IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 5687 OF 2020 IN
FIRST APPEAL NO. 3701 OF 2019

1. Atul Nemichand Dhadiwal
2. Microvision Technologies,
through its Proprietor, **.. Applicants**

VERSUS

1. The Dhule Municipal Corporation Dhule
Taluka and District Dhule
2. The Commissioner,
Dhule Municipal Corporation Dhule,
Taluka and District Dhule **.. Respondents**

...

Advocate for applicants : Mr. C.A. Sundaram, Senior Advocate a/w
Ms. Mohini Musa i/by Mr. A.S. Bajaj
Advocate for respondents No.1 and 2: Mr. P.R. Katneshwarkar, Senior Advocate i/by Mr. Amol S. Sawant

...

CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.

RESERVED ON : 03 MARCH 2025
PRONOUNCED ON: 08 APRIL 2025

ORDER (MANGESH S. PATIL, J.) :

This is a defendants' first appeal, purportedly preferred under section 96 of the Code of Civil Procedure, being aggrieved by the final order of the learned Civil Judge, Senior Division, Dhule, in final decree proceeding FD/02/2010 dated 22.08.2019. In order to avoid confusion, the parties are referred to by their status in the suit.

2. By way of this application, the plaintiffs pray that the defendants be directed to deposit 75% of the decretal amount as laid down under section 19 of the Micro Small Medium Enterprises Development Act, 2006 (hereinafter **MSMED Act**), else the appeal itself will not be entertainable.

3. (a) The impugned final decree is a result of a suit for accounts, in respect of the work for installation of energy savers undertaken by virtue of a joint venture agreement between parties, with the agreement to share the profit in the form of savings made by the defendants – municipal corporation by such installation, in the proportion of 52% and 48% between the defendants – municipal corporation and the plaintiffs. A preliminary decree was passed on 22.07.2011 in Special Civil Suit no. 127 of 2008 which reads as under :-

Suit is decreed with the costs as under :-

1. *Defendants do pay ₹ 84,15,444.06 (Rs. Eighty Four Lakh Fifteen Thousand Four Hundred Forty Four and six paisa only) to plaintiffs.*

2. *Out of the above amount i.e. ₹ 84,15,444.06 (Rs. Eighty Four Lacs Fifteen Thousand Four Hundred Forty Four and six paisa) defendants do pay directly to Income Tax Department, Dhule to plaintiff's account an amount of ₹ 16,94,484.00 (Rs. Sixteen Lacs Ninety Four Thousand Four Hundred Eighty Four only).*

3. *Defendants do pay interest @ 11% p.a. on amount of ₹ 84,15,444.06 (₹ Eighty Four Lacs Fifteen Thousand Four Hundred Forty Four and six paisa) to the plaintiffs from the date of suit till the realization of the decreetal amount.*

4. *Final decree be drawn up after payment of proper Court fees by plaintiffs.*

(b) Being aggrieved by such preliminary decree, both the sides preferred their respective first appeals. By the common final order, the High Court disposed of the first appeals on 08.12.2017 with following order :-

"1. Order passed below Exh. 1 by learned Civil Judge, Senior Division, Dhule, in Final Decree No. 02/2010 in Special Civil Suit No. 127/2008 on 22.07.2011, is set aside, and matter is remanded to the Trial Court for its disposal in accordance with law.

2. The Trial Court shall dispose of the Final Decree No. 02/2010 (in Special Civil Suit No. 127/2008) in accordance with law, as early as possible, preferably within a period of six months.

3. The Trial Court shall give opportunity to both the sides to lead their evidence in support of their rival claims.

> 4. *Parties are directed to appear before the Trial Court on 10.01.2018.*
>
> 5. *Record and proceedings be sent to the Trial Court forthwith.*
>
> 6. *First Appeal No. 3502/2011 and 3611/2017 are disposed of accordingly.*
>
> 7. *As the matter is remanded to the Trial Court, Civil Application No. 1800/2016 in First Appeal No. 3611/2011, is disposed of."*

(c) As is evident, the matter was remanded and after extending an opportunity of being heard, by the impugned judgment and order, the final decree proceeding was disposed of, operative part of which read as under:-

