

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.12.2018**

C O R A M

THE HON'BLE MR.JUSTICE M.S.RAMESH

C.R.P.[PD] No.4601 of 2017
and C.M.P.No.13319 of 2018

M/s.Unicon Engineers,
Rep. by Mr.P.Ponram
Managing Partner
Bharathi Road,
Chinnavedampatty,
Coimbatore – 641 049.

.. Petitioner

Vs

Chief Engineer/PTPS-I
Panipat Thermal Power Station,
Panipat (PTPS-I)
(A Unit of Haryana Power
Generation Corporation Ltd)
Panipat – 132 105.

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order and Decreeal Order dated 13.09.2017 passed in I.A.No.1114 of 2017 in A.O.P.No.55 of 2017 on the file of Principal District Court, Coimbatore and allow the I.A.

For Petitioner : Mr.B.Manoharan

For Respondent : Mr.R.C.Chugh
for Mr.K.Thiruvengadam

ORDER

The only ground on the petitioner's application seeking for permission to withdraw a sum of Rs.2,97,74,600/- (Rupees Two

Crores Ninety Seven Lakhs Seventy Four Thousand and Six Hundred only) which is in the bank deposit came to be rejected, is that there is no provision under the Micro, Small and Medium Enterprises Development Act, 2006.

2. However, it is seen that under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006, there is a provision which enables the petitioner herein to withdraw the amount lying in deposit. The relevant portion is extracted hereunder:

"Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006:

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.”

3. As such, the observation of the Court below may not be correct and hence, the petitioner will be entitled to succeed.

4. The learned Standing Counsel for the respondent submits that he has a valid defence in the proceedings before the Principal District Court and as such if the respondent is permitted to withdraw the entire amount lying in deposit, it would cause serious hardship for them to recover the money. In my view, if the petitioner is permitted to withdraw about 50% of amount lying in deposit, for which, if the petitioner is directed to furnish the Bank Guarantee in favour of the respondent herein, no prejudice would be caused to them.

5. In the light of the above observations, the order passed in I.A.No.1114 of 2017 in A.O.P.No.55 of 2017 is set aside. Consequently, the petitioner herein is permitted to withdraw a sum of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs only), which is lying in the bank deposit in the account of A.O.P.No.55 of 2017.

The petitioner shall make out an appropriate memo before the learned Principal District Judge, Coimbatore along with a copy of this order and on the receipt of the same, the learned Principal District Judge, Coimbatore shall pass appropriate orders permitting the petitioner to withdraw a sum of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs only), after furnishing the necessary Bank Guarantee to the respondent herein.

6.At this Juncture, the Learned Standing Counsel for the respondent submits that the petitioner herein has also filed an application in I.A.No.1360 of 2017, seeking for rejection of the appeal pending before the Principal District Judge and same has been kept pending for a very long time. It is also brought to the notice of this Court that the counter has been filed in the said application seeking for rejection of the appeal has been filed and the application is ripe for enquiry.

7.As such, the learned Principal District Judge, Coimbatore shall endeavour to dispose of the said application as expeditiously as possible, in any event, within a period of 60 days, from the date of receipt of a copy of this order. The learned Principal District Judge, Coimbatore shall also endeavour to dispose of the main appeal as expeditiously as possible, thereafter.

8.The Civil Revision petition stands ordered accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

21.12.2018

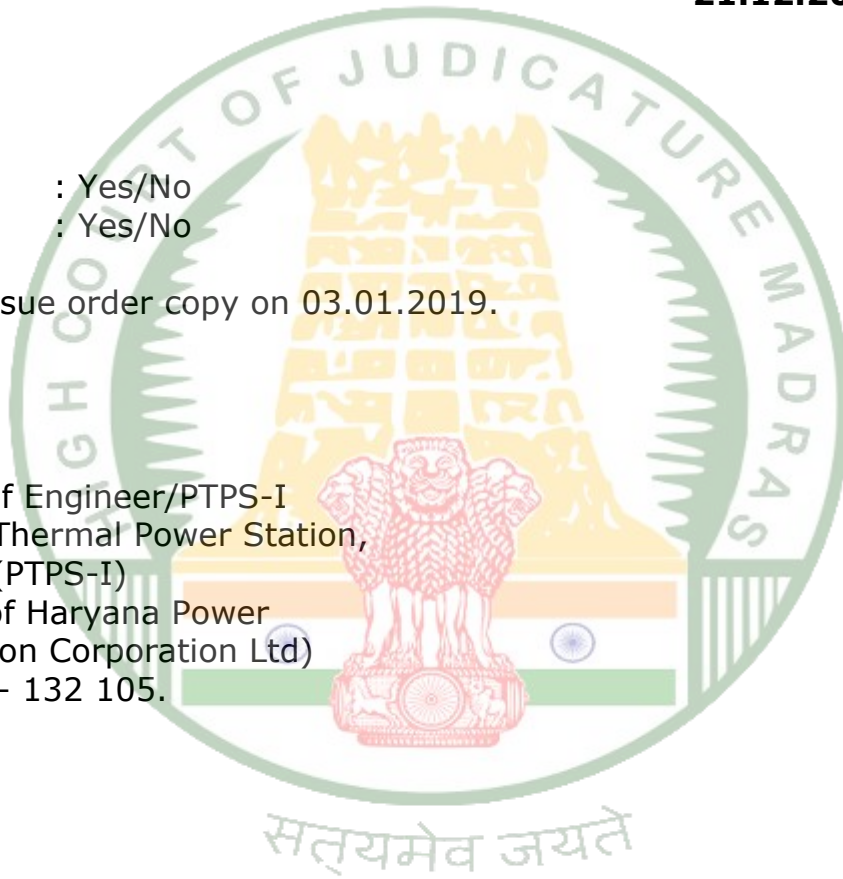
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Index : Yes/No
Internet : Yes/No

Note: Issue order copy on 03.01.2019.

To

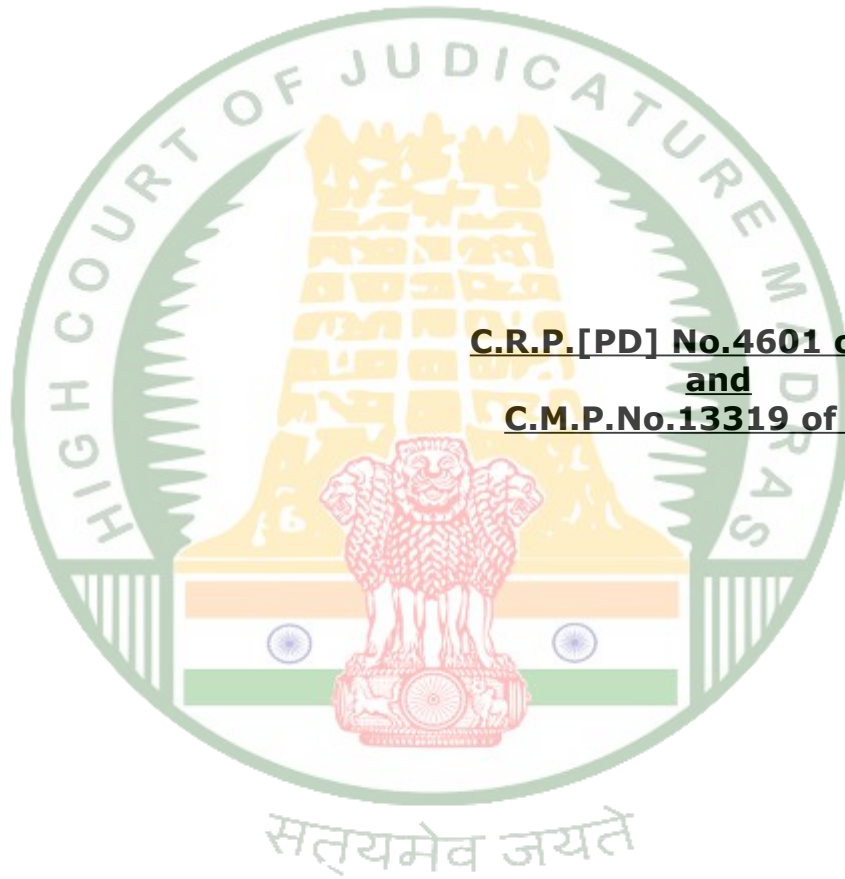
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M.S.RAMESH, J.

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