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

Date of decision:-31.05.2023

1. **CR-6689-2019 (O&M)**

M/s Steel Authority of India Ltd.and another

.......Petitioners

Versus

M/s M.R. Beltings

......Respondent

2. **CR-4612-2022**

M/s Steel Authority of India Limited

...... Petitioner

versus

M/s M.R.Belting

.....Respondent

3.

CR-1634-2022

M/s M.R. Beltings

...... Petitioner

versus

M/s Steel Authority of India Limited

Respondent........

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present:- Mr. Sharat Kapoor, Advocate
Mr. Atul Tripathi, Advocate and
Mr. Satyam Tandon, Advocate for the petitioner(s)
in CR- Nos.4612-2022 and CR-6689-2019 and
for respondent in CR-1634-2022.

Mr. Atul Kumar Tripathi, Law Officer for SAIL.

Mr. Saurabh Arora, Legal Aid Counsel
for respondent in CR-6689-2019.

Mr. Pranav Chadha, Advocate for petitioner
in CR- 1634-2022 and
for respondent in CR No.4612-2022.

******

AVNEESH JHINGAN J.(Oral)

1. This single order shall dispose of three revisions petitions filed by the parties as the facts are common and issues are inter-related.

2. The brief facts are that the M/s Steel Authority of India (for brevity 'SAIL') placed a purchase order with MR Beltings, Sonepat (for short 'Supplier') for supply of 1400 Conveyor Belts. The supplier was registered under Micro, Small & Medium Enterprises Development Act, 2006 (hereinafter to be referred to 'MSME Act'). The dispute was referred to the MSME Council for resolution and the proceedings culminated in award dated 15.03.2018. Aggrieved of the award, SAIL on 11.07.2018 filed objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred to as the 1996 Act) at Gurugram. The pre-deposit of 75% as per Section 19 of the MSME Act was made though late i.e. within the extended period granted by the Court. It would be apposite to mention here that the extension of time granted by the Court is not under challenge before this Court. The supplier filed an execution petition at Sonipat attaching the list of properties. The SAIL filed objections in the execution petition raising the issue of jurisdiction and that petition filed is pre-mature. The objections were dismissed on 17.07.2019. The dismissal of objections is subject matter of Civil Revision No. 6689-2019.

3. An application under Section 34 (3) of 1996 Act, was filed by the supplier in the Gurugram Court for dismissal of the objections as time barred. The contention was that as 75 % pre-deposit was not made alongwith the objections and hence are barred by limitation. At the same time an application was filed under Section 19 (3) of MSME Act for release

of 75% pre-deposit made by SAIL. The application was allowed and it was ordered that the amount shall be released subject to furnishing of bank guarantee.

4. The application filed under Section 19 of the MSME Act was disposed of balancing the equity between the parties and taking into consideration the principles for stay of money decree. The amount was ordered to be released to the supplier and at the same time ensuring that the amount is secured in the eventuality of success of the SAIL in proceedings under Section 34 of the 1996 Act. .

5. Before proceedings further it would be apposite to note that in the list of property attached by the supplier in the execution petition, no property of the SAIL at Sonipat was mentioned.

6. As regards to the contention raised that the objections filed under Section 34 of 1996 Act should be dismissed as time barred for not being accompanied with pre-deposit amount was rightly rejected. The pre deposit was made within the extended time granted by the Court. The extension of time was not challenged.

7. Section 19 of the MSME Act is reproduced:-

> 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.

8. Section 19 of the MSME Act provides that no objections shall be entertained without a pre-deposit of 75% of the amount awarded. There is no bar in filing or receiving of appeal without prior deposit but appeal cannot be entertained till the deposit of 75%of the amount is made.

9. The Supreme Court in ***M/s Lakshmiratan Engineering Works Ltd. v. Asst. Commissioner (Judicial), I, Sales Tax, Kanpur Range, Kanpur and another, AIR 1968 SC 488*** while dealing with the provision of pre-deposit under Section 9 of the U.P. Sales Tax Act, held:

"*7.To begin with it must be noticed that the proviso merely requires that the appeal shall not be entertained unless it is accompanied by satisfactory proof of the payment of the amount of tax admitted by the appellant to be due. A question thus arises what is the meaning of the word 'entertained' in this context? Does it mean that no appeal shall be received or filed or does it mean that no appeal shall be admitted or heard and disposed of unless satisfactory proof is available' The dictionary meaning of the word 'entertain' was brought to our notice by the parties, and both sides agreed that it means either "to deal with or admit to consideration". We are also of the same opinion. The question, therefore, is at what stage can the appeal be said to be entertained for the purpose of the application of the proviso? Is it entertained when it is tiled or is it 'entertained' when it is* *admitted and the date is fixed for hearing or is it finally 'entertained' when it is heard and disposed of? Numerous cases exist in the -law reports in which the word 'entertained' or similar cognate expressions have been interpreted by the courts. Some of them from the Allahabad High Court itself have been brought to our notice and we shall deal with them in due course. For the present we must say that if the legislature intended that the word -'file' or 'receive' was to be used, there was no difficulty in using those words. In some of the statutes which were brought to our .notice such expressions have in fact been used. For example. under Order 41. rule I of the Code of Civil Procedure it is stated 'that a memorandum shall not be filed or presented unless it is accompanied etc.; in s. 17 of the Small Causes Courts Act, the expression is 'at the time of presenting the application'. In sec. 6 .of the Court Fees Act, the words are 'file' or 'shall be received'. It would appear from this that the legislature was not at a loss for words if it had wanted to express itself in such forceful manner as is now suggested by counsel for the State. It has used the word 'entertain' and it must be accepted that it has used it advisedly. This word has come in for examination in some of the cases of -the Allahabad High Court and we shall now refer to them.*

10. In our opinion these cases have taken a correct view of the word 'entertain' which according to dictionary also means 'admit to consideration'. It would therefore appear that the direction to the court in the proviso to s. 9 is that the court shall not proceed to admit to consideration an appeal which is not accompanied by satisfactory proof of the payment of the admitted tax. This will be when the case is taken up by the court for, the first time. In the

> *decision on which the Assistant Commissioner relied, the learned Chief Justice (Desai C.J.) holds that the words 'accompanied by' showed that something tangible had to accompany the memorandum of appeal. If the memorandum of appeal had to be accompanied by satisfactory proof, it had to be in the shape of something tangible, because no intangible thing can accompany a document like the memorandum of appeal. In our opinion, making 'an appeal' the equivalent of the memorandum of appeal is not sound. Even under 0. 41 of the Code of Civil Procedure. the expressions "appeal" and "memorandum of appeal" are used to denote two distinct things. In Wharton's Law Lexicon, the word "appeal" is defined as the judicial examination of the decisions by a higher Court of the decision of an inferior court. The appeal is the judicial examination; the memorandum of appeal contains the grounds on which the judicial examination is invited. For purposes of limitation and for purposes of the rules of the Court it is required that a written memorandum of appeal shall be filed. When the proviso speaks of the entertainment of the appeal, it means that the appeal such as was filed will not be admitted to consideration unless there is satisfactory proof available of the making of the deposit of admitted tax."*

10. The Legal Aid Counsel appearing for the supplier on instructions from the client who is present in Court duly identified by them submits that dispute in these petitions can be cut short if the objections under Section 34 of 1996 Act are ordered to be disposed of in a time bound manner.

11. In view of the restricted prayer made by learned counsel for the supplier, learned counsel for SAIL is not in a position to raise any substantial objection. He submits that 75% of the pre-deposit was made with the District Judge, Gurugram and 25% further amount was deposited with the Addl. District Judge, Sonepat.

12 Without commenting upon the merit of the case in view of the

restricted prayer made by counsel for the supplier and not objected by counsel for the SAIL and the officer of the SAIL present in the Court, the revisions petitions are disposed of in the following terms:-

(a) The objections filed under Section 34 of 1996 Act pending with the District Judge, Gurugram shall be disposed of within three months from the next date fixed. None of the parties shall be granted unwarranted adjournments. The parties would be at liberty to raise all legal issues before the Court concerned at the appropriate stage.

(b) The supplier if intend to get the pre-deposit amount released during the pendency of objections under Section 34 of 1996 Act, it shall be released on furnishing a bank guarantee to be kept alive till the objections under Section 34 of 1996 Act are decided on merits.

(c) In case the release of pre-deposit amount is not sought, it shall be kept in FDR in a nationalized bank, (if not already kept) till the decision of objections under Section 34 of 1996 Act.

(d) After decision of objections under Section 34 of 1996 Act, the supplier shall be at liberty to pursue the execution if need so arises. Supplier shall produce a *prima facie* evidence to substantiate that the Court at Sonipat has jurisdiction for execution of the award, in case the supplier intends to continue execution at Sonipat after decision of objections under Section 34 of 1996 Act. In the eventuality of supplier filing an application alongwith the *prima facie* evidence as per law, the same would be considered in accordance with law and an opportunity shall be provided to SAIL to contest the application.

13 Revision petitions are disposed of in the aforesaid terms.

14. Since the main cases have been disposed of, pending application(s), if any, are rendered infructuous.

15. A photocopy of this order be placed on the file of other connected matter.

(AVNEESH JHINGAN)
JUDGE

31.05.2023
shweta

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