> *"The suit is decreed with costs as under :-*
>
> 1. *The defendant is liable to pay to plaintiff amount arrived with as follows:-*
>
> a) *On 1 March 2011, the liability of the defendant is to pay ₹1,85,40,444.39 (Rupees One Crore Eighty Five Lakh Forty Thousand Four Hundred Forty Four and Thirty Nine Paise only)*
>
> b) *Defendant shall pay ₹1,85,40,444.00 (Rupees One Crore Eighty Five Lakh Forty Thousand Four Hundred Forty Four only) and further interest thereon from 1st March 2011 till actual realization as per MSMED Act 2006; adjusting the payment of ₹71,25,000.00 (Rupees Seventy One Lakhs Twenty Five Thousand only) on 03.12.2014 (and not that on 1 March 2011) as per Section 16 of the MSMED Act 2006 to be calculated as per Court Commissioner report.*
>
> 2. *Out of the above amount, the defendant should pay directly to the Income Tax department, to plaintiffs account an amount of ₹ 16,94,484.00 (Rupees Sixteen Lakhs Ninety Four Thousand Four Hundred Eighty Four only). As per Section 23 of the MSMED Act 2006, the plaintiff is not liable to pay any Income Tax on decreetal amount except ₹ 16,94,484.00 (Rupees Sixteen Lakhs Ninety Four Thousand Four Hundred Eighty Four only).*
>
> 3. *Final Decree be drawn up after considering already paid court fees and payment of proper court fees if found short by the plaintiffs."*

(d) It is necessary to note that while disposing of the final decree proceeding by the impugned order, an issue was also framed as to whether the plaintiffs were entitled to claim interest under the provisions of the MSMED Act.

Answering the issue in the affirmative, the afore-mentioned direction was issued under section 16 of that Act, awarding interest and holding the plaintiffs not liable to pay income tax on the decretal amount, under Section 23, except Rs.16,94,484/-.

4. The application is opposed by the defendants – municipal corporation by filing affidavit in reply.

5. We have heard learned senior advocate Mr. C.A. Sundaram for the plaintiffs and Mr. P.R. Katneshwarkar, learned senior advocate for the defendants.

6. Mr. Sundaram would submit that section 19 of the MSMED Act is mandatory and without compliance with the proviso thereto, by way of deposit of 75% of the decretal amount, the appeal is not entertainable. He would take us through the scheme of the MSMED Act and would emphasize that the provisions thereof provide for a special status to the MSMEs to facilitate them in carrying the businesses. There is no escape from complying with section 19 of the MSMED Act, which is a condition precedent for entertainment of the appeal. He would refer to several decisions to demonstrate that the word 'entertainment' would, in the context, means 'admit to consideration'. He would refer to following decisions :-

i) ***Lakshmi Rattan Engineering Works Ltd. Vs. Asstt. Commr. Sales Tax, Kanpur and another; AIR 1968 SC 488;***

ii) ***Gujarat State Disaster Management Authority Vs. Aska Equipments Ltd.; (2022) 1 SCC 61***

iii) ***India Glycols Ltd. and another Vs. Micro and Small Enterprises Facilitation Council, Medchal – Malkajgiri and others; 2023 SCC OnLine SC 1852***

iv) ***Goodyear India Limited Vs. Norton Intech Rubbers Private Limited and another; (2012) 6 SCC 345***

v) ***Snehadeep Structures Private Limited Vs. Maharashtra Small Scale Industries Development Corporation Limited; (2010) 3 SCC 34.***

7. He would submit that in a different proceeding, between the same parties, arising out of an award dated 13.02.2025 passed by the facilitation council under the MSMED Act in petition no. 8 of 2011, the defendants – municipal corporation had preferred writ petition no. 10764 of 2015 and by the judgment and order dated 18.08.2011, the single judge of this Court, has allowed the writ petition, set aside the award of the facilitation council, holding that the plaintiff was not an MSME and the facilitation council, therefore, had no jurisdiction to pass the award. However, on a challenge in SLP (Civil) Diary no. 24820 of 2024, by the order dated 28.02.2025, operation of the judgment and order of the learned Single Judge has been stayed. He, would, therefore, submit that the defendant – municipal corporation is not entitled to bank upon the judgment of the learned Single Judge.

