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DEPOSITING 75% OF AWARDED AMOUNT U/S 19 MSME ACT IS MANDATORY WHILE INITIATING APPLICATION U/S 34 OF ARBITRATION ACT: A CASE STUDY OF ASKA EQUIPMENT CASE

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The Supreme Court recently, in the case of *Gujarat State Disaster Management Authority v. Aska Equipment Limited (for short 'Aska Equipment Case')* [2021 SCC Online SC 917], observed that the requirement under Section 19 of the Micro, Small and Medium Enterprises Development Act (for short MSME Act) of pre-depositing 75% of the awarded amount while preferring the application/appeal for setting aside the award, is mandatory.

wherein the District Judge directed a party preferring an application u/s 34 of the Arbitration Act to pre-deposit 75% of the awarded amount according to the provisions of the MSME Act.

1. Facts of the case: Aska Equipment Case

1.1 The parties were governed by the provisions of the MSME Act. A dispute arose between them regarding non-payment of goods that were taken by the appellant (Gujarat State Disaster Management Authority).

1.2 The proceedings were initiated u/s 18 of the MSME Act. An award was passed by the Facilitation Council in favor of the respondent (Aska Equipment Limited) and the appellant was directed to pay Rs. 105,053,387/- (Rs. Ten crores Fifty Lakhs Fifty-Three Thousand Three Hundred and Eighty-Seven only) along with interest.

1.3 Being aggrieved by the said award, an application was preferred by the appellant before the Additional District Judge (Commercial), Dehradun u/s 34 of the Arbitration & Conciliation Act, 1996 (Arbitration Act) read with Section 19 of the MSME Act.

1.4 According to Section 19 of the MSME Act, the appellant had to pre-deposit 75% of the amount awarded by the arbitrator. Many opportunities were given by the Court to the appellant to deposit 75% of the awarded amount. An application for waiver of pre-deposit was also preferred which was dismissed by the Court.

1.5 The High Court of Uttarakhand upheld the order passed by an Additional District Judge (Commercial), Dehradun

1.6 Being aggrieved, the appellant filed an appeal before the Supreme Court of India.

2. Issue

2.1 Whether or not pre-depositing of 75 % of awarded amount u/s 19 MSME Act is mandatory while initiating application u/s 34 of Arbitration & Conciliation Act (for short Arbitration Act)?

3. Case Referred

3.1 *In Goodyear India Limited v. Norton Intech Rubbers Private Limited, (2012) 6 SCC 345-* The Court considered the provisions of Section 19 of the MSME Act and stated that requirement of deposit of 75% as a pre-deposit is mandatory. The Court held that the expression "in the manner directed by such court" would indicate the discretion of the Court to allow the pre-deposit to be made in installments. Otherwise, the deposit of 75% as a pre-deposit is mandatory and the appellate court would have no discretion at all to deviate from the mandate u/s 19 of the MSME Act.

4. Observation of the Supreme Court

The Apex Court speaking through Hon'ble Justices MR Shah and AS Bopanna held that:-

4.1 While considering the object and purpose of Section 19 of the MSME Act, the pre-deposit of 75% of the awarded

amount before preferring the application to set aside the award is mandatory.

4.2 If the appellate court is satisfied that there shall be an undue hardship caused to the applicant to pre-deposit 75% of the awarded amount, the court may allow the pre-deposit of the amount to be made in installments.

4.3 The Apex Court while disposing of the appeal stated that both the High Court and the Additional District Judge (Commercial) were justified in directing the appellant for pre-deposition of 75% of the awarded amount.

4.4 The Court directed the appellant to deposit Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lakhs) and on such deposit the District and Sessions Judge, Dehradun was directed to take up the appeal and proceed with the same as per law.

5. Decision of the Supreme Court

5.1 The Court held that according to Section 19 of the MSME Act, at the time/before entertaining the application for setting aside the award made u/s 34 of the Arbitration Act, the applicant/appellant has to deposit 75% of the amount in terms of the award as a pre-deposit.

6. Conclusion

The decisions of the Courts as discussed above may be interpreted to lead to the following conclusion:-

6.1 The provisions of Section 19 of the MSME Act are mandatory.

6.2 The requisite of pre-depositing 75% of the awarded amount before initiating an application u/s 34 of the Arbitration Act is mandatory.

6.3 There exists no exemption to the said rule; however, if the Appellate Court is satisfied that the appellant is facing hardships in pre-depositing the amount then liberty to deposit the amount in installments may be granted at the discretion of the appellate authority.

6.4 The requirement of pre-deposit while preferring an appeal by unsuccessful party though saves the Award Holder from the undue hardship of facing a challenge to the Award. However, same may at times also lead to undue hardship to the unsuccessful party, who was subjected to Award against it without due opportunities and/ or proper adjudication of the disputes.

A copy of the judgment is annexed hereto at **page 3 to 6.**

2021 SCC OnLine SC 917

In the Supreme Court of India
(BEFORE M.R. SHAH AND A.S. BOPANNA, JJ.)

Gujarat State Disaster Management Authority ... Appellant;
Versus

Aska Equipments Limited ... Respondent.

Civil Appeal No. 6252 of 2021

Decided on October 8, 2021

The Judgment of the Court was delivered by

M.R. SHAH, J.:— Feeling aggrieved and dissatisfied with the impugned judgment and order dated 26.09.2019 passed by the High Court of Uttarakhand at Nainital in Writ Petition (MS) No. 2708/2019, by which the High Court has dismissed the said writ petition and has confirmed the order passed by the learned Additional District Judge (Commercial), Dehradun in Miscellaneous Application No. 150 of 2018, whereby the appellant herein was directed to deposit 75% of the awarded amount in terms of Section 19 of Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the 'MSME Act, 2006'), the appellant herein - original appellant/applicant has preferred the present appeal.

2. That the parties are governed by the provisions of the MSME Act, 2006. A dispute arose between the parties regarding payment of goods which was taken by the appellant. The proceedings under Section 18 of the MSME Act, 2006 commenced. The Facilitation Council passed an award dated 10.11.2017 in favour of the respondent herein and directed the appellant to pay a sum of Rs. 105,053,387/- (Rs. Ten crores Fifty Lakhs Fifty Three Thousand Three Hundred and Eighty Seven only).

3. Feeling aggrieved by the said award, the appellant preferred an application before the learned Additional District Judge (Commercial), Dehradun under Section 34 of the Arbitration & Conciliation Act, 1996 read with Section 19 of the MSME Act, 2006. As per Section 19 of the MSME Act, 2006, the appellant was required to deposit 75% of the amount awarded by the arbitrator. Several opportunities were given to the appellant to deposit 75% of the awarded amount. An application for waiver of pre-deposit was preferred which came to be dismissed. That thereafter vide order dated 22.08.2019, the learned Additional District Judge (Commercial), Dehradun granted a month's time, as a last opportunity, to the appellant to deposit the said amount.

4. Feeling aggrieved by the said order, the appellant herein preferred writ petition before the High Court. By the impugned judgment and order, the High Court has dismissed the said writ petition. Even while dismissing the writ petition, the High Court granted further eight weeks' time to the appellant to deposit 75% of the awarded amount.

5. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the appellant herein - original applicant has preferred the present appeal.

6. Today, when the present appeal is taken up for further hearing, Shri Ajay Kumar, learned Advocate appearing on behalf of the appellant has submitted that in the present case while issuing notice on 23.10.2019, this Court directed the appellant to deposit a sum of Rs. 2,50,00,000/- (Rs. Two crores Fifty lakhs) before the appellate authority and on such deposit the learned appellate Court was directed to take up the appeal on file and proceed with the same. It is stated that pursuant to the said order, the appellant has deposited a sum of Rs. 2,50,00,000/- (Rs. Two Crores Fifty Lakhs)

and thereafter the learned appellate authority - Additional District Judge (Commercial), Dehradun has heard the appeal/application under Section 34 of the Arbitration & Conciliation Act, 1996 read with Section 19 of the MSME Act, 2006 and the order is to be pronounced on 12.10.2021. Therefore, it is prayed to dispose of the present appeal.

