

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR.

**WRIT PETITION NO.4646/2018**

M/s. Online Computers through its Proprietor - Rajesh Krishnanarayan Tripathi  
Vs.  
Central Board for Workers Education Acting through its Director and another.

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Office notes Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Arjun V. Bobde, Advocate for petitioner  
Shri U.M.Aurangabadkar, Assistant Solicitor General of India, for respondent  
no.1.

**CORAM : A.S.CHANDURKAR, J.**

**DATE ON WHICH THE ARGUMENTS WERE HEARD : 04.10.2019**  
**DATE ON WHICH THE ORDER IS PRONOUNCED : 17.10.2019**

The challenge raised in the present writ petition is to the order dated 03.04.2018 passed by the learned Principal District Judge, Nagpur in Civil Miscellaneous Application No. 833 of 2015. By that order the application filed by the respondent no.1 herein under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act of 1996') was held liable to be entertained despite the fact that the amount as required to be deposited by Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short, the Act of 2006') was so deposited beyond the period prescribed by the Act of 1996.

2. The facts relevant for adjudicating the challenges raised in the writ petition are that on 21.07.2014 the MSE Facilitation Council, Nagpur passed an award in favour of the petitioner and directed the respondent no.1 to pay an amount of Rs.59,17,502/- along with other ancillary directions. On 08.11.2014 the respondent no.1 filed an application under Section 34 of the

Act of 1996 along with application for condonation of delay. In the said proceedings the petitioner filed an application for dismissal of those proceedings on the ground that the amount as required to be deposited under Section 19 of the Act of 2006 had not been so deposited by the respondent no.1. Thereafter on 06.01.2015 the respondent no.1 moved an application seeking permission to deposit 75% of the amount of award. That application was allowed on 09.01.2015 and the amount in question was deposited on 20.01.2015. In the meanwhile, the delay in filing the application under Section 34 of the Act of 1996 stood condoned.

3. The petitioner was thereafter permitted to withdraw the amount as deposited by the respondent no.1. This Court in Writ Petition No. 486/2016 (Rajesh K.Tripathi Vs. Central Board for Workers Education and others) decided on 20.12.2017 passed an order directing the trial Court to decide the question as to whether the application filed by the respondent no.1 under Section 34(2) of the Act of 1996 could be entertained though the amount as required to be deposited by Section 19 of the Act of 2006 was deposited beyond the period prescribed by Section 34(3) of the Act of 1996. By the impugned order the learned Principal District Judge by following the decision in *Ravindranath GE Medicate Associate Private Limited Vs. Clean Coats Private Limited 2016 (6) Mh. L J 49* held that the application under Section 34(2) of the Act of 1996 could be entertained even though the deposit of the amount under Section 19 of the Act of 2006 was after the expiry of the period stipulated by Section 34(3) of the Act of 1996. Being aggrieved the petitioner has challenged the aforesaid order.

4. Shri A.V.Bobde, learned counsel for the petitioner submitted that in view of the fact that 75% of the amount of the award having been deposited belatedly and after about 184 days from the period prescribed by Section 34(3) of the Act of 1996, the proceedings under Section 34(2) of the Act of 1996 were not liable to be entertained. It was his contention that there was no jurisdiction with the Court to extend such time to deposit 75% of the amount and grant of such permission was beyond jurisdiction. Placing

reliance on the decision of the learned Single Judge of the Madras High Court in *Goodyear India Ltd. Vs. Nortan Intec Rubber (P) Ltd. and another*, 2013 (5) CTC 25, it was submitted that the application filed under Section 34 of the Act of 1996 was required to be accompanied by 75% of the amount of the award and it was not permissible to deposit such amount beyond the period of limitation prescribed for filing the application under Section 34 (3) of the Act of 1996. He sought to distinguish the decision of learned Single Judge in *Ravindranath GE Medicate Associate Private Limited* (supra) and submitted that the proceedings filed under Section 34 of the Act of 1996 were liable to be dismissed on that count. It was thus urged that on a combined reading of the provisions of Section 34 of the Act of 1996 with Section 19 of the Act of 2006, the application filed under Section 34 of the Act of 1996 was not in accordance with law and was thus not liable to be entertained. It was undisputed that the amount of deposit of 75% was beyond the period of limitation prescribed and therefore the impugned order was liable to be set aside.

5. Shri U.M.Aurangabadkar, learned Assistant Solicitor General of India for the respondent no.1 supported the impugned order. At the outset, he submitted that the petitioner itself having moved an application on 19.12.2014 seeking directions against the respondent no.1 to deposit 75% amount of the award was precluded from raising a challenge to the proceedings under Section 34 of the Act of 1996 being entertained on merits. The respondent no.1 moved an application below Exhibit 16 on 06.01.2015 seeking permission to deposit such amount which application was allowed on 09.01.2015. This order dated 09.01.2015 was not challenged by the petitioner and in fact the petitioner had withdrawn the entire amount deposited by the respondent no.1. Thus having first applied for directions to be issued to the respondent no.1 for depositing that amount and thereafter having withdrawn those amounts, the petitioner was estopped from contending that since such deposit was beyond the period prescribed, the proceedings under Section 34 of the Act of 1996 were not maintainable. It

was further submitted that the learned Principal District Judge rightly placed reliance upon the judgment of the learned learned Single Judge *Ravindranath GE Medicate Associate Private Limited* (supra) which decision was binding on the said Court. He further submitted that the ratio of the judgment of the learned Single Judge of the Madras High Court was not applicable to the case in hand and in the light of the fact that the amount under Section 19 of the Act of 2006 was deposited prior to the application under Section 34 of the Act of 1996 being entertained, there was no reason to set aside the impugned order.

6. I have heard the learned counsel for the parties at length and with their assistance I have gone through the documents placed on record. After having considered the decisions relied upon by the learned counsel for the parties, I find that the impugned order is not liable to be interfered with.

7. The facts are not in dispute that the amount of 75% that was required to be deposited in terms of the Section 19 of the Act of 2006 was so deposited beyond the period of limitation prescribed by Section 34 of the Act of 1996 for challenging the award. A somewhat similar controversy has been considered by a learned Single Judge in *Ravindranath GE Medicate Associate Private Limited* (supra). In that case also the amount towards 75% of the sum awarded came to be deposited after the period of limitation for filing the proceedings under Section 34 of the Act of 1996. The learned Single Judge relied upon the judgment of the Hon'ble Supreme Court in *Goodyear India Limited Vs. Norton Intech Rubbers Private Ltd. and another*, (2012) 6 SCC 345 wherein the expression "in the manner directed by such Court" as occurring in Section 19 of the Act of 2006 was held to mean that discretion was conferred on the Court to allow pre-deposit to be made if necessary in instalments. It was further observed that though the provisions of Section 19 of the Act of 2006 contemplated pre-deposit to be made before the application under Section 34 of the Act of 1996 was filed, the latter provisions were not read into the provisions of Section 19 of the Act of 2006. Thereafter reference has been made to the decision in *E-Square Leisure Pvt. Ltd Vs.*

*K.K.Dani 2013(3) Mh.L.J. 24* wherein the expression “entertain” was held to mean that deposit of 75% amount was not required to be made at the stage of filing of an application under Section 34 of the Act of 1996 but was required to be made prior to such application being entertained. Thus, on considering the relevant provisions it was held that Section 19 of the Act of 2006 did not provide for any period of limitation in filing the application under Section 34 of the Act of 1996 and therefore the deposit of such amount after the period of limitation for filing proceedings under Section 34 of the Act of 1996 would not preclude the Court from entertaining such proceedings on merits.

8. In *Goodyear India Limited* (supra), the learned Single Judge of the Madras High Court was pleased to hold that when the condition of pre-deposit of 75% of the amount of award was not complied with within the period of limitation prescribed for filing the proceedings under Section 34 of the Act of 1996, the application under Section 34 was not liable to be entertained on merits. Though the learned counsel for the petitioner strenuously urged that the view taken by the learned Single Judge of the Madras High Court ought to be preferred than the view taken by the learned Single Judge in *Ravindranath GE Medicate Associate Private Limited* (supra), I am not inclined to accept that contention. I find that the learned Single Judge in *Ravindranath GE Medicate Associate Private Limited* (supra) has after considering the decision of the Hon’ble Supreme Court in *Goodyear India Limited* (supra) as well as the judgment of this Court in *E-Square Leisure Pvt. Ltd.* (supra) found that since no period of limitation is prescribed by Section 19 of the Act of 2006 to deposit 75% of the amount of the award as a condition precedent for entertaining the challenge to an award passed by the Council, I am inclined to follow the view as taken in *Ravindranath GE Medicate Associate Private Limited* (supra). The learned Principal District Judge has in the light of the ratio of the aforesaid decision held that the proceedings filed under Section 34(2) of the Act of 1996 were maintainable in view of deposit of 75% of the amount of the award. Though it was urged on behalf of the respondent no.1 that the petitioner was estopped from making a grievance as to the

maintainability of the proceedings under Section 34 of the Act of 1996 on account of belated deposit of 75% of the amount in question, in the light of the view as taken it is not necessary to go into that aspect of the matter. I am therefore not inclined to interfere with the impugned order. The writ petition is accordingly dismissed with no orders as to costs.

**JUDGE**

Andurkar.