8. In response to our query as to if the plaintiff can be allowed to rake up this issue regarding pre-deposit under the proviso to section 19 of the MSMED Act, when it had chosen to approach the civil Court for recovery of the amount, applied for and obtained a final decree and put it to execution before the civil court, and as to whether the defendant – municipal corporation could have challenged the judgment and decree of the civil court, not under section 96 of the Code of Civil Procedure but under section 19 of the MSMED Act, Mr. Sundaram answered in the affirmative. He would emphasize the wording of section 19 of the MSMED Act, to buttress his stand and particularly referring to the use of word ‘decree’ therein. He would submit that a decree can be passed only by a civil court. There will not be any occasion if MSME resorts to a recovery proceeding under the MSMED Act and approaches the facilitation council which can only pass an award and not a decree. He would submit that

the legislature in its wisdom has used the word 'decree'. It would become otiose if it is to be overlooked, as rightly laid down in the matter of ***Saryu Plastics Pvt. Ltd. and another V. Gujarat Water Supply and Swerage Board; AIR 2018 Guj 57***, which in turn referred to with emphasis the judgment of the learned single judge of the Gujarat High Court in the matter of JMC Projects (India) Limited V. Mech Tech Engineers, SCA/14629/2010 dated 10.01.2011.

9. Mr. Katneshwarkar, learned Senior advocate for the defendants would submit that once having filed the suit in a civil court and having obtained the final decree for recovery of money, the objection being raised by the plaintiffs regarding entertainment of this appeal for want of deposit, as laid down under the proviso to Section 19 of the MSMED Act, is nothing but approbation and reprobation. The final decree in a suit filed before the civil court/commercial court can only be challenged by resorting to provisions of Section 96 of the Code of Civil Procedure/Section 13 of the Commercial Courts Act. Section 19 of the MSMED Act is applicable only in respect of applications preferred against the orders passed by the facilitation council under Section 18 of that Act. It is illogical and illegal to resort to the provisions of the MSMED Act, that too calling upon compliance with the proviso to Section 19 even when the first appeal is preferred under Section 96 of the Code of Civil Procedure/Section 13 of the Commercial Courts Act. It is only when a decision of a facilitation council under the MSMED Act is challenged under Section 19 of that Act that the proviso would apply. Merely because the trial court by resorting to Section 23 of the MSMED Act has awarded interest, expecting the defendants to comply with Section 19 of the MSMED Act does not make it a

challenge as contemplated under Section 19.

10. Mr. Katneshwarkar would submit that merely because the legislature has used the word ‘decree’ in Section 19 of the MSMED Act that *ipso facto* would not attract the provisions of that Act so as to regulate and govern the mechanism for preferring appeal against the final decree passed by a civil court/commercial court. Without there being any such challenge to any order or award under Section 18 and when the defendants are merely putting up a challenge to the final decree passed by a civil court/commercial court under Section 96 of the Code of Civil Procedure/Section 13 of the Commercial Courts Act, the provisions of MSMED Act will not be applicable.

11. Mr. Katneshwarkar would fairly concede that whether in the facts and circumstances of the case the plaintiff is a micro or small enterprise (supplier) as defined under Section 2(n) of the MSMED Act raked up by the defendants in Writ Petition No.10764/2015 is subjudice before the Supreme Court and the operation of the order of this Court dated 18.08.2021 has been stayed.

12. Mr. Katneshwarkar would submit that the decision in the matter of **Saryu Plastics Pvt. Ltd.** (supra) of the Gujarat High Court is not applicable to facts and circumstances of this case. In that case, the arbitrator was privately appointed by the parties. The award was passed and it was challenged in the form of application under Section 34 of the Arbitration and Conciliation Act, 1996 (**the Arbitration Act**). The application seeking waiver of pre-deposit of 75% was allowed and the issue was, whether the award passed by privately appointed arbitrator was challenged by resorting to Section 34 of the Arbitration Act, pre-deposit under Section 19 was mandatory for entertainment

of application under Section 34. He would submit that the facts in the matter in hand are quite peculiar and not analogues to the one obtaining before the division bench of the Gujarat High Court.

