

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CR-6867-2019(O&M)

Date of Decision : November 22, 2019

STATE OF PUNJAB

.....Petitioner

VERSUS

M/S OASIS CONTRACTORS AND CONSULTANT PVT LTD AND
ANOTHER

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present : Ms. Samina Dhir, DAG, Punjab.

Mr. Satish Goel, Advocate with
Mr. Nitin Sherwal, Advocate
for the respondent.

NIRMALJIT KAUR, J. (Oral)

The present revision petition is filed against the order dated 23.9.2019 passed by the Additional District Judge, Patiala vide which application under Section 19 of the Micro Small and Medium Enterprises Development Act, 2006 (for short '**the Act**') for directing the objector-State of Punjab to deposit 75% of the amount awarded by the Arbitrator alongwith interest was allowed.

Learned counsel for the petitioner while placing reliance upon the judgment rendered by this Court in the case of **State of Punjab Vs. Jai Bhushan Malik and others**, decided on 25.9.2019 submitted that Section 19 of the Act was not applicable to an award by the Arbitrator and in any case Section 19 of the Act could not have been invoked without following the procedure laid down in Section 18 of the said Act.

Learned counsel for the respondent while vehemently opposing the said revision petition submitted that the judgment rendered in the case of Jai Bhushan Malik (supra) cannot be taken into consideration in as much as the issue qua the applicability of Section 19 of the Act to an award of Arbitrator was left open as is evident from the judgment rendered by the Hon'ble Apex Court in the case of **M/s JMC Projects (India) Ltd. Vs. M/s Mechtech Engineers and another**, Civil Appeal No. 10388 of 2013 (arising out of SLP(C) No. 32719 of 2013) decided on 1.11.2013 and, therefore, the observations of the learned Single Bench in the case of Jai Bhushan Malik (supra) that the Hon'ble Apex Court had set-aside the judgment passed by the Gujarat High Court in the case of M/s JMC Projects (India) Ltd. (supra) does not in any manner mean that the Hon'ble Apex Court had set-aside the findings of the Gujarat High Court that Section 19 of the Act would apply in all cases wherever by a specific order of payment made in favour of the supplier of goods or provided of goods which is a micro or small enterprises when an application is made challenging such a decree, award or order. It is further stated that the Hon'ble Apex Court while deciding Special Civil Application No. 12769 of 2017 decided on 11.9.2017 modified the order of the High Court in the case of **Saryu Plastics Pvt. Ltd. and Anr. Vs. Gujarat Water Supply and Sewerage Board**, rendered by the Division Bench of the Gujarat High Court only on account of the fact that amount was already deposited by the petitioner in the said case before the Commercial Court. Thus, the findings or the observations in the cases of Saryu Plastics (supra) as well as M/s JMC Projects (supra) rendered by

the High Court remained intact.

These facts as stated by learned counsel for the respondent are not disputed.

Still, this Court cannot lose sight of the fact that another Division Bench of the Gujarat High Court while deciding the case of **Gujarat Energy Transmission Corporation Ltd. (GETCO) Vs. Deora Wires N.Machines Pvt. Ltd.**, on 10.4.2017 held in para No.8.1 as under:-

“Therefore, only in an 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, aggrieved party is required to deposit 75% of the amount in terms of decree/award and unless and until such an amount is deposited, the Court shall not entertain such an application. Such a requirement is not there under the provisions of the Arbitration Act, 1996, more particularly, Section 34 of the Arbitration Act, 1996.”

The above judgment was rendered on 10.4.2017 which was prior in time and before the judgment rendered by the Division Bench of Gujarat High Court in the case of Saryu Plastics (supra) which was subsequently on 11.9.2017 but the same was not noticed by the subsequent Division Bench in the case of Saryu Plastics (supra). Therefore, the judgment rendered in the case of Gujarat Energy Transmission Corporation Ltd. (GETCO) (supra) would hold the ground as on date. Moreover, as stated by learned counsel for the petitioner-

State, the said judgment was followed in almost similar set of circumstances in the case of Jai Bhushan Malik (supra) passed in FAO No.6194 of 2019 on 25.9.2019.

In view of the above, this Court finds no reason not to follow the same in the facts of the present case.

In any case, a careful perusal of Section 19 of the Act shows that there is no mention of the award of the Arbitrator. The award of the Arbitrator appears to have been specifically left out. Therefore, while interpreting Section 19 of the Act, the same has to be read as it is. It is not for the Court to import or delete any word from the said provision and has to be read as it is. If it is read as it is, then Section 19 of the Act is not applicable to an award of the Arbitrator unless you follow the procedure laid down in Section 18 of the said Act.

Accordingly, the revision petition is allowed and the impugned order is set-aside.

November 22, 2019
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(NIRMALJIT KAUR)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No