(2018) 04 SHI CK 0049

In the High Court Of Himachal Pradesh

Case No : Arb. C. Nos. 20, 21 of 2018

M/s SGI Power Limited APPELLANT

Vs

M/s Himachal Wire Ind. Pvt. Ltd. RESPONDENT

Date of Decision : 11-04-2018

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 18, 34
Micro Small and Medium Enterprises Development Act, 2006 — Section 15, 19, 23, 24

Citation : (2018) 04 SHI CK 0049

Hon'ble Judges : TARLOK SINGH CHAUHAN

Bench : Single Bench

Advocate : Shivank Singh Panta, Atul Jhingan

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.

1.Both these petitions have been preferred by the petitioner/objector/judgment debtor under Section 34 of the Arbitration and Conciliation Act (for

short the â??Actâ??) read with Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short â??MSME Actâ??).

2. At the outset, it may be observed that an application for setting aside the decree, award or order under Section 19 is maintainable only with pre-

condition of deposit 75% of the decreetal or award amount, which reads thus:-.â??19. ApplicationÂ forÂ settingÂ asideÂ decree,Â awardÂ 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 be, the other order in the manner

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.â??

3. It is not in dispute that the award passed by the learned Arbitrator was on the basis of the reference made by the Council under Section 18 of the

Act.

4. At this stage, it would be necessary to refer to Section 24 which gives an overriding effect to the provisions of Sections 15 to 23 of the MSME Act

or any other law for the time being in force and read thus:- â??24. Overriding effect.- The provisions of sections 15 to 23 shall have effect

notwithstanding anything inconsistent therewith contained in any other law for the time being in force.â??

5. Evidently, Section 24 starts with non obstante clause and it is well known that a non obstante clause is a legislative device which is usually implied to

give overriding effects to certain provisions over contrary provisions that may be found either in the same enactment or some other enactment, that is

to say, to avoid operation and effect of contrary provisions.

6. In Chandavarkar Sita Ratna Rao vs. Ashalata S. Guram (1986) 4 SCC 447, the scope of non obstante clause was explained in the following words:

A clause beginning with the expression â??notwithstanding anything contained in this Act or in some particular provision in the Act or in some

particular Act or in any law for the time being in force, or in any contractâ? is more often than not appended to a section in the beginning with a view

to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non

obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non obstante clause or any

contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would

not be an impediment for an operation of the enactment.

7. Since, the objector has not complied with the provisions of Section 19 of the MSME Act, by depositing 75% of the decreetal award amount,

therefore, these appeals are not maintainable and dismissed as such, leaving the parties to bear their costs.