13. We have considered the rival submissions and perused the papers.

14. Admittedly, the plaintiffs filed a suit for recovery of money and obtained a preliminary decree. A final decree application was moved resulting in passing of a final decree, which is a subject matter of challenge in this first appeal under Section 96 of the Code of Civil Procedure read with Section 13 of the Commercial Courts Act. This very fact, in our considered view, is demonstrative of the fact that the plaintiffs themselves had resorted to the remedy of approaching the civil court by filing a civil suit, which ultimately culminated in passing of the impugned final decree. This according to us is a salient feature of the matter in hand which distinguishes it from the decisions referred to by the learned Senior advocate Mr. Sundaram, in the matter of ***Snehadeep Structures Vs. Maharashtra Small-Scale Industries Development Corporation; (2010) 3 SCC 34*** and ***Saryu Plastics Pvt. Ltd.*** (supra).

15. In order to appreciate the controversy, it is imperative to understand the legislative history. The interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (hereinafter the 1993 Act) was the first enactment which provided for and regulated payment of interest on delayed payments to small scale and ancillary industrial undertakings, with the object and reason of ensuring prompt payments of money by buyers to the small industrial units and provided for payment of interest on the outstanding

monies. The object was to deter the buyers from the small scale and ancillary industrial undertakings from withholding the payments. Section 3 provided for liability of the buyer to make the payment within a stipulated time. Section 4 provided for payment of interest on failure to make the payment by the buyer. Section 5 further declared it to be a compound interest. Section 6 permitted the small scale and ancillary industrial undertakings to recover such interest by filing a suit or other proceeding. Sub-Section 2 of Section 6 permitted a party to the dispute to make a reference to Industry Facilitation Council seeking arbitration or conciliation. Section 7, which is relevant and analogous to Section 19 of the MSMED Act, required a pre-deposit for entertaining an appeal against a decree, award or other order. Section 7 read thus :

> *"**7. Appeal -** No appeal against any decree, award or other order shall be entertained by any court or other authority 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, other order in the manner directed by such court or, as the case may be, such authority."*

16. It is to be noted that filing a suit was one of the remedies available to the supplier and obviously, there was a reference to 'decree' in Section 7 which provided an appeal against any decree, award or order.

17. By way of amendment existing Section 6 was renumbered as Sub-Section (1) and Sub-Section (2) was added with effect from 10.09.1998. It provided that 'any party' to the dispute could make a reference to Industry Facilitation Council for acting as an arbitrator or conciliator and made the provisions of the Arbitration and Conciliation Act, 1996 applicable thereto.

18. The MSMED Act, repealed the 1993 Act with effect from 02.10.2006. Section 15 thereof pertains to liability of a buyer to make payment. Section 16 imposes liability on the buyer to pay interest at a

prescribed rate. Section 18 provides for a reference of a dispute to Micro and Small Enterprises Facilitation Council and reads as under :

*"**18. Reference to Micro and Small Enterprises Facilitation Council. - -***

(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-Section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference."

19. Section 19 of the MSMED Act, which is analogous to Section 7 of 1993 Act reads as under :

*"**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."

20. Section 23 of MSMED Act exempts the MSMEs from payment of Income Tax. Section 24 by use of a non obstante clause declares that the provisions of Section 15 to 23 would have supremacy against any other law for the time being in force.

21. A careful understanding of the provisions of the 1993 Act in juxtaposition to that of the MSMED Act and particularly the wording of Section 7 of the former and Section 19 of the latter would make it clear that under the 1993 Act, a small scale and industrial undertaking had remedy of filing a suit or any other proceeding for recovery of dues from the buyers. Obviously, since even a suit could be filed under Section 6(1), Section 7 provided and used the word 'decree' simultaneously with words 'award' or 'other order', providing that those would not be entertained unless there was a pre-deposit of 75% of the amount of decree or award in the manner directed by such 'decree'. The shift in the mechanism under the MSMED Act is evident.

22. Under the MSMED Act, there is conspicuous absence of remedy of preferring an appeal, which was there under Section 7 of the 1993 Act. Under the MSMED Act the only remedy for a micro and small enterprise is of approaching a facilitation council by way of reference under Section 18. The legislature in its wisdom has done away with a remedy for a micro and small enterprise of approaching the civil court and to have a decree. The conscious shift in such mechanism makes it abundantly clear that a resolution in respect of claim of a micro and small enterprise can be only in the form of a reference to the facilitation council which can undertake conciliation or seek assistance of any institution or centre providing for alternate dispute resolution or on failure of conciliation, itself can undertake arbitration or arbitration by any other

institution or centre, making it abundantly clear that the provisions of the Arbitration and Conciliation Act, 1996 would be applicable. Sub-Section 3 of Section 18 makes it clear that even in the absence of any arbitration agreement, the facilitation council can assume existence of such agreement under Section 7(1) of the Arbitration Act and refer the dispute for settlement. It is quite apparent that in spite of such peculiar change in the mechanism provided for a micro and small enterprise to recover money from its buyer, and filing of suit as a remedy has been done away with under the MSMED Act, Section 19 continues to use the word 'decree'.

