



ELP Arbitration: Update



SUPREME COURT: PRE-DEPOSIT OF 75% OF THE AWARDED AMOUNT UNDER SECTION 19 OF THE MSME ACT IS MANDATORY, BEFORE ENTERTAINING AN APPLICATION TO SET ASIDE AN AWARD UNDER SECTION 34 OF THE ARBITRATION ACT.

Gujarat State Disaster Management Authority v. Aska Equipments Limited, 2021 SCC OnLine SC 917

FACTS & ISSUES

- Disputes between Aska Equipments Limited (**Respondent**) and Gujarat State Disaster Management Authority (**Appellant**) were referred to the Facilitation Council (**Council**) under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (**MSME Act**). The Council passed an award (**Award**) in favor of the Respondent, directing the Appellant to pay the Respondent a sum of money (**Award Amount**).
- Aggrieved by the Award, the Appellant filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 (**the Act**) before the Additional District Judge, Dehradun. In the said proceedings, several opportunities were given to the Appellant to deposit 75% of the Award Amount as per Section 19 of the MSME Act. However, the Appellant did not comply with the said directions. Subsequently, vide an order dated 22.08.2019 (**Order**), the court granted the Appellant a final opportunity to deposit the said amount within a one-month period.
- The Appellant filed a writ petition before the High Court of Uttarakhand, to challenge the Order. The writ petition was dismissed, and the Appellant was directed to deposit 75% of the Award Amount within eight weeks (**HC Order**). Aggrieved by the HC Order, the Appellant preferred the present appeal before the Supreme Court (**SC**).
- While issuing notice on October 23, 2019, the SC directed the Appellant to deposit 75% of the Award Amount with the appellate authority (i.e. Additional District Judge, Dehradun) as a conditional pre-deposit for the authority to take the appeal on file. Accordingly, the Appellant deposited the said amounts, and the appellate authority heard the appeal. In the circumstances, a prayer was made to dispose the present appeal. However, the short question which arose for the SC's consideration was whether the appellate court had any discretion to deviate from directing pre-deposit of 75% of the Award while determining an application under Section 34 of the Act.

FINDINGS OF THE SC

- The Respondent submitted that the present case was squarely covered by the decision in *Goodyear India Limited v. Norton Intech Rubbers Limited*.¹ In *Goodyear India*, while interpreting Section 19 of the MSME Act, the SC held that the requirement of 75% as a pre-deposit was mandatory. Pertinently, in *Goodyear India*, the SC interpreted the expression “in the manner directed by such court” appearing in Section 19 and concluded that the Court had discretion to allow the pre-deposit, if necessary, in instalments.
- The SC observed that the Appellant was unable to either cite any decision contrary to *Goodyear India* or satisfy that pre-deposit of 75% of the Award was not mandatory while preferring an application of the Section 34 of the Act. The SC held that - on a plain reading of Section 19 of the MSME Act, before entertaining the application for setting aside the award made under Section 34 of the Act, the applicant had to mandatorily pre-deposit 75% of the awarded amount. However, at the same time, considering the hardship caused to the applicant to deposit 75% of the awarded amount, the court could allow pre-deposit to be made in instalments.

ANALYSIS AND CONCLUSION

In view of the above, the SC concluded that the Order and the HC Order were appropriate inasmuch as the Appellant was directed to deposit 75% of the Award Amount as a pre-deposit. Accordingly, the SC disposed of the appeal.

The SC directed the parties to continue with the interim arrangement as per its directions dated October 23, 2019 till the final disposal of the application under section 34 of the Act read with Section 19 of the MSME Act. The SC cautioned that the said direction shall not be treated as a precedent.

Judgement creditors are often unable to secure the fruits of awards in their favor due to pending challenges and delayed enforcement of awards. By clarifying that Section 19 of the MSME Act applies squarely to challenges under Section 34 of the Act, the SC has brought much needed relief to award holders and litigants in the MSME sector. The present judgement of the SC indeed appears to be a step in the right direction.

Recently, taking cognizance of the hurdles in enforcing awards in the construction sector, the Department of Expenditure, Ministry of Finance issued office memorandum dated October 29, 2021² to insert Rule 227A under the General Financial Rules, 2017. Pursuant to the amendment, in arbitrations arising from construction projects, government entities challenging the arbitral award shall release 75% of the amount into an escrow account. While the duration for disposal of enforcement applications in India is prolonged, the recent developments are an effort to bring relief to judgement creditors until they are finally able to reap the fruits of an award/ decree in their favor.

We hope you have found this information useful. For any queries/clarifications please write to us at insights@elp-in.com or write to our authors:

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¹ (2012) 6 SCC 345

² Office Memorandum dated 29 October 2021 bearing reference number F.1/9/2021-PPD titled ‘Insertion of Rule 227A in General Financial Rules (GFRs) 2017 – Arbitration Awards’ issued by the Department of Expenditure, Ministry of Finance.