2026:AHC:212772

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 13232 of 2026

M/S ABR Petro Products Private Ltd. and Another

.....Petitioner(s)

Versus

M/s Indian Inks and Chemicals Industries

.....Respondent(s)

Counsel for Petitioner(s) : Ram Sagar, Utkarsh Tripathi
Counsel for Respondent(s) :

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Supplementary Affidavit filed by learned counsel for the petitioners is taken on record.

2. Heard learned counsel for the petitioners.

3. In view of the order, which is proposed to be passed today, notices are not being issued to the defendant-respondent.

4. The case of the petitioner is that it is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of manufacturing of sacks and the petitioner no. 2 is the employer of the petitioner company who has been duly authorized to present the present petition pursuant to a resolution passed by the petitioner no. 1.

5. As per the writ petitioner, the respondent herein, who is the manufacturer of inks, had contacted the petitioner company for supply of inks and the orders were placed and the period whereof was between 14.08.2021 to 11.11.2023. On account of the disputes and the differences so occurred, the matter travelled to the Facilitation Council at Varanasi and an award came to be passed on 15.09.2025 which was signed on a 18.09.2025 awarding an amount of Rs.2,75,88,95/- as principal amount and interest amount to Rs.11,66,893/- totaling to Rs.39,25,788/- under Section 16 of the Micro Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 2006 Act). Since the award, according to the petitioner was not in accordance with law, thus an application under Section 34 of the Arbitration and Conciliation Act, 1996, (in short, 1996

Act) came to be preferred on 10.04.2026 along with a stay application. As per the petitioner, in view of the provisions contained under Section 19 of the 2006 Act, a pre-deposit of 75% of the awarded amount was to be deposited for entertaining the application under Section 34 of the 1996 Act, but due to certain reasons beyond control and comprehension of the petitioner, the same could not be deposited, resulting to the fact that recovery certificate came to be issued on 27.06.2026 seeking to recover an amount Rs.39,25,788/-. The Commercial Court, Varanasi, in Arbitration Case No. 2 of 2026, M/s ABR Petro Products Limited v. M/s India Inks and Chemical Industries proceeded to pass an order dated 01.09.2026 while disposing the application 27Ga directing the petitioner to comply with the mandatory requirement of pre-deposit of 75% of the awarded amount as per Section 19 of the 2006 Act fixing the date on 29.09.2026.

6. Aggrieved against the same, the petitioners herein has filed the present writ petition seeking following reliefs:-

"*(i) issue a writ, order or direction in the nature of certiorari quashing/setting aside the impugned order dated 01.09.2026 (Application-27 Ga) and calling for record, passed by the learned Commercial Court, Varanasi in Arbitration Case No. 2 of 2026 (Annexure No.-2), and to consequently direct that the petitioners' stay application (being 6-C) be decided on its own merits and that the petitioners be permitted to make the pre-deposit under Section 19 of the MSMED Act, 2006, if at all required, in reasonable instalments.*

(ii) issue a writ, order or direction in the nature of certiorari quashing the impugned recovery certificate dated 27.06.2026 issued by the Council and the consequential recovery citation issued by revenue Authorities (Annexure No.-2) in pursuance of the ex-parte award dated 18.10.2025 passed by the Council in Reference No. 00019/2023;

(iii) issue a suitable writ, order or direction directing the learned Commercial Court, Varanasi to decide the petitioners' stay application dated 10.04.2026 (being 6-C), (Annexure No.-7) in Arbitration Case No. 2 of 2026 as expeditiously as possible, preferably within a time barred period;

(iv) issue a writ, order or direction in the nature of mandamus commanding the respondents, their officers, servants and agents not to take any coercive steps or recovery proceedings"

7. Today a supplementary affidavit has been filed, according to which, there happens to be a challan receipt, reference whereof has been made in para 3 of the affidavit, extract whereof is at page 7 showing the total deposit of 75% of the total awarded amount of Rs.39,25,788.00 (breakup whereof is Rs.27,58,895.00 principal amount + interest Rs.11,66,893/-). According to the petitioner, now the relief no. 1 has become redundant, however relief no. 2 and 3 are concerned the same are to be remains alive and in view of the pre-deposit the petitioner is entitled to interim protection. Thus, prayer has been made to decide the stay application and also not to recover any amount in pursuance of the recovery certificate dated 27.06.2026.

8. Having heard the learned counsel for the petitioner, in view of the intervening facts and the circumstances with regard to the deposit of 75% of the awarded amount as per the claim set up by the petitioner, now the question would be what relief can be accorded to the petitioner at this stage, when the other side is not before this Court in that regard.

9. Plainly and simply, Section 19 of the Micro Small and Medium Enterprises Development Act 2006, is mandatory, meaning thereby that though an application under Section 34 of the 1996 Act can be filed, but the same shall only be heard provided there is a deposit of the mandatory amount of 75%. The law in this regard stands decided in ***Goodyear India Ltd. versus Norton Intech Rubbers Pvt. Ltd and others (*****2012) 6 SCC 345**, ***Sneh Deep Structures Pvt. Ltd. versus Maharashtra Small Scale Industries Development Corporation*** **(2010) 3 SCC 34**, ***Gujarat State Disaster Management Authority vs. Ashka Equipments Ltd.*** **(2022) 1 SCC 61**, **Appeal under Section 37 of the Arbitration and Conciliation Act 1996 No. 161 of 2024**, ***Ganga Prasad Memorial Trust and others versus DHK Eduserve Ltd.*** decided on 29.04.2024 and the judgment of this Court in Matters under Article 227 No. 4053 of 2017, State of UP vs M/s Jindal Concrete Udhyog decided on 20.12.2024. The net inevitable legal position would be that though the proceedings under Section 34 of the 1996 Act can be initiated while filing the same, but consideration can only be done provided the amount stands deposited i.e. 75% of the awarded amount. Apart from the same, the Apex Court in Special Leave Petition (Diary) No. 968 of 2026, ***Mahanagar Telephone Nigam Ltd.***

MNTL versus Micro and Small Enterprise Facilitation Council and others had the occasion to consider the issue relatable to deposit of 75% of the awarded amount in terms of Section 19 of the 2006 Act, wherein the aspect relating to 'mandatory' or 'directory' came up for consideration and the matter has been referred to larger Bench while according interim protection and the Rajasthan High Court in S.B. Civil Writ Petition No. 7607 of 2026, Chief General Manager, Bharat Sanchar Nigam Ltd. and others vs. M/s Raj Solutions (India) Ltd. decided on 22.05.2026 had decided the petition directing the disposal of the objections under Section 34 of the 1996 Act without insisting for pre-deposit of 75% of the awarded amount. Since as per the petitioner in view of the supplementary affidavit filed today dated 09.10.2026 of the petitioner no. 2 depicts that 75% of the awarded amount has been deposited, thus, now the relief, which stands confined to is with relation to not to recover the further amount i.e. residue 25%. The para 3 of the supplementary affidavit filed today is quoted hereinunder:-

"*3. That the petitioners, being law-abiding citizens having utmost respect and regard for the judicial institution and the orders passed by the courts of law, and with a view to demonstrate their bona fides, have, during the pendency of the instant writ petition, complied with the direction contained in the order dated 01.09.2026 passed by the learned Commercial Court, Varanasi. The petitioners have deposited 75% of the amount of the award, i.e. Rs. 29,44,341/- (Rupees Twenty Nine Lakh Forty Four Thousand Three Hundred Forty One only), on 22.09.2026 before the Presiding Officer, Commercial Court, Varanasi, vide Challan bearing Reference No. CT0AJXLAG2. The said deposit has been made without prejudice to the rights and contentions of the petitioners raised in the instant writ petition, and only in deference to the order of the learned Court. For the kind perusal of this Hon'ble Court, a true copy of the Challan receipt dated 22.09.2026 is being filed herewith and marked as Annexure S.A. No.-1 to this affidavit.*"

10. Bearing in mind the fact that a statement has been made that too on affidavit in supplementary affidavit by the petitioner no. 2 that the pre-deposit being 75% of the awarded amount has been deposited, thus, in the fitness of the matter, without issuing notice to the respondent herein, the petition stands disposed of, requiring the petitioner to file the self-attested copy of the present petition, supplementary affidavit, and also the original

proof of payment of the 75% of the awarded amount before the Commercial Court, who shall thereupon, post verification, shall pass appropriate orders, looking into the claim set up by the writ petitioner that now till the Application under Section 34 of the 1996 Act is decided, there is no requirement under statute to deposit the further amount. Any recovery so made shall abide by the decision in that regard.

11. With the aforesaid observations, the petition stands **disposed of**.

12. Though this petition has been decided on ex-parte version, however, in case the respondent is aggrieved, it shall be open for it to file a recall application.

(Vikas Budhwar,J.)

October 9, 2026
N.S.Rathour