



O.S.A.No.181 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

O.S.A.No.181 of 2022

and

C.M.P.No.11308 of 2022

M/s.NCBA Exports Private Limited,
No.212, ShahpurJat,
New Delhi – 110 049
Represented by its Director
Amitabha Sen

... Appellant

Vs.

M/s.Smile Publishing (India) Private Limited,
SP-118, Deccan Complex,
Ambattur Industrial Estate,
Ambattur,
Chennai – 600 058
Represented by its Director
Rajesh

... Respondent

Original Side Appeal filed under Order XXXIX Rule 9 of Original Side Rules read with Clause 15 of Letters Patent against the judgment and decree dated 22.08.2019 in A.No.4179 of 2019 in O.P.SR.No.27219 of 2019 on the file of this Court.



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For Appellant : Mr.Pranava Charan M.G.

For Respondent : Mr.R.Murali

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

This Original Side Appeal is directed against the order of the learned Single Judge in A.No.4179 of 2019 in O.P.SR.No.27219 of 2019, dated 22.08.2019.

2.The appellant suffered an Award by the Micro Small Enterprises Facilitation Council and as against the Award, they preferred an Original Petition before this Court under Section 34 of the Arbitration and Conciliation Act. The appellant also filed an application for waiver of pre-deposit of a sum of Rs.18,88,340/- as required under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (“MSMED Act” for brevity). Before the learned Single Judge, the appellant stated that the appellant acted only as a Commission Agent and it is not the buyer of goods. It was mainly on that count, the appellant sought for waiver of pre-



deposit. The learned Single Judge found that the issue raised by the applicant can be gone into only in the Original Petition and that the pre-deposit of 75% of Award amount for filing of application/appeal cannot be dispensed with merely because the applicant has a good case on merits. The learned Single Judge also granted three months' time to deposit the entire amount from the date of receipt of the order. As against the order of the learned Single Judge, the appellant has preferred the above Original Side Appeal mainly on the ground that the appellant has a *prime facie* case to show that they are not liable for the Award amount.

3.Learned counsel appearing for the appellant relied upon the order of a learned Single Judge of this Court in A.Nos.2059 and 2060 of 2024 in Unnumbered Original Petition, dated 09.09.2024. The learned Single Judge, in the said order, allowed the said applications for waiver of pre-deposit under the Act on the ground that the claim before the Council was by an industry which was not registered at the relevant point of time. Since jurisdictional issue was raised before the learned Single Judge, the learned Single Judge found that the Award itself is without jurisdiction.



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4.The learned counsel for the appellant also relied upon the judgment of a Division Bench of this Court in the case of *M/s.Super Steam Boilers Engineers Pvt. Ltd. v. Micro, Small Enterprises Facilitation Council and another [W.A.No.2655 of 2021, dated 07.03.2022]*. The Writ Appeal was against the order of the learned Single Judge dismissing the writ petition challenging the order of the MSME Facilitation Council on the allegation that the entire Award is not sustainable for lack of jurisdiction. It was found that the procedure as contemplated under Section 18 of the MSMED Act, which is mandatory, is not followed. The challenge before this Court was again on the ground of violation of a mandatory procedure required to be followed before passing Award and therefore, this Court entertained the writ petition. This Court is unable to find any support from the judgments relied upon by the learned counsel on principles to argue that, in the case of appellant also, there can be waiver of pre-deposit.

5.The learned counsel then submitted that the appellant is made liable to pay interest on interest. The Award, according to him, gives a direction to



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pay principal amount of Rs.8,02,655.79 along with interest with monthly rests at three times the Bank rate notified by the Reserve Bank of India as stipulated in the MSMED Act. It is to be seen that, before the Micro Small Enterprises Facilitation Council, the respondent claimed a sum of Rs.4,99,028.35 and compounded monthly interest. The prayer in the application before the Arbitrator was for recovery of a sum of Rs.8,02,655.79 towards the principal and compounded monthly interest at 24% from the date of liability to pay the amount till the month of October, 2016. This Court finds that the total liability towards the interest is alarming. In view of the considerable delay, this Court is of the view that, though the provisions give a discretion for awarding interest, there must be some application of mind to award the maximum interest that can be directed by the Council. In the absence of recording strong reasons, this Court is of the view that there can be some concession. The amount now calculated as per Award comes to more than Rs.18 Lakhs.

6. Therefore, having regard to the peculiar facts and circumstances of the case, this Court directs the appellant to deposit a sum of Rs.10,00,000/-



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(Rupees Ten Lakhs only) as pre-deposit within a period of three months from today, to satisfy the requirement under Section 19 of the MSMED Act. To that extent, this Original Side Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) (K.R.S., J.)
18.09.2024

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