OCD-8

ORDER SHEET

AP/462/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

FOOD AND PUBLIC DISTRIBUTION, MADHYA PRADESH STATE CIVIL SUPPLIES CORPORATION LIMITED
Versus
PRIME TECHNOPLAST PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA
Date : July 20, 2023.

Appearance:
Mr. Reetobroto Mitra, Adv.
Mr. Jai Kumar Surana, Adv.
Mr. Debangshu Dinda, Adv.
Ms. Meera Agarwal, Adv.
Ms. Muskan Bangani, Adv.
…for the petitioner

Mr. Varun Kothari, Adv.
Mr. Nikunj Berlia, Adv.
…for the respondent

The Court: The entire dispute arises from the perceived ambiguity in the directions passed by the Arbitral Tribunal on a claim made by the respondent (claimant in the arbitration) against the petitioner (respondent in the arbitration) before this Court.

The only question is the correctness of calculations presented by the learned counsel appearing for the petitioner (respondent in the arbitration) and the respondent (claimant in the arbitration) on the quantum of deposit which the petitioner is to make before the present application for setting aside of the Award is entertained. Counsel appearing for the petitioner raises other points with regard to the alleged delay on the part of the Council in passing the Award; contrary to Section 18(5) of the MSMED Act, 2006. The other point raised is on the delayed service of the Award to the petitioner/award-debtor. Counsel seeks reduction of the quantum which the petitioner is to pay before the application is taken up for hearing on these grounds.

Section 19 of the MSMED Act is unequivocal and without any ambiguity. Section 19 requires an award-debtor to deposit 75% of the awarded amount before any application is made for setting aside of the Award. The only exception made in Section 19 is for a supplier. The petitioner/award-debtor before the Court is the buyer within the meaning of the MSMED Act.

Section 19 does not call for any interpretation of the quantum which is to be deposited by the applicant who seeks setting aside of the Award on any ground under the 2006 Act. The language is that the application for setting aside shall not be entertained by a Court unless the appellant/applicant has deposited 75% of the amount in terms of the Award or in any other manner as directed by the Court. Section 19 begins with “Award” and ends with “75% of the amount in terms of the Award”. There is no scope in Section 19 to entertain arguments for interpretation of the “awarded amount”.

On calculations made by learned counsel appearing for the petitioner/buyer and the respondent/supplier which have also been exchanged between counsel, the awarded amount along with interest at three times the bank rate prescribed under Section 16 of the Act with monthly rests comes to Rs.1,19,50,233/- as on 19th July, 2023. Therefore, 75% of this amount would be Rs.89,62,674/-.

The petitioner shall accordingly deposit Rs.89,62,674/- within two weeks from today. The deposit shall be made to the Registrar, Original Side within the time directed.

The amount will be deposited by way of a bank draft as suggested by counsel on behalf of the petitioner.

All the other points argued including with regard to the alleged delay in service of the Award and the Award not being passed within the time mandated under Section 18(5) of the Act are matters of argument for setting aside of the Award which can only be entertained once the petitioner complies with the requirement of Section 19 of the MSMED Act, 2006.

AP/462/2023 is disposed of in terms of the above.

(MOUSHUMI BHATTACHARYA, J.)

kc