

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

CIVIL REVISION PETITION No.1543 of 2024

ORDER: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. J.Prabhakar, learned Senior Counsel representing Ms. D.Venkata Padmaja, learned counsel for the petitioner.

Mr. Dida Vijaya Kumar, learned counsel for respondent No.1.

2. In this petition under Article 227 of the Constitution of India, the petitioner has assailed the validity of the order dated 23.04.2024 passed by the Special Judge for Trial and Disposal of Commercial Disputes, Ranga Reddy District, at L.B.Nagar (hereinafter referred to as 'the Commercial Court') in I.A.No.5 of 2024 in C.O.P.No.18 of 2023, by which Commercial Court has

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permitted respondent No.1 to withdraw a sum of Rs.50,85,490.00 deposited by the petitioner.

3. Facts giving rise to filing of this petition briefly stated are that the petitioner is a Government of India Enterprise incorporated to promote, aid and foster the growth of Micro, Small and Medium Enterprises in the country. The petitioner and respondent No.1 entered into an agreement on 14.05.2013 under tender marketing scheme. The dispute between the parties subsequently arose, which was referred for adjudication to Facilitation Council under the Micro, Small and Medium Enterprises Development Act, 2006. The aforesaid Council passed an award on 03.11.2022 in favour of respondent No.1. The aforesaid award has been challenged in a proceeding under Section 34 of the Arbitration and Conciliation Act, 1996.

4. In the proceeding under Section 34 of the Arbitration and Conciliation Act, 1996, the petitioner deposited a sum of Rs.50,23,828.00 which was kept in the fixed deposit. The learned Judge of the Commercial Court by an *ex parte* order dated 14.12.2023 called for the FDR

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along with interest. Thereafter, by order dated 23.04.2024 passed in I.A.No.5 of 2024, the Commercial Court has permitted withdrawal of the amount by respondent No.1. In this factual background, this civil revision petition has been filed.

5. Learned Senior Counsel for the petitioner submitted that the Commercial Court grossly erred in not deciding the petition filed by the petitioner under Section 36 of the Arbitration and Conciliation Act, 1996 seeking stay of the award. It is further submitted that respondent No.1 is no longer in existence and is a non-performing asset. Therefore, in the event of success of the petitioner in the proceeding under Section 34 of the Arbitration and Conciliation Act, 1996, it will not be possible for the petitioner to recover the amount from respondent No.1. It is pointed out that the Commercial Court by an order dated 15.04.2024 passed in I.A.No.380 of 2023 held that till 75% of the amount is deposited by the petitioner, the main OP will not be entertained. However, despite the aforesaid order, the Commercial Court has passed an

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impugned order subsequently on 23.04.2024, by which respondent No.1 has been permitted to withdraw the amount. It is therefore contended that impugned order is liable to be set aside.

6. On the other hand, learned counsel for respondent No.1 has invited the attention of this Court to Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 and has submitted that pending disposal of the application to set aside the decree or an award, the Court is at liberty to permit respondent No.1 to withdraw the amount. It is further submitted that the petitioner was heard and thereafter the Commercial Court has passed the order permitting withdrawal which does not suffer from any infirmity.

7. We have considered the rival submissions made on both sides and have perused the record.

8. Section 19 of the Micro, Small and Medium Enterprises Development 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.”

9. Thus, from perusal of the aforesaid proviso, it is evident that the Court is empowered to permit release of such percentage of amount deposited to the supplier as it considers reasonable under the circumstances of the case subject to such conditions as it deems necessary to impose.

10. Thus, the Court while dealing with a prayer to release the amount has to assign reasons for releasing such percentage of the amount as it considers reasonable subject to such conditions as it may deem necessary to impose.

11. In the instant case, the petition under Section 36 of the Arbitration and Conciliation Act, 1996 seeking stay of the award was also pending. Therefore, in the facts and circumstances of the case, the propriety demands that the learned Judge of the Commercial Court ought to have dealt with both the applications together. In addition, it is pertinent to note that the Commercial Court has not assigned any reason for releasing the whole amount by the petitioner in favour of respondent No.1.

12. For the aforementioned reasons, impugned order dated 23.04.2024 is set aside. The learned Judge of the Commercial Court is directed to decide the aforesaid application along with petition under Section 36 of the Arbitration and Conciliation Act, 1996 after hearing the

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parties within a period of three weeks from the date of receipt of copy of the order passed today.

13. Accordingly, the Civil Revision Petition is disposed of.

Miscellaneous petitions, pending if any, shall stand closed. There shall be no order as to costs.

ALOK ARADHE, CJ

ANIL KUMAR JUKANTI, J

Date: 19.06.2024
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