IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (CAS) NO. 600 OF 2021 IN SECOND APPEAL NO. 539 OF 2019

M/s. International Combustion (India) Limited,
A Company registered under the Indian
Companies Act, having its office at L-7,
MIDC, Hingna Road, Nagpur, through
its Vice President Shri Swapan Kumar
Goswami

.... **APPELLANT.**
(Org. Defendant)

// **VERSUS** //

Stellar Industries,
A Registered Partnership firm,
having Registration No.260/1979-80,
having its registered office at 10, MIDC
Area, Nagpur, Through its partners:

1. Ashok son of Anantram Chourasia,
   Aged about 56 years, Occupation:
   Business, Resident of Somwar Bazar,
   Sitabuldi, Nagpur.

2. Dilip Son of Dattatraya Pande,
   Aged about 58 years, Occupation:
   Business, Resident of Fulay Lane,
   Mahal, Nagpur.

3. Abhishek son of Dilip Pande,
   Aged about 31 years, Occupation:
   Business, Resident of Mahal,
   Nagpur.

.... **RESPONDENTS.**
(Org.Plaintiff)

Shri C.S.Kaptan, Sr.Adv. a/b. Shri S.V.Bhutada, Adv for Appellants.
Shri S.M.Pande, Advocate for the Respondent No.1.

CORAM : ANIL S. KILOR, J.
DATE OF RESERVING THE ORDER : 12/04/2022
DATE OF PRONOUNCING THE ORDER : 26/04/2022

ORDER :

1. This is an application filed under Section 7 of the Interest of Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (hereinafter referred to as "the Act of 1993") for dismissal of the instant appeal or alternatively for issuance of direction to the appellant for deposit of decretal amount as per Order 41 Rule 2(3) read with Section 151 of the Code of Civil Procedure.

2. Second Appeal No.539 of 2019 appeal is arising out of the judgment and decree dated 17/08/2019 passed by Adhoc District Judge-2, Nagpur in Regular Civil Appeal No.282 of 2016 allowing the appeal and thereby reversing the judgment and decree dated 11/12/2012 passed by learned 3rd Joint Civil Judge, Senior Division, Nagpur in Regular Civil Suit No.152/2010 (Old Summary Civil Suit No. 763 of 2003), thereby dismissing the suit filed by the defendant for recovery of Rs. 20,65,275.63ps.

3. The facts in brief are as under: (The parties are referred as per their status before the trial Court):

It is the case of the plaintiff that the plaintiff is a partnership firm running a small scale industry of fabrication, registered with Directorate of Industry of State of Maharashtra. It is the further case of the plaintiff that the defendant used to issue purchase order of various goods made of steel and the plaintiff used to manufacture goods as per requirement of the defendant.

4. It is further submitted that there was a legal written contract between the parties and as per the same, the defendant to make 100% payment of the goods on its supply. Accordingly, various bills were raised against the defendant. It is further submitted that though there was no express agreement in respect of interest on delayed payment, the plaintiff is entitled for the same as per the Act of1993.

5. It is further submitted that after considering the adverse effect of non-payment, the plaintiff decided to charge interest as per the provisions of Act of 1993. It charged interest @18% per annum w.e.f. 01/10/1997 and issued Debit Note on 09/06/2000. The interest amount was worked out and it was calculated to the tune of Rs.14,46,555/- as on 31/05/2000. Accordingly, the plaintiff claimed Rs.20,46,055/- as on 31/05/2003.

6. The learned trial Court, thereupon, dismissed the suit vide its judgment and decree dated 11/10/2012 which was carried in appeal namely Regular Civil Appeal No. 282 of 2016 before the

learned Ad-hoc District Judge-2, Nagpur whereby the learned First Appellate Court was pleased to allow the appeal and set aside the order of the trial Court. The learned first appellate court vide impugned judgment and decree dated 23/08/2019 directed the defendant to pay an amount of Rs.17,64,856.63 with interest @ 18% per annum from the date of filing of the suit till its realization, the same is under challenge in this appeal.

7. The respondent filed the present application for direction to the appellant to deposit 75% of the decretal amount as per provisions of the Act of 1993 or to dismiss the appeal for non-compliance of mandatory provision of pre-deposit of decretal amount.

8. I have heard the learned counsel for the respective parties.

9. The learned counsel for the applicant/respondent submits that under Section 7 of the Act of 1993 it is mandatory to deposit 75% of the amount in terms of the decree. It is submitted that

unless the appellant deposits 75% of the decretal amount, this Court cannot entertain the appeal. It is submitted that even under the new Act of 2006 under Section 19 similar provision is there and therefore, the appellant/ respondent cannot oppose the present application on any ground. For this purpose, Shri Pande, learned counsel for the applicant/respondent has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Gujrat State Disaster Management Authority ..vs.. Aska Equipments Ltd.*[1].

10. Shri Kaptan, learned Senior Advocate opposes the present application and submits that the present application has been moved under the Act of 1993, which has already been repealed and therefore, the present application is not maintainable.

11. He further submits that a question is raised in the present appeal about the maintainability of the suit under the Act of 1993, as it was repealed and it was replaced by the Act of 2006.

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Thus, he submits that unless it is satisfied that the suit was maintainable after coming into force the Act of 2006, the provision as regards deposit of 75% of the decretal amount will not come into play.

