

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO.433 OF 2025
WITH
INTERIM APPLICATION (L) NO.9775 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO.433 OF 2025

Gannon Dunkerley & Company Limited	...Petitioner
Versus	
D2H Green Solutions Pvt. Ltd.	...Respondent

Mr. Rahul Gupta *i/b. Amir Arsiwala, Advocate for Petitioner.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JULY 28, 2025

Oral Judgement:

1. By an Order dated June 9, 2025, it was made clear that since the challenge is to an Arbitral Award passed under the Micro, Small and Medium Enterprises Development Act, 2006 (***“MSMED Act”***), it is a statutory pre-condition under Section 19 of the MSMED Act, that no Court shall entertain any challenge to such award unless a deposit of 75% of the amount awarded is made. Therefore, it was made clear that if such deposit was made by June 16, 2025, the Petitioner would be entitled to pursue the matter further.

2. On June 23, 2025, advocates for the Petitioner submitted that the deposit had not been made and sought further extension of time.

An extension was granted until July 21, 2025 with interest as awarded having to be computed until that date.

3. Today, when the matter is called out, Learned Counsel for the Petitioner submits that he still does not have instructions on the deposit having been made. Since more than one month has been given for meeting the pre-condition for this Court to entertain the challenge to arbitral award and since such deposit has not been made at all, this Court is constrained not to entertain the challenge filed under Section 34 of the Arbitration and Conciliation Act, 1996 (*“the Act”*) to the arbitral award passed under MSMED Act.

4. Section 19 of the MSMED Act would bear reproduction:-

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.

[Emphasis Supplied]

5. Under the MSMED Act, the term “supplier” is defined in Section 2(n) of the MSMED Act to essentially mean an enterprise that is a micro or small enterprise. This pre-condition is a statutory protection in the form of an economic disincentive to lightly challenge arbitral awards made under that legislation.

6. Since the deposit has not been made, the Petition is required to be *dismissed* as this Court is required not to entertain such a challenge in view of the statutory duty in the case of non-compliance with the pre-deposit requirement.

7. The Petition is *finally disposed of* in the aforesaid terms.

8. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court’s website.

[SOMASEKHAR SUNDARESAN, J.]