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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1640 of 2021

M/s.Leo Garments,
Represented by
Devarajan,
No.69, Lakshmi Nagar,
50 Feet Road,
Tiruppur.

... Appellant/Petitioner/Respondent

Vs

1. M/s.Indel Narrow Fabrics Private Limited,
Represented by
S.Balasubramanian, Director,
740, Trichy Road,
Ramanathapuram,
Coimbatore - 45.

... Respondent/1st Respondent/Petitioner

2. Regional Industrial Facilitation Council,
Represented by its Chairman,
Department of Industries and Commerce,
Codissia,
G.D.Naidu Towers,
T.B.Road,
Hozur Road,
Coimbatore - 18.

... Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 37(1) (c) of the Arbitration and Conciliation Act, 1996 against the fair and decreetal order dated 29.09.2020 made in Arbitration Original Petition No.414 of 2005 passed by the learned Principal District Court, Coimbatore confirming the Arbitral Award dated 27.02.2003 made in case No.IFC/CBER/2/2003 passed by the Statutory Arbitrator/2nd respondent.

For Appellant

: Mr.N.S.Suganthan

For Respondent 1

: Mr.J.Franklin



JUDGMENT

This appeal has been filed under section 37 of the Arbitration and Conciliation Act, 1996 challenging the order dated 29.09.2020 passed by the learned Principal District Judge, Coimbatore in A.O.P.No.414 of 2005 under which, the Arbitral Award dated 27.02.2003 passed in favour of the first respondent under the provisions of The Interest on Delayed Payments to Small Scale And Ancillary Industrial Undertakings Act, 1993 was confirmed.

2. The Appellant has raised several grounds challenging the Arbitral Award dated 27.02.2003 passed against them under which the Appellant was directed to pay a sum of Rs.5,96,455/- together with interest and costs to the first respondent for the non-payment of the value of the supplies made by the first respondent to the Appellant.

3. The learned Principal District Judge, Coimbatore under the impugned order dated 29.09.2020 passed in A.O.P.No.414 of 2005 under section 34 of the Arbitration and Conciliation Act has dismissed the application by giving the following reasons:

(a) The Appellant has admitted its liability to the first respondent in the conciliation proceedings initiated by the second respondent and they have only sought for waiver of interest; and

(b) The Appellant has not made the mandatory deposit of 75% of the Award amount as per section 7 of the Interest on Delayed Payments to Small Scale And Ancillary Industrial Undertakings Act, 1993.

4. Even in this appeal filed under section 37 of the Arbitration and Conciliation Act, aggrieved by the aforementioned order, the grounds raised in section 34 application have once again been reiterated by the Appellant. The Appellant has raised the following grounds:

(a) There is no arbitration agreement between the Appellant and the first respondent;

(b) The Appellant is not liable to pay the value of the supplies, since the supplies made by the first respondent was of substantiated quality;

(c) The principles of natural justice has been violated by the second respondent counsel before passing the Arbitral Award as according to them, no sufficient opportunity of hearing was granted to them by the second respondent council.



5. Only after considering the aforementioned grounds, the impugned order has been passed rejecting the Appellant's application filed under section 34 of the Arbitration and Conciliation Act by the learned Principal District Judge, Coimbatore.

6. This Court does not want to go into the merits of the matter, since admittedly, the Appellant has not deposited the mandatory deposit for filing an application under section 34 of the Arbitration and Conciliation Act.

7. Section 7 of the Interest on Delayed Payments to Small Scale And Ancillary Industrial Undertakings Act, 1993 reads as follows:

"7.Appeal. - No appeal against any decree, award or other order shall be entertained by any Court or other authority unless the appellant (not being a supplier) has deposited with it seventy-five per cent, of the award amount in terms of the decree, award or as the case may be, other order in the manner directed by such Court or, as the case may be, such authority."

As seen from the aforementioned section, no appeal before any court can be entertained as against an arbitral award passed by the second respondent Council under the aforementioned Act, unless and until, the party aggrieved by the said award deposits 75% of the award amount.

8. In the case on hand, admittedly, the Appellant has not made the mandatory deposit for filing an application under section 34 of the Arbitration and Conciliation Act. The appeal provision of section 7 of the Interest on Delayed Payments to Small Scale And Ancillary Industrial Undertakings Act, 1993 is pari materia to the provisions of section 19 of the Micro, Small and Medium Enterprises Development Act, 2006. Section 19 of the aforementioned Act reads as follows:

" 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



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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."

As seen from the aforementioned section also, the mandatory deposit of 75% of the award amount will have to be made for filing an appeal or application aggrieved by an arbitral award passed under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006.

9. The Hon'ble Supreme Court while considering section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 in the case of M/s.Goodyear India Limited vs. Norton Intech Rubbers (P) Ltd & Another reported in CDJ 2012 SC 495 held that the mandatory deposit stipulated under section 19 of the said act cannot be waived by courts. As section 7 of the Interest on Delayed Payments to Small Scale And Ancillary Industrial Undertakings Act, 1993 is also similar to section 19 of the Micro, Small and Medium Enterprises Development Act, 2006, there cannot be any waiver of the statutory deposit of 75% for filing an application under section 34 of the Arbitration and Conciliation Act, 1996.

10. In the case on hand, admittedly, the said statutory deposit of 75% was not made by the Appellant along with the application filed under section 34 of the Arbitration and Conciliation Act, 1996. Therefore, this court is of the considered view that the dismissal of the application filed by the Appellant under section 34 of the Arbitration and Conciliation Act, 1996 by the learned Principal District Judge, Coimbatore on the ground that the Appellant has not made the statutory pre-deposit amount for filing an application under section 34 of the Arbitration and Conciliation Act, is a correct order and there is no infirmity in the same. This Court is deciding this appeal only on the ground that the Appellant has not made the statutory pre-deposit amount stipulated under section 7 of the Interest on Delayed Payments to Small Scale And Ancillary Industrial Undertakings Act, 1993 and is not deciding other issues raised by the Appellant on merits.

11. For the foregoing reasons, there is no merit in this appeal. Accordingly, the Arbitral Award dated 27.02.2003 passed by the second respondent in case No.IFC/CBER/2/2003 as well as the impugned order dated 29.09.2020 passed by the learned



Principal District Judge, Coimbatore are hereby confirmed and this Appeal is dismissed. No costs.

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Sd/-
Assistant Registrar (CS-VII)

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Sub Assistant Registrar

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To

1. The Principal District Judge,
Coimbatore.
2. The Statutory Arbitrator,
Regional Industrial Facilitation Council,
Coimbatore.
3. The Section Officer,
V.R.Section,
High Court of Madras.

+1cc to Mr.N.S.Suganthan, Advocate, S.R.No.53861

+1cc to M/s.J.Franklin, Advocate, S.R.No.53804

C.M.A.No.1640 of 2021

CP(CO)
SU(18/11/2021)