<u>Court No. - 38</u>
Case :- WRIT - C No. - 46388 of 2013
Petitioner :- M/S Tirupati Stationary Pvt. Ltd.
Respondent :- State Of U.P. And Anr.
Counsel for Petitioner :- Atul Dayal,Alok Kumar Yadav
Counsel for Respondent :- C.S.C.

<u>Hon'ble Saumitra Dayal Singh,J.</u>

Heard Sri Alok Kumar Yadav learned counsel for the petitioner and the learned Standing Counsel for the State respondents.

Present petition is directed against the order dated 20.7.2013 passed by the District Judge Kanpur Nagar in Arbitration Case No. Nil of 2011 (Director Printing and Stationery Allahabad, U.P. and Another Vs. M/s Tirupati Stationery Pvt. Ltd.). By that order the learned District Judge has rejected the objection-Paper No. 14-C-2 filed by the petitioner seeking deposit of 75% of the awarded amount under the statutory arbitration award dated 27.4.2011(wrongly typed as 27.4.2010 in the impugned order). The learned court below has rejected the objections raised by the petitioner relying on the provisions of Order XXVII Rule 8-A of the Civil Procedure Code.

The writ petition was entertained on 04.9.2013 and the below quoted interim order was passed:

"In view of the aforesaid circumstances until further orders of the court the effect and operation of the impugned order dated 20.07.2013 passed by the District Judge, Kanpur Nagar in Arbitration Case no. Nil of 2011 (Director, Printing and Stationary, Allahabad U.P. and another Vs M/s Tirupati Stationary Private Limited) shall remain stayed."

Learned counsel for the petitioner states, in view of interim order granted by this Court, the entire proceeding in the aforesaid Arbitration Case have remained pending.

Having heard learned counsel for parties and having perused the record, the proceedings before the learned District Judge were instituted under Section 34 of the Arbitration Act, 1996 (hereinafter referred to as the 'Arbitration Act') read with Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'the MSME Act'). While there can be no dispute to the proposition that an application/objection filed under Section 34 of the Arbitration Act does not mandate pre-deposit of any part of the awarded amount and the deposit of the awarded amount may be enforced on the judgment debtor only by way of execution proceedings only, yet by virtue of the interaction of the Arbitration Act with the MSME Act, in respect of applications/objections to set aside the statutory award made under Section 18 of the MSME Act, Section 19 imposes a pre-condition of deposit of 75% of the awarded amount. For ready reference provisions of Section 19 of the MSME Act are quoted 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.

As to the mandatory or directory nature of the pre-deposit required to be made and as to whether the MSME Act would prevail over other enactments, the legislative intent is clear. Section 24 of the MSME Act gives a clear and sweeping overriding effect to any law that may be inconsistent thereto. For ready reference provisions of Section 24 of the MSME Act is quoted below:

*"**24. Overriding effect.**—The provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."*

Section 19 of the MSME Act being one which has been given overriding effect over any other law, clearly the requirement of pre-deposit prescribed under Section 19 would prevail over the provisions of Order XXVII Rule 8-A C.P.C. and any other law that may allow the Courts discretions while dealing with the requirement to pre-deposit the disputed amount of award in an application filed under Section 34 of the Arbitration Act.

Inasmuch as the language of Section 19 of the MSME Act is mandatory, as it provides that no application to set aside a statutory award shall be entertained unless the appellant pre-deposits 75% of the disputed awarded amount, the provisions of Order XXVII Rule 8-A C.P.C. would remain inconsistent to the mandatory requirement contained in Section 19 of the MSME Act.

Perusal of the impugned order passed by the District Judge reveals that effect caused by Section 24 of the MSME Act has not been taken into account. In view of the above, the impugned order is wholly erroneous and unsustainable. It is accordingly set aside.

In view of the order passed today, the respondent-State is granted a month's time to pre-deposit the amount of 75% of the disputed award to maintain its application filed under Section 34 of the Arbitration Act. Failing that deposit, the application shall stand dismissed.

The writ petition stands **allowed** accordingly.

Order Date :- 31.3.2022/Faraz