HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Miscellaneous Appeal No. 5190/2024
CNR: RJHC021075212024 | URN: CMA / 8464U / 2024

1. Superintending Engineer (MM), Purvanchal Vidyut Vitran Nigam Limited, Vidyut Nagar, Varansi 221004

----Appellant/Buyer/Applicant
(Non-Claimant Before MSE Fecilitation Council, Jaipur)

Versus

M/s Anamika Conductors Pvt. Ltd., Through Its Director B-70, Upasana House, II Floor Rajendra Marg, Bapu Nagar, Jaipur 302015

----Respondent/Supplier/Non-Applicant
(Claimant Before MSE Fecilitation Council, Jaipur)

For Appellant(s)	:	Mr. Alok Chaturvedi, Adv. Mr. Rahul Sharma, Adv. Mr. Bhawani Shanker, Adv. Mr. Kartik Sharma, Adv. Ms. Vedika Yadav, Adv. Mr. Ajay Kumar Saini, Adv.
For Respondent(s)	:	Mr. R.K. Agarwal, Senior Adv. assisted by Mr. Pulkit Arora,Adv. Mr. Anmol Vyas, Adv.

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Order (Oral)

Reportable

24/07/2026

Per: Arun Monga, J.

1. This appeal is directed against the order dated 16.11.2024 passed by the Commercial Court No. 1, Jaipur Metropolitan-II, Jaipur, whereby the appellant's objection application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "the Act of 1996") was dismissed for non-compliance with the requirement of pre-deposit of 75% of the

awarded amount under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short "the MSME Act").

2. Briefly, the facts are that the respondent, M/s Anamika Conductors Pvt. Ltd., invoked Section 18(1) of the MSME Act by filing a reference before the Rajasthan Micro and Small Enterprises Facilitation Council, Jaipur Headquarters-I ("the Facilitation Council") for recovery of amounts allegedly due under two invoices arising out of purchase orders issued by the appellant. The Facilitation Council took up the matter for conciliation under Section 18(2); in its meeting dated 22.12.2020, it directed the parties to explore an amicable settlement, and in its meeting dated 10.02.2021, recording that no settlement had been reached within the prescribed period, it declared the conciliation to have failed and initiated arbitration under Section 18(3) of the MSME Act.

2.1 Upon commencement of the arbitral proceedings, the Facilitation Council directed the respondent to file its statement of claim and the appellant to file its statement of defence upon receipt thereof. The matter was listed before the Facilitation Council on several dates. By order dated 27.02.2023, Shri Pankaj Purohit was appointed as the sole Arbitrator. The appellant filed preliminary objections before the learned Arbitrator on 09.05.2023, whereupon time was granted to the respondent to file its reply.

2.2 While the proceedings before the learned Arbitrator were pending, the matter was again taken up by the Facilitation Council itself. The appellant participated and raised objections relating, inter alia, to limitation, the scope of the reference, the quality of the goods supplied, and the jurisdiction of the Facilitation Council. Upon conclusion of the proceedings, the Facilitation Council passed an award dated

02.07.2024, directing the appellant to pay a sum of ₹6,50,95,249/-, inclusive of interest, to the respondent.

2.3 Aggrieved, the appellant filed an objection application under Section 34 of the Act of 1996 before the Commercial Court on 25.09.2024. The respondent entered appearance on caveat. The appellant initially sought permission to furnish a bank guarantee equivalent to 75% of the awarded amount in lieu of the statutory pre-deposit, but withdrew that application on 08.11.2024 and, on the same day, filed an application, supported by an affidavit of the competent authority, praying that it be permitted to deposit 75% of the awarded amount within fifteen days.

2.4 On 16.11.2024, the appellant moved a further application seeking additional time to make the deposit. By the impugned order of the same date, the Commercial Court declined the request for extension of time and, in the absence of the statutory pre-deposit, dismissed the application under Section 34 of the Act of 1996.

2.5 Hence this appeal.

3. Learned counsel for the appellant submits that the impugned order is unsustainable, as the learned Commercial Court dismissed the Section 34 application solely on the ground of non-deposit, without examining the merits of the challenge to the award. The appellant never sought exemption from the statutory pre-deposit; it prayed only for reasonable time to comply, having regard to the substantial amount involved and the financial sanctions required of a public sector utility dealing with public funds.

3.1 On merits, it is contended that the award dated 02.07.2024 is without jurisdiction: once the Facilitation Council had appointed a sole Arbitrator, it could not thereafter resume the arbitral proceedings and pronounce the award itself; the appellant's preliminary objections remained undecided; no proper statement of claim was filed in terms of the directions issued; and the award travelled beyond the scope of the original reference, which was confined to two invoices. It is further contended that the award was rendered beyond the period prescribed under the Act of 1996, the arbitral proceedings having commenced on 10.02.2021 and the award having been passed only on 02.07.2024.

