment reported in (2021) SCC Online MP 5993 in Jabalpur Treasure Vs. State of M.P., it is observed as under :

"14. A harmonious reading of sub-section (2), (3) and (4) clearly reveals that even if the Facilitation council has acted as a Conciliator, it can still act as an Arbitrator as provided [u/s.18\(4\)](#) which starts with a non-obstante clause in the following manner: -

"(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."

11. This Court opines that under Section 34(3) of the Arbitration and Conciliation Act, 1996 the statutory limitation to file an application for challenging an Award is 90 days from the date of Award. The present case Award was made on 25.03.2022 for which the 90 days limitation expired on 22.06.2022 and the writ petition is filed on

01.09.2022 without any explanation for the delay, therefore this Court opines that the writ petition is not maintainable not only due to delay but also since it is an abuse of process of law.

12. ABUSE OF PROCESS OF LAW :

a. The Division Bench of High Court of Madhya Pradesh in the judgment dated 30.12.2021 in Jabalpur Treasure Vs. State of M.P., reported in (2021) SCC Online MP 5993 at para No. 22-A observed as under:

“22-A. It is also a matter of concern, the manner in which the process of this court has been misused by filing this petition. It is found that the impugned award was passed on 27.12.2017 and the demand notice was issued on 04.05.2019, whereas, the petition has been filed on 06.01.2020 and there is no explanation provided in clause 4 of the petition. It is also found that the decisions relied upon by the counsel for the petitioners viz. Bombay and Patna High Courts in the case of [Gujarat State Petronet Limited, Gujarat v. Micro and Small Enterprises Facilitation Council, Thane and others](#) (supra) and Reliance Communications Limited, Patna (Bihar) v. State of Bihar & others (supra) respectively, already stood reversed by the Division bench of the Allahabad High Court and the Patna High Court, but the counsel has cited the aforesaid decisions rendered by the single benches in the petition

itself by relying upon the judgments which have already been held to be bad in law by the Division benches of two High Courts.”

b. The High Court of Telangana under similar circumstances in the judgment dated 12.12.2022 in W.P.No.34612 of 2022 in PEC Usha Furniture Vs. Union of India & Others, dismissed the said Writ Petition referring to the judgment of the Apex Court in Gas Authority of India Ltd., vs Ketu Construction (I) Ltd., reported in (2007) 5 SCC 38 and held intervention of the High Court is not permissible.

c. The Apex Court in the judgment dated 26.10.2005 in SBP & C. Vs. Patel Engineering Ltd. and another, reported in (2005) 8 SCC 618, and in particular at para No.45 observed as under:

45. It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under [Article 226](#) or 227 of the Constitution of India. We see no warrant for such an approach. [Section 37](#) makes certain orders of the arbitral tribunal appealable. Under [Section 34](#), the aggrieved party has an avenue for ventilating his grievances against the award including any

in-between orders that might have been passed by the arbitral tribunal acting under [Section 16](#) of the Act. The party aggrieved by any order of the arbitral tribunal, unless has a right of appeal under [Section 37](#) of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The arbitral tribunal is after all, the creature of a contract between the parties, the arbitration agreement, even though if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the arbitral tribunal. It will still be a forum chosen by the parties by agreement. **We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the arbitral tribunal is capable of being corrected by the High Court under [Article 226](#) or 227 of the Constitution of India. Such an intervention by the High Courts is not permissible.**

13. This Court opines that the Petitioner having submitted itself to the jurisdiction of the 2nd Respondent and the proceedings having been conducted by the 2nd Respondent for more than an year from 24.02.2020 till 28.02.2022 and the Award having been passed on 25.03.2022 cannot at this length of time in September 2022 raise the plea that the composition/constitution of the Micro and Small Enterprises Facilitation (MSEF) Council/Respondent No.2 was in gross violation of Sec.21

(1) (iii) and (iv) of the MSMED Act, 2006, hence the MSEF Council/R2 is illegal. However, this Court opines that still the said plea can be raised by the Petitioner in an appropriate proceeding U/s.34 of the Arbitration and Conciliation Act, 1996 and not under Article 226.

14. The Apex Court in the judgment dated 11.05.2007 in Gas Authority of India Ltd., Vs. Ketu Constructions (I) Ltd., reported in (2007) 5 SCC 38 and in particular at para No. 23 observed as under:

23. So, the commentary on the Model Law which was drafted by UNCITRAL and has been adopted by many countries including India shows that where a party asserts that the arbitral tribunal has not been properly constituted or it has no jurisdiction, then such a plea must be raised before the arbitral tribunal right at the beginning and normally not later than in the statement of defence.

24. The whole object and scheme of the Act is to secure an expeditious resolution of disputes. **Therefore, where a party raises a plea that the arbitral tribunal has not been properly constituted or has no jurisdiction, it must do so at the threshold before the arbitral tribunal so that remedial measures may be immediately taken and time and expense involved in hearing of the matter before the arbitral tribunal which may ultimately be found to be either not properly constituted or lacking in jurisdiction, in**

proceedings for setting aside the award, may be avoided. The commentary on Model Law clearly illustrates the aforesaid legal position.

15. The judgment of the Apex Court in Tirupati Steels Vs. Shub Industrial Component, reported in (2022) 7 SCC 429 and in particular at para Nos. 8 to 13, observed as under:

"8). The question which is posed for consideration of this Court is, whether, the predeposit 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 predeposit 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 predeposit at a time, the court may allow the predeposit to be made in installments. 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.

9). In para 13 of the aforesaid judgment, it is observed and held as under: (Aska Equipments Case, SCC P.64,Para 13)

"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 predeposit. 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 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 predeposit at a time, the court may allow the predeposit to be made in instalments."

10) In view of the aforesaid decision of this Court in Aska Equipments case, 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.

11) 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.

12. In view of the above discussion and for the reasons stated above, the present appeal is allowed. The impugned order passed by the High Court is hereby quashed and set aside. Respondent No. 1 is directed to deposit 75% of the awarded amount before its application under section 34 of the Arbitration Act, 1996 challenging the award is entertained and considered on merits.

13. It is observed and held that unless and until respondent No.1 deposits the 75% of the awarded amount, its application under section 34 of the Arbitration Act, 1996, challenging the award shall not be entertained and decided on merits and, in that case, the execution proceedings may continue. The present appeal is accordingly allowed. There shall be no order as to costs.

The predeposit 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

16. It is observed and held that unless and until respondent No. 1 deposits the 75% of the awarded amount, its application under section 34 of the Arbitration Act, 1996, challenging the award shall not be entertained and decided on merits and, in that case, the execution proceedings may continue. The present appeal is accordingly allowed. There shall be no order as to costs.

17. This Court opines that the judgments relied upon by the learned counsel appearing on behalf of the Petitioner do not apply to the facts of the present case.

18. Taking into consideration the aforesaid facts and circumstances of the case and duly considering the observations in the judgements referred to and extracted above, this Court opines that the Petitioner is not entitled for the relief as prayed for in the present Writ Petition and the same is in fact abuse of process of law and with a sole intention to get away from the mandatory requirement of depositing 75% of the awarded amount by the petitioner,

and hence, it is accordingly dismissed. However, there shall be no order as to costs.

19. The interim order passed by this Court dated 23.09.2022 in W.P.No.36795 of 2022 stands vacated.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

MRS. JUSTICE SUREPALLI NANDA

Dated: 03.06.2024

Note: L.R. copy to be marked
b/o
yvkr/ktm