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Arb.O.P.(Com.Div.) No.557 of 2025
& Arb.A.(Com.Div.) No.369 of 2025

In the High Court of Judicature at Madras

Reserved on
06.11.2025

Delivered on :
17.11.2025

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Arbitration O.P.(Com.Div.) No.557 of 2025
& Arb.Application (Com.Div.) No.369 of 2025

Numaligarh Refinery Ltd.,
rep.by its Senior Chief
General Manager (HR & Legal)
Dr.Kajal Saikia

...Petitioner in
Arb.O.P.

Vs

M/s.Solar Design Pvt. Ltd.,
rep.by its Managing Director
Mr.A.A.K.Apath Sakaayam
Chennai-6

...Respondent in
Arb.O.P.

M/s.Solar Design Pvt. Ltd.,
rep.by its Managing Director
Mr.A.A.K.Apath Sakaayam

...Applicant in
Arb.Appln.

Vs

M/s.Numaligarh Refinery Ltd.,
rep.by its Chairman &
Director Finance, Guwahati.

...Respondent in
Arb.Appln.



*Arb.O.P.(Com.Div.) No.557 of 2025
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PETITION under Sections 34(2)(a)(iv), 34(2)(b)(i) and 34(2A) of the Arbitration and Conciliation Act, 1996 read with Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 praying to set aside the award dated 09.10.2024 passed by the Micro and Small Enterprises Facilitation Council, Chennai Region, Tamil Nadu in MSEFC/CR/280/2022 and for costs.

APPLICATION under Section 9(ii)(b) of the Arbitration and Conciliation Act, 1996 praying to direct the respondent to deposit a sum of Rs.34,40,997/- together with compound interest with monthly rests three times the bank rate till the date of deposit before this Court.

For Petitioner in OP
& Respondent in OA : Mr.Shatadru Chakraborty, SC
for Mr.A.K.Sahewalla &
Ms.Vandana Parasuram

For Respondent in OP
& Applicant in OA : Mr.Sharath Chandran

COMMON ORDER

Arbitration O.P.(Com.Div.) No.557 of 2025 has been filed by the petitioner under Section 34 of the Arbitration and Conciliation Act,



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1996 (for short, the Act) challenging the award dated 09.10.2024 passed by the Micro and Small Enterprises Facilitation Council, Chennai (for brevity, the Council).

2. Arbitration A.No.369 of 2025 has been filed by the respondent in the main original petition under Section 9 of the Act seeking for a direction to the petitioner in the main original petition to deposit a sum of Rs.34,40,997/- along with interest pursuant to the award passed by the Council dated 09.10.2024.

3. The petitioner in the main original petition is the respondent before the Council whereas the respondent in the main original petition is the claimant before the Council. For the sake of convenience, the parties will be referred to in this common order as are arrayed in the main original petition.

4. When Arb.A.(Com.Div.)No.369 of 2025 came up for hearing on 09.9.2025, this Court passed the following order :

"When the matter was taken up for hearing today, there is no representation on the side of the



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respondent. Even though this Court had directed the respondent to number the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 [for brevity, hereinafter referred to as 'the Act'] and bring it up for hearing, there is no indication that any such petition was filed since it is reported by the learned counsel for the applicant that they are on a caveat.

2. The award is dated 09.10.2024 and it was received by the applicant on 10.01.2025. Since the respondent is carrying on business at Assam, the present application has been filed under Section 9 of the Act to ensure that the award amount is deposited by the respondent to safeguard the interest of the applicant.

3. The available remedy for execution of the award is not a bar to file a petition under Section 9 of the Act. The award of the Micro, Small and Medium Enterprises has become enforceable and therefore, the applicant has an option to enforce payment in the absence of any challenge made to the award under Section 34 of the Act. The total claim made by the applicant against the respondent is sum of Rs.34,40,997/- including interest.

4. This Court wants to give one more opportunity to the respondent and in the absence of any response from the respondent, this Court



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will pass final orders on the next date of hearing.

*Post this application finally under the caption
"For Orders" on 16.09.2025."*

5. When Arbitration O.P.(Com.Div.) No.557 of 2025 came up for hearing on 11.9.2025, this Court passed the following order :

"Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent, who has entered caveat.

2. Before going into the grounds raised in the present petition, touching upon the facts of the case and the findings rendered by the MSME Council, a preliminary objection has been raised on the side of the respondent on the maintainability of this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996.

3. It is submitted that the Award was received by the petitioner on 13.01.2025. The three months period expired on 13.04.2025. However, the mandatory deposit of 75% as contemplated under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006, was made only on 16.06.2025. It is submitted that this deposit was made much beyond the period of three months and 30 days condonable period and therefore, the petition itself cannot be entertained by this Court.