12. To consider the rival contentions of the parties, I have perused the record and the relevant provisions of the Act of 1993 and the Act of 2006.

13. There is no doubt that the question as to the maintainability of suit under the Act of 1993 after coming into force Act of 2006, has been raised in this appeal. Even the point of limitation is also involved.

14. However, Section 7 of the Act of 1993 says that 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 75% of the 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.

15. After the Act of 1993 was repealed and Act of 2006 came into force, similar provision has been enacted by way of Section 19, which also mandates that no application for setting aside any decree, award or other order made either by the counsel itself or by any institution or centre providing Alternate Dispute Resolution Services to which a reference is made by the counsel, shall be entertained by any Court unless the appellant (not being a supplier), has deposited with it 75% 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.

16. Recently, the Hon'ble Supreme Court of India in the case of *Gujrat State Disaster Management Authority* (supra) has observed thus:

> *"13. On a plain/fair reading of Section 19 of the MSME Act, 2006, reproduced hereinabove, at the time/before entertaining the application for setting aside the award made under Section 34 of*

the Arbitration & Conciliation Act, the applicant/appellant has to deposit 75% of the amount in terms of the award as a pre-deposit. The requirement of deposit of 75% of the amount in terms of the award as a pre-deposit is mandatory. However, at the same time, considering the hardship which may be projected before the appellate court and if the appellate court is satisfied that there shall be undue hardship caused to the appellant/applicant to deposit 75% of the awarded amount as a pre- deposit at a time, the court may allow the pre-deposit to be made in instalments.

14. An identical question came to be considered by this Court in the case of Goodyear India Limited. In paras 10 & 11, this Court observed and held as under: (SCC pp 347-48)

> *"10. In his submissions, Mr Ramachandran has referred to the various decisions, all of which, however, are in the context of enactments in which discretion has been left to the appellate body to either waive or reduce the amount of pre-deposit, which factor is absent in the present case. In support of his contention, however, he referred to and relied upon the decision of this Court in Snehadeep Structures (P) Ltd. v. Maharashtra Small-Scale Industries Development Corpn. Ltd. wherein while considering the question as to whether an application under Section 34 of the Arbitration and Conciliation Act, 1996, could be treated to be an appeal, a question incidentally arose as to whether if the same was to be treated as an appeal, would it be necessary to comply with the provisions of*

> *Section 19 of the 2006 Act. Their Lordships observed that the provision, no doubt, requires pre-deposit to be made before an application under Section 34 of the Arbitration Act is filed, but that they were not inclined to read that provision into the provision in question. The facts of the said case are different from the facts of this case and it would be difficult to import the ratio of the decision in the above case into the facts of this case.*
>
> *11. Having considered the submissions made, both on behalf of the petitioner and on behalf of the respondents, we do not see any reason to interfere with the views expressed, both by the learned Single Judge, as also the Division Bench with regard to Section 19 of the 2006 Act. It may not be out of place to mention that the provisions of Section 19 of the 2006 Act, had been challenged before the Kerala High Court in Kerala SRTC v. Union of India, where the same submissions were negated and, subsequently, the matter also came up to this Court, when the special leave petitions were dismissed, with leave to make the pre-deposit in the cases involved, within an extended period of ten weeks. We may also indicate that the expression "in the manner directed by such court" would, in our view, indicate the discretion given to the court to allow the pre-deposit to be made, if felt necessary, in instalments."*

15. In view of the above and considering the language used in Section 19 of the MSME Act, 2006 and the object and purpose of providing

> *deposit of 75% of the awarded amount as a pre-deposit while preferring the application/appeal for setting aside the award, it has to be held that the requirement of deposit of 75% of the awarded amount as a pre- deposit is mandatory. Therefore, as such, both the High Court as well as the learned Additional District Judge (Commercial), Dehradun were justified in directing the appellant to deposit 75% of the awarded amount as a pre-deposit.*"

17. The Hon'ble Supreme Court of India in clear terms has held that the language used in Section 19 of the Act of 2006 and the object and purpose of providing pre-deposit of 75% of the awarded amount as a fixed deposit while preferring the application/ appeal for setting aside the award, it has to be held that the requirement of deposit of 75% of the awarded amount as pre-deposit is mandatory.

18. Once it is held that pre-deposit of 75% decretal amount is mandatory and in both the Acts i.e. Act of 1993 and Act of 2006 similar requirement of pre-deposit of 75% decretal amount has been provided, even though in this appeal the question about maintainability of the suit under the Act of 1993 or the point of

limitation is involved, the same cannot be entertained or answered unless pre-deposit of 75% decretal amount is made.

19. In the circumstances, after considering the law laid down by the Hon'ble Supreme Court of India and in view of the findings recorded herein above, I have no hesitation to hold that in this case direction needs to be issued to the appellant to comply with the condition of pre-deposit of 75% of decretal amount. Accordingly, I pass the following order:

i) The application is allowed.

ii) The appellant is directed to deposit 75% of the decretal amount by 10th June 2022, failure to which, the appeal shall stand dismissed.

iii) On compliance of condition of pre-deposit of 75% of the decretal amount, place this matter for further hearing.

The application is **disposed of**. No order as to costs.

(ANIL S. KILOR, J)

Signed By:RAJIV BABARAO RAUT
PRIVATE SECRETARY
Signing Date:27.04.2022 14:35

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