

IN THE HIGH COURT OF ORISSA AT CUTTACK

**ARBA No.33 of 2022
(Through hybrid mode)**

M/S. Bridge and Roof Company ***Appellant***
(India) Ltd.

-versus-

M/S. Adarsh Noble Corporation ***Respondent***
Ltd.

Advocates appeared in the case:

For Appellant: - Mr. S. Banerjee, Advocate
Mr. J. P. Behera, Advocate
Mr. S. Samal, Advocate

For Respondent: - Mr. J. K. Mohapatra, Advocate

CORAM:

JUSTICE ARINDAM SINHA

JUDGMENT

17.10.2022

1. Mr. Banerjee, learned advocate, appears on behalf of appellant and submits, his client is aggrieved by order dated 16th September, 2022 made by the Commercial Court, Bhubaneswar saying his client could not be permitted to deviate mode of deposit ordered by the Court, on ground of inconvenience, to deposit of bank guarantee in respect of entire 75% of awarded amount as bank guarantee does not give any

interest. He submits, section 19 in Micro, Small and Medium Enterprises Development Act, 2006 does not provide for future interest in mandating pre-deposit for purpose of challenge to the award. Secondly, his client, being a Central Government Enterprise, should not be saddled with direction to block its capital, required for ongoing infrastructure projects. Hence, prayer for deposit by bank guarantee. Thirdly, meaning given in Black's Law Dictionary 18th edition of 'deposit in Court' would include deposit of security by bank guarantee.

2. Mr. Mohapatra, learned advocate appears on behalf of respondent and submits, the appeal is not maintainable from the order, passed under section 19. Such an appeal cannot be maintained under section 37 in Arbitration and Conciliation Act, 1996. Without prejudice he submits, in any event the appeal ought to have been filed before the Commercial Appellate Court at District Judge level, required by section 3-A in Commercial Court's Act, 2015.

3. On query from Court regarding above technical objection being removed by treating the appeal as writ petition, Mr. Mohapatra submits, even then there is no ground for interference as there no illegality or material irregularity in impugned order.

4. The appeal is treated to be a writ petition. The Registry will

appropriately re-register and number the appeal as a writ petition.

5. Section 19 in the 2006 Act is reproduced below.

“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 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.”

6. There is no necessity to take aid of interpretation from Black’s Law Dictionary since, proviso to the section makes it clear that the Court must be in possession of the money, for purpose of ordering such percentage of it, as it considers reasonable under the circumstances of the case, and subject to such conditions imposed, be paid to the supplier (respondent). In case contention for deposit by bank guarantee is accepted, the proviso will become unworkable.

7. Impugned order does not require interference. Mr. Banerjee prays for extension of time by four weeks, to make the deposit. Time to make the deposit in the Court below is extended till 11th November, 2022.

8. The writ petition is disposed of.

(Arindam Sinha)
Judge

Prasant

