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M/S TIRUPATI STEELS

v.

M/S SHUBH INDUSTRIAL COMPONENT & ANR.

(Civil Appeal No. 2941 Of 2022)

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APRIL 19, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

C *Micro, Small and Medium Enterprise Development Act, 2006 (MSMED Act) – s.19 – Parties governed by provisions of MSMED Act – Appellant preferred claim petition before Micro and Small Enterprises Facilitation Council constituted under the MSMED Act – On failure of conciliation, dispute referred to Arbitrator – Arbitrator, appointed through MSME Facilitation Council, passed award in favour of appellant – Appellant filed execution petition – Respondent No.1 filed application u/s.34 of the Arbitration Act for setting aside the arbitral award – Appellant submitted application u/s.19 of the MSMED Act for direction to respondent no.1-judgment debtor to deposit 75% of the arbitral award – Special Commercial Court allowed the application moved by appellant granting six weeks' time to Respondent No.1 to deposit 75% of the arbitral award before its' application u/s.34 of the Arbitration Act, could be entertained by the Court – Respondent No.1 filed appeal before High Court which permitted proceedings u/s.34 of the Arbitration Act to go on, without insisting for pre-deposit of 75% of the awarded amount – Whether pre-deposit of 75% of the awarded amount as per s.19 of the MSMED Act, while challenge to the award u/s.34 of the Arbitration Act is made mandatory or not – Held: Requirement of deposit of 75% of the amount in terms of the award as a pre-deposit as per s.19 of the MSMED Act, is mandatory – However, 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 installments – Unless and until respondent No.1 deposits 75% of the awarded amount, its application u/s.34 of the Arbitration Act, challenging the award not to be entertained and decided on merits and, in that case, the*

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execution proceedings to continue – Arbitration and Conciliation Act, 1996 – s.34. A

Allowing the appeal, the Court

HELD:1.1. The requirement of deposit of 75% of the amount in terms of the award as a pre-deposit as per section 19 of the Micro, Small and Medium Enterprise Development Act, 2006, 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 installments. Therefore, pre-deposit of 75% of the awarded amount under section 19 of the MSMED Act, 2006 is a mandatory requirement. [Para 4][360-A-C] B C

1.2. The impugned order passed by the High Court permitting the proceedings under section 34 of the Arbitration and Conciliation Act, 1996 without insistence for making pre-deposit of 75% of the awarded amount is unsustainable. [Para 5][360-F] D

Gujarat State Disaster Management Authority v. Aska Equipments Limited, (2022) 1 SCC 61 and Goodyear (India) Ltd. v. Norton Intech Rubbers (P) Ltd., (2012) 6 SCC 345 – relied on. E

M/s Mahesh Kumar Singla and another v. Union of India and others [Decision of High Court in CWP No. 23368 of 2015] – partly overruled. F

2. Respondent No.1 is directed to deposit 75% of the awarded amount before its application under section 34 of the Arbitration and Conciliation Act, 1996 challenging the award is entertained and considered on merits. Unless and until respondent No.1 deposits 75% of the awarded amount, its application under section 34 of the Arbitration and Conciliation Act, 1996, challenging the award shall not be entertained and decided on merits and, in that case, the execution proceedings may continue. [Para 6][361-A-C] G

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Case Law Reference**(2022) 1 SCC 61** **relied on** **Para 4****(2012) 6 SCC 345** **relied on** **Para 4**

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2941 of 2022.

From the Judgment and Order dated 09.04.2019 of the High Court of Punjab and Haryana at Chandigarh in FAO-Com No.4 of 2019.

Pankaj Bhagat, Adv. for the Appellant.

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Dr. Vinod Kumar Tewari, Adv. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

D 1. Feeling aggrieved and dissatisfied with impugned order dated 09.04.2019 passed by the Division Bench of the High Court of Punjab and Haryana at Chandigarh in Commercial Appeal Case No. FAO-COM/4/2019 (O&M), by which in the proceedings under section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act, 1996) which was filed under section 19 of the Micro, Small and Medium Enterprise Development Act, 2006 (hereinafter referred to as the 'MSMED Act, 2006'), the Division Bench of the High Court has directed the first appellate court to proceed under section 34 of the Arbitration Act, 1996 without insistence for making pre-deposit of 75% of the awarded amount, the judgment creditor has preferred the present appeal.

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2. The parties are governed by the provisions of the MSMED Act, 2006. The appellant herein preferred a claim petition before the Micro and Small Enterprises Facilitation Council constituted under the MSMED Act, 2006 for recovery of Rs.1,40,13,053/- and interest amounting to Rs. 1,32,20,100/- which comes to a total amounting to Rs.2,72,33,153/-. On the failure of conciliation, the dispute was referred to the Arbitrator. The Arbitrator, appointed through the MSME Facilitation Council at Chandigarh, passed an award in favour of the appellant vide award dated 16.07.2018. Thereafter, the appellant herein filed the execution petition before the District and Sessions Judge, Faridabad. Respondent No.1 herein filed an application under section 34 of the Arbitration Act, 1996 for setting aside the arbitral award before the Special

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Commercial Court, Gurugram. That the appellant herein submitted an application under section 19 of the MSMED Act, 2006 directing respondent No. 1 herein – judgment debtor to deposit 75% of the arbitral award. The learned Additional District Judge cum Special Commercial Court, Gurugram allowed the said application moved by the appellant herein granting six weeks’ time to the Respondent No.1 herein to deposit 75% of the arbitral award before the application filed under section 34 of the Arbitration Act, 1996 could be entertained by the Court. Feeling aggrieved with the order passed by the Special Commercial Court, Gurugram directing the judgment debtor – respondent No. 1 herein to deposit 75% of the arbitral award and on that condition the petition under section 34 of the Arbitration Act, 1996 was to be entertained, which order was passed on considering section 19 of the Arbitration Act, 1996, respondent No. 1 filed the commercial appeal being FAO-COM/4/2019 before the High Court. By the impugned order, considering the decision of the Division Bench of the High Court rendered in CWP No.23368 of 2015 (**M/s Mahesh Kumar Singla and another Vs. Union of India and others**), by which, the Division Bench, while up holding the vires of section 19 of the MSMED Act, 2006, held that the pre-deposit of 75% of the arbitral award under section 19 of the MSMED Act, 2006 is directory and not mandatory, has permitted the proceedings under section 34 of the Arbitration Act, 1996 to continue without insistence on making a pre-deposit of 75% of the awarded amount. Feeling aggrieved and dissatisfied with the impugned order passed by the Division Bench of the High Court permitting the proceedings under section 34 of the Arbitration Act, 1996, to go on without insistence for making pre-deposit of 75% of the awarded amount, the appellant herein – original judgment creditor has preferred the present appeal.

3. We have heard learned counsel appearing on behalf of the respective parties at length.

4. 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 the case of **Gujarat State Disaster Management Authority Vs. Aska Equipments Limited; (2022) 1 SCC 61**. While interpreting section 19 of the MSMED Act, 2006 and after taking into consideration the

- A earlier decision of this Court in the case of **Goodyear (India) Ltd. Vs. Norton Intech Rubbers (P) Ltd.**; (2012) 6 SCC 345, 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. In para 13 of the aforesaid judgment, it is observed and held as under:-

- D “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 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.”

- F 5. In view of the aforesaid decision of this Court, the impugned order passed by the High Court permitting the proceedings under section 34 of the Arbitration Act, 1996 without insistence for making pre-deposit of 75% of the awarded amount is unsustainable and the same deserves to be quashed and set aside. As observed hereinabove, while passing the impugned order, the Division Bench of the High Court has relied upon an earlier decision of the Division Bench in the case of **M/s Mahesh Kumar Singla** (supra) which has taken a contrary view. Therefore, the decision of the Division Bench in the case of **M/s Mahesh Kumar Singla** (supra), which has been relied upon by the Division Bench of the High Court while passing the impugned order, is held to be not good law and is specifically overruled to the extent that it holds that pre-deposit of 75% of the awarded amount under section 19 of the MSMED Act, 2006, is directory and not a mandatory requirement.

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6. In view of the above discussion and for the reasons stated above, the present appeal is allowed. The impugned order passed by the High Court is hereby quashed and set aside. Respondent No. 1 is directed to deposit 75% of the awarded amount before its application under section 34 of the Arbitration Act, 1996 challenging the award is entertained and considered on merits.

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It is observed and held that unless and until respondent No. 1 deposits the 75% of the awarded amount, its application under section 34 of the Arbitration Act, 1996, challenging the award shall not be entertained and decided on merits and, in that case, the execution proceedings may continue. The present appeal is accordingly allowed. There shall be no order as to costs.

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Bibhuti Bhushan Bose

Appeal allowed.