

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-3158-2022 (O&M)

Date of decision : August 31, 2022

M/s Max Pacific Corporation Limited

.....Petitioner

Versus

Shree Ram Roadlines and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vaibhav Mittal, Advocate for the petitioner.

LISA GILL, J.

This petition has been filed for modification of order dated 15.07.2022 passed by the learned Additional District Judge, Chandigarh praying that petitioner be permitted to deposit 75% of the principal sum of the arbitral Award only i.e. Rs.41,23,363/- and not Rs.58,70,602/- i.e. 75% of the total amount as directed by the learned Additional District Judge, Chandigarh.

Learned counsel submits that petitioner is a Company incorporated under the provisions of the Companies Act, 1956 and is engaged in providing logistic services to various Multi Nationals and top brands in the industry. Award dated 13.02.2020 (Annexure P4) was passed by the learned Arbitrator under the Micro, Small and Medium Enterprises Development Act, 2006 ('MSMED Act' – for short) on the claim raised by the respondent – claimant. Present petitioner was held liable to pay:-

- a) Principal sum of Rs.41,23,363.00.

- b) Interest on the Principal amount of Rs.41,23,363.00 under Section 16 of the MSMED Act at the rate of Three (3) times of RBI Bank Rate compounded monthly from date of last payment of payment i.e. 31.01.2018 till date of till actual realisation.
- c) A sum of Rs. 25,000/- (Twenty Five thousand) towards costs of Arbitration.

Petition under section 34 of the Arbitration and Conciliation Act, 1996 (for short – ‘Arbitration Act’) was filed by the petitioner challenging Award dated 13.02.2020 inter alia on the ground that material facts and circumstances have been ignored by the learned Arbitrator with mandatory provisions of law and well established legal principals not being adhered to and unwarranted inferences being drawn.

Notice was issued to the respondent in the said petition for 02.05.2022. Petitioner has been directed to deposit 75% of the awarded amount in terms of Section 19 of MSMED Act vide impugned order dated 15.07.2022. It is further directed that sum of Rs.17 lakhs already paid by the petitioner would be considered to be a part and parcel of said 75% amount. Aggrieved therefrom, this petition has been filed.

Learned counsel for the petitioner vehemently argues that learned Additional District Judge has grossly erred in directing the petitioner to pay 75% of Rs.58,70,602/- whereas it should be 75% of Rs.41,23,363/- for the reason that this is the principal amount found to be due as per award dated 13.02.2020 which otherwise is the subject matter of challenge in the petition under Section 34 of the Arbitration Act. Inclusion of component of interest to determine 75% of the amount due, it is stated, is absolutely illegal and arbitrary. Amount of Rs.20 lakhs stated to be deposited by the petitioner by way of demand draft dated 12.04.2022, it is submitted, has not been adjusted in 75% of the amount directed to be

deposited. Remedy of appeal available to the petitioner under Section 34 of the Arbitration Act it is strenuously urged would be rendered infructuous and meaningless in case petitioner has to deposit such a huge amount. It is, thus, prayed that this revision petition be allowed and order dated 15.07.2022 be modified accordingly.

Heard learned counsel for the petitioner and have gone through the file with his able assistance.

At this stage, it is useful to refer to Section 19 of the MSMED Act, which reads as under:-

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.

A bare perusal of Section 19 of MSMED Act reveals that it mandates deposit of 75% of ‘the amount in terms of decree, award or as the case may be the other order in the manner directed by such Court’. The amount in terms of the decree would necessary involve the component of interest and cannot be segregated to mean the principal amount only.

Learned counsel for the petitioner is unable to deny that the amount alongwith the component of interest till the filing of execution petition was indeed Rs.58,70,602/-, therefore, there is no infirmity in the direction given by the learned Additional District Judge to the petitioner to deposit 75% of Rs.58,70,602/-. Insofar as the question of adjustment of amount deposited by the petitioner vide demand draft dated 12.04.2022 is concerned, a bare perusal of the impugned order reveals that the said amount has been directed to be adjusted. Demand draft dated 12.04.2022 as per the petitioner's own stand is for amount of Rs. 17,71,947/- and this amount in terms of order dated 15.07.2022 would clearly form part of 75% directed to be deposited in terms of Section 19 of the MSMED Act. There is nothing on record to indicate that petitioner has deposited an amount of Rs.20 lakhs which needs to be adjusted in the said deposit. It is a settled position of law that appeal filed by the petitioner without such deposit cannot be entertained. It has been held by the Hon'ble Supreme Court in **M/s Tirupati Steels versus M/s Shubh Industrial Component and another 2022 AIR (Supreme Court) 1939**, that pre-deposit of 75% of the awarded amount in terms of Section 19 of MSMED Act is mandatory. It is observed by the Hon'ble Supreme Court as under:-

“ The question which is posed for consideration of this Court is, whether, the pre-deposit of 75% of the awarded amount as per section 19 of the MSMED Act, 2006, while challenge to the award under section 34 of the Arbitration Act, 1996, is made mandatory or not, is now no longer res integra in view of the decision of this Court in the case of **Gujarat State Disaster Management Authority Vs. Aska Equipments Limited; (2022) 1 SCC 61**. While interpreting section 19 of the MSMED Act, 2006 and after taking into consideration the earlier decision of this Court in the case of **Goodyear (India) Ltd. Vs. Norton Intech Rubbers (P) Ltd.; (2012) 6 SCC 345**, it is observed and held that the requirement of deposit of 75% of the amount in terms of the award as a pre-deposit as per section 19 of

the MSMED Act, is mandatory. It is also observed that 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. Therefore, it is specifically observed and held that pre-deposit of 75% of the awarded amount under section 19 of the MSMED Act, 2006 is a mandatory requirement.”

In my considered opinion there is no ground whatsoever which calls for any interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India for setting aside impugned order dated 15.07.2022. However, in case the amount has not yet been deposited, liberty is afforded to the petitioner to approach the appellate Court for deposit of amount in question in instalments, in case of any, hardship which the petitioner may be facing. In case, such a request is made, same be considered in accordance with law.

No other argument has been addressed.

Accordingly, present petition is dismissed with no order as to costs.

August 31, 2022
rts

(LISA GILL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No