

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 7210 of 2022

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YAMUNA CABLES ACCESSORIES PVT. LTD.
Versus
DESAI ENTERPRISE

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Appearance:

KAUSHAL H PATEL(9328) for the Petitioner(s) No. 1
MR SP MAJMUDAR(3456) for the Petitioner(s) No. 1

MR B S PATEL, SENIOR ADVOCATE with
MR CHIRAG B PATEL(3679) for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 04/05/2022

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

Learned advocate Mr. S. P. Majmudar appeared for the petitioner and learned senior advocate Mr. B. S. Patel with learned advocate Mr. Umang Oza appeared for the respondents.

2. By way of the present petition, the petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India to challenge the order dated 29.03.2022 passed by the learned Additional District Judge, Panchmahal at Halol, whereby the application filed by the petitioner below Exh. 20 for extension of time to deposit the 75% of the award amount as per the order dated 11.02.2022 passed below Exh. 5 in Commercial Court Application (CMA) No. 1 of 2021 was rejected.

2.1 While passing the impugned order the learned Commercial Court has stated that as per Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 pre-deposit of 75% of the award is required. It was the contention of the petitioner *inter-alia* that as per the judgments of the Apex Court, pre-deposit could be made in installments.

3. The facts to be stated shortly are that the arbitration proceedings took place between the petitioner - M/s Yamuna Cable Accessories Pvt. Ltd. and the respondent - Desai Enterprises which culminated into award of the sole arbitrator dated 07.02.2020. The petitioner was directed under the said award to pay the respondent an amount of Rs. 3,46,07,118.31 paise with interest at 12% from the date of award till its realization. It appears that thereafter the respondent also filed an application under Section 33 of the Arbitration and Conciliation Act, 1996 before the Arbitrator for passing an additional award. The Arbitrator directed the petitioner to pay additional Rs. 1,50,000/- with interest from 07.02.2020 till its realization.

3.1 Against the said award, the petitioner preferred application under Section 34(2)(iv) of the Arbitration and Conciliation Act, 1996 being Commercial Court Application (CMA) No. 1 of 2021 before the District Court, Halol (Panchmahal). It was in the said proceedings that the order impugned in this petition dated 29.03.2022 came to be passed.

4. On 13.04.2022, this Court, while issuing notice for final disposal, passed the following order.

"Learned advocate Mr.S.P.Majmudar assails the impugned order dated 29.3.2022 by learned Additional District Judge, Panchmahal, Halod whereby the application of the petitioner to grant time to pay 75% of the awarded amount as required under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 is refused, by relying on the decision of the Supreme Court in [Goodyear India Limited Vs. Norton Intech Rubbers Private Limited and Another] [(2012) 6 SCC 345] as also Gujarat State Disaster Management Authority Vs. Aska Equipment Limited [(2022) 1 SCC 61] to submit that the Supreme Court in those cases interpreted the words "in the manner directed by such court" to hold that in a given set of circumstances, the court may not compel the appellant to pay the deposit of 75% at one go but may consider grant of installment to pay the same.

2. Notice for final disposal, returnable on 4.5.2022.

3. Learned advocate for the petitioner states that in order to show the bonafides, the petitioner shall deposit with this court amount of Rs.30,00,000/- (Thirty Lakhs) towards 75% amount, on or before the returnable date.

4. On condition of compliance of the above statement and the deposit being made, there shall be stay of the proceedings of the Commercial Court Application No.1 of 2021 to operate till 5.5.2022.

5. Direct service is permitted.”

4.1 It was stated that as per the direction in Para: 3 of the above order Rs.30,00,000/- has already been deposited by the petitioner with the registry of this Court.

4.2 Today when the petition comes up for consideration, learned advocate for the petitioner submitted an undertaking dated 04.05.2022 affirmed on oath by one Momin Rupdeen Khan who is stated to be authorized signatory of the petitioner company having address at M026, Block B7, Ashiana Navrang, Halol Panchmahal, in which the following is undertaken:

“I state that present petitioner has already deposited the amount of Rs. 30,00,000/- before this Hon'ble Court on 02.05.2022, as per order dated

13.04.2022. I state that petitioner undertakes to deposit the balance amount of Rs. 2,50,96,654/- on or before 29.09.2022.

4.3 The aforesaid undertaking is taken on record.

5. Since in the above undertaking the petitioner has agreed to deposit the balance amount of Rs. 2,50,96,654/- on or before 29.09.2022, learned advocate for the respondent has no objection to the said deposit. He stated on instruction of the respondent that if the petitioner abides by the said undertaking of deposit, nothing would survive in the petition. He requested the Court to accordingly dispose of the petition.

5.1 In view of the above undertaking of the petitioner given on oath and to which the respondent having concurred as per the statement made by respondent's learned advocate, the challenge in this petition does not survive. However, the petitioner shall abide by the undertaking and shall deposit the balance amount as above before 29.09.2022 as committed by him in the undertaking.

5.2 The petition stands disposed of in view of the above deposit and undertaking. The Court below shall proceed with the application under Section 34 filed by the petitioner expeditiously to decide the same on merits.

6. The registry shall transmit the amount to the Court concerned, which is the 75% of the amount, which is required to be made under Section 19 of the Micro, Small and Medium

Enterprises Development Act, 2006.

7. Disposed of in the above terms.

(N.V.ANJARIA, J)

SHRIJIT PILLAI

(SAMIR J. DAVE, J)

