



C.R.P.(MD)No.2719 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.12.2023

PRONOUNCED ON: 20.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

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M/s Sri Saravanan Constructions,
represented by its Managing Director /
Authorized Signatory Partner
P.Eswaran,
S/o Palanisamy,
No.153, Lakshmipuram,
Palani – 624 601,
Dindigul District.

: Petitioner/Petitioner

Vs.

Athimuthan Natarajan,
M/s Aathees Hard Flooring,
No.26/2, LDC College Road,
Chinnachokkikulam,
Madurai-625 002.

: Respondent/Respondent

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the docket order dated 30.11.2022, passed in unnumbered Ar.O.P.No..... of 2022, on the file of the Principal District and Sessions Court, Madurai against the award passed in MSE,



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Facilitation Council in Case No.MSEFC/MDU/25/2021, in online
Application No.TN-12-0004348/M/0001, dated 24.09.2021.

For Petitioner : Mr.C.Sundaravadivel

For Respondent : Mr.V.S.Kishore Kumar

ORDER

The Civil Revision Petition is directed against the docket order dated 30.11.2022, passed in unnumbered Ar.O.P.No. of 2022, on the file of the Principal District and Sessions Court, Madurai, challenging the award passed in MSE, Facilitation Council in Case No.MSEFC/MDU/25/2021, in online Application No.TN-12-0004348/M/0001, dated 24.09.2021.

2. When the matter was taken up for admission, considering the production of the docket order only, directed the revision petitioner to get the fair order and accordingly, a copy of the order has been produced.

3. The revision petitioner has filed the original O.P., under Section 34 of the Arbitration and Conciliation Act for setting aside the arbitral

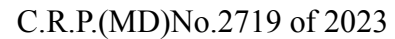


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award, dated 24.09.2021, in Case No.MSEFC/MDU/25/2021, in online Application No.TN-12-0004348/M/0001, before the Chairperson, MSE, Facilitation Council, Madurai Region / Industries Commissioner and Director of Industries and Commerce. It is evident from the records that the petition has been returned, directing the petitioner to deposit 75% of the amount in terms of decree as per Section 19 of the Micro Small and Medium Enterprises Development Act, 2006 and by granting one month time.

4. The revision petitioner has represented the Original Petition with endorsement that as per the order passed by the Hon'ble Supreme Court in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020 dated 23.09.2021, the period from 15.03.2020 till the extended period 28.02.2022 shall bind the Arbitration and Conciliation Act, 1996 and Tribunals and as such, the above amount shall not bind. Not satisfied with the representation endorsement, the said petition was again returned, but the petition was again represented requesting the Court office to call the matter in the open Court. The learned Principal District Judge, after hearing the petitioner's side and on perusing the records available, has passed the impugned order dated



5. The learned Counsel for the revision petitioner would submit that the learned District Judge erred in rejecting the application without giving the reason or the compliance made by the petitioner for the order dated 09.02.2022, that the learned District Judge has overlooked the fact that there is no condition stipulated under Section 34 of the Arbitration and Conciliation Act to deposit 75% of the award amount for the petition to set aside the arbitration award, that the learned District Judge has failed to follow the order passed by the Hon'ble Supreme Court in Miscellaneous Application No.665 of 2021 in Suo Writ Petition (C) No.3 of 2020 dated 23.09.2021, the period from 01.01.2020 till the extended period 28.02.2022 shall bind the Arbitration and Conciliation Act, 1996 and Tribunals.

6. As rightly observed by the learned District Judge, the Hon'ble Supreme Court in the order passed in Miscellaneous Application No.665



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of 2021 in Suo Motu Writ Petition (C) No.3 of 2020 held that the period from 15.03.2020 till the extended period 28.02.2022 shall stand excluded in computing the periods prescribed under Section 23(4) and 29(A) of the Arbitration and Conciliation Act, 1996 and as such, the above order is in noway help the case of the revision petitioner.

7. The only point that now arises for consideration is as to whether the learned Principal District Judge erred in holding that the Arbitration O.P., cannot be entertained without depositing 75% of the award amount as per Section 19 of the Micro Small and Medium Enterprises Development Act, 2006.

8. The Hon'ble Apex Court has already settled the legal position that the requirement of the deposit of 75% of the amount in terms of the award as a pre-deposit as per Section 19 of the Micro Small and Medium Enterprises Development Act, 2006, is mandatory and it is necessary to refer the following passages in the judgment of the Hon'ble Supreme Court in *M/s Tirupati Steels Vs. M/s Shubh Industrial Component and another* reported in *2022(7) SCC 429*, which are extracted hereunder:



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“4. 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 para 13 of the aforesaid judgment, it is observed and held as under-



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“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 and [Conciliation Act](#), the appellant-applicant 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.”

*5. In view of the aforesaid decision of this Court, the impugned order passed by the High Court permitting the proceedings under [section 34](#) of the Arbitration Act, 1996 without insistence for making pre-deposit of 75% of the awarded amount is unsustainable and the same deserves to be quashed and set aside. As observed hereinabove, while passing the impugned order, the Division Bench of the High Court has relied upon an earlier decision of the Division Bench in the case of M/s Mahesh Kumar Singla (*supra*) which has taken a contrary view. Therefore, the decision of the Division Bench in the case of M/s Mahesh Kumar Singla (*supra*), which has been relied upon by the Division Bench of*



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the High Court while passing the impugned order, is held to be not good law and is specifically overruled to the extent that it holds that pre deposit of 75% of the awarded amount under section 19 of the MSMED Act, 2006, is directory and not a mandatory requirement.

6. In view of the above discussion and for the reasons stated above, the present appeal is allowed. The impugned order passed by the High Court is hereby quashed and set aside. Respondent No. 1 is directed to deposit 75% of the awarded amount before its application under [section 34](#) of the Arbitration Act, 1996 challenging the award is entertained and considered on merits.”

9. Another Division Bench of the Hon'ble Supreme Court in ***Gujarat State Disaster Management Authority Vs. M/s Aska Equipments Limited*** reported in ***2022(1) SCC 61***, considering the earlier decisions, has specifically observed that on 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.



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10. Considering the legal position settled by the Hon'ble Supreme Court, this Court has no hesitation to hold that the Original Petition for setting aside the award without making statutory deposit of 75% of the award amount is legally not maintainable and as such, the impugned order rejecting the petition cannot be found fault with. Hence, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

11. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

20.12.2023

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

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To

1. The Principal Subordinate Court, Dindigul.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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