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

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Pronounced on: 2nd September, 2021

\+ **<u>CM (M) 475/2021, CM APPL.22047/2021 (by the petitioner u/S 151 CPC for stay)</u>**

M/S SUISSE A LA MODE (P) (LTD) .....Petitioner

Through: Mr. Sunil K. Mittal, Mr. Sameer Dawar and Ms. Aanchal Mittal, Advocates

Versus

M/S KAPOOR ENTERPRISES .....Respondent

Through: Mr. Manish Vashisht, Sr. Advocate with Mr. P.K. Rawal, Mr. Sameer Vashisht, Mr. Manashwy Jha, Ms. Urvi Kapoor and Ms. Sanjana Nangia, Advocates

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

<u>J U D G M E N T</u>

1. This petition under Article 227 of the Constitution of India has been filed by M/s. Suisse A LA Mode (P) Ltd. being aggrieved by the order dated 20th February, 2021 passed by the Commercial Court, South East District, Saket Courts, Delhi, directing the petitioner to make a deposit of 75 per cent of the amount awarded by the Arbitrator.

2. The brief facts as are relevant for the disposal of the present petition are that the parties were engaged in commercial business transactions relating to purchase of readymade denims and shirts by the

petitioner from the respondent. Disputes arose between the two sides. The respondent company filed a claim for Rs.60,49,930.11/**-** along with pendente-lite and future interest, as per the Micro, Small and Medium Enterprises Development Act, 2006 ("**MSMED Act**", for short).

3. The learned Arbitrator passed an Award for Rs.84,13,888/- with compound interest @ 12.75 per cent with effect from 1st September, 2020 till actual date of realization, in favour of the respondent. This Award was challenged by the petitioner before the learned Commercial Court by filing an application under Section 34 of the Arbitration and Conciliation Act, 1996 ("**A&C Act**", for short). Along with the Objections, the petitioner also sought stay of the Award by moving an application under Section 36 (2) & (3) of the A&C Act.

4. Vide the impugned order, the learned Commercial Court directed the petitioner to deposit 75 per cent of the awarded amount within a period of 15 days subject to which the application under Section 36(2) and (3) of the A&C Act was allowed.

5. Mr. Sunil K. Mittal, learned counsel for the petitioner has submitted that as the arbitration was not conducted in accordance with the provisions of the MSMED Act, therefore, the learned Commercial Court erred in applying Section 19 of the said Act to the objections filed by the petitioner against the Award and directing the deposit. According to the learned counsel for the petitioner, it was unjust for the Commercial Court to enforce Section 19 of the MSMED Act, when throughout, there has been no adherence to the procedure prescribed under Section 18 of the

MSMED Act. It was urged by the learned counsel for the petitioner that when a claim was filed before the Micro and Small Enterprises Facilitation Council, it was required under the MSMED Act to refer the matter to Conciliation which was to be conducted in terms of Sections 65-81 of the A&C Act.

6. In the present case, no written statement was called for from the parties. Merely on the basis of the reply sent by the petitioner to the intimation sent by the Haryana Micro and Small Enterprises Facilitation Council, the matter was referred to Arbitration. The Arbitrator, without any evidence before him passed the impugned Award. In the circumstances, the learned Commercial Court had to deal with the objections filed as an ordinary matter under Section 34 of the A&C Act with no reference to MSMED Act, particularly, Section 19 thereof. Hence, it was prayed that the impugned order be set aside.

7. Mr. Manish Vashisht, learned senior counsel for the respondent, on the other hand, submitted that in the reply to the intimation of the Haryana Micro and Small Enterprises Facilitation Council, the petitioner had disputed its liability to make any payment and disclosed no inclination for reconciliation. As this intention was evidenced in the reply placed on this record as document P-10, that the matter was not referred to Conciliation under Section 65 of the A&C Act was immaterial. Unlike the provisions of the A&C Act, the MSMED Act makes it imperative for a pre-deposit before an Award could be challenged. The learned senior counsel also submitted that interlocutory orders could not be challenged

under Article 227 of the Constitution and the petition was liable to be dismissed on this very short ground.

8. There is no doubt that, the provisions of the MSMED Act are intended to provide a quick redressal mechanism to micro and small enterprises by giving them an option to approach the Micro and Small Enterprises Facilitation Council for resolution of any dispute. It is clear from document P-12 that an application was sent by M/S. Kapoor Enterprises, the respondent, to the Haryana Micro and Small Enterprises Facilitation Council, against the present petitioner under the provisions of Section 18 (1) of the MSMED Act. Prima facie, therefore, all actions which emanate from and are a consequence of that application, and taken by the Micro and Small Enterprises Facilitation Council of Haryana are necessarily to be construed as one under the MSMED Act.

9. The Haryana Micro and Small Enterprises Facilitation Council on receipt of this complaint sent an intimation to the petitioner, which is document P-12 on this record. In this document, the Council refers to the beneficial provision in the MSMED Act empowering the Council to advise the parties to conciliate and settle the dispute to their mutual satisfaction and benefit. Accordingly, the intimation of the Council, document P-12, advised the petitioner to pay the due amount to the respondent not later than 15 days failing which the case was to be registered.

10. Now, in response to this advisory or suggestion for conciliation, the petitioner sent a reply which is document P-13. The petitioner rejected

the advisory to conciliate in toto. Rather, it raised several objections to the claim of the respondent. Further it asked the respondent to withdraw its application under Section 18 (1) of the MSMED Act and intimated the respondent that it was going to initiate legal action against the respondent.

11. From this response it is more than apparent that the petitioner knew that the action was being initiated and taken under the MSMED Act. Under Section 18 (2), the Micro and Small Enterprises Facilitation Council has the powers to conduct conciliation by itself. The Haryana Micro and Small Enterprises Facilitation Council had informed the petitioner through document P-12 that it was exercising its powers to conciliate by suggesting to the petitioner to pay the dues as claimed by the respondent. If the petitioner had any counter suggestion to make, it would have been reasonable to expect Haryana Micro and Small Enterprises Facilitation Council to have proceeded further under Section 65-81 of the A&C Act. But, on the contrary, the petitioner rejected the suggestion and threatened legal action. In these circumstances, the reference to arbitration under Section 18 (3) of the MSMED Act, being well within the power of the Haryana Micro and Small Enterprises Facilitation Council, cannot be faulted.

12. Since objections to an Award are to be filed under Section 34 of the A&C Act, Section 19 of the MSMED Act qualifies the filing of such objections by providing that no such application under Section 34 of the A&C Act shall be entertained by any court unless the applicant had deposited with it 75 per cent of the amount in terms of the Award. As held by the Supreme Court in ***Goodyear India Ltd. v. Norton Intech***

Rubbers (P) Ltd., (2012) 6 SCC 345, the Court has no discretion to vary the amount required to be deposited before the Court can entertain an application under Section 34 of the A&C Act. At best, it can direct payment in installments.

13. The learned Commercial Court has only followed this decision, to hold that the Court lacked discretion to reduce the pre-deposit under Section 19 MSMED Act. In the circumstances, there is no error in the impugned order calling for interference by this Court in exercise of its powers under Article 227 of the Constitution of India.

14. The petition lacks merits and is accordingly dismissed along with the pending application.

15. In case the petitioner has not made the deposit so far, it is granted four weeks' time from the date of this order to do so.

16. Copy of this order be sent through electronic mode to the learned Commercial Court.

17. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

SEPTEMBER 02, 2021
Ak/pkb