

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Smt. Justice T.Rajani

Civil Revision Petition No.836 of 2017

Date: 11.04.2017

Between:

Rashtriya Ispat Nigam Limited

... Petitioner

and

M/s.Sencon Systems Pvt. Ltd.,
Visakhapatnam rep. by its Managing Director
GSN.Reddy

...Respondent

Counsel for the Petitioner: Mr.A.Krishnam Raju

Counsel for the respondent: Mr.G.Ramachandra Rao
for Mr.G.Pedda Babu

The Court made the following:



Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Civil Revision Petition (CRP) arises out of Order, dated 21-09-2016, in EA.No.38 of 2015 in EP.No.5 of 2013 in AOP.No.20 of 2013 on the file of the II Additional District Judge, Visakhapatnam.

We have heard Mr.A.Krishnam Raju, learned Counsel for the petitioner, and Mr.G.Ramachandra Rao, learned Counsel representing Mr.G.Pedda Babu, learned Counsel for the respondent.

The disputes between the petitioner and the respondent in connection with the execution of a contract were referred for Arbitration. The Arbitrator has passed award, dated 01-05-2012, allowing certain claims preferred by the respondent. Feeling aggrieved by the said award, the petitioner has filed AOP.No.20 of 2013 before the lower Court under Section 34 of the Arbitration and Conciliation Act, 1996. In order to satisfy the requirement of Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short 'the 2006 Act'), the petitioner has deposited a sum of Rs.84,08,590/- being 75% of the amount payable under the arbitral award as a pre-condition for maintainability of the AOP. The respondent has filed EP.No.5 of 2013 for execution of the arbitral award. Pending the EP, it has also

filed EA.No.38 of 2015 to permit it to withdraw the sum of Rs.84,08,590/-, which was lying in the Court deposit, together with the interest accrued thereon. This Application was allowed by the lower Court by permitting the respondent to withdraw 50% of the aforementioned sum without furnishing any security and the balance amount by furnishing bank guarantee. Feeling aggrieved by this order, the petitioner in AOP.No.20 of 2013 filed this Civil Revision Petition.

At the hearing, it has been stated by the learned Counsel for the respondent that AOP.No.20 of 2013 itself was dismissed for default.

The learned Counsel for the petitioner, while not disputing the said submission, however, stated that the Application for restoration of the said AOP is pending. He has confined his submissions in the CRP only to the extent of the permission contained in the order under revision for withdrawal of 50% of the amount by the respondent without furnishing security. His objection to this part of the order is based on the hypothesis that in the event of the petitioner succeeding in the AOP.No.20 of 2013, the chances of his recovering the amount withdrawn by the respondent without furnishing security are bleak.

We have carefully considered the above submission of the learned Counsel for the petitioner. As things stand today, the respondent has succeeded in securing an arbitral award. The petition filed by the petitioner for setting aside the arbitral award is dismissed for default and so far, it has not been restored. As rightly pointed out by the learned Counsel for the respondent, the object of pre-deposit under Section 19 of the 2006 Act is to provide immediate relief to the small scale industries, which have succeeded in obtaining arbitral award, and denial of such benefit pending the petition filed under Section 34 of the Act would defeat the very object of the said provision. No doubt, in the event of the petitioner succeeding in the OP, there may be a risk of the petitioner not being able to recover that part of the amount, which was permitted to be withdrawn without furnishing security. But we cannot predict the result of the OP. When we weigh the balance of convenience between two parties, we are inclined towards the respondent for the afore-mentioned two reasons *viz.*, that it has already secured an arbitral award and that the OP filed by the petitioner has been dismissed for default and for all legal purposes, that OP does not exist on file as on today. Moreover, the Court below, having regard to the *prima facie* merits of the case, was also satisfied that the respondent is entitled to withdraw atleast 50% of the amount deposited by the petitioner without furnishing any

security. Therefore, we do not find any reason to interfere with the discretion exercised by the lower Court in granting such permission.

For the afore-mentioned reasons, we do not find any merit in this Civil Revision Petition and the same is, accordingly, dismissed.

As a sequel to dismissal of the Civil Revision Petition, interim order, dated 21-02-2017, is vacated and CRPMP.No.1102 of 2017 is disposed of.



(C.V.Nagarjuna Reddy, J)

(T.Rajani, J)

Dt: 11th April, 2017
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