7. Learned Advocate appearing on behalf of the respondent has submitted that, as such, it is mandatory to deposit 75% of the awarded amount as a pre-deposit at the time when the appeal/application under Section 34 of the Arbitration & Conciliation Act, 1996 read with Section 19 of the MSME Act, 2006 is preferred. It is submitted that what is directed to deposit vide ex-parte order dated 23.10.2019 is not even 25% of the amount awarded. It is submitted that the question involved in the present appeal is a pure question of law and therefore the same may be decided by this Court even for future guidance.

8. Learned counsel for the respondent has further submitted that, as such, the issue involved in the present case is squarely covered against the appellant in view of the decision of this Court in the case of *Goodyear India Limited v. Norton Intech Rubbers Private Limited*, (2012) 6 SCC 345. It is submitted that the very provision of MSME Act, 2006 - Section 19 has been interpreted by this Court and it is observed and held that requirement of deposit of 75% as a pre-deposit is mandatory. It is submitted that even the expression "in the manner directed by such court" in Section 19 has been interpreted by this Court and it is held that the expression "in the manner directed by such court" would indicate the discretion given to the Court to allow the pre-deposit to be made, if felt necessary, in instalments. It is submitted that otherwise the deposit of 75% as a pre-deposit is mandatory and the appellate court would have no discretion at all to deviate from the mandate under Section 19 of the MSME Act, 2006.

9. Learned counsel appearing on behalf of the appellant is not in a position to show any contrary decision to the decision of this Court in the case of *Goodyear India Limited* (supra). He is also not in a position to satisfy whether the appellate court would have any discretion to deviate from the requirement of deposit of 75% as a pre-deposit while preferring the appeal/application under Section 34 of the Arbitration & Conciliation Act read with Section 19 of the MSME Act, 2006.

10. We have heard the learned counsel for the respective parties at length.

11. The short question posed for the consideration of this Court is, whether in an appeal/application filed under Section 34 of the Arbitration & Conciliation Act, 1996 read with Section 19 of the MSME Act, 2006, the appellate court would have any discretion to deviate from deposit of 75% of the awarded amount as a pre-deposit?

12. Section 19 of the MSME Act, 2006 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."

(bold words are ours)

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

hereinabove, at the time/before entertaining the application for setting aside the award made under Section 34 of the Arbitration & Conciliation Act, the applicant/appellant 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.

14. An identical question came to be considered by this Court in the case of *Goodyear India Limited* (supra). In paragraphs 10 & 11, this Court observed and held as under:

"10. In his submissions, Mr. Ramachandran has referred to the various decisions, all of which, however, are in the context of enactments in which discretion has been left to the appellate body to either waive or reduce the amount of pre-deposit, which factor is absent in the present case. In support of his contention, however, he referred to and relied upon the decision of this Court in *Snehadeep Structures (P) Ltd. v. Maharashtra Small-Scale Industries Development Corpn. Ltd.* (2010) 3 SCC 34 wherein while considering the question as to whether an application under Section 34 of the Arbitration and Conciliation Act, 1996, could be treated to be an appeal, a question incidentally arose as to whether if the same was to be treated as an appeal, would it be necessary to comply with the provisions of Section 19 of the 2006 Act. Their Lordships observed that the provision, no doubt, requires pre-deposit to be made before an application under Section 34 of the Arbitration Act is filed, but that they were not inclined to read that provision into the provision in question. The facts of the said case are different from the facts of this case and it would be difficult to import the ratio of the decision in the above case into the facts of this case.

