



Advocates
& Solicitors

**Pre-deposit of 75% of the awarded amount is mandatory as per
Section 19 of MSME Act, 2006**

Gujarat State Disaster Management Authority v. Aska Equipments Ltd.

Citation	2021 SCC OnLine SC 917
Date	08 October 2021
Court	Supreme Court of India
Coram	Hon'ble Mr. Justice M.R. Shah, Hon'ble Mr. Justice A.S. Bopanna

1. **FACTUAL MATRIX & PROCEDURAL HISTORY:**

- 1.1 Disputes arose between the Gujarat State Disaster Management Authority (“**Appellant**”) and Aska Equipments Ltd. (“**Respondent**”) regarding the payment of goods. Proceedings commenced under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (“**MSME Act**”). The Facilitation Council passed an award in favour of the Respondent and directed the Appellant to pay a sum of Rs. 105,053,387/-.
- 1.2 The Appellant filed an appeal before the learned Additional District Judge (Commercial), Dehradun (“**District Court**”) under Section 34 of the Arbitration & Conciliation Act, 1996 (“**the Act**”) read with Section 19 of the MSME Act, 2006. As per Section 19 of the MSME Act, 2006, the Appellant was required to deposit 75% of the amount awarded by the arbitrator. The Appellant failed to make the deposit despite several opportunities being granted. An application for waiver of the pre-deposit was also filed that was dismissed.
- 1.3 Accordingly, the Appellant filed a writ petition before the High Court of Uttarakhand (“**High Court**”). The High Court dismissed the writ petition and confirmed the order passed by the learned Additional District Judge whereby the Appellant was directed to make the pre-deposit. The High Court also granted additional eight weeks time to make the said awarded payment.
- 1.4 Aggrieved by the decision of the High Court, the Appellant filed an appeal before the Hon’ble Supreme Court of India (“**Supreme Court**”).

2. **ISSUE:**

- 2.1 Whether the appellate court would have any discretion in deviating from the deposit of 75% of the awarded amount as a pre-deposit while hearing an application filed under Section 34 of the Act read with Section 19 of MSME Act?

3. **CONTENTIONS OF THE APPELLANT:**

- 3.1 The Appellant submitted that while issuing notice to the Respondent, the Supreme Court had directed the Appellant to deposit a sum of Rs. 2,50,00,000/- (Rs. Two crores Fifty lakhs) before the appellate authority and on such deposit the appellate court was directed to take up the appeal. Accordingly, the Appellant had submitted the afore-stated amount and the learned District Court heard the appeal and has further reserved its order. Thus, the Appellant prayed for disposal of the appeal.

4. **CONTENTIONS OF THE RESPONDENT:**

- 4.1 The Respondent argued that it is mandatory to make the pre-deposit of 75% of the awarded amount in any case. Placing reliance on the judgment in *Goodyear India Ltd.*,¹ the Respondent submitted that the requirement of 75% pre-deposit is mandatory. The expression “*in the manner directed by such court*” refers to the discretion to allow the pre-deposit to be deposited in installments if necessary, but mandatory in any case.

5. **JUDGEMENT OF THE SUPREME COURT:**

¹ Goodyear India Ltd. v. Norton Intech Rubbers Private Limited, (2012) 6 SCC 345.

- 5.1 On a bare perusal of Section 19 of the MSME Act, the Supreme Court held that the pre-deposit of 75% of the awarded amount is mandatory. It is only when some hardship has been projected and if the appellate court is satisfied with such projection, the pre-deposit may be made in installments. To substantiate this reasoning, the Supreme Court agreed with the Respondent's reliance on the judgment in *Goodyear India Ltd.*²
- 5.2 The Supreme Court also agreed with the contention of the Respondent that the expression "*in the manner directed by such court*" is only confined to allowing the pre-deposit in installments and nothing beyond.
- 5.3 In light of the specific facts, the Supreme Court confirmed that its earlier order while issuing notice in the appeal and directing the deposit of Rs. 2,50,00,000/- shall not be treated as a precedent.

6. PSL OPINION:

- 6.1 The present judgment will benefit the MSME sector since the mandatory nature of pre-deposit will ensure that genuine award-holders (MSME unit) do not suffer from the dilatory tactics often deployed by award-debtors. It will also help differentiate between legitimate and frivolous petitions.

² *Id.*