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4. In support of the above submission, the learned counsel appearing on behalf of the respondent placed reliance upon various judgments of the Apex Court, this Court, Kolkata High Court and Bombay High Court.

5. The Full Bench judgment in *State of Tamil Nadu Vs. E.P.Nawab Marakkadai* reported in 1995 SCC OnLine Mad 356 dealt with a case under the Sales Tax Act. Paragraph 24 of the said judgment is extracted hereunder :

'24. Rule 27 of the Tamil Nadu General Sales Tax Rules provides for the manner in which an appeal under section 31 should be filed. The appeal shall be in form I appended to the Rules and shall be accompanied by two copies of the order appealed against. The necessary treasury receipt for the fee prescribed under sub-rule (2-A) shall also be appended to the memorandum of appeal. Sub- rule (4) says that if there are defects or omissions in the appeal, the same shall be returned for rectification and re-presented within 10 days from the date of receipt by the appellant. There is also a provision for excusing the delay if the re-presentation is made after a period of 10 days. These provisions regarding the filing of the appeal and the return for defects, if any, are in conformity with most of the provisions relating to an appeal in other statutes, and do not in any way



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take away the rigour of the second proviso to section 31(1) of the Act. We are, therefore, firmly of the opinion that if there is no payment of the admitted tax within the period allowed for filing the appeal or within the extended period as specified in the Act for condonation of delay in preferring an appeal, no appeal can be said to have been filed. It is only when the payment of admitted tax is made that the appeal can be said to have been filed. We also make it clear that the words "no appeal shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due or of such instalments thereof as might have become payable, as the case may be", as already stated by us in para 14 supra, are interpreted to mean that the payment of the admitted tax should be made within the time or the extended time prescribed, for filing an appeal even though the satisfactory proof may be produced later before the appeal is taken up for the first time for consideration. Consequently, it follows that if the payment of admitted tax is made beyond the period of 30 days prescribed for the filing of an appeal and beyond the further period of 15 days in respect of which alone the appellate authority has power to condone the delay, then the appellate authority has to necessarily reject the appeal as barred by



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limitation. It, no doubt, follows that there should also be a memorandum of appeal as prescribed in rule 27 of the Rules referred to by us. In the tax cases before us, we hold that the respective orders of the Appellate Assistant Commissioner rejecting the applications to condone the delay and consequently dismissing the appeals are perfectly in order. Only in cases where the delay is not beyond the period of 15 days which the appellate authority could excuse the same and hear the appeal. The decision of the Tribunal holding that the payment of admitted tax has no consequence so long as the memorandum of appeal is filed in time, is incorrect and liable to be set aside.'

In the above case, Rule 27 of the Tamil Nadu General Sales Tax Rules provided the manner in which an appeal should be filed under Section 31. The payment of admitted tax is a condition precedent for filing of the appeal and the Full Bench interpreted the expression 'no appeal shall be entertained'. The Full Bench held that the payment of the admitted tax should be made within the time or the extended time period for filing an appeal and consequently, if it is beyond the said period, the appeal itself will be barred by limitation.



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6. *The next judgment that can be taken into consideration is, the judgment of the Kolkata High Court in A.P.No.202 of 2015 dated 09.10.2015 and the relevant portion is extracted hereunder :*

'In any event, Section 19 requires a deposit. Such deposit has not yet been made. Till such time that the deposit is made, the petition cannot be received. It cannot be accepted that to arrest the clock of limitation a petition would be regarded to have been validly filed, though the statutory pre-condition thereto is not complied with.

Since it is the admitted position that no deposit in terms of Section 19 of the said Act of 2006 has yet been made and Section 19 of the said Act makes such a deposit a condition precedent to a petition for setting aside an award passed under such Act being entertained, AP.No.202 of 2015 is dismissed as not maintainable.'

7. *It will also be relevant to take note of the judgment of the Apex Court in Snehideep Structures Private Limited Vs. Maharashtra Small-Scale Industries Development Corporation Limited reported in 2010(3) SCC 34, where a passing reference has been made at paragraph 59, which is extracted hereunder :*

'59. Section 19 of the 2006 Act reads as follows:



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'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.'

This provision, no doubt, requires the deposit to be made before an application under Section 34 of the Arbitration Act is filed. However, we are not inclined to read this provision of a subsequent legislation into the provision in question.'