11. Having considered the submissions made, both on behalf of the petitioner and on behalf of the respondents, we do not see any reason to interfere with the views expressed, both by the learned Single Judge, as also the Division Bench with regard to Section 19 of the 2006 Act. It may not be out of place to mention that the provisions of Section 19 of the 2006 Act, had been challenged before the Kerala High Court in *Kerala SRTC v. Union of India* [(2010) 1 KLT 65], where the same submissions were negated and, subsequently, the matter also came up to this Court, when the special leave petitions were dismissed, with leave to make the pre-deposit in the cases involved, within an extended period of ten weeks. We may also indicate that the expression "in the manner directed by such court" would, in our view, indicate the discretion given to the court to allow the pre-deposit to be made, if felt necessary, in instalments."

15. In view of the above and considering the language used in Section 19 of the MSME Act, 2006 and the object and purpose of providing deposit of 75% of the awarded amount as a pre-deposit while preferring the application/appeal for setting aside the award, it has to be held that the requirement of deposit of 75% of the awarded amount as a pre-deposit is mandatory. Therefore, as such, both the High Court as well as the learned Additional District Judge (Commercial), Dehradun were justified in directing the appellant to deposit 75% of the awarded amount as a pre-deposit.

16. However, at the same time, considering the fact that while issuing notice in the present proceedings on 23.10.2019, this Court passed the following order:

"Permission to file the special leave petition is granted.

In an appeal filed by the petitioner-Gujarat State Disaster Management

Authority, a Public Sector Undertaking of the State of Gujarat, challenging the award passed under the Micro, Small and Medium Enterprises Development Act, 2006 by the Facilitation Council, pursuant to Section 19 of the said Act the petitioner-Authority was directed to deposit 75% of the Award amount as conditional pre-deposit for taking the appeal on file.

Being aggrieved by the direction for pre-deposit of the amount the petitioner-Authority has preferred this special leave petition.

We have heard Mr. Huzefa Ahmadi, learned senior counsel appearing for the petitioner-Authority, who has submitted that the entire amount payable to the respondent-supplier has already been paid to the respondent-supplier and hence there is no necessity to make pre-deposit for filing the appeal. Arguments advanced by learned senior counsel is on the merit of the matter.

Having regard to the facts and circumstances and considering the fact that the petitioner-Authority is a Public Sector Undertaking, in exercise of the discretion vested with the court under Section of the said Act, we direct the petitioner-Authority to deposit Rs. 2,50,00,000/- before the Appellate Authority within a period of four weeks from today. On such deposit, the District and Sessions Judge, Dehradun, is directed to take up the appeal on file and proceed with the same.

Issue notice to the respondent.

On deposit of Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lakhs), the same shall be invested in a fixed deposit in a nationalised bank for a period of three months with auto renewal so that it may enure to the benefit of the successful party and the disbursement of the same shall await further orders from this Court."

and directed the appellant to deposit Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lakhs) and on such deposit the District and Sessions Judge, Dehradun was directed to take up the appeal on file and proceed with the same. It is reported that by now the application/appeal has been heard and the order is to be pronounced on 12.10.2021, we continue with the arrangement as per order dated 23.10.2019 in the appeal/application under Section 34 of the Arbitration & Conciliation Act is finally decided and disposed of. We hope and trust that the learned Additional District Judge (Commercial), Dehradun shall pronounce the order at the earliest and more particularly on 12.10.2021, the date on which order is to be pronounced, as reported.

17. With the aforesaid, the question posed is answered against the appellant in terms of the above and we dispose of the appeal laying down the law in terms of the above, however, as observed hereinabove, continue with the interim arrangement as per order dated 23.10.2019 till final disposal of the appeal/application under Section 34 of the Arbitration & Conciliation Act, 1996 read with Section 19 of the MSME Act, 2006, which shall not be treated as a precedent.

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