



CR-6317-2019 (O&M) and other connected cases

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

243(3 cases)

Date of Decision: 20.05.2025

CR-6317-2019 (O&M)

Om Metallogic Private Limited

...Petitioner(s)

Versus

Century NF Casting and another

...Respondent(s)

With

CR-2019-2020 (O&M)

M/s Century NF Casting

...Petitioner(s)

Versus

M/s Om Metallogic Private Limited

...Respondent(s)

And

CR-3429-2022 (O&M)

M/s Century NF Casting

...Petitioner(s)

Versus

M/s Om Metallogic Private Limited

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Suman Jain, Advocate for the petitioner in CR-6317-2019

Mr. Ajay Jain, Advocate for the petitioner in CR-2019-2020 and
CR-3429-2022; for respondents in CR-6317-2019

TRIBHUVAN DAHIYA, J. (Oral)

These three revision petitions are interconnected and are, therefore, being decided together by this common order. For clarity, the parties are being referred as per memo of parties in CR-6317-2019.

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2. The first petition (CR-6317-2019) has been filed for setting aside order, dated 07.09.2019, passed by learned Additional District Judge-I, Palwal, in Arbitration case no.03 dated 19.04.2019 titled *Century NF Casting v. Om Metallogics Private Limited and another*, whereby the petitioner's application seeking a direction to the respondents to comply with provisions of Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short, 'the MSMED Act'), dated 21.05.2019, has been dismissed.

2.1. As per facts apparent on record, the petitioner is a private limited company registered under the Companies Act, and is manufacturing fabricated metal products at village Sikri, Ballabgarh, district Faridabad; it is a unit registered under the MSMED Act. The petitioner supplied material to the respondent as per purchase orders dated 01.06.2013 and 03.01.2017. Disputes arose between them, and the matter was referred to the Arbitrator under Section 18 (3) of the MSMED Act, leading to passing of an award dated 14.01.2019, whereby the petitioner's claims were accepted. It was held entitled to ₹91,95,719 as principal amount from the respondent under Section 15 of the Act; the ₹38,86,231 as interest under Section 16 of the Act. The claimant was also held entitled to future interest at the rate of eighteen per cent per annum on the awarded amount from the date of award till realisation. The award was challenged by the respondent before the Additional District Judge by filing a petition, dated 18.04.2019, under Section 19 of the MSMED read with Section 34 of the Arbitration and Conciliation Act, 1996. Since it was filed without depositing the requisite seventy-five per cent of the decreed amount in terms therewith, the petitioner filed an application seeking a direction for deposit of the amount by the respondents. It was dismissed vide impugned order, dated 07.09.2019, by recording as under:



3. From examination of record in the light of aforesaid rival contentions, it is crystal clear that the application is for issuing directions to the applicant to deposit 75% of decreed amount under section 19 of MS & MED Act in application under section 34 of Arbitration & Conciliation Act, 1986 challenging the arbitral award. Before the Arbitrator, applicant had taken the pleas of the proceedings being time barred and not maintainable under the MS & MED Act. The objections are that the respondent no. I had raised dispute for the transactions which were prior to registration of respondent no.1 under the Act. MS & MED Act does not provide for its retrospective effect. As per ratio of judgment in Shakti Tubes Limited's case (supra) it is well settled that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. In view of above material facts and well settled principle of law, application dated 31.5.2019 (21.05.2019) is dismissed.

4. At this stage, learned counsel for applicant submitted that the execution proceedings for enforcement of award are pending for 10.9.2019. The same may be stayed. In view of contents of petition under section 34 of Arbitration & Conciliation Act and application for stay, operation of impugned award is stayed till further order. Case is adjourned to 19.10.2019 for filing replies to objection petition and stay application.