8. The judgment of the Bombay High Court in Ravindranath Ge Medicate Associate Pvt. Ltd., Chennai Vs. Clean Coats Pvt. Ltd., Ambarnath reported in 2016 (6) Maharashtra Law Journal 49 also assumes significance, since the Bombay High



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Court has taken a divergent view from that of the Kolkata High Court.

9. In the case in hand, the materials before this Court reveal the fact that the petitioner has deposited 75% of the amount much beyond the period of limitation (3 months + 30 days). Under such circumstances, this Court has to necessarily deal with the maintainability of this petition, since Section 19 uses the term that no application for setting aside any award made by the Council "shall be entertained" by any Court, unless the appellant has deposit 75% of the amount in terms of the award.

10. The learned counsel for the petitioner wants to argue this case in physical mode and hence, sought for time.

11. Post this petition on 06.11.2025 at 02.15. P.M."

6. In the light of the above orders passed by this Court, a direction was issued to the petitioner to make their submissions on the preliminary objections that were raised by the respondent as to the entertainability of the main original petition.

7. Heard both.



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8. The learned Senior Counsel appearing on behalf of the petitioner made the following submissions :

(i) Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter called the MSMED Act) provides for the Court exercising its discretion in so far as the deposit of 75% of the award amount is concerned and the petitioner, which has already deposited 75% of the award amount, will be entitled for exercise of such discretion by the Court and they cannot be shut out on the ground that 75% of the award amount was not deposited at the time of filing the main original petition.

(ii) The limitation period has been prescribed only under Section 34 of the Act and no such limitation has been prescribed under Section 19 of the MSMED Act. Therefore, the limitation prescribed under the Act cannot be imported into the MSMED Act.

(iii) The deposit of 75% of the award amount becomes mandatory only for entertaining the petition and the same will not apply in so far as filing of the main petition is concerned and once the petition is filed, the clock of limitation stops.

(iv) If a litigant, who makes this mandatory 75% deposit, is shut out from the Court, he will be treated inferior to a person, who is



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otherwise seeking for the deposit in instalments or otherwise and such a situation is not contemplated under Section 19 of the MSMED Act.

(v) In order to substantiate his submissions, he relied upon the judgments of the Hon'ble Apex Court in

(a) ***Tirupati Steels Vs. Shubh Industrial Component [reported in 2022 (7) SCC 429];*** and

(b) ***Gujarat State Disaster Management Authority Vs. Aska Equipments Ltd. [reported in 2022 (1) SCC 61].***

9. Per contra, the learned counsel appearing for the respondent submitted as follows :

(i) There can be three scenarios under Section 19 of the Act. The first scenario is where the person does not deposit any amount; the second scenario is where the person deposits a part of the amount; and the third scenario is where the person seeks for deposit in instalments or otherwise.



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(ii) In the case in hand, the main original petition was filed on 11.4.2025 and at that point of time, the petitioner did not deposit even a single pie and the deposit of 75% of the award amount was made only on 18.6.2025. This deposit was made much beyond 120 days. Under such circumstances, there is no question of exercising the discretion in the case of a person, who has not chosen to deposit any amount under Section 19 of the MSMED Act.

(iii) Section 19 of the MSMED Act mandates deposit of 75% of the award amount and till this deposit is made, the clock of limitation will not get arrested and it will continue till the statutory pre-condition is satisfied. If the deposit is made beyond the maximum limitation period of 120 days, the main original petition is not maintainable.

(iv) To substantiate his submissions, he relied upon the following decisions :

*"(1) of the Hon'ble Supreme Court in
**Lakshmiratan Engineering Works Ltd. Vs.
Assistant Commissioner (Judicial) I, Sales
Tax, Kanpur Range, Kanpur [reported in
1967 SCC OnLine SC 140];***



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(2) of the Hon'ble Supreme Court in **Lala Ram Vs. Hari Ram [reported in 1969 (3) SCC 173];**

(3) of the Hon'ble Supreme Court in **M/s.Lalta Prasad Khinni Lal Vs. Assistant Commissioner (Judicial), Sales Tax, Kanpur [reported in 1972 (4) SCC 505];**

(4) of a Full Bench of this Court in **State of Tamil Nadu Vs. E.P.Nawab Marakkadai [1995 SCC OnLine Madras 356];**

(5) of the Hon'ble Supreme Court in **Snehadeep Structures Private Ltd. Vs. Maharashtra Small Scale Industries Development Corporation Ltd. [reported in 2010 (3) SCC 34];**

(6) of the Hon'ble Supreme Court in **Goodyear India Ltd. Vs. Norton Intech Rubbers (P) Ltd. [reported in 2012 (6) SCC 345];**



