

Bombay High Court

M/S. Ravindranath Ge Medical ... vs M/S. Clean Coats Private Limited on 20 July, 2016

Bench: R.D. Dhanuka

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION APPEAL (ST.) NO.18470 OF 2016

WITH
CIVIL APPLICATION (ST.) NO.18471 OF 2016
IN
ARBITRATION APPEAL (ST.) NO.18470 OF 2016

M/s.Ravindranath GE Medicate Associate)
Private Limited, a company registered under)
the Companies Act, 1956 and having its)

registered office at 439, Cheran Nagarm)
Perumbakkam, Chennai - 600 100.) .. Appellant/Applicant

Versus

M/s.Clean Coats Private Limited, a company)

incorporated under the Companies Act,1956)
and having its registered office at K30/1,)
MIDC, Anand Nagar, Ambernath (E),)
District Thane - 421 506.) .. Respondent

Mr.G.R. Joshi, Senior Advocate a/w Mr.Raj Panchnnatia a/w Mr.Ayush

Agarwala a/w Mr.Anindya Basarkod a/w Mr.Nishant Prasad i/by
M/s.Khaitan & Co. for the Appellant/Applicant.
Mr.Ashwin Ankhad a/w Ms.Nishita Mohanty i/by M/s. Ashwin Ankhad

& Associates for the respondent.

CORAM

: R.D. DHANUKA, J.

RESERVED ON : 13th July 2016 PRONOUNCED ON : 20th July 2016 Judgment :-

. By this appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short "the Arbitration Act"), the appellant has impugned the order dated 13th June 2016 passed by the learned Principal District Judge, Thane allowing the application filed by the respondent ppn 2 arast-18470.16(j).doc herein raising a preliminary objection on the maintainability of the application filed by the appellant herein under Section 34 of the Arbitration Act and holding that the said arbitration application was not maintainable. Learned Principal District Judge rejected the arbitration application filed by the appellant praying for setting aside the impugned award dated 17th March 2015. Some of the relevant facts for the purpose of deciding this appeal are as under :-

2. The appellant had issued a work order dated 9 th January 2008 to the respondent for Epoxy flooring, coving, hygiene PU wall coating and other specialty coating at its hospital in Chennai. The total value of the work order was Rs.1,09,55,852/-. The dispute arose between the parties. The respondent herein made an application before the Micro and Small Enterprises Facilitation Council, Konkan Region, Thane (Reference Petition No.19 of 2013) inter alia praying for an amount of Rs.21,17,361/- against the appellant herein. The appellant herein filed an application before the said council appointed under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (for short "the said MSMED Act") challenging its jurisdiction and also raised various objections regarding the claims of the respondent on merits. The said council made an award on 17th March 2015 directing the appellant to pay the principal amount of Rs.10,31,915/- to the respondent and interest thereon as per the provisions of Section 16 of the said MSMED Act.

3. The appellant herein filed a Civil Miscellaneous Application No.236 of 2015 before the learned Principal District Judge, Thane under Section 34 of the Arbitration Act or thereby impugning the said award dated 17th March 2015 rendered by the said council.

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4. On 1st August 2015, the council issued a certificate transferring the execution proceedings qua the award to the Principal District Judge, Chennai. On 9th December 2015, the respondent herein filed a proceeding challenging the maintainability of the said Civil Miscellaneous Application filed by the

appellant inter alia on the ground that the appellant herein had failed to deposit 75% of the amount awarded to the respondent with the learned Principal District Judge along with the said application under Section 34 in terms of Section 19 of the said MSMED Act.

5. On 5th March 2016, the appellant herein filed an application before the learned Principal District Judge, Thane inter alia praying for permission to deposit 75% of the amount awarded to the respondent by the said council vide demand drafts in the Court of the learned Principal Judge, Thane. On 2nd April 2016, the appellant filed another application with a request to permit the appellant to deposit 75% of the amount awarded to the respondent under the said award with the Nazir Office which section is responsible for collecting the court deposits. The said applications filed by the appellant were resisted by the respondent before the learned Principal District Judge, Thane.

6. On 13th June 2016, the learned Principal District Judge, Thane allowed the said application dated 9th December 2015 filed by the respondent raising a preliminary objection to the maintainability of the said civil miscellaneous application filed by the appellant under Section 34 of the Arbitration Act and held that since the appellant herein had failed to deposit 75% of the amount awarded to the respondent by the council in the said award prior to filing of the said civil miscellaneous application, the said civil miscellaneous application was not maintainable. Learned Principal District Judge also held that the appellant had not deposited 75% of the amount awarded at the time of filing of the application on 17th June 2015 and also had not deposited the said amount even within 120 days i.e. three months plus 30 days as per Section 34(3) of the Arbitration Act and proviso to Section 19 of the said MSMED Act. The appellant not having made compliance of the provision of Section 19 of the said MSMED Act regarding deposit of the awarded amount while filing an application under Section 34 of the Arbitration Act, the said application was not maintainable.

7. Mr. Joshi, learned senior counsel appearing for the appellant invited my attention to the order passed by the learned Principal District Judge, Thane allowing the application filed by the respondent thereby raising a preliminary objection on the maintainability of the application filed under Section 34 of the Arbitration Act. He submits that there was no dispute that the appellant herein had already filed the said civil miscellaneous application (236 of 2015) in the Court of learned Principal District Judge, Thane within a period of three months from the date of service of the signed copy of the award from the council.

8. Learned senior counsel for the appellant placed reliance on the proviso to Section 19 of the said MSMED Act and would submit that under the said proviso, for making an application for setting aside any decree, award or other order made by the council, the appellant was not required to deposit 75% of the awarded amount before the learned arbitrator in terms of the decree, award or other order along with the application under Section 34 of the Arbitration Act. He submits that if 75% of the awarded amount is not deposited, the application for setting aside the award cannot be entertained by any Court. He submits that admittedly the appellant had made an application for seeking permission to deposit the said 75% of the awarded sum by demand drafts. It is submitted by the learned senior counsel that the learned Principal District Judge has erroneously interpreted Section 19 of the said MSMED Act.

He submits that the term "entertain" mentioned in Section 19 of the said MSMED Act clearly indicates that the said stage would arise only at the time of hearing of the said application under Section 34 of the Arbitration Act filed by an aggrieved party and not at the time when such application was filed by an aggrieved party.

9. It is submitted that proviso to Section 19 of the said MSMED Act clearly indicates that the Court has been given a discretionary power to order such percentage of the amount to be deposited as it considers reasonable under the circumstances of each case during the pendency of the application to set aside decree, award or order. He submits that such discretion given to the Court itself indicates that the said discretion could be exercised by the Court only when the application for setting aside the award was entertained or heard by the said Court.

10. Learned senior counsel for the appellant placed reliance on the judgment of the Supreme Court in the case of Lakshmi Rattan Engineering Works Vs. Assistant Commissioner, Sales Tax, Kanpur & Anr., reported in AIR 1968 SC 488 and in particular paragraph 12 and would submit that the term "entertain" has been interpreted by the Supreme Court and it is held that the term "entertain" would mean the ppn 6 arast-18470.16(j).doc first occasion on which the Court takes up the matter for consideration.

It may be at the admission stage or if by the rules of that tribunal, the appeals are automatically admitted, it will be at the time of hearing of the appeal. It is held that on the first occasion, when the Court takes up the matter for consideration, a satisfactory proof must be presented that the tax was paid within the period by limitation available for the appeal.

11. Learned senior counsel for the appellant placed reliance on the judgment of the Supreme Court in the case of Hindustan Commercial Bank Ltd. Vs. Punnu Sahu (Dead) through legal representatives, reported in 1971 (3) SCC 124. Supreme Court has interpreted the term "entertain" and has held that the term "entertain"

would mean "adjudicate upon" or "proceed to consider on merits."

12. Learned senior counsel for the appellant placed reliance on the judgment of this Court in the case of E-Square Leisure Pvt. Ltd., Pune Vs. K.K. Dani Consultants & Engineers Pvt. Ltd., Pune, reported in 2013 (3) Mh.L.J. 24 and in particular paragraph 17 interpreting Section 19 of the said MSMED Act. He submits that this Court has held that under Section 19 of the said MSMED Act, there is a bar from entertaining the petition under Section 34 of the Arbitration Act for non-deposit of 75%, but there is no bar from filing an application under Section 34 of the Arbitration Act. The stage of entertaining the petition would arise only after it is filed before the District Court. It is held that such objection of non-deposit of 75% could have been entertained by the learned District Judge only if he would have allowed the application for condonation of delay in filing Section 34 application.

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13. Learned senior counsel for the appellant placed reliance on the judgment of the Supreme Court in the case of Goodyear India Limited Vs. Norton Intech Rubbers Private Limited & Anr., reported in (2012) 6 SCC 345 and in particular paragraphs 11 and 12 and would submit that the Supreme Court in the said judgment after interpreting Section 19 of the said MSMED Act has granted extension of time for pre-deposit by the petitioner and had ordered that if such deposit was made, the appeal shall be treated to be in order and thereafter, the same may be proceeded with. He submits that it is thus clear that even if 75% of the awarded sum is deposited within the extended time granted by the Court, the application filed for challenging the arbitral award would be treated to be in order and has to be proceeded with on merits. He submits that the impugned order passed by the learned Principal District Judge is totally contrary to the judgments of the Supreme Court in the cases of Goodyear India Limited (supra), Lakshmi Rattan Engineering Works (supra), Hindustan Commercial Bank Ltd.(supra) and the judgment of this Court in the case of E- Square Leisure Pvt. Ltd., Pune (supra) squarely apply to the facts of this case.

14. Learned senior counsel for the appellant placed reliance on an unreported order of this Court delivered on 5th October 2012 in the case of Mazgaon Dock Ltd. Vs. Micro & Small Industries Facilitation Council & Ors. in Writ Petition No.10551 of 2011 in which the Division Bench of this Court had accepted the assurance of the petitioner to deposit 75% of the ordered amount within the time prescribed and upon such assurance given by the petitioner therein this Court had granted stay of operation of the impugned order passed by the council till next date.

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15. Learned senior counsel for the appellant fairly invited my attention to the judgment of the Supreme Court in the case of Snehadeep Structures Private Limited Vs. Maharashtra Small-Scale Industries Development Corporation Limited, reported in (2010) 3 SCC 34 and more particularly paragraphs 12, 13, 42 and 59 thereof. He submits that issue before the Supreme Court in the said judgment was whether the expression "appeal" appearing in Section 7 of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 includes an application to set aside the arbitral award filed under Section 34 of the Arbitration Act. He submits that observation made by the Supreme Court in the said judgment that proviso to Section 19 which requires the deposit to be made before an application under Section 34 of the Arbitration Act is filed, is not a ratio, but such observation was made in the context of the issue raised before the Supreme Court. He submits that the said judgment of the Supreme Court in the case of Snehadeep Structures Private Limited (supra) is clearly distinguishable.

16. Mr. Ankhad, learned counsel for the respondent on the other hand invited my attention to various paragraphs of the impugned order passed by the learned Principal District Judge, Thane and would submit that the learned Judge has rightly interpreted the provisions of the said MSMED Act and has rightly held that since the appellant had not deposited 75% of the awarded amount alongwith the Civil Miscellaneous Application filed under section 34 of the Arbitration Act before the learned Principal District Judge, Thane, the said application was not maintainable and was even otherwise barred by law of limitation.

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17. Learned counsel led emphasis on the words 'as deposited with it 75% of the amount in terms of the decree, award or the case may be. He submits that the words 'with it' would itself indicate that 75% of the awarded amount has to be deposited alongwith such application for setting aside any decree, award or other order made by the council or by any institution. He submits that the deposit of 75% of the awarded amount alongwith such application filed under section 34 of the Arbitration Act is mandatory and non compliance thereof would make an application itself not maintainable. He also placed reliance on section 18(4) of the said MSMED Act and would submit that the Central Government has constituted the Micro and Small Enterprises Facilitation Council for the purpose of providing an alternate dispute resolution services who would have acted as an arbitrator or conciliator in a dispute between the supplier and a buyer.

18. It is submitted that the said MSMED Act is a social welfare legislation and is enacted for the purpose of protecting the interest and rights of a small enterprises. He also placed reliance on section 24 of the said MSMED Act and would submit that the provisions of sections 15 to 23 including section 19 shall have overriding effect over the provisions contained in any other law which would include the provisions of the Arbitration and Conciliation Act, 1996.

19. It is submitted by the learned counsel that the learned District Judge was right in dismissing the application filed by the appellant filed under section 34 of the Arbitration Act also on the ground of limitation. He submits that since the applicant was required to deposit ppn 10 arast-18470.16(j).doc 75% of the awarded sum alongwith the application under section 34 with the Council, filing of such application without such deposit itself was defective and thus limitation would not stop upon filing of such application without deposit.

20. Learned counsel for the respondent placed reliance on the judgment of Supreme Court in case of Snehadeep Structures Private Limited vs. Maharashtra Small Scale Industries Development Corporation Limited in Civil Appeal No.10 of 2010 decided on 5th January, 2010 and more particularly paragraphs 42 and 55. He submits that the Supreme Court has interpreted section 19 of the said MSMED Act and has held that deposit of 75% of the awarded amount is mandatory and has to be made alongwith an application filed under section 34 for challenging an award or for filing the appeal. He submits that the said judgment is binding on this court.

21. Learned counsel for the respondent placed reliance on the judgment of Kerala High Court in case of K.S.R.T.C. vs. Union of India decided on 1st December, 2009 in Writ Petition (C) No.10950 of 2009 and would submit that the constitutional validity of section 19 of the said MSMED Act has been upheld by the Kerala High Court in the said judgment, holding that the said provision did not violate Article 14 of the Constitution. He submits that in this case the appellant had made an application for deposit after one year of the filing of the application under section 34 of the Arbitration Act and not within the period of three months and 30 days. He submits that the application under section 34 itself having become time barred in view of the non deposit of the 75% of ppn 11 arast-18470.16(j).doc the awarded amount, application for seeking permission for deposit filed after one year was thus not maintainable.

22. Learned counsel for the respondent placed reliance on the judgment of Supreme Court in case of Goodyear India Limited vs. Norton Intech Rubbers (P) Ltd. and another decided on 15th March, 2012 in S.L.A.(Civil) Nos.16919-16920 of 2011 and in particular paragraphs 11 to 13 and would submit that the said judgment would assist the case of the respondent. Reliance is also placed on judgment of Madras High Court in case of Goodyear India Ltd. vs. Nortan Intec Rubber (P) Ltd. and another 2013(5) CTC 25 and more particularly paragraphs 9, 11 and 16. He submits that the Madras High Court has taken a view that the pre-deposit of the 75% of the awarded sum was to be made alongwith application under section 34 of the Arbitration Act and if no such deposit was made alongwith such application, the petition could not be entertained by the Court in view of the bar under section 19.

23. Mr.Joshi, learned senior counsel in rejoinder submits that the words 'with it' mentioned in section 19 has to be construed as a deposit of 75% of the awarded sum with court and not with an application under section 34. Learned senior counsel led emphasis on the words 'entertain' and 'the other orders in any manner directed by such court'. He submits that the discretion given to the court to pass an order for deposit under section 19 itself would indicate that such discretion can be exercised only when such application filed under section 34 is heard by the concerned court.

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24. Learned senior counsel submits that the Supreme Court in case of Goodyear India Limited (supra) has already dealt with this issue and has held that the expression 'in the manner directed by such court' would indicate the discretion given to the court to allow the pre-deposit to be made, if felt necessary in installment. He submits that the Supreme Court had also extended the time for pre-deposit to the petitioner in that matter and had made it clear that if such deposit was made within the extended period, the appeal shall be treated to be in order and to be proceeded with. He submits that the said judgment of the Supreme Court was after interpreting its earlier judgment in case of Snehadeep Structures Private Limited (supra).

25. Learned senior counsel also placed reliance on the order passed by this court on 15th April, 2016 in Arbitration Petition No.1559 of 2015 in case of M/s.Amartara Pvt.Ltd. v/s. M/s. Clean Coats Pvt.Ltd.

and would submit that this court in the said judgment had also granted time to deposit the amount of 75% of the awarded sum.

26. Learned senior counsel for the appellant distinguished the judgment of Madras High court in case of Goodyear India Limited (supra) and would submit that the said judgment of Madras High Court is contrary to the view taken by the Supreme Court in case of Goodyear India Limited (supra) and contrary to the judgment of this court in case of E.Square Leisure Pvt.Ltd., Pune (supra).

REASONS AND CONCLUSIONS :-

27. There is no dispute that the appellant herein had not deposited any amount alongwith the application filed under section 34 ppn 13 arast-18470.16(j).doc while challenging the impugned award before the learned Principal District Judge, Thane. There is no dispute that the appellant had subsequently made an application for permission to deposit 75% of the awarded sum by the demand draft. The said application filed by the appellant was opposed by the respondent on the ground that the appellant not having deposited 75% of the awarded sum alongwith the application filed under section 34, the said application itself was not maintainable or in any event was barred by law of limitation.

28. The learned Principal District Judge in the impugned order has accepted the objections raised by the respondent herein and has held that the application filed by the appellant under section 34 was not maintainable on the ground of non-compliance of mandatory deposit of 75% of the awarded sum alongwith the said application. The learned Principal District Judge has also considered the said application filed under section 34 as barred by law of limitation.

29. Supreme Court in case of Goodyear India Limited (supra) has interpreted section 19 of the said MSMED Act. It has been held by the Supreme Court in the said judgment that the expression 'in the manner directed by such court' would indicate that the discretion is given to the court to allow the pre-deposit to be made and if felt necessary, in installments. The Supreme Court extended the time for pre-deposit to be made by the petitioner therein by a further period of 12 weeks and made it clear that if such deposit was made, the appeal shall be treated to be in order and thereafter the same may be proceeded with.

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30. In the said judgment, the Supreme Court has also dealt with the judgment of Kerala High Court in case of K.S.R.T.C. vs. Union of India (supra) relied upon by the learned counsel for the respondent upholding the constitutional validity of section 19 of the MSMED Act and also the order passed by the Supreme Court arising out of the said judgment. The Supreme Court in the said Special leave petition arising out of the said judgment of Kerala High Court while dismissing the said special leave petition had granted extension to make the pre-deposit in those cases by a period of 10 weeks.

31. The Supreme Court also adverted to its earlier judgment in case of Snehadeep Structures Private Limited (supra) which is strongly relied upon by the learned counsel for the respondent and has clarified that while considering the question as to whether an application under section 34 of the Arbitration and Conciliation Act, 1996 could be treated to be an appeal, a question incidentally arose as to whether if the same was to be treated as an appeal, it be necessary to comply with the provisions of section 19 of the MSMED Act. In that context, the Supreme Court held that the provisions of section 19 no doubt require pre-deposit to be made before an application under section 34 of the Arbitration Act was filed but they were not inclined to read that provisions into the provisions in question. The Supreme Court held that the facts of the said case were different from the facts before the Supreme Court in case of Goodyear India Limited (supra) and it would be difficult to import the ratio of the decision in case of Snehadeep Structures Private Limited (supra)

into the facts of the case in Goodyear India Limited (supra).

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32. A perusal of the judgment of Supreme Court in case of Snehadeep Structures Private Limited (supra) relied upon by the learned counsel for the respondent also indicates that even in the said judgment, the Supreme Court directed the party to make a deposit of 75% of the amount awarded by the learned arbitrator in court where the application for setting aside the award was pending decision within the period of three months from the date of the said order. The Supreme Court also clarified that in the event, such deposit was made, the court shall decide the application for setting aside the award filed under Section 34 of the Arbitration Act as expeditiously as possible preferably within six months from the date of deposit with the Court. A perusal of the said judgment clearly indicates that whether amount of 75% of the awarded sum shall be deposited alongwith the application under section 34 or not was not an issue before the Supreme Court in the said judgment in case of Snehadeep Structures Private Limited (supra). Supreme Court in case of Goodyear India Limited (supra) has clarified this issue.

33. This court in case of E.Square Leisure Pvt.Ltd., Pune (supra) has already interpreted the expression 'entertain' and has held that the said expression does not indicate that the deposit of 75% was required to be made at the stage of filing an application under section 34 but would indicate that the application would not be entertained at the time of hearing. In my view the judgment of this court in case of E.Square Leisure Pvt.Ltd., Pune (supra) squarely applies to the facts of this case. I am respectfully bound by the said judgment.

34. Insofar as the submission of the learned counsel for the respondent that the term "with it" would itself indicate that 75% of the ppn 16 arast-18470.16(j).doc awarded sum has to be deposited along with an application filed under section 34 of the Arbitration & Conciliation Act, 1996 is concerned, in my view the term "with it" has to be read with the term "entertain by any Court". A conjoint reading of both the term clearly indicates that the amount of 75% of the awarded sum has to be deposited with the Court and not with an application filed under section 34 of the Arbitration & Conciliation Act, 1996 for the reason that in the later part of section 19, it is made clear that the Court has been given discretion to direct the applicant to deposit such amount and in such manner as the Court may deem fit.

35. The Supreme Court in case of Goodyear India Limited (supra) has held that the Court is empowered to grant even installments to the applicant for depositing 75% of the amount awarded by the learned arbitrator while entertaining the application under section 34 of the Arbitration & Conciliation Act, 1996. In my view, Mr.Joshi, learned senior counsel for the appellant is right in his submission that the term "with it" has to be construed as the amount of deposit with the Court and not with the application filed under section 34 of the Arbitration & Conciliation Act, 1996 otherwise the term "shall be entertained by any Court" and the term "however the order in any manner directed by such Court" will become redundant and otiose.

36. Insofar as the issue of limitation raised by the counsel for the respondent that since the appellant has not deposited 75% of the awarded sum along with the arbitration application under section 34 of the Arbitration & Conciliation Act, 1996, limitation had not stopped and ppn 17 arast-18470.16(j).doc thus the said application under section 34 of the Arbitration & Conciliation Act, 1996 had become time barred is concerned, reliance placed on section 24 of the MSMED Act, 2006 is misplaced. Section 18(3) of the MSMED Act, 2006 clearly indicates that once the conciliation initiated under section 18(2) is not successful and stands terminated without any settlement between the parties, the dispute has to be resolved by arbitration and for such dispute resolution, the provisions of the Arbitration & Conciliation Act, 1996 shall apply to such disputes as if the arbitration was pursuant to the arbitration agreement referred to in section 7(1) of the Arbitration & Conciliation Act, 1996.

37. In my view, section 19 of the MSMED Act, 2006 does not provide for any period of limitation in filing the application under section 34 of the Arbitration & Conciliation Act, 1996. The said provision does not indicate that if the amount of 75% of the awarded sum is not deposited along with the application under section 34 of the Arbitration & Conciliation Act, 1996, the limitation in filing such application under section 34 of the Arbitration & Conciliation Act, 1996 would not stop.

38. In my view, since the arbitral proceedings under the provisions of MSMED Act, 2006 are also governed by the provisions of the Arbitration & Conciliation Act, 1996, limitation for filing an application under section 34 of the Arbitration & Conciliation Act, 1996 would be governed by section 34(3) of the Arbitration & Conciliation Act, 1996. Limitation in this case had stopped when the appellant had filed the arbitration application under section 34 of the Arbitration & Conciliation Act, 1996 before the Principal District Judge, Thane, which ppn 18 arast-18470.16(j).doc was admittedly filed within a period of three months from the date of service of the signed copy of the award. In my view, the Court has to consider the plea of limitation raised, if any, in filing an application under section 34 of the Arbitration & Conciliation Act, 1996 by applying the provisions of section 34(3) of the Arbitration & Conciliation Act, 1996 which Act is self-contained which is applicable in all respects even to the arbitration proceedings commenced under the provisions of the said MSMED Act, 2006 in view of section 18(3) thereof. There is no separate provision for limitation in filing an application for challenging the award rendered by the Micro & Small Enterprises Facilitation Council under the provisions of the said MSMED Act, 2006. Reliance thus placed by the learned counsel for the respondent under section 23 of the MSMED Act, 2006 is totally misplaced.

39. The Supreme Court in case of Laxmi Ratan Engineering Works Ltd. (supra) and in case of Hindustan Commercial Bank Ltd.

(supra) has interpreted the term "entertain" and has held that the term "entertain" would mean first occasion on which the Court takes up the matter for consideration which may be at the admission stage or if by rules of that tribunal, the appeals are automatically admitted, it will be at the time of hearing of the appeal. It is held that on the first occasion, when the Court takes up the matter for consideration, satisfactory proof must be presented that tax was paid within the period of limitation available for the appeal.

40. In my view, the appellant was thus not required to deposit 75% of the awarded sum along with the application filed under section 34 ppn 19 arast-18470.16(j).doc of the Arbitration & Conciliation Act, 1996 before the learned Principal District Judge, Thane and such amount of deposit could be made when the said application was ultimately entertained by the learned Principal District Judge, Thane, who could even consider grant of installments of the said amount and also the mode and manner in which the said amount could be deposited. In my view, the judgment of this Court in case of E. Square Leisure Pvt. Ltd., Pune (supra) squarely applies to the facts of this case. I am respectfully bound by the said judgments.

41. Insofar as the judgment of the Kerala High Court in case of K.S.R.T.C. (supra) relied upon by the learned counsel for the respondent is concerned, Kerala High Court had upheld the validity of section 19 of the MSMED Act, 2006. The Supreme Court in case of Goodyear India Limited (supra) has also dealt with the judgment of Kerala High Court in case of K.S.R.T.C. (supra) relied upon by the learned counsel for the respondent and the order passed by the Supreme Court arising out of the said judgment of the Kerala High Court and has held that the Supreme Court in the Special Leave Petition arising out of the said judgment of the Kerala High Court had granted extension to the applicant to make pre- deposit in those cases by a period of 10 weeks. In my view, the judgment of the Kerala High Court relied upon by the learned counsel for the respondent thus would not assist the case of the respondent. In my view, in view of the judgment of the Supreme Court in case of Goodyear India Limited (supra), the judgment of the Kerala High Court in case of K.S.R.T.C. (supra) would not apply to the facts of this case.

42. Insofar as the judgment of the Madras High Court in case of Goodyear India Limited vs. Norton Intec Rubbers Private Limited & ppn 20 arast-18470.16(j).doc Anr. (supra) is concerned, a perusal of the said judgment indicates that there was no issue of limitation in the said judgment delivered by the Madras High Court. With great respect to the said judgment of the Madras High Court, in my view, in view of the judgment of the Supreme Court in case of Goodyear India Limited (supra), the said judgment of the Madras High Court in case of Goodyear India Limited (supra) would not assist the case of the respondent.

43. In my view, the impugned order passed by the learned Principal District Judge, Thane refusing to entertain the arbitration application though the applicant had agreed to deposit 75% of the awarded sum and had filed an application for seeking permission to deposit the said amount on the ground that the said amount of 75% of the awarded sum not having deposited along with the arbitration application was not maintainable or in any event was barred by law of limitation is totally contrary to the law laid down by the Supreme Court and this Court in the judgments referred to aforesaid and is also contrary to sections 18 and 19 of the MSMED Act, 2006 and thus deserves to be set aside.

44. I therefore, pass the following order :-

a) Arbitration Appeal (Stamp) No.18470 of 2016 filed by the appellant is allowed. The impugned order passed by the learned Principal District Judge, Thane on 13th June, 2016 allowing the application Exhibit-11 filed by the respondent raising a preliminary objection on the maintainability

of the arbitration application under section 34 of the Arbitration & Conciliation Act, 1996 is set aside. The application (Exhibit 11) filed by the respondent is ppn 21 arast-18470.16(j).doc dismissed. The impugned order dismissing the original application being Civil Misc. Application No.236 of 2015 filed by the appellant is set aside. The Civil Misc. Application No.236 of 2015 is restored to file.

b) The appellant is granted two weeks time to deposit 75% of the awarded sum in the Court of Principal District Judge, Thane in Civil Misc. Application No.236 of 2015. If the amount of 75% of the awarded sum is deposited by the appellant within the time prescribed, the said application shall be treated in order and shall heard and disposed off by the learned Principal District Judge, Thane on its own merits expeditiously.

c) In view of disposal of the appeal, civil application does not survive and is accordingly disposed of.

d) There shall be no order as to costs.

R.D. DHANUKA, J.