A.No.360 of 2020
in O.P.No.692 of 2019

Dr.G.JAYACHADRAN, J.

Heard the learned counsel for the applicant and the learned counsel for the respondents.

2. This application is filed seeking permission to withdraw a sum of Rs.2,91,66,443/-, which is in the credit of E.P.No.7 of 2017 (Rs.1,50,00,000/-) and in the credit of O.P.D.No.820 of 2017 (Rs.1,41,66,443/-) as Court deposit. According to the applicant the Micro Small Enterprises Facilitation Council, Coimbatore Region, vide award dated 04.06.2016, passed the following award:-

> *"The Respondent shall be liable to pay the balance retention amount of Rs.39,66,144/- along with interests due to piecemeal releases of the total retention money of Rs.1,17,57,399/- with effect from 31.03.2011 & (2) Rs.1,57,59,537/- along with interests with effect from 17.01.2014 towards additional expenditure incurred by the petitioner due to the delay of 3 years in execution of civil works by the respondent together with compounded interest with monthly rest, at three time of the Bank rate notified by the Reserve Bank of India as stipulated in MSMED Act 2006 from the appointed due dates respectively as above to the petitioner, till the date of settlement."*

3. As of now the award claim works out around Rs.9,52,02,568.82/-. The respondent namely the Tamil Nadu Cement Corporation Limited instead of honouring the award, has preferred O.P.No.692 of 2019 beyond the period of limitation and after filing E.P.No.7 of 2017. According to the petitioner Execution Petition in E.P.No.7 of 2017 filed for recovery of the award amount. The respondent filed an application under Section 47 of CPC, which was rejected by the Execution Court as not maintainable. Thereafter, aggrieved by the said order O.S.A.Nos.156 & 157 of 2018 were filed. Rejection of Section 47 application was confirmed by the Division Bench of this Court vide order dated 05.12.2018 in O.S.A.No.157 of 2018. In O.S.A.No.156 of 2018 vide order dated 18.07.2019, conditional order was passed, pursuant to the conditional order, the respondent had deposited only Rs.1,41,66,443/- in O.P.D.No.820 of 2017 as against Rs.4,14,01,926/-, which is liable to be deposited as per Section 19 of MSMED Act, 2006. In the Execution Petition, the first respondent has deposited a sum of Rs.3,00,00,000/- out of which Rs.1,50,00,000/- already been withdrawn by the applicant pursuant to the order of this Court.

4. In this application, the petitioner seeks permission to withdraw the remaining amount in the deposit on the ground that as against the total claim of Rs.9,52,02,568.82/-, the respondent has deposited only Rs.4,41,00,000/-, whereas, the Act contemplated in an Appeal against an award passed in

MSMED Act, 75% of the award amount has to be deposited and whatever the little amount is deposited, is also lying in the O.P and E.P account without any interest.

5. Whereas, the said application is totally opposed by the learned counsel for the respondent on the ground that the award passed on 04.06.2016, in the reference made on 17.01.2014 itself is bad in law in view of Section 18(5) of the MSMED Act, which mandates every reference made under Section shall be decided within a period of 90 days, from the date of making reference.

6. The learned counsel for the respondent would submit that three times of the normal interest calculated is mulcted on the respondent for no fault of the respondent due to the delay in passing the award. Also the learned counsel for the respondent would submit that if the entire money deposited is permitted to be withdrawn without any solvency or guarantee, it will be difficult for the respondent to recover the same, in case the respondent succeed in the O.P.No.692 of 2019.

7. Heard the counsels making rival submissions.

8. The dispute between the parties has emanated from breach of contract, pursuant to the Tender floated by the respondent on 27.01.2010, the total amount liable to be paid by the respondent as per the award is around Rs.10,00,00,000/-. From the penultimate paragraph of the award, this Court finds that a sum of Rs.39,66,144/- has been retained by the respondent as on the date of reference and a sum of Rs.1,17,57,399/- was payable to the petitioner towards interest due to piecemeal releases of the total retention money. Thus, it appears that Rs.1,57,59,537/- was payable by the respondent as on the date on 17.01.2014. For this principal amount and the accrued interest, the petitioner has so far realised only Rs.1.50.00,000/- pursuant to the order passed by this Court in O.S.A.No.184 of 2019, which reads as below:-

> *"5.Having heard the learned counsel for the parties, we are of the opinion that the present Appeal deserves to be disposed of with a direction to the Decree-holder that he will furnish an undertaking in the Court below that in case the present Appellant, M/s.Tamil Nadu Cements Corporation Limited succeeds before the Executing Court, the Appellant would refund the sum of Rs.1,50,00,000/- with interest at 6% per annum from the date of receipt to the date of refund. The disbursement of Rs.1,50,00,000/- to the Decree-holder will be subject to the final decision of the Execution Court.*

6. With this observation, the present Appeal is disposed of. Office may number the Application filed under Section 19 of the MSME Act, before the learned Single Judge. No costs. The connected Miscellaneous Petition is closed."

9. Under such circumstances, the petitioner is permitted to withdraw remaining sum of Rs.1.50,00,000/- lying in the E.P. account on undertaking that he will refund the said sum to the respondent with 6% interest if the respondent succeed in O.P.No.692 of 2019. Further, the Registry is directed to invest a sum of Rs.1.41,00,000/- lying in the O.P.D. account in any one of the nationalised banks, which shall gain some interest, so that the parties who succeed will be benefited.

10. Taking note of the age of the litigant, the Registry is directed to post the main O.P.No.692 of 2019 for final disposal on 03.03.2020.

03.02.2020

rpl

Dr.G.JAYACHANDRAN, J.

rpl

A.No.360 of 2020
in O.P.No.692 of 2019

03.02.2020