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

**CR No.5202 of 2019 (O&M)
Date of Decision: 19.12.2022**

FIVE STAR CONSTRUCTION PVT LTD

.....Petitioner

Vs

KRISH INFRASTRUCTURE PVT LTD AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Arshdeep Singh Cheema, Advocate
for the petitioner.

Mr. Aashish Chopra, Senior Advocate with
Ms. Gurprit Randhawa, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

The petitioner has assailed the order dated 25.07.2019 passed by the Addl. District Judge-cum-Presiding Judge, Special Commercial Court, Gurugram whereby the application for exemption/waiver from depositing 75% of the awarded amount has been allowed by the Court by observing that the respondents cannot be directed to deposit 75% of the awarded amount in the peculiar facts and circumstances of the case.

Notice of motion was issued on 29.08.2019 by passing the following order:-

“Learned counsel for the petitioner contends that even if claimants company was registered as a Small Manufacturing Enterprise under MSMED Act, 2006 on 30.04.2017, but the claim relates to the period prior to its registration and therefore, in view of decision rendered in M/s Nitesh Estate Ltd vs Micro and Small Enterprise, Facilitation Council of Haryana and others, CWP No.21088 of 2018 decided on 07.09.2018, claimants company falls within the purview of aforesaid Act and the Court has no discretion/jurisdiction to either waive or reduce the amount of 75% which is mandatory and condition pre-deposit for filing the application in question.

Notice of motion for 04.11.2019.

Till the next date of hearing, proceedings before the Special Commercial Court at Gurugram shall remain stayed.”

During course of arguments, learned Senior counsel for the respondents admits that the Court below has no jurisdiction to either waive off or reduce the pre-deposit of 75% of the awarded amount which is mandatory and condition precedent for hearing the objection.

Learned Senior counsel for the respondents has offered that instead of waiving off the pre-deposit of 75% of the awarded amount, the respondents may be directed to deposit the said amount in the Court below where objections are pending within a period of one month from today.

Learned counsel for the petitioner has shown his willingness to accept the proposal made by learned Senior

counsel for the respondents.

In view of consensus arrived at between the parties, the impugned order dated 25.07.2019 passed by the Addl. District Judge-cum-Presiding Judge, Special Commercial Court, Gurugram is set aside.

The respondents shall deposit 75% of the awarded amount before the Court of Addl. District Judge-cum-Presiding Judge, Special Commercial Court, Gurugram for the objections to be heard. The amount so deposited by the respondents shall not be disbursed to anyone till disposal of the objections by the Court below.

The Court of Addl. District Judge-cum-Presiding Judge, Special Commercial Court, Gurugram shall make every endeavour to dispose of the pending objections at the earliest preferably within a period of three months from the date of receipt of certified copy of this order.

The petition is disposed of.

December 19, 2022
Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No