Before Rajesh Bindal & Harinder Singh Sidhu, JJ.

M/S MAHESH KUMAR SINGLA AND ANOTHER—*Petitioners*

versus

UNION OF INDIA AND OTHERS—*Respondents*

CWP No.23368 of 2015

March 27, 2017

Constitution of India, 1950—Arts. 226 and 227—Micro, Small and Medium Enterprises Development Act, 2006—S.19—Vires upheld—Deposit of 75% of decretal amount—Precondition for entertaining application/appeal—Assailed as onerous, oppressive, arbitrary— Validity upheld—Pre-deposit