OD-6 & 7

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP/865/2023

M/S. GARDEN REACH SHIPBUILDERS AND ENGINEERS LIMITED
VS
MALAY ENTERPRISE
&
AP/851/2023

GARDEN REACH SHIP BUILDERS AND ENGINEERS LIMITED
VS
MALAY ENTERPRISE

BEFORE:
The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA
Date : January 18, 2024.

Appearance:
Mr. Ranjay De, Adv.
Mr. B. K. Sen, Adv.
Mr. B. Banerjee, Adv.
Mr. A.A. Bose, Adv.
...for the petitioner

Mr. Saptarshi Basu, Adv.
Mr. Sanjib Seth, Adv.
...for the respondent

The Court:- The quantum of the awarded amount is not clear from the submissions made on behalf of the award-debtor.

Learned counsel appearing for the award-holder (supplier) has made a calculation of the awarded amount which comes to Rs.19,55,215/-.

Counsel appearing for the award-debtor tries to canvass that the award-debtor is not liable to pay any sum of money to the supplier. Counsel raises several points which may be good points for the Section 34 application but certainly not under the mandate of Section 19 of the MSMED Act, 2006.

Section 19 contains a mandate, in unequivocal terms, that an appellant, who seeks to challenge a decree/ award passed by the MSMED Council (unless the appellant is not the supplier) is required to make a deposit of 75% on the awarded amount. Section 19 also mandates that the deposit shall be made along with the application challenging the award/decree passed by the Facilitation Council. The words of Section 19 make it clear, beyond doubt, that the amount shall be deposited along with the application of challenge/ setting aside, as the case may be. There is in fact a statutory bar on the Court from entertaining a challenge without the 75% deposit.

Section 19 does not admit of any arguments with regard to the correctness or legality of the Award or any reason for which the pre-deposit may be waived. There are several decisions of the Supreme Court which have reinforced the mandate of Section 19 but given time to the award-debtor to deposit the amount only on consideration of the award-debtor being in financially involved circumstances.

The Court is not willing to engage with the award-debtor on the nitty-gritties of the calculation or least of all, that there is no direction on the award-debtor to pay certain sums of money to the award-holder.

The relevant part of the impugned award, in fact, indicates precisely the opposite. The concluding part of the Award divides the directions into a monthwise statement of liability on the part of the award-debtor. An amount of Rs.65,692/- has been arrived at as the total principal amount outstanding for the month of January, 2020. The award-debtor was held to be liable to pay interest on this amount at three times of the bank rate of RBI compounded with monthly rests to the supplier/ award-holder under Section 16 of the MSMED Act. The interest was also to be calculated after 45 days from the submission of the bill dated 3rd November, 2020 till the realisation thereof.

The second part of the Award directs the award-debtor to pay a total principal amount outstanding from the award-debtor to the award-holder of Rs.1,65,692/- for the month of February, 2020 and the award-debtor was made liable to a similar rate of interest under Section 16 of the MSMED Act.

The third part of the Award relates to the liability of the award-debtor to pay the total principal amount outstanding for March-December, 2020 except April and May, 2020. The buyer unit (award-debtor) was given leave to deduct the legitimate amounts towards the statutory clearances as per the terms of the purchase order before making payment to the supplier unit.

Even if the Court gives the benefit of the statutory clearances to the award-debtor, there is absolutely no indication in the relevant part of the Award that the award-debtor was absolved of making any payments to the award-holder.

The submission of counsel with regard to the benefit of Rs.2 lakhs on account of statutory clearances is not clear but the Court is willing to accept the figure of Rs.2 lakhs as correct at least for the time being. The document which the award-debtor seeks to rely on is not a part of the Award and hence the Court is not prepared to give any credence to this document at the stage of Section 19 of the MSMED Act.

The amount hence comes to Rs.17,55,215/-.

75% of this amount would be Rs.13,16,411/-.

The award-debtor shall hence deposit Rs.13,16,411/- by way of a bank guarantee with the Registrar, Original Side of this Court within 10 days from date, which is 29th January, 2024.

The petitioner/ award-debtor also seeks stay of the impugned Award. The petitioner will hence secure the remaining 25% of the awarded amount of Rs.17,55,215, which is Rs.4,38,803/- with the Registrar Original Side within 10 days from date, which is 29th January, 2024.

The Award will remain stayed from 30th January, 2024, if the award-debtor complies with all the directions contained this order. If not, the award-holder will be at liberty to enforce the Award on and from 30th January, 2024.

AP/865/2023 is disposed of in terms of the above.

List AP/851/2023, which is the Section 34 application, on 7th February, 2024.

(MOUSHUMI BHATTACHARYA, J.)

sg.