

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.9562 of 2015
(Through hybrid mode)**

M/s. Chemflo Industries Pvt. Ltd. Petitioner

Mr. Jaydeep Pal, Advocate
Mr. S.S. Mohanty, Advocate

-versus-

***M/s. KMC Construction Ltd. and Opposite Parties
another***

Mr. U.C. Behura, Advocate

CORAM: JUSTICE ARINDAM SINHA

**ORDER
23.08.2022**

**Order
No.**

9.

1. Mr. Pal, learned advocate appears on behalf of petitioner. He submits, impugned is order dated 13th March, 2015 passed on the interlocutory application of his client made in arbitration petition (ARBP no. 122 of 2013), of purported challenge of opposite parties to award dated 29th January, 2011. He submits, by the application his client raised issue of maintainability of the challenge. The ground was regarding 75% deposit as pre-condition for admission of the appeal, mandated by section 19 in Micro, Small and Medium Enterprises Development Act, 2006. The Court below rejected the demurrer application on erroneous consideration of fact that already

Rs.10,000,00/- had been realized by his client in the execution proceeding pending in the Court of Principal District Judge at LB Nagar, Hyderabad.

2. Mr. Pal relies on view taken by a learned Single Judge in the High Court of Madras on **judgment dated 21st March, 2013 in O.P. no.888 of 2010 (Goodyear India Ltd. v. Nortan Intec Rubber (P) Ltd. and others)**. A passage from paragraph-9 (Manupatra print) is extracted and reproduced below.

“xxx xxx xxx This Court has categorically held that the petitioner has deposited 75% principal amount and not 75% of the entire award amount consisting of principal and interest in compliance with Section 19 of the Act and unless the Petitioner deposits 75% of the award amount of principal and interest within six weeks from the date of receipt of copy of the order, O.P. will be dismissed xxx xxx xxx”

He also relies on judgment of the Supreme Court in **Snehadeep Structures Private Ltd. v. M.S.S.I. Development Corporation Ltd.** reported in **AIR 2010 SC 1497**, paragraphs 42 and 58.

3. Mr. Pal submits, there can be no dispute that 75% of awarded amount, required to be deposited for admission of challenge to the award, has to be 75% of the aggregate principal and interest. He relies on section 16 in the 2006 Act, which mandates that the buyer is liable to pay compound interest with monthly rests on the amount from, inter

alia, the appointed day at three times of the bank rate notified by the Reserve Bank. He submits, on date of presentation of the appeal, the aggregate amounted to Rs.55,40,217/-. His client though had realized Rs.10,00,000/- in execution, further deposit had to be made, of an amount in excess of Rs.5,00,000/- deposited by opposite parties, for the appeal to be admitted. The Court below acted illegally and with material irregularity in rejecting his client's demurrer application. He seeks interference.

4. Mr. Behura, learned advocate appears on behalf of opposite parties. He submits, there stands admitted a duly filed challenge to the award under section 34 in Arbitration and Conciliation Act, 1996. His client has been found to have complied with requirement under section 19 of the 2006 Act regarding deposit for purpose of admission of appeal, in this case by way of challenge to the award. The writ petition is not maintainable as otherwise interference by Court is limited by section 5 in the 1996 Act. He draws attention to his clients' arbitration petition, disclosed in the writ petition. He demonstrates, the Council had directed his client to pay Rs.6,38,928/- with compound interest from 22nd July, 2002 till realization. His client availed of statutory remedy by duly filing challenge petition. He submits, sub section (5) in section 18 of the 2006 Act mandates every reference made under the section to be decided within a period of 90 days from the making of it.

For purported supply made on 22nd July, 2002, the Council passed award on 29th January, 2011. He submits further, the goods supplied were rejected by his client. On the top of that petitioner obtained more than value of the goods in execution. Still, his client has complied with the requirement of law and deposited Rs.5,00,000/- out of value of the goods at Rs.6,38,928/-.

5. View expressed in **Goodyear India Ltd.** (supra) relied upon by petitioner is that 75% deposit consists of principal award amount and interest, to be in compliance with provision in section 19 of the 2006 Act. There is no dispute that the supply was of goods to be paid for at Rs.6,38,928/-. There appears to be a dispute regarding the supply inasmuch as opposite parties contend that the goods were rejected. Rejection of goods is possible as provided in law under Sale of Goods Act, 1930. **Snehadeep Structures** (supra) is not applicable as the declaration of law relied upon relates to an 'appeal' under section 19 of the 2006 Act to include challenge to award under section 34 in the 1996 Act.

6. Petitioner contends violation of mandatory provision in section 19 of the 2006 Act while a contention in defence of opposite parties is that inordinately long delay by the Council in dealing with the reference cannot be basis of benefit to petitioner in calculating the amount of deposit to be made for purpose of admitting his client's

challenge. There is no dispute that more than value of the rejected goods has already been obtained by petitioner in execution.

7. Opposite parties have also contended on maintainability of the writ petition. Section 5 in the 1996 Act says no judicial authority shall intervene except where provided in part-1. Challenge to award is to be made to Court as provided in said part, under section 34. Such challenge has been made and found to be maintainable by the Court below. Question raised in this writ petition is regarding compliance with mandatory provision in section 19 of the 2006 Act, by the Court in admitting, for adjudication, the challenge under section 34 of the 1996 Act. The result of the adjudication is also appealable to Court as provided in section 37 of the 1996 Act. There has been an adjudication on the question of admissibility of the challenge with regard to provision in section 19 of the 2006 Act. That can be taken as a ground in appeal, in event petitioner is aggrieved by the adjudication to follow. In the circumstances Court, in exercise of writ jurisdiction, is not inclined to term this as rarest of rare case for intervention by judicial review where the matter relates to arbitration. [See **judgment dated 6th January, 2021** of the Supreme Court in **Appeal (Civil) 14665 of 2015 (Bhaven Construction v. Ex. Engineer Sardar Sarovar Narmada Nigam Ltd.)**]. This is also because there cannot be a pronouncement for calculation of interest at three times the bank notified rate

compounded with monthly rests, on time taken by the Council to adjudicate on the claim arising by supply made on 22nd July, 2002, on award dated 29th January, 2011.

8. In view of aforesaid no direction is to be made on the writ petition. It is disposed of.

(Arindam Sinha)
Judge

Sks