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(7) of a learned Single Judge of this Court in **Goodyear India Ltd. Vs. Norton Intech Rubbers (P) Ltd. [reported in 2013 (5) CTC 25];**

(8) of a Division Bench of this Court in **M/s.Goodyear India Ltd. rep.by its Zonal Manager Mr.Baburaj Vs. Norton Intec Rubbers (P) Ltd. [O.S.A.Nos.272 & 294 of 2013 dated 20.9.2013];**

(9) of a learned Single Judge of the Calcutta High Court in **Development Consultants Pvt. Ltd. Vs. Rama Engineering [A.P.No.202 of 2015 dated 09.10.2015];**

(10) of a learned Single Judge of the Bombay High Court in **Ravindranath GE Medicate Associate Pvt. Ltd., Chennai Vs. Clean Coats Pvt. Ltd. [reported in 2016 (6) Mh.Law Journal 49];**



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(11) a First Bench of this Court in

***Waaree Energies Ltd. rep.by its
Authorized Signatory Vs. Sahasradhara
Energy Pvt. Ltd. [reported in 2021 SCC
OnLine Madras 5086]."***

10. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned award.

11. In the case in hand, the award came to be passed by the Council on 09.10.2024. A copy of this award was received by the petitioner on 13.1.2025. The three months' period came to an end on 13.4.2025 and the condonable period of 30 days also came to an end on 13.5.2025. The main original petition was filed before this Court on 11.4.2025. Admittedly, on the date of filing of the main original petition, no pre-deposit was made by the petitioner. But, 75% of the award amount was deposited only on 18.6.2025. In the light of the above facts, this Court must venture into Section 19 of the MSMED Act read with Section 34 of the Act.



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12. For proper appreciation, Section 19 of the MSMED Act is extracted as hereunder :

"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 percent 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."

13. A careful reading of the above provision makes it abundantly clear that no application for setting aside an award passed by a Council can be entertained by any Court unless the petitioner deposits with the application 75% of the amount in terms of the award. Towards the end



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of that provision, a small window is provided for the Court to exercise its discretion when the Legislature uses the term '**or, as the case may be, the other order in the manner directed by such Court**'. The Constitutional validity of this provision has already been upheld.

14. The above provision sans the last portion would have made it mandatory to deposit 75%, failing which, a petition cannot be entertained. However, a discretion is given to the Court and even by exercising its discretion, there is no question of waiver of the pre-deposit of 75% of the award amount and such discretion can be exercised on the facts of a particular case by permitting the deposit to be made in instalments or by permitting the applicant to give bank guarantee towards 75% of the award amount, etc.

15. In the judgment of the Hon'ble Apex Court in **Lakshmiratan Engineering Works Ltd.**, the following portion is very crucial, which requires proper understanding :

"The distinction made by the learned Chief Justice between the tangible and intangible objects does not, in our opinion, fall for consideration in the present case. If one holds that by



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'entertainment' is meant the time of admission of the appeal, satisfactory proof may be furnished at the time of admission of the appeal. We are of opinion that by the word "entertain" here is meant the first occasion on which the court takes up the matter for consideration. It may be at the admission stage or if by the rules of that Tribunal the appeals are automatically admitted, it will be the time of hearing of the appeal. But on the first occasion when the court takes up the matter for consideration, satisfactory proof must be presented that the tax was paid within the period by limitation available for the appeal. In the present case when the Assistant Commissioner took up the appeal for consideration, satisfactory proof was available in the shape of a certificate which even today is not denied. In our opinion the Assistant Commissioner was wrong in declining to consider the appeal in the presence of such uncontestable proof."

16. In the said judgment, the Hon'ble Apex Court was dealing with the purport of Section 9 of the Sales Tax Act, which provided that no appeal against an assessment should be entertained unless it was accompanied by satisfactory proof of payment of the amount of tax, which was admitted by the appellant. The Hon'ble Apex Court was



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explaining the scope of the word '**entertainment**'. It was held that the Court, in order to take up the matter for consideration, must satisfy itself on the first occasion that the tax has been paid **within the period of limitation** available for filing the appeal.

17. Thus, it was made clear that the word '**entertain**' is meant the first occasion, on which, the Court takes up the matter for consideration and at the time of entertaining, the Court must be satisfied that the tax has been paid within the period of limitation for filing the appeal.