3.2 On these grounds, it is prayed that the impugned order be set aside, reasonable time be granted to comply with the requirement of pre-deposit, and the objections under Section 34 be restored for adjudication on merits.

4. Per contra, learned Senior Counsel for the respondent contends that the impugned order is in accordance with law. The requirement of depositing 75% of the awarded amount under Section 19 of the MSME Act is mandatory, as consistently held by the Hon'ble Supreme Court and this Court. The appellant first sought exemption by offering a bank guarantee, withdrew that application on 08.11.2024, and, despite being granted seven days' time, failed to deposit the requisite amount; on 16.11.2024, instead of complying, it sought yet further time. The Commercial Court, therefore, rightly rejected the request and dismissed the Section 34 application. It is urged that, absent the pre-deposit made prior to or along with the objection petition, the petition was not maintainable, and no cognizance thereof could even have been taken by the Commercial Court. Reliance is placed upon the following decisions:

(i) Bihar State Electricity Board v. Chairman & Anr.[1];

(ii) Union of India & Ors. v. M/s Vijay Electricals[2];

1 D.B. SAW No.1540/2017, Rajasthan High Court
2 D.B. CMA No.207/2025, Rajasthan High Court

(iii) M/s Crompton Greaves Ltd. v. M/s Annapurna Electronics & Ors.[3];

(iv) M/s India Glycols Ltd. & Anr. v. Micro and Small Enterprises Facilitation Council & Ors.[4]

5. Having heard the rival contentions and perused the record, the questions that arise for our consideration are:

(i). Whether Section 19 of the MSME Act requires the pre-deposit of 75% of the awarded amount to be made prior to or simultaneously with the filing of the application under Section 34 of the Act of 1996, failing which the application is liable to be dismissed as not maintainable ?

and ;

(ii). Whether, on the facts of this case, the learned Commercial Court was justified in declining the appellant's request for time and dismissing the application ?

6. Before adverting to the authorities cited, it is apposite to notice the relevant statutory provision i.e. Section 19 of the MSME Act which 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."* *(emphasis is ours)*

7. A plain reading of Section 19 yields two significant features. First, the bar it enacts is against the application being "entertained" by the

3 AIR 2016 Kartnataka 13
4 AIR 2024 SC 285

Court without the pre-deposit, not against its institution or presentation. To "entertain" an application is to take it up for consideration on its merits; the provision does not, in terms, require the deposit to be made prior to or simultaneously with the filing of the application. Secondly, the deposit is to be made "in the manner directed by such court", words which themselves contemplate a judicial direction issued after the application is presented, prescribing the mode and, by necessary implication, the time within which the deposit is to be made. The statutory scheme thus mandates the pre-deposit as a condition precedent to the adjudication of the challenge, while leaving the manner and timing of compliance to the sound discretion of the Court.

8. The decisions relied upon by learned Senior Counsel are consistent with, and not contrary to, this construction. In ***M/s India Glycols Ltd.*** **(supra)**, the Hon'ble Supreme Court held:

> *"9. Section 19 provides recourse against an award of the Facilitation Council in the following terms:*
>
> > *"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."*
>
> *10. In terms of Section 19, an application for setting aside an award of the Facilitation Council cannot be entertained by any court unless the appellant has deposited seventy-five per cent of the amount in terms of the award. In view of the provisions of Section 18(4), where the Facilitation Council proceeds to arbitrate upon a dispute, the provisions of the Act of 1996 are to apply to the dispute as if it is in pursuance of an arbitration agreement under sub-section (1) of Section 7 of that Act. Hence, the remedy which is provided under Section 34 of the Act of 1996 would govern an award of the Facilitation Council. However, there is a super added condition which is imposed by Section 19 of MSMED Act 2006 to the effect that an application for setting aside an award can be entertained only upon the appellant depositing with the Council seventy-five per cent of the amount in terms of the award. Section 19 has been introduced as a measure of security for enterprises for whom a special*

provision is made in the MSMED Act by Parliament. In view of the provisions of Section 18(4), the appellant had a remedy under Section 34 of the Act of 1996 to challenge the award which it failed to pursue."

8.1 In ***M/s Crompton Greaves Ltd.*** **(supra)**, it was held:

"21. Sub-section (2) of Section 34 of the Arbitration Act provides that, an arbitral award may be set aside by the Court only if the party making the application furnishes proof of the grounds set out in the said application. Therefore, only if the aforesaid statutory ground is made out, the Court gets the jurisdiction to set aside the award. Otherwise the question of setting aside the award would not arise. Sub-section (3) of Section 34 provides the period of limitation within which an application for setting aside the said award is to be made. Even if such an application is made the Court is to be satisfied that the applicant was prevented by sufficient cause from making the application, within a period of three months, to condone the delay. The Court has the discretion to condone the delay and entertain the application and decide the application on merits. Then the question of setting aside the award, on the grounds mentioned under sub Section (2) arises. If the delay is not condoned, the application for condonation of delay is dismissed, consequently the application under sub-section (1) of Section 34 of the Arbitration Act, also stands dismissed. The resultant position is that the court is declining to set aside the award. The other scenario is that if the application is not made within the prescribed period, an application for setting aside the award under Section 34 is not maintainable, and consequently the application stands dismissed."