23. In light of the submission of Mr. Sundaram that use of the word 'decree' as defined under Section 2(2) of the Code of Civil Procedure can only be understood as a decree of a civil court, when a micro and small enterprise can no longer approach a civil court by filing a suit, it does appear that the use of expression 'decree' in Section 19 does not aptly fit into the scheme provided for recovery of money under the MSMED Act and may look superfluous.

24. It is pertinent to note that the suit in the matter in hand was filed on 08.09.2008, after coming into force of the MSMED Act. A division bench of this Court, in the matter of ***M/S. Steel Authority of India Ltd. and Anr. Vs. Micro Small Enterprises Facilitation Council, Nagpur; AIR 2012 Bom 178,*** has held that the remedy of approaching civil court by filing a civil suit is no longer available in the wake of Section 18 of the MSMED Act. It is not a case that the suit was filed prior to coming into force of the MSMED Act but the decree was passed thereafter. In such a case, a peculiar fact situation could be easily comprehended. If a micro and small enterprise was to recover the dues from the buyer and could have filed a suit for its recovery under the 1993 Act,

which is not the case in the matter in hand, it could be assumed that the legislature was conscious of occurrence of such peculiar state of affairs where, a micro and small enterprise which had filed a suit under the 1993 Act which was pending on the date the MSMED Act came into force, but a decree was passed by a civil court after coming into force of MSMED Act. Whether such a decree can be challenged by resorting to Section 96 of the Code of Civil Procedure is the moot question which may have to be gone into. Indeed this would be an anomalous situation, inasmuch as, when a remedy of suit was available under 1993 Act, but the decree is passed therein after enforcement of the MSMED Act, as to whether the appeal against the decree could be under Section 96 read with Section 7 of 1993 Act and not under MSMED Act, which does not expressly save the suits pending on the date when it was brought into effect by repealing the 1993 Act, in spite of the fact that Section 7 of the 1993 Act provided an appeal but the MSMED Act does not contemplate any appeal.

25. The cardinal principle of interpretation of statute is, as far as possible resort must be had to the plain meaning and if there is some ambiguity or incompatibility, the provisions have to be construed harmoniously so as to attribute meaning to every word used by the legislature to the extent possible.

26. To our mind, the aforementioned peculiar facts and circumstances leave a legitimate doubt as to whether a decree passed by a civil court in a suit filed by micro and small enterprise after coming into force of the MSMED Act, can be challenged under Section 96 of the Code of Civil Procedure. Certainly this would be an issue which will have to be considered and decided while hearing the first appeal.

27. We are at a stage when after grant of the *ad interim* relief in the form of stay to the execution of the final decree under challenge, the present application has been moved seeking a direction to the defendants to deposit 75% of the decreetal amount as a precondition for entertaining the appeal.

28. In ***Snehadeep Structures*** and ***Saryu Plastics Pvt. Ltd.*** (supra), the challenge was under Section 34 of the Arbitration Act and it was held mandatory to deposit 75% of the amount under Section 19. When no suit under MSMED Act is possible to be filed by a small and micro enterprise for recovery of its dues, in our considered view, an appeal would lie under Section 96 of the Code of Civil Procedure there being a final decree passed by a civil court in a suit. Only if a suit was filed when 1993 Act was in force but a decree was passed after coming into force of the MSMED Act, a harmonious construction in such circumstances could be resorted to. Section 19 of the MSMED Act refers to a challenge to a decision of the facilitation council and still refers to and uses the word 'decree'. If one has to give effect to the legislative intent of consciously using the word 'decree' that can possibly be only in such cases. The plaintiffs having chosen to file a suit after coming into force of the MSMED Act and have obtained a decree cannot fall back to Section 19 and cannot insist for pre-deposit.

29. The application is rejected.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/-