18. The said judgment was considered by a learned Single Judge of the Bombay High Court in the decision in ***Ravindranath GE Medicate Associate Private Ltd., Chennai*** wherein the relevant portions are extracted as hereunder :

"39. The Supreme Court in case of Laxmi Ratan Engineering Works Ltd. (supra) and in case of Hindustan Commercial Bank Ltd. (supra) has interpreted the term "entertain" and has held that the term "entertain" would mean first occasion on which the Court takes up the matter for



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consideration which may be at the admission stage or if by rules of that tribunal, the appeals are automatically admitted, it will be at the time of hearing of the appeal. It is held that on the first occasion, when the Court takes up the matter for consideration, satisfactory proof must be presented that tax was paid within the period of limitation available for the appeal.

40. In my view, the appellant was thus not required to deposit 75% of the awarded sum along with the application filed under section 34 of the Arbitration & Conciliation Act, 1996 before the learned Principal District Judge, Thane and such amount of deposit could be made when the said application was ultimately entertained by the learned Principal District Judge, Thane, who could even consider grant of installments of the said amount and also the mode and manner in which the said amount could be deposited. In my view, the judgment of this Court in case of E.Square Leisure Pvt. Ltd., Pune (supra) squarely applies to the facts of this case. I am respectfully bound by the said judgments."

19. In the said judgment of the Bombay High Court, the learned Single Judge was dealing with the very same issue that is considered in the present case on the scope of not depositing 75% of the award



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amount within the period of limitation prescribed under Section 34 of the Act. The Bombay High Court, on considering the judgment of the Hon'ble Apex Court, held that it is enough if the amount is deposited before the Court takes up the matter for consideration.

20. With all due respects, this Court is not in agreement with the above view taken by the Bombay High Court. The Bombay High Court has mixed up the issue of the deposit of amount and entertaining the petition and concluded that such deposit of amount can be made at any time before the petition is entertained by the Court.

21. The above extracted portion of the judgment of the Hon'ble Apex Court in **Lakshmiratan Engineering Works Ltd.**, makes it abundantly clear that at the time when the petition is entertained by the Court, it must be satisfied that the amount/tax has been paid within the period of limitation. The Hon'ble Apex Court did not hold that the tax can be paid at any time before entertaining the petition/appeal.

22. Even the learned Single Judge of the Delhi High Court, in the



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decision in **Central University of Jharkhand Vs. King Furnishing & Safe Co. [reported in 2024 SCC OnLine Delhi 1472]**, seemed to have taken the same view that was taken by the learned Single Judge of the Bombay High Court in **Ravindranath GE Medicate Associate Private Ltd., Chennai** (Refer paragraphs 9 to 13 in the decision). With due respect, this Court does not subscribe even to the above decision of the Delhi High Court since the essence of the judgment of the Hon'ble Apex Court in **Lakshmiratan Engineering Works Ltd.,** has been lost sight of.

23. The judgment of the Hon'ble Apex Court in **Lakshmiratan Engineering Works Ltd.,** has been properly appreciated by a Full Bench of this Court in the decision in **E.P.Nawab Marakkadai** wherein the relevant portion is extracted as hereunder :

"24. Rule 27 of the Tamil Nadu General Sales Tax Rules provides for the manner in which an appeal under Section 31 should be filed. The appeal shall be in form I appended to the Rules and shall be accompanied by two copies of the order appealed against. The necessary treasury receipt for the fee prescribed under Sub-rule (2-A) shall also be appended to the memorandum of



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appeal. Sub-rule (4) says that if there are defects or omissions in the appeal, the same shall be returned for rectification and re- presented within 10 days from the date of receipt by the appellant. There is also a provision for excusing the delay if the re-presentation is made after a period of 10 days. These provisions regarding the filing of the appeal and the return for defects, if any, are in conformity with most of the provisions relating to an appeal in other statutes, and do not in any way take away the rigour of the second proviso to Section 31(1) of the Act. We are, therefore, firmly of the opinion that if there is no payment of the admitted tax within the period allowed for filing the appeal or within the extended period as specified in the Act for condonation of delay in preferring an appeal, no appeal can be said to have been filed. It is only when the payment of admitted tax is made that the appeal can be said to have been filed. We also make in clear that the words "no appeal shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due or of such instalments thereof as might have become payable, as the case may be", as already stated by us in para 14 supra, are interpreted to mean that the payment of the admitted tax should be made within the time or the extended time prescribed,



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for filing an appeal even though the satisfactory proof may be produced later before the appeal is taken up for the first time for consideration. Consequently, it follows that if the payment of admitted tax is made beyond the period of 30 days prescribed for the filing of an appeal and beyond the period of 15 days in respect of which alone the appellate authority has power to condone the delay, then the appellate authority has to necessarily reject the appeal as barred by limitation. It, no doubt, follows that there should also be a memorandum of appeal as prescribed in Rule 27 of the Rules referred to by us. In the tax cases before us, we hold that the respective orders of the Appellate Assistant Commissioner rejecting the applications to condone the delay and consequently dismissing the appeals are perfectly in order. Only in cases where the delay is not beyond the period of 15 days which the appellate authority could excuse the same and hear the appeal. The decision of the Tribunal holding that the payment of admitted tax has no consequence so long as the memorandum of appeal is filed in time, is incorrect and liable to be set aside.”

24. In the decision in ***E.P.Nawab Marakkadai***, the Full Bench of this Court was dealing with the scope of Rule 27 of the TNGST Rules,



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which made it mandatory for the payment of admitted tax and without the same being complied with, no appeal should be entertained. Ultimately, the Full Bench of this Court held that the payment of admitted tax must be made within the time prescribed for filing the appeal or within the extended time prescribed and beyond that, the appeal had to be necessarily rejected as barred by limitation.

25. The above judgment of the Full Bench of this Court in ***E.P. Nawab Marakkadai*** is perfectly in line with the judgment of the Hon'ble Apex Court in ***Lakshmiratan Engineering Works Ltd.***

26. It is also relevant to take note of the judgment of the Hon'ble Apex Court in ***Lalta Prasad Khinni Lal*** wherein the relevant portion reads thus :

"5. We are wholly unable to comprehend and appreciate the above reasoning or the conclusion of the Allahabad High Court on the point under consideration. It is true that an appeal filed under Section 9 of the Act cannot be entertained by the Appellate Authority unless satisfactory proof is adduced of the payment of tax admitted by the appellant to be due but in a case where the



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amount of admitted tax is deposited after the period of limitation has expired all that will happen is that the appeal will become entertainable only on the day on which satisfactory proof of payment of that amount is produced. In other words the appeal will be deemed to have been properly filed on the date on which the amount of admitted tax is paid. If that is beyond the period of 30 days the appeal will be barred by time. Section 9(6) will immediately become applicable to that appeal and it will be open to the appellant to apply for condonation of delay under that provision. We are wholly unable to follow the argument that the deposit of the amount of admitted tax must be made within 30 days even though the delay in filing the appeal can be condoned under sub-section (6). A proper and correct reading of Section 9 cannot justify such an approach. If a petition of appeal has been filed without proof of payment of tax accompanying it that appeal can be said to have been preferred only when proof of payment of tax is furnished. Such furnishing of the proof may take place within the period prescribed for preferring the appeal or after the lapse of that period. If the proof of payment of admitted tax is furnished within the period prescribed the appeal must be entertained. If the furnishing of that proof is done after the expiry of the period of limitation



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the question will arise whether the appeal should be entertained or not. In such cases Section 9(6) will come into operation and the question will arise whether there has been sufficient cause for not preferring the appeal within the statutory period. The correct approach is to treat the appeal as having been preferred on the date on which proof of payment of the tax was furnished and then to see whether under sub-section (6) of Section 9 there was sufficient cause for excusing the delay in preferring the appeal. The decision of the Kerala High Court in Gangadharan Pillai v.Sales Tax Officer (Reserve) Ernakulam [16 STC 578] is to this effect and we entirely agree with the reasoning and the conclusion therein. In Raja of Venkatagiri v. CIT [AIR 1957 AP 276 : 28 ITR 188] a division bench of the Andhra Pradesh High Court consisting of Subba Rao, C.J. (as he then was) and Bhimasankaram, J. had to consider the provisions of the Indian Income Tax Act 1922 similar to Section 9 of the Act. According to the proviso to Section 30(1) of that Act no appeal lay against an order under sub-section (1) of Section 46 unless the tax had been paid. Sub-section (2) of that section provided that the appeal was to be ordinarily presented within 30 days but the Appellate Assistant Commissioner could admit the same after the expiration of the period if he was



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satisfied that the appellant had sufficient cause for not presenting it within that period. It was held that the payment of the tax was condition precedent to the maintainability of the appeal. If an appeal was filed, though after the prescribed period of time, the Assistant Commissioner had the jurisdiction to hear the appeal after the tax due was paid. The only possible objection that could have been raised was that the appeal was barred as having been filed beyond the period prescribed by Section 30(2). But the Appellate Authority had the jurisdiction to excuse the delay. The ratio of this decision is that even though the payment of tax was a condition precedent to the maintainability of the appeal the delay could be condoned under Section 30(2) thus treating the appeal as having been filed when the amount of tax was paid."

