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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO-182-2022 (O&M)

Date of decision: 4th May, 2023

Hiranmaye Energy Limited

...Appellant

Versus

M/s ASYC Projects Pvt. Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Amit Prashar, Advocate for the appellant.

AVNEESH JHINGAN, J (Oral):

1. This appeal under Section 37 of Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act') is filed aggrieved of order dated 9th November, 2021 dismissing the objections filed under Section 34 of the 1996 Act read with Section 19 of Micro Small and Medium Enterprises Development Act, 2006 (for short 'MSME Act')

2. The brief facts are that the appellant placed a supply order with the respondent. The respondent was registered under the MSME Act. The dispute between the parties was ultimately referred for arbitration. Vide award dated 30th July, 2019, the appellant was held liable to pay ₹1,25,00,000/-. Aggrieved of the award, appellant filed objections under Section 34 of the 1996 Act accompanied by an application for condoning the delay of 26 days and application for waiver of pre-deposit of 75% of awarded amount. The objections were dismissed due to non-compliance of pre-deposit condition as per Section 19 of MSME Act and also being time barred.

3. On a specific query from the Court, as to whether the appellant is now ready to comply with pre-deposit condition, learned counsel for the appellant on instructions submits that due to financial constraint, appellant is not in a position to deposit 75% of the amount awarded.

4. Section 19 of MSME Act is reproduced below:-

“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.”

5. As per Section 19 of MSME Act, no application for setting aside the award shall be entertained without deposit of 75% of the awarded amount exception being where the appellant is a supplier. In other words condition of pre-deposit is mandatory for entertaining the objections

6. The appellant *inspite* of opportunities provided neither complied with the condition of pre deposit as per Section 19 of the MSME Act nor is now willing to do so.

7. In such circumstances, the impugned order refusing to entertain the objections suffers no illegality. The issue of condonation of

delay need not be gone into in view of the fact that the objections cannot be entertained without fulfilling the condition of pre deposit as per Section 19 of MSME Act.

8. The appeal is dismissed.

9. Since the main appeal is dismissed, pending application, if any is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

4th May, 2023

Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |