HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Miscellaneous Appeal No. 599/2025
CNR: RJHC020104792025 | URN: CMA / 1028U / 2025

Spml Infra Limited, A Company Incorporated Under The Companies Act, 1956 And An Existing Company Under The Provisions Of The Companies Act, 2013, Having Its Registered Office At F-27/2, Okhla Industries Area, Phase-Ii, New Delhi 110020

----Appellant

Versus

New Tech Engineers And Fabricators, A Proprietorship Firm Having Office At House No. G-17, Behind Laxminath Aashra Behind Tehsil Bhawan, Chomu, Jaipur 303702

----Respondent

For Appellant(s)	:	Mr. S.S. Hora Mr. Ankit Sethi Mr. Rupender Singh Rathore Mr. Aman Manju Mr. Amulya Jemini Mr. Abhiuday Barwar
For Respondent(s)	:	Mr. R.K. Agarwal, Sr. Adv. Mr. Adhiraj Modi

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Order(Oral)

30/07/2026

Per: Arun Monga,J

1. This appeal is directed against the order dated 21.11.2024 passed by the Commercial Court No. 1, Jaipur Metropolitan-II, Jaipur, whereby the appellant’s objection application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short “the Act of 1996”) was dismissed for want of the mandatory pre-deposit of 75% of the awarded amount

prescribed by Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short “the MSME Act”).

2. The essential facts lie within a narrow compass. The appellant, a public limited company engaged in infrastructure development, was awarded various projects by the Public Health Engineering Department (PHED), Government of Rajasthan, including the Dhannasar Project (Fatehpur Package VI). Between 2010 and 2017, the appellant issued several work orders to the respondent, a proprietorship firm, for execution, as a sub-contractor, of excavation, laying, jointing, testing and commissioning of MS pipeline works. The works stood completed by September 2018, and the respondent raised its invoices during the currency of execution. It was only thereafter, on 08.06.2019, that the respondent obtained registration as a Small Enterprise under the MSME Act.

2.1 On 19.06.2020, the respondent invoked the jurisdiction of the Micro and Small Enterprises Facilitation Council, Jaipur, claiming recovery of the alleged outstanding principal together with interest. During the pendency of those proceedings, the parties executed a Settlement Agreement dated 16.11.2022, agreeing to resolve all disputes arising out of the work orders for a consolidated sum of ₹80,00,000/-. In part performance thereof, the appellant paid ₹40,00,000/- through two demand drafts, which were accepted and encashed by the respondent, and further prepared two demand drafts of ₹20,00,000/- each towards the balance.

2.2 Disputes, however, arose over implementation of the Settlement Agreement, and correspondence was exchanged in December 2022 concerning the balance payment. The proceedings before the Facilitation Council meanwhile continued. On 13.10.2023, the Council recorded failure of conciliation and referred the matter to arbitration. The appellant entered appearance through counsel and filed its statement of defence and counterclaim on 05.03.2024.

2.3 On 14.03.2024, the Facilitation Council passed an award in favour of the respondent. Aggrieved, the appellant filed an application under Section 34 of the Act of 1996 before the Commercial Court, together with an application under Section 36 seeking stay of the award. By order dated 12.07.2024, the Commercial Court directed the appellant to deposit 75% of the awarded amount in terms of Section 19 of the MSME Act as a condition precedent to the challenge being taken up.

2.4 On 21.11.2024, upon the appellant seeking further time for compliance, the Commercial Court dismissed the Section 34 application. The appellant thereafter prepared a demand draft for 75% of the awarded amount, tendered it before the Commercial Court, and sought restoration of the proceedings; the restoration application was, however, dismissed by order dated 20.01.2025. In the meantime, execution proceedings in respect of the award were also set in motion before the Commercial Court. Hence, this appeal.

3. Having heard the rival contentions, we may record at the outset our agreement with Mr. R.K. Agarwal, learned Senior Counsel for the respondent, on the question of waiver. Section 19 of the MSME Act, read with Section 34 of the Act of 1996, admits of no discretion in the Court to dispense with the pre-deposit of 75% of the awarded amount; the requirement is mandatory, and no court entertaining objections under Section 34 can waive it. To the extent the Commercial Court declined the appellant’s prayer for waiver, it adopted the correct course.

4. The mandatory character of the deposit does not, however, exhaust the enquiry. Two distinct features deserve notice.

4.1 First, Section 19 itself vests in the Court a measure of latitude as to the manner of compliance, including the power to permit the deposit to be made in instalments. The appellant's default, moreover proceeded under the misapprehension that since the works were executed under a sub-contract and the moneys were ultimately payable by the Government (PHED) as the principal employer, the appellant itself was not required to make the pre-deposit and thus sought waiver. Upon realising that the Commercial Court had no jurisdiction to grant a waiver, the appellant moved promptly to comply, and a demand draft dated 29.11.2024 for the requisite amount was tendered before the Court. The tender was declined only because it came after the dismissal of the waiver application, that is to say, the deposit was held to be belated.

4.2 Secondly, and decisively, the object of Section 19 has in substance been achieved in the collateral execution proceedings. The Government has deposited a sum of ₹4,23,79,094/-, an amount almost equal to the arbitral award, in those proceedings, and the same was permitted to be disbursed to the respondent. Since the amount so received exceeded what was permissible, the respondent was directed to redeposit a sum of ₹3,00,00,000/- before the Executing Court, where it continues to remain deposited, subject to the outcome of further proceedings.

5. It was in this premise that, while issuing notice in this appeal, the following order came to be passed by Coordinate Bench of this Court on 06.02.2025:

> *"Learned Senior Counsel submits that the appellant is ready to deposit 75% of the award amount before the learned Court below in compliance of Section 19 of the Micro, Small, Medium Enterprise Development (MSME) Act, 2006.*
> *In that view of the matter issue notice to the respondent(s).*
> *List on 10.02.2025.*
> *Requisition be given 'dasti'."*

6. Apropos, on the Court’s enquiry as to whether the amount has since been deposited, learned counsel for the appellant states that, the Commercial Court having already declined to accept the demand draft, the appellant had no option but to await further orders of this Court. He points out, however, that the requirement stands satisfied in the execution proceedings, in the manner noticed above.

7. The question, therefore, is not whether the pre-deposit can be waived, it cannot, but whether it stands complied with. Section 19 is a benevolent provision. Its purpose is to secure the awarded amount for the benefit of the MSME supplier pending the challenge, not to shut out an objector from a hearing on merits where the money is in fact available to the Court and to the claimant/supplier. In the present case, an amount approximately equivalent to the award has been deposited and substantially disbursed in the execution proceedings, and an additional sum of ₹3,00,00,000/- still remains as deposit with the Executing Court. The security which Section 19 contemplates is thus in place, albeit through collateral proceedings. To insist, in these circumstances, on the empty formality of a fresh deposit, while dismissing the challenge altogether, would be to convert a provision designed to protect the claimant/supplier’s money into an instrument for denying the objector the adjudication which the statute itself contemplates.

8. We accordingly hold that the requirement of pre-deposit under Section 19 of the MSME Act stands satisfied, and we find no reason why the objection petition under Section 34 filed by the appellant should not be restored and heard on merits in accordance with law. It is further directed that if any deficiency of 75% in the deposit is found, the same

shall be made good by the appellant before the Commercial Court and shall, upon deposit, be disbursed to the respondent.

9. As regards the contention of the appellant on the timing of the deposit, namely, whether Section 19 requires the deposit to be made prior to or simultaneously with the filing of the Section 34 application, we need not dilate upon it afresh, since the very issue has been considered by us in, **Superintending Engineer (MM) V/s M/s Anamika Conductors Pvt. Ltd**[1], wherein, incidentally Mr. R.K. Aggarwal, same learned senior counsel, who is assisting us in this case also, appeared and it was opined by us as under:

> *"5. Having heard the rival contentions and perused the record, the questions that arise for our consideration are:*
>
> *(i). Whether Section 19 of the MSME Act requires the pre-deposit of 75% of the awarded amount to be made prior to or simultaneously with the filing of the application under Section 34 of the Act of 1996, failing which the application is liable to be dismissed as not maintainable ?*
>
> *and;*
>
> *x-x-x-x*
>
> *6. Before adverting to the authorities cited, it is apposite to notice the relevant statutory provision i.e. Section 19 of the MSME Act which reads as under:-*
>
> > ***"19. Application for setting aside decree, award or order. -***
> >
> > *<u>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:</u>*
> >
> > *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." (emphasis is ours)*
>
> *7. A plain reading of Section 19 yields two significant features. First, the bar it enacts is against the application being "entertained" by the Court without the pre-deposit, not against its institution or presentation. To "entertain" an application is to take it up for consideration on its merits; the provision does not, in terms, require the deposit to be made prior to or simultaneously with the filing of the application. Secondly, the deposit is to be made "in the manner directed by such court", words which themselves contemplate a judicial direction issued after the application is presented, prescribing the mode and, by necessary implication, the time within which the deposit is to*

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> *be made. The statutory scheme thus mandates the pre-deposit as a condition precedent to the adjudication of the challenge, while leaving the manner and timing of compliance to the sound discretion of the Court.*
>
> *x-x-x-x*
>
> *11. We accordingly hold that while the requirement of pre-deposit of 75% of the awarded amount under Section 19 of the MSME Act is mandatory and must be complied with before the Section 34 application is entertained on merits, the provision does not require the deposit to accompany the application at the time of its presentation, and the Court is empowered to grant reasonable time and, in an appropriate case of demonstrated hardship, to permit instalments for making the deposit. The learned Commercial Court erred in declining the appellant's bona fide request for time and in dismissing the application."*

10. We see no reason to depart from the view taken in the aforesaid judgment, which squarely governs the present case. The Commercial Court, having jurisdiction neither to waive the deposit nor, equally, any warrant to foreclose the challenge where compliance was forthcoming and now stands achieved, ought to have permitted the deposit and proceeded to hear the objection on merits.

11. In the result, the appeal is allowed. The order dated 21.11.2024 (and the consequential order dated 20.01.2025 declining restoration) is set aside. The appellant’s application under Section 34 of the Act of 1996 is restored to the file of the Commercial Court, to be heard and decided on merits in accordance with law, subject to the direction in paragraph 8 above regarding any deficiency in the deposit.

12. Any pending applications also stand disposed of.

(ASHUTOSH KUMAR),J **(ARUN MONGA),J**

27/Tushar/Prateek