27. The said judgment of the Hon'ble Apex Court in **Lalta Prasad Khinni Lal** also reiterates the proposition of law that the admitted tax must be deposited within the period of limitation and that the appeal itself would be deemed to have been properly filed only on the date, on which, the amount of admitted tax was paid.



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28. The Calcutta High Court in the decision in **Development Consultants Private Limited** has also come to the very same conclusion while interpreting the scope of Section 19 of the MSMED Act. It was held that mere filing of the petition without the deposit would not arrest the clock of limitation and that the deposit should be made within the period of limitation prescribed under Section 34 of the Act, failing which, the petition itself would not be maintainable.

29. In the case in hand, the mandate of pre-deposit is provided under Section 19 of the MSMED Act and the filing of the petition and the limitation period are prescribed under Section 34 of the Act.

30. It was contended on the side of the petitioner that since Section 19 of the MSMED Act does not prescribe any limitation, the limitation period prescribed under the Act cannot be imported and read into Section 19 of the MSMED Act.



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31. This Court must keep in mind that the MSMED Act is a special Enactment and the Act namely the Arbitration and Conciliation Act, 1996 is a general Enactment. The MSMED Act will override the provisions of the Act.

32. Section 19 of the MSMED Act makes it mandatory to deposit 75% of the award amount as a condition precedent to entertain any application filed to set aside the award. Section 18(3) of the MSMED Act provides that the Council will either take it up by itself or will refer the dispute for arbitration or will refer the dispute to any institution and the provisions of the Act shall then apply to the disputes as if the arbitration was in pursuance of an arbitration agreement referred to under Section 7(1) of the Act. As a result, what comes out of such proceedings will get the colour of an award and such award can be challenged only by way of filing a petition under Section 34 of the Act.

33. In turn, Section 34 of the Act prescribes the period of limitation and Sub-Section (3) of Section 34 of the Act makes it clear that an application cannot be filed after three months have elapsed from the date, on which, the party making that application received



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the arbitral award and the Proviso to Sub-Section (3) gives a maximum period of 30 days to condone the delay.

34. Thus, the filing of a petition challenging the award is governed under the Act whereas the pre-condition of deposit of 75% of the award amount is governed by the MSMED Act, which is a special Enactment. Therefore, such mandate prescribed under the MSMED Act has to be necessarily read into while filing a petition under Section 34 of the Act, which prescribes the period of limitation. Hence, a harmonious reading of the provisions of the MSMED Act and the Act will result in the only conclusion that the mandate namely the pre-deposit of 75% of the award amount must be necessarily fulfilled within the period of limitation provided under Sub-Section (3) of Section 34 of the Act.

35. The last issue to be dealt with is on the window of discretion that has been given to Courts under Section 19 of the MSMED Act. At the risk of repetition, this Court holds that this discretion cannot be used for waiving the pre-deposit of 75% of the award amount and it can be only exercised on the facts of the given case to make this



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deposit by way of instalments or any other method as the Court thinks it fit.

36. The Hon'ble Apex Court, in the decision in **Goodyear India Limited**, exercised such discretion and permitted the petitioner therein to make the pre-deposit amount within the stipulated period.

37. The Hon'ble Apex Court in the decision in **Tirupati Steels** also exercised such discretion by relying upon the earlier judgment of the Hon'ble Apex Court in **Goodyear India Limited** wherein it was held as follows :

"8. The question which is posed for consideration of this Court is, whether, the pre-deposit of 75% of the awarded amount as per Section 19 of the MSMED Act, 2006, while challenge to the award under Section 34 of the Arbitration Act, 1996, is made mandatory or not, is now no longer res integra in view of the decision of this Court in Gujarat State Disaster Management Authority v. Aska Equipments Ltd. [Gujarat State Disaster Management Authority Vs. Aska Equipments Ltd., (2022) 1 SCC 61 : (2022) 1 SCC (Civ) 369] While interpreting Section 19 of



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the MSMED Act, 2006 and after taking into consideration the earlier decision of this Court in Goodyear India Ltd. v. Norton Intech Rubbers (P) Ltd. [Goodyear India Ltd. v. Norton Intech Rubbers (P) Ltd., (2012) 6 SCC 345 : (2012) 3 SCC (Civ) 722] , it is observed and held that the requirement of deposit of 75% of the amount in terms of the award as a pre-deposit as per Section 19 of the MSMED Act, is mandatory. It is also observed that however, at the same time, considering the hardship which may be projected before the appellate court and if the appellate court is satisfied that there shall be undue hardship caused to the appellant/applicant to deposit 75% of the awarded amount as a pre-deposit at a time, the court may allow the pre-deposit to be made in instalments. Therefore, it is specifically observed and held that pre-deposit of 75% of the awarded amount under Section 19 of the MSMED Act, 2006 is a mandatory requirement."

