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A.Nos.322 & 325 of 2022

Appln. Nos.322 & 325 of 2022
in OP Nos.692 & 1030 of 2019

KRISHNAN RAMASAMY, J.,

Application No.322 of 2022 has been filed, seeking to permit the applicant to withdraw the amount for a sum of Rs.1,47,31,295/- along with accrued interest if any and issue cheque in the name of the applicant namely, M/s.Unicon Engineers, which was deposited by the respondent in the Registry of this Court in compliance with the conditional order passed by this Court in O.P.No.1030 of 2019, while granting interim stay.

2.Application No.325 of 2022 has been filed to permit the applicant to withdraw the amount for a sum of Rs.10,26,636/- along with accrued interest if any and issue cheque in the name of the applicant namely M/s.Unicon Engineers.



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3. Aggrieved by the common Award passed by the 2nd respondent, the 1st respondent has come forward with Original Petitions in O.P.Nos.692 and 1030 of 2019 before this Court. As could be seen from the Certificate of Fund issued by the Registry, it appears that while filing the above Ops, the 1st respondent has deposited Rs.10,26,636/- in Court Deposit to the credit of OP 1030 of 2019 and Rs.146,64,852/- to the credit of OP No.692 of 2019.

4. By virtue of common order, dated 09.09.2021, this Court dismissed both the above said Original Petitions on ground of limitation while rejecting the contention raised on behalf of the 1st respondent that Section 34 of the Arbitration and Conciliation Act is not applicable to shut the rights of the 1st respondent to challenge the award passed under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 Act (MSMED Act).



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5. Challenging the common award dated 09.09/2001, the 1st respondent preferred OSA No.55 of 2022. However, the 1st respondent withdrew the same on 28.04.2022 after filing a Writ Petition in W.P.No.7633 of 2022 challenging the impugned orders dated 25.10.2016 and 04.06.2016 passed by the 2nd respondent. By detailed order, dated 13.07.2022, this Court dismissed the W.P.No.7633 of 2022 and the appeal preferred in W.A.No.2079 of 2022 also came to be dismissed by a Division Bench of this Court on 07.12.2022. Further, the 1st respondent also challenged the vires of Sections 16 to 19 of the MSMED Act in W.P.No.29101 of 2017 which is tagged along with Civil Appeal Nos.8885 to 8886 of 2014 and SLP (c) Nos.19980 to 19981 of 2016 now pending before the Hon-ble Supreme Court along with the batch of cases.

6. Therefore, the learned counsel for the applicant would submit that the award passed by the 2nd respondent came to be confirmed by this Court and in view of the order passed by a Division Bench of this Court



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in WA.No.2079 of 2022, the award had attained the finality and hence, the applicant is permitted to withdraw the amount lying to the credit of the O.P.Nos.692 and 1030 of 2019. and hence, the appellant may be permitted to withdraw the amount already deposited by the respondent before this Court.

7. The learned counsel appearing for the 1st respondent on instructions would submit that virtually the the awards passed by the 2nd respondent had not attained the finality despite withdrawl of OSA and dismissal of WA 2079 of 2022 by this Court since the 1st respondent has challenged the vires of Sections 16 to 19 of MSMED Act and the matter is still pending before the Hon'ble Supreme Court and the outcome of the same would have direct bearing on the common order passed in O.P,Nos.692 & 1030 of 2019 vis-a-vis awards passed by the 2nd respondent.



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8. Considering the submissions made by the learned counsel for the learned counsel for the parties and as on date, the awards passed by the 2nd respondent had attained finality and in view of the fact that as on date, there is no interim stay in force as regards the execution of awards of the 2nd respondent, this Court is of the view that the applicant is entitled to withdraw the amounts along with accrued interest lying to the credit of O.P.Nos.692 and 1030 of 2019.

9. Accordingly, these applications are allowed as prayed for.

19.12.2022

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