



\$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO (COMM) 220/2024 & CM APPL. 66964/2024 –Stay**
M/S CORNER STORE TECHNOLOGIES PVT LTD

.....Appellant

Through: Dr.Shashwat Bajpai, Mr.Mrinal Singh
& Ms.Himanshi, Advs.

versus

M/S AR KAY MEDICOS PVT LTD

.....Respondent

Through: Mr.Amit Dayal, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

26.11.2024

%

1. Pursuant to the last order, learned counsel for the respondent enters appearance and submits that the appeal itself would not be maintainable under Section 37 of the Arbitration and Conciliation Act, 1996 (the Act). He further contends that since the appellant's application under Section 34 of the Act is still pending consideration, the appellant can always raise their pleas raised in the present appeal before the learned Trial Court at the stage of final hearing and therefore, prays that the appeal be dismissed.
2. In response, learned counsel for the appellant submits that the impugned order though passed under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (the MSME Act), is



in fact in the nature of an interim measure for securing the amount of dispute in the arbitration and would therefore be akin to an order passed under Section 9(1)(ii)(B) of the Act and thus the present appeal *per se* is very much maintainable in the present form.

3. Having considered the rival submissions of the parties, we are of the view that since this Court has, on the last date, already expressed its opinion that no interference was called for with the impugned order, it is not necessary for us to deal with the rival submissions of the parties on the question of maintainability of the appeal. However, it needs to be noted that the learned counsel for the respondent has *inter alia* urged that the pleas raised by the appellant in the present appeal would be open for consideration by the learned Trial Court while deciding the appellant's pending application under Section 34 of the Act.
4. In these circumstances, while we find no reason to interfere with the impugned order, while disposing of the appeal, we clarify that it shall be open for the appellant to raise all grounds raised in the present appeal including its plea regarding the non-applicability of Section 19 of the MSME Act to the facts of the present appeal at the time of final hearing of its pending application under Section 34 of the Act making it clear that the learned Trial Court will deal with all the pleas raised by the appellant including the aforesaid plea raised by the respondent qua the applicability of the MSME Act.
5. Additionally, taking into account the peculiar facts of the present case, we grant liberty to the appellant to move an application for seeking further time to make the deposit before the learned Trial Court, which



application, we hope will be considered sympathetically.

6. The appeal is, accordingly, disposed of in the aforesaid terms.

REKHA PALLI, J

SAURABH BANERJEE, J

NOVEMBER 26, 2024

kk