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Appln. No.5548 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2025

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Appln. No.5548 of 2024

in

Arb. O.P. (Com. Div.) Dr. No.107594 of 2024

M/s.National Contracting Company Ltd.
Rep. by its Divisional Manager – Operations
Sh. Venkatachalam Krithivasan

....
Vs

Applicant

M/s.A.V. Forgings

.....

Respondent

For Applicant : Mr.Kaustubh Sinha

For Respondent : Ms.Geethi Ara

for

M/s.Ramasubramaniam & Associates

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This application has been filed seeking permission of this Court to make the pre-deposit amount as prescribed under Section 19 of the MSMED Act by the applicant in instalments.

2. In the affidavit filed in support of this application, the applicant has undertaken to adhere to the statutory mandate as prescribed under



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Section 19 of the MSMED Act and show its bonafides by depositing

75% of the award amount, prior to pursuing the challenge under Section

34 of the Arbitration and Conciliation Act, 1996. However, according to

the applicant undue hardship would be caused to them, if the entire pre-

deposit amount is directed to be paid in a single instalment. According

to the applicant, it is an entity based in Saudi Arabia and the financing of

the subject matter of the project was from a project account, specially

and solely set up for a specific purpose, which is the subject matter of

the dispute. According to the applicant as per the relevant regulations,

the applicant cannot expend any amount from any other account and all

expenses in relation to the project are liable to be debited from this

project account only, which remain in suspension on account of the

completion of the project. The applicant seeks permission for payment

of the pre-deposit amount in instalments by relying upon a decision of

the Hon'ble Supreme Court in the case of ***Tirupati Steels vs. Shubh***

Industrial Component (2022) 7 SCC 429, wherein the Hon'ble

Supreme Court has permitted the payment of the pre-deposit amount as

mandated under Section 19 of the MSMED Act in instalments, provided

the applicant is able to establish hardship for payment of the entire

amount in one instalment.



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3. The learned counsel for the respondent opposes the instant application and would submit that since the applicant is an entity based in South Arabia, they have the means and therefore, the question of payment of instalments does not arise.

4. However, this Court is satisfied with the reasons contained in the affidavit filed in support of this application. This Court has also taken note of the fact that the applicant has raised several grounds in the main Section 34 petition. According to the applicant, the award is patently illegal since based on the Chartered Accountant's certificate, the arbitrator has mechanically accepted the same and has passed the impugned Arbitral Award. This Court deems it fit to direct the applicant to pay the pre-deposit amount as mandated under Section 19 of the MSMED Act on or before 30.04.2025 failing which, the main Section 34 petition seeking to challenge the impugned Arbitral Award shall stand automatically dismissed. The pre-deposit amount to be made by the applicant as directed by this Court shall be taken in the form of a Fixed Deposit favouring the Registrar General of this Court for a period of one year which shall be renewed periodically, depending upon the outcome of the main Section 34 petition. On payment of the pre-deposit amount



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within the stipulated time, Registry shall number the main O.P., if it is otherwise in order .

5. With the aforesaid directions, this application is disposed of.

10.03.2025

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ABDUL QUDDHOSE, J.

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