3. The second petition (CR-2019-2020) has been filed by the respondent/judgment debtor for setting aside order, dated 25.02.2020, passed by the Executing Court/learned Additional District Judge, Faridabad, whereby during pendency of execution application filed by the petitioner/decreed holder for execution of award dated 14.01.2019, a direction was issued to provide list of properties of the respondent, and he was also directed to appear in person on the date fixed.

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4. The third petition (CR-3429-2022) has also been filed by the respondent/judgment debtor for setting aside the order dated 30.05.2022, passed by the Executing Court arising out of the same execution application filed by the petitioner/decreed holder, whereby warrant of attachment against the respondent's property has been issued.

5. In this factual background, learned counsel for the petitioner (CR-6317-2019) has contended that as per provisions of Section 19 of the MSMED Act, deposit of seventy-five per cent of the decretal amount in terms of the award is a mandatory condition for filing a petition to set aside the award. The arbitral award, dated 14.01.2019, Annexure P-4, has been challenged by the respondents without depositing the amount, therefore their petition could not have been entertained. The impugned order, dated 07.09.2019, is illegal being in violation of the statutory provision, and cannot be sustained. In dismissing the petitioner's application the Court has touched upon merits of the case, which is impermissible. It is further contended that the award is a money decree, and the petitioner is entitled to get it enforced by filing the execution application. The other two revisions petitions filed by the respondents against interim orders passed by the Executing Court are not maintainable.

6. Submissions made by learned counsel for the petitioner has been considered.

7. The arbitral award, dated 14.01.2019, has been passed in the petitioner's favour holding him entitled to the amounts aforementioned with interest. It has been challenged by the respondents by filing a petition under Section 19 of the MSMED Act read with Section 34 of the 1996 Act. Section 19 provides that no application for setting aside any decree, award or other order shall be entertained by the Court unless the applicant has deposited seventy-



five per cent of the amount in terms of the decree, award or order, as the case may be. This is a mandatory requirement and the Court has no jurisdiction to entertain an application without deposit of the amount stipulated. Reference in this regard can be made to the law settled by the Supreme Court in *Tirupati Steels v. Shubh Industrial Component and another*, (2022) 7 SCC 429; relevant paragraph whereof reads as under:

13. It is observed and held that unless and until Respondent 1 deposits the 75% of the awarded amount, its application under Section 34 of the Arbitration Act, 1996, challenging the award shall not be entertained and decided on merits and, in that case, the execution proceedings may continue. The present appeal is accordingly allowed. There shall be no order as to costs.

8. A perusal of the impugned order, dated 07.09.2019, shows that the petitioner's application seeking direction to the respondent/decree holder to deposit seventy-five per cent of the decretal amount has been dismissed on the ground that its claim before the Arbitrator was for transactions prior to its registration under the MSMED Act, which cannot be given retrospective application to make the claims admissible. In this manner, the Additional District Judge has examined merits of the dispute between the parties and rejected the application in terms therewith. This is an error of jurisdiction, as prior to deposit of seventy-five per cent of the awarded amount by the respondent/judgment debtor, its petition challenging the arbitral award could not have been entertained. The Court gets the jurisdiction to examine merits of the petition only on deposit of the awarded amount. Therefore, the impugned order becomes unsustainable in law being violative of provisions of Section 19.

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As a consequence, there is no reason why the other two petitions against interim orders passed by the Executing Court should be entertained.

9. For the reasons aforementioned, the petition, CR-6317-2019, is allowed, and the impugned order, dated 07.09.2019, is set aside. The petitioner's application, dated 21.05.2019, accordingly stands allowed, and the respondent is directed to comply with the mandate of Section 19 of the MEMED Act as a prerequisite to challenge the arbitral award.

10. The other two petitions, CR-2019-2020 and CR-3429-2022, stand dismissed.

11. Pending miscellaneous application(s), if any, also stand(s) disposed of.

12. A photocopy of this order be placed on connected files.

(TRIBHUVAN DAHIYA)
JUDGE

20.05.2025*Payal*

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No