

ITEM NO.24

COURT NO.2

SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).16919-16920/2011

(From the judgement and order dated 10/06/2011 in MP No.1/2011,OSA
No.119/2011 of The HIGH COURT OF MADRAS)

M/S GOODYEAR INDIA LIMITED

Petitioner(s)

VERSUS

NORTON INTECH RUBBERS(P) LTD.& ANR

Respondent(s)

(With prayer for interim relief)
(For final disposal)

WITH S.L.P.(C) NOS.31468-31469 of 2011

(With appln.(s) for permission to appaer and argue in person and
office report)

Date: 15/03/2012

These Petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE J. CHELAMESWAR

For Petitioner(s) Mr. M.G. Ramachandran, Adv.
Mr. K.V. Mohan, AOR
Mr. Anand K. Ganesan, Adv.

IN SLP 31468- Mrs. Prabha Swami, AOR
31469/2011

For Respondent(s) Mr. K. Swami, Adv.
Mr. Nikhil Swami, Adv.
Mrs. Prabha Swami, AOR

For State of Mr. B. Balaji, AOR
Tamil Nadu Mr. M. Anbalagam, Adv.

SLP (C) 16919-16920/2011 Mr. P.N. Ramalingam, AOR

UPON hearing counsel the Court made the following
O R D E R

Four special leave petitions, being S.L.P. (C)
Nos.16919-16920 of 2011 and S.L.P. (C) Nos.31468-31469 of
2011, have been filed against the judgment and order dated
10th June, 2011, passed by the Division Bench of the Madras
High Court in O.S.A. No.119 of 2011 and M.P. No.1 of 2011,
filed by M/s. Goodyear India Limited. The first two special
leave petitions have been filed by M/s. Goodyear India
Limited, while the other two have been filed by M/s. Norton

Intech Rubbers (P) Ltd. The said appeal had been preferred by M/s. Goodyear India Limited against the order passed by the learned Single Judge on 7th April, 2011, in O.P. No.888 of 2010, which was an application to set aside an award under the Arbitration and Conciliation Act, 1996.

The main question which had arisen before the learned Single Judge was with regard to the provisions of Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short, '2006 Act'), which provides for applications for setting aside decrees, awards or orders. For the sake of reference, Section 19 is extracted hereinbelow:

"Application for setting aside decree, award or order.-- 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

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be, the other order in the matter directed by such court:

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."

As will be noticed, Section 19 provides that no application for setting aside any decree, award or other order made either by the Council, appointed under the 2006 Act, shall be entertained by any Court unless the appellant (not being a supplier) deposits with the Court 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. The learned Single Judge having considered the submissions made on the said provision came to the conclusion that on a plain reading of the Section, the Court had no discretion to either waive or reduce the amount of seventy-five per cent of the award as a pre-deposit for filing of the appeal and, accordingly, dismissed the original petition, with leave to the petitioner to deposit an amount, amounting to seventy-five per cent of the award, within an extended period of six weeks.

The Division Bench before whom the aforesaid appeal was preferred concurred with the judgment of the learned Single Judge and while dismissing the appeal, extended the period for deposit of the aforesaid amount by a further period of six weeks.

Aggrieved by the aforesaid judgment and order of the Division Bench, as also that of the learned Single Judge,

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M/s. Goodyear India Limited, has preferred the first two special leave petitions.

As far as Norton Intech Rubbers (P) Ltd. and another, are concerned, they have filed the special leave petitions on account of certain observations that had been made by the Division Bench while disposing of the appeal, which were likely to prejudice them. An objection had also been taken with regard to limitation, which had been decided against them.

In the two special leave petitions, which have been filed by M/s. Goodyear India Limited, once again the main thrust of the submissions made by Mr. M.G. Ramachandran, learned counsel appearing for the petitioner, was with regard to interpretation of the provisions of Section 19 of the 2006 Act. According to him, one of the questions of law which arise for consideration in these proceedings is, whether the requirement under Section 19 of the 2006 Act, regarding deposit of seventy-five per cent of the amount in terms of the award made under the said Act, is absolute, perverse, capricious or arbitrary in nature. Coupled with the said question, another submission was made by Mr. Ramachandran as to the interpretation of the expression "in the manner directed by such court", which appears at the end of Section 19, just before the proviso. Mr. Ramachandran sought to interpret Section 19 within the meaning of such expression by submitting that the said expression provided the court with discretion to alter the provisions relating to deposit of seventy-five per cent as pre-deposit, for the appeal to be taken up for consideration. According to Mr. Ramachandran, the said expression could also be understood to include securing of the amount by way of Bank Guarantee

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or otherwise, having regard to the onerous and stringent conditions involved.

Of course, Mr. Ramachandran has submitted that no attempt has been made by the petitioner herein to challenge the vires of Section 19 of the 2006 Act. Mr. Ramachandran submitted that he was only interested in having the provisions of Section 19 interpreted in a manner whereby a litigant was not put to unnecessary hardship.

In his submissions, Mr. Ramachandran has referred to various decisions, all of which, however, are in the context of enactments, in which discretion has been left to the appellate body to either waive or reduce the amount of pre-deposit, which factor is absent in the present case.

In support of his contention, however, he referred to and relied upon the decision of this Court in Snehadeep Structures Private Limited v. Maharashtra Small-Scale Industries Development Corporation Limited (2010) 3 SCC 34, wherein 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, would it be necessary to comply

with the provisions of Section 19 of the 2006 Act.

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Lordships observed that the provision, no doubt, requires pre-deposit to be made before an application under Section 34 of the Arbitration Act is filed, but that they were not inclined to read that provision into the provision

in

question. The facts of the said case are different from the facts of this case and it would be difficult to import the ratio of the decision in the above case into the facts of

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this case.

Having considered the submissions made, both on behalf of the petitioner and on behalf of the respondents, we do not see any reason to interfere with the views expressed, both by the learned Single Judge, as also the Division Bench with regard to Section 19 of the 2006 Act. It may not be out of place to mention that the provisions of Section 19 of the 2006 Act, had been challenged before the Kerala High Court in K.S.R.T.C. v. Union of India, reported in INDLAW KER 666, where the same submissions were negated and, subsequently, the matter also came up to this court, when the special leave petitions were dismissed, with leave to make the pre-deposit in the cases involved, within an extended period of ten weeks.

We may also indicate that the expression "in the manner directed by such court" would, in our view, indicate the discretion given to the court to allow the pre-deposit to be made, if felt necessary, in installments.

Having regard to the above, we are not inclined to entertain the special leave petitions filed by M/s. Goodyear India Limited and the same are, accordingly, dismissed. However, in keeping with the other decisions rendered in these cases, we extend the time for pre-deposit by the petitioner, by a further period of twelve weeks. If such deposit is made, the appeal shall be treated to be in order and, thereafter, the same may be proceeded with.

As far as the two special leave petitions filed by M/s. Norton Intech Rubbers (P) Limited and another, are SLP (C) 16919-16920/2011

concerned, having regard to the decision in these two special leave petitions, nothing survives therein and the same are disposed of, however, with leave to the special leave petitioner to take whatever objections, that may have been taken in these special leave petitions, at the time of hearing of the appeal.

(Chetan Kumar)
Court Master

(Juginder Kaur)
Assistant Registrar