OCD-7

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

AP-COM/928/2025

WESTERN COALFIELDS LIMITED
VS
RONIX POLYMERS PVT LTD

BEFORE:
The Hon'ble JUSTICE GAURANG KANTH
Date : 9th December, 2025.

<u>Appearance</u>
Mr. Ayan Poddar, Adv.
Mr. Soham Dutta, Adv.
Ms. Anjali Shaw, Adv.
...for the petitioner

Mr. Sakabda Roy, Adv.
Mr. Supriyo Ranjan Saha, Adv.
...for the respondent

The Court: This an application filed by the petitioner under Section 36(2) of the Arbitration and Conciliation Act, 1996, seeking an order of stay of the operation and implementation of the arbitral award dated 16.04.2024, passed by the West Bengal Micro and Small Enterprises Facilitation Council, in the arbitration proceedings. The said award was communicated to the petitioner by a letter dated 19.05.2025. Vide the said Award, the Arbitral Tribunal had directed the petitioner to refund the security deposit and liquidated damages to the tune of Rs.49,02,736/- inclusive of interest quantified at Rs.15,32,268/-.

Learned Counsel for the petitioner submits that the petitioner has already challenged the award dated 16.04.2024 in a Section 34 application being AP/754/2025.

Learned Counsel for the petitioner further submits that the arbitral proceedings suffered from violations of the principles of natural justice and were vitiated by several procedural irregularities. It is, therefore, contended that the petitioner is entitled to an unconditional stay of the impugned award.

Learned counsel appearing for the respondent raises a preliminary objection with regard to the maintainability of the present application. It is submitted that, in terms of Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 ("MSMED Act"), the petitioner is mandatorily required to deposit 75% of the awarded amount as a pre-condition for maintaining an application for setting aside an award rendered under the said Act. Counsel further contends that, by virtue of Section 24 of the MSMED Act, this statutory requirement has an overriding effect over all other laws for the time being in force. On this premise, it is urged that, since the petitioner did not deposit the requisite 75% of the awarded amount at the time of filing AP/754/2025, the petitioner is not entitled to seek a stay of the award, and the present application under Section 36(2) is consequently not maintainable in law.

Having heard learned counsel for the parties and upon perusing the materials on record, this Court is required to consider whether the petitioner is entitled to an order of stay of the award under Section 36(2) of the Arbitration and Conciliation Act, 1996, in the absence of compliance with Section 19 of the MSMED Act.

The award in question, dated 16.04.2024, was rendered by the West Bengal Micro and Small Enterprises Facilitation Council in exercise of its statutory jurisdiction under Section 18 of the MSMED Act. The award directs the petitioner to refund the security deposit and liquidated damages amounting to Rs. 49,02,736/-, inclusive of interest quantified at Rs. 15,32,268/-. The petitioner has instituted a challenge to the said award in AP/754/2025 under Section 34 of the Arbitration and Conciliation Act, 1996, which is presently pending consideration.

The petitioner does not dispute that no pre-deposit, as mandated under the MSMED Act, was made at the time of filing AP/754/2025.

The issue raised is no longer res integra. The coordinate Bench of this Court in ***Board of Major Port Authority for the Shyama Prasad Mookerjee Port v. Marine Craft Engineers Pvt. Ltd.*****, 2023 SCC OnLine Cal 2200**, has comprehensively examined the interplay between Sections 19 and 24 of the MSMED Act on one hand and the scheme of Sections 34 and 36 of the Arbitration and Conciliation Act on the other. The learned Single Bench of this Court, in the said matter held that the requirement of depositing 75% of the awarded amount is a mandatory condition precedent for entertaining an application under Section 34 challenging an award rendered under the MSMED Act. It was further held that such requirement is jurisdictional, and in the absence of compliance, the Section 34 application itself is rendered non-maintainable. Consequently, the Court held that unless the statutory precondition is fulfilled, an applicant cannot bypass Section 19 by invoking Section 36 for an order of stay, since the right to seek stay flows only from a duly instituted and maintainable Section 34 petition.

The Coordinate Bench also clarified that Section 24 of the MSMED Act confers an overriding effect over all other laws, thereby giving primacy to the legislative mandate of Section 19 as a special statute enacted for the benefit and protection of micro and small enterprises. Thus, even principles applicable under the Arbitration and Conciliation Act, including those governing grant of stay under Section 36, must yield to the special regime created under the MSMED Act.

Applying the above ratio to the present case, it is an admitted position that the petitioner, while filing the Section 34 application being AP/754/2025, has not deposited 75% of the awarded amount as directed under Section 19 of the MSMED Act. In view of the law declared in *Marine Craft Engineers Pvt. Ltd.(supra)*, the absence of such deposit, the consequential prayer for stay under Section 36(2) cannot be entertained. Grant of stay in such circumstances would defeat the statutory intention underlying Section 19 and render nugatory the overriding effect stipulated under Section 24 of the MSMED Act.

The contention of the petitioner that principles of natural justice were violated does not alter the statutory position. Even otherwise also it is evident from the record that the impugned award is not an exparte award, the Petitioner participated in the Arbitration proceedings and filed its pleadings. The award is passed after considering the version of both sides. Allegations of procedural violation or prejudice may, if substantiated, constitute grounds under Section 34; however, such grounds cannot operate to dilute or circumvent the mandatory statutory precondition imposed by Section 19. The requirement of deposit cannot be relaxed or dispensed with even on alleged procedural grounds, unless the legislature itself creates such an exception, which it has not.

For the aforesaid reasons, this Court finds that, in the absence of compliance with Section 19 of the MSMED Act, the present application for stay of the award under Section 36(2) is not maintainable. The preliminary objection raised on behalf of the respondent accordingly succeeds and the Application being AP-COM/928/2025 is dismissed.

The petitioner is, however, at liberty to file an appropriate application for deposit of the mandatory amount as per Section 19 of the MSME Act, in accordance with law.

(GAURANG KANTH, J.)

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AR(CR)