

\$~50

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) (COMM) 143/2018**

Date of decision: 17th July, 2018

UNITED ELECTRICAL INDUSTRIES LTD Appellant
Through: Mr. Jaideep Gupta, Sr. Advocate with
Mr. G. Prakash, Advocate.

versus

EPPLETON ENGINEERS PVT LTD & ORS. Respondents
Through: Mr. Manish Sharma and Mr. Ninad
Dogra, Advocates.
Ms. Prabhsahay Kaur, with Mr. Santosh Kumar,
Advocates for R-2 and 3 (GNCTD).

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

United Electrical Industries Limited has challenged and prayed for setting aside of order dated 3rd April, 2018 in IA No. 4305/2018, order dated 11th April, 2018 in IA No. 4305/2018, order dated 7th May, 2018 in IA No. 6161/2018 and order dated 14th May, 2018 in IA No. 6636/2018, passed by the single Judge of this Court in OMP (C) No. 137/2018.

2. The impugned order dated 3rd April, 2018 after referring to Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 had directed the appellant to deposit 75% of the awarded amount in the Registry of this court with the observations that the deposit would be subject to further orders of the Court. The amount would be invested in a fixed deposit

initially for a period of six months. Order dated 11th April, 2018 passed by the single Judge corrects a typographical error in the order dated 3rd April, 2018 and clarified that the deposit was to be made within six weeks and not six months. Order dated 7th May, 2018, states that the appellant herein was required to deposit the principal amount as well as interest amount. It was thereafter directed that the 75% of the principal amount would be paid within four weeks and the remaining 75% of the interest amount would be deposited before the next date of hearing, that is, 19th July, 2018.

3. It is stated that the appellant has deposited 75% of the principal amount but is contesting direction to deposit 75% of the interest amount. The contention raised is that the issue whether the Micro, Small and Medium Enterprises Development Act, 2006 would be applicable is a subject matter of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996. It is also submitted that this issue is not foreclosed and decided as has been recorded in the arbitration award as the decision in the writ petition filed in this Court had left the issue open.

4. Learned counsel for the respondent has, however, disputed the last contention and submitted the issue with regard to applicability of the Micro, Small and Medium Enterprises Development Act, 2006, was specifically adjudicated in the Letters Patent Appeal and SLP was dismissed.

5. Be that as it may, we would not like to enter into detailed discussion on the said aspect as the contention is pending before the single Judge and the next date of hearing is fixed on 19th July, 2018.

6. On the question whether the appellant should be asked to deposit 75% of the interest amount, we would notice that the arbitration award itself

records admission made by the appellant that they had received goods of Rs.19,82,15,096/-, but had made payment of Rs. 18,23,31,840/-. There was also a letter written by the respondents dated 1st October, 2011 wherein they had admitted shortfall of Rs. 86,29,281/-. The award also refers to admissions made by the appellant on other occasions as well.

7. The supplies in question were admittedly made during the period 14th December, 2006 till 2nd November, 2010. It may be noted that till the award was pronounced, no further payment was made.

8. In these circumstances looking at the prima facie case, we do not think that the direction given by the single Judge that the appellant should deposit 75% of the interest amount in terms of the award can be treated as a harsh and burdensome. The appellant de-hors the applicability of Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006, does not deserve any indulgence and leniency. The appellant would accordingly deposit the said amount in terms of the order passed by the single Judge.

9. Recording the aforesaid, the appeal is dismissed without any order as to costs. We clarify that observations made above, are for disposal of the present appeal, and would not be construed as final and binding finding on merits. Objections under Section 34 of the Arbitration and Conciliation Act, 1996, would be decided without being influenced by this order.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

JULY 17, 2018/MR