8.2 These decisions, as also those in ***Bihar State Electricity Board*** **(supra)** and ***M/s Vijay Electricals*** **(supra)**, enunciate the principle that the requirement of pre-deposit under Section 19 is mandatory and that, absent compliance, the Court is precluded from proceeding to adjudicate the challenge on merits. With that principle, we are in respectful and complete agreement. However, none of these decisions holds that the deposit must be made prior to or simultaneously with the presentation of the Section 34 application, or that an application unaccompanied by the deposit is stillborn and incapable of even being taken cognizance of for the limited purpose of directing compliance.

9. That the rigour of Section 19 accommodates judicially-regulated flexibility in the manner of compliance stands settled by the Hon'ble Supreme Court in ***Gujarat State Disaster Management Authority v. Aska Equipments Limited***[5], wherein it was held:

5 2021 SCC OnLine SC 917

> *"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."*

9.1 If, as held in ***Aska Equipments* (supra)**, the Court may, upon satisfaction of undue hardship, permit the pre-deposit to be made in instalments, it follows a fortiori that the Court may grant a reasonable time for making the deposit in a lump sum. The High Court of Orissa adopted precisely this course in ***M/s Aryan Ispat & Power Limited v. General Manager***[6], observing:

> *"24. This Court therefore declines to interfere with the impugned order directing deposit of 75% of the awarded amount. However, in the interest of justice, the Petitioner is granted 3 months from the date of this order to deposit the requisite amount in the manner specified by the Ld. Court below. After deposit of the same, the appeal under Section 34 of the A&C Act preferred by the Petitioner shall be heard. All contentions on merits are left open. Nothing contained in the present order shall influence the adjudication of the Section 34 application. The Parties shall cooperate so as to enable early resolution of their dispute."*

10. Examined on the anvil of the above principles, the facts of the present case speak for themselves. The award was passed on 02.07.2024; the objection application was preferred on 25.09.2024, i.e., within limitation; and when the matter came up before the learned Commercial Court on 08.11.2024, the appellant, having withdrawn its application for furnishing a bank guarantee, filed on the very same day an application duly supported by an affidavit of the competent authority praying that it be permitted to deposit 75% of the awarded amount within fifteen days. The appellant is a State Government entity; the deposit of an amount exceeding ₹6.50 crore from the public exchequer necessarily entails administrative and financial sanctions, a ground reality of which judicial notice can be taken.

6 WPC NO. 34448/2025

10.1 Moreover, the appellant at no stage sought exemption from, or evaded, the statutory obligation; its request was the innocuous one of a short accommodation to comply. Its bona fides stand conclusively established by the fact that the amount was actually deposited on 08.01.2025.

10.2 The learned Commercial Court, instead of weighing these circumstances and satisfying itself whether a short extension would cause any prejudice to the respondent, whose interest stood fully protected by the proviso to Section 19, under which a reasonable percentage of the deposit is to be released to the supplier pending disposal, proceeded to dismiss the Section 34 application outright within eight days of the first listing. Such an approach, in our considered view, is over-pedantic and mechanical, and reflects non-application of mind to the discretion which Section 19 itself vests in the Court through the words "in the manner directed by such court". The consequence of the impugned order is to foreclose, on a procedural default remedied within weeks, the appellant's only statutory remedy against an award of over ₹6.50 crore, a consequence wholly disproportionate to the default, and one the statute does not compel.

11. We accordingly hold that while the requirement of pre-deposit of 75% of the awarded amount under Section 19 of the MSME Act is mandatory and must be complied with before the Section 34 application is entertained on merits, the provision does not require the deposit to accompany the application at the time of its presentation, and the Court is empowered to grant reasonable time and, in an appropriate case of demonstrated hardship, to permit instalments for making the deposit. The learned Commercial Court erred in declining the appellant's bona fide request for time and in dismissing the application.

12. The appeal is, therefore, allowed. The impugned order dated 16.11.2024 is set aside, and the objection petition under Section 34 of the Act of 1996 is restored to its original number, the statutory pre-deposit having already been made on 08.01.2025. The parties are directed to appear before the learned Commercial Court on 24.08.2026, and the petition shall thereafter be proceeded with in accordance with law. Nothing observed herein shall be construed as an expression of opinion on the merits of the objections. No order as to costs.

13. All pending applications also stand disposed of.

(ASHUTOSH KUMAR),J **(ARUN MONGA),J**

27/KESHAV/TANISHA