38. A reference can be made to the judgment of the Hon'ble Apex Court in **Gujarat State Disaster Management Authority** wherein the relevant portion is extracted as hereunder :

"13. On a plain/fair reading of Section 19 of the MSME Act, 2006, reproduced hereinabove, at



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the time/before entertaining the application for setting aside the award made under Section 34 of the Arbitration and Conciliation Act, the appellant-applicant has to deposit 75% of the amount in terms of the award as a pre-deposit. The requirement of deposit of 75% of the amount in terms of the award as a pre-deposit is mandatory. However, at the same time, considering the hardship which may be projected before the appellate court and if the appellate court is satisfied that there shall be undue hardship caused to the appellant-applicant to deposit 75% of the awarded amount as a pre-deposit at a time, the court may allow the pre-deposit to be made in instalments."

39. All the above judgments move in the trajectory of the Court exercising its discretion in considering the hardship faced by the petitioner to deposit 75% of the award amount and accordingly permitting such payment within the extended time stipulated or in instalments.

40. Even in the judgment of the Hon'ble Apex Court in ***Haryana Pradesh Congress Committee Vs. First Newsmedia (P) Ltd.***



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[reported in 2021 SCC OnLine SC 3722], it has been held as follows :

"5. The learned Single Judge, in effect and substance, found that the arbitration case was not entertainable since the appellant had not deposited 75% of the amount awarded in terms of the impugned arbitral award.

6. Mr. Mukul Gupta, learned senior counsel appearing on behalf of the appellant submits that the appellant had deposited an amount of Rs. 26,07,000/- which fell short of 75% of the awarded amount by about Rs. 7,00,000/-. However, an amount of Rs. 50,00,000/- and odd has been recovered from the bank account of the appellant in proceedings for execution of the award. The amount is, thus, well above 75% of the awarded amount.

7. It may be true, as argued on behalf of the respondent, that 75% of the amount had not been deposited at the time of filing of the arbitration case. However, Section 19 of the MSMED Act provides that no application for setting aside any award, made either by the Council itself or by any institution or centre providing alternative disputes resolution services to which a reference has been made by the Council, is to be entertained by any court unless the appellant, not being a supplier,



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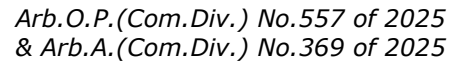
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has deposited with it, 75% of the amount in terms of the award.

8. There is a bar to entertain an application unless the amount awarded or 75% thereof is deposited. There is no bar to filing of an application. Since over 75% of the amount awarded has been paid and/or released and/or kept in deposit, we deem it appropriate to set aside the impugned orders of the learned Single Bench and the Division Bench and to remit the application for setting aside of award to the Single Bench for decision in accordance with law."

41. In the judgment in ***Haryana Pradesh Congress Committee***, the Hon'ble Apex Court found that there was a shortfall of Rs.7 lakhs, which was not deposited and that what was deposited was only Rs.26,07,000/-. Therefore, the Hon'ble Apex Court exercised its discretion.

42. In the case in hand, the learned counsel appearing for the respondent submitted that the petitioner did not even deposit a single pie at the time of filing the main original petition, that the entire pre-deposit was made only on 18.6.2025 and that in a case of this nature,



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the main original petition was filed without making any pre-deposit and the deposit of 75% of the award amount was made as late as on 18.6.2025.

45. This Court must keep in mind the object behind Section 19 of the MSMED Act and also the object behind the Act, which provides for minimum judicial intervention. Hence, on the facts of this case, this Court holds that this is not a fit case to exercise its discretion. In view of the same, since 75% of the award amount was deposited only on 18.6.2025 and that too, much beyond the period of limitation, the main original petition cannot be entertained.

46. Accordingly, Arbitration O.P.(Com.Div.) No.557 of 2025 stands dismissed.

47. In the light of the above decision taken in the main original petition, Arbitration A.(Com.Div.) No.369 of 2025 is disposed of and the deposit of 75% of the award amount made by the petitioner in the main original petition namely Arbitration O.P.(Com.Div.) No.557 of 2025 shall be treated as a deposit made in Arbitration A.No.(Com.Div.)



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369 of 2025 and the same shall be paid to the respondent in the main original petition. It is needless to point out that if the petitioner does not pay the balance amount to the respondent as per the award, it is left open to the respondent, which is the applicant in Arbitration A. (Com.Div.) No.369 of 2025 to file a petition in order to execute the award.

17.11.2025

Index : Yes
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