

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 2268 OF 2021

Luxury Lifeline, Nagpur

Vs.

Sunpet Pack Jabalpur Private Limited and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. H.R. Gadhia, Advocate h/f Mr. A.S. Tiwari, Advocate for
petitioner.
Mr. Shraddhanand Bhutada, Advocate for respondent.

CORAM : MANISH PITALE J.

DATE : 22.03.2022.

By this writ petition, the petitioner has challenged order dated 01.01.2021, passed by the Court of Principal District Judge, Nagpur, whereby an application at Exhibit 18 filed by the petitioner for refund of amount of ₹ 6,00,000/- (₹ Six Lakhs Only) has been dismissed.

(2) The facts in brief leading upto filing of the present writ petition are that an arbitration proceeding initiated between the petitioner and respondent No.1, in the context of the Micro, Small and Medium Enterprises Development Act, 2006, culminated in an award against the respondent No.2 under which the

said respondent was required to pay specific amount along with interest to respondent No.1. An application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'Act of 1996') was filed before the District Court concerning the said award.

(3) At this stage, the petitioner along with respondent No.2, filed Writ Petition No.1762/2017, to challenge an order passed by the Tahsildar to seal the factory premises of respondent No.2. The petitioner claimed that by an agreement dated 05.03.2013, the respondent No.2 had transferred the aforesaid factory to the petitioner, wherein the plant and machinery allegedly belonged to the petitioner. In this writ petition, the Division Bench of this Court directed the petitioners, therein i.e. the respondent No.2 and the petitioner herein to show their *bonafide* by depositing certain amount. Pursuant thereto, an amount of ₹6,00,000/- (₹ Six Lakhs Only) was deposited by way of cheque by the petitioner. The said amount remained in deposit before this Court. The said writ petition was eventually disposed of by an order dated 02.08.2017, whereby it was held that the petitioners would be at liberty to exhaust the remedy under Section 37 of the Act of 1996 and that the amount lying in this Court would stand appropriated in the proceedings under

Section 34 of the Act of 1996, pending before the District Court.

(4) Thereafter, the petitioner moved an application for intervention in the proceedings under Section 34 of the Act of 1996, before the District Court. The said application was dismissed. The same was challenged by the petitioner by filing Writ Petition No.100/2018. The said writ petition filed by the petitioner was dismissed and the order passed by the District Court dismissing the application for intervention was confirmed.

(5) It is in this backdrop, that the petitioner moved the aforesaid application at Exh.18, seeking refund of the amount of ₹6,00,000/- (₹ Six Lakhs Only) deposited by it, which stood transferred from this Court to the District Court. The said application has been dismissed by the impugned order and the same is made subject matter of challenge in the present writ petition.

(6) Mr. Gadhia, learned counsel appearing for the petitioner submitted that when the intervention application filed by the petitioner in the proceedings under Section 34 of the Act of 1996, stood dismissed and the same stood confirmed by order of this Court

dismissing Writ Petition No.100/2018, the petitioner was prevented from intervening in the proceedings. It was further submitted that the amount of ₹6,00,000/- (₹ Six Lakhs Only) was deposited when the Writ Petition No.1762/2017 was pending before the Division Bench of this Court, merely to show the *bonafide* of the petitioners therein.

(7) It was submitted that the respondent No. 1 could have no concern with the said amount for the reason that his remedy could be pursued under the arbitration award only against the respondent No.2.

(8) It was further submitted that when the District Court and this Court concurrently held that the petitioner could have no concern with the arbitration award and the consequent proceedings, there was no propriety in the amount deposited by the petitioner not being refunded.

(9) It is submitted that it would not be in the interest of justice that on the one hand the petitioner is prevented from intervening in the proceedings concerning the arbitration award and on the other hand the amount deposited by him to show *bonafide* stands appropriated towards the award, which can be executed

only against respondent No.2 at the behest of respondent No.1.

(10) On the other hand, Mr. Bhutada, learned counsel appearing for the contesting respondent No.1 submitted that a perusal of the order passed by this Court, disposing of Writ Petition No.1762/2017, would show that a specific direction was given that the amount deposited in this Court shall be appropriated towards the proceedings filed under Section 34 of the Act of 1996. It is submitted that therefore, it could not lie in the mouth of the petitioner that the said amount had no concern with the arbitration award or the proceedings initiated in that context.

(11) Attention of this Court was invited to the judgment and order disposing of Writ Petition No.100/2018, whereby dismissal of the intervention application of the petitioner was confirmed, wherein it was noted that the Director of respondent No.2 – Company was the uncle of the proprietor of the petitioner and that therefore, the facts sought to be portrayed by the petitioner before this Court were not as simple as they were sought to be made out. It was submitted that even as of now the respondent No.1 is struggling with the process of executing the arbitration

award and that therefore, no interference is warranted in the impugned order.

(12) Heard learned counsel for the rival parties and perused the material on record.

(13) The most significant aspect of the present case is that the District Court, as well as this Court concurrently held that the petitioner has no right to intervene in the proceedings arising out of the arbitration award. All attempts made by the petitioner to demonstrate that its interest would be directly affected by the proceedings concerning the arbitration award met with failure. By the judgment and order disposing of Writ Petition No.100/2018, it was finally held that the petitioner had no right to intervene in the proceedings pending before the District Court concerning the aforesaid arbitration award.

(14) Keeping this in mind, it needs to be appreciated as to the reason why the Division Bench of this Court directed the petitioners in Writ Petition No.1762/2017, to deposit the aforesaid amount. A perusal of the order shows that in the said writ petition, the concern of the petitioners was the order of the Tahsildar sealing the factory.

(15) The petitioner in the said writ petition claimed that the plant and machinery in the factory belonged to him and that the factory premises had been transferred by respondent No.2 in favour of the petitioner. It was in order to entertain the challenge to the order of the Tahsildar sealing the factory premises that the Division Bench of this Court directed the petitioners in the aforesaid writ petition to show their *bonafide* by depositing certain amount.

(16) It is an undisputed position that the amount of ₹6,00,000/- (₹ Six Lakhs Only) in the aforesaid writ petition was deposited by the petitioner. Eventually, the writ petition stood disposed of, granting liberty to the petitioners therein to exhaust remedies available to them and it was directed that the amount lying in deposit should stand be transferred to the District Court in the proceedings under Section 34 of the Act of 1996.

(17) The developments thereafter are of significance because the petitioner moved an application for intervention, claiming that it would be affected by the proceedings arising out of the arbitration award. The said contention was repudiated by the District Court and confirmed by this Court.

(18) Thus, it was finally held that the petitioner could have no concern with the proceedings arising out of the arbitration award. This also meant that the respondent No.1 could proceed against only the respondent No.2 for enjoying the fruits of the arbitration award.

(19) In such a factual background, this Court is of the opinion that if on the one hand it has been finally held that the petitioner has no right to intervene in the proceedings concerning the arbitration award, it would be inappropriate to hold that the petitioner can still not claim refund of the amount deposited on the direction of the Division Bench of this Court in the aforesaid writ petition. The deposit of the amount was to show *bonafides* in the backdrop of the order of the Tahsildar sealing the factory in the process of execution of the arbitration award. Such deposit made by the petitioner, who has been held to be a party that can have no remedy in the context of the arbitration award or cannot claim any right to intervene in the proceedings arising therefrom, cannot accrue to the benefit of respondent No.1, who admittedly has the right to execute the award only as against respondent No.2.

(20) A perusal of the impugned order shows that none of these aspects were discussed by the District Court while passing the impugned order. Therefore, it is found that the impugned order is unsustainable.

(21) For the reasons stated above, this Court is of the opinion that the present writ petition deserves to be allowed. Accordingly, the writ petition is allowed. The impugned order is quashed and set aside. The application filed by the petitioner at Exh.18 seeking refund of the amount of ₹ 6,00,000/- (₹ Six Lakhs Only) is allowed. Accordingly, it is directed that the said amount along with interest accrued, if any, shall be disbursed to the petitioner.

JUDGE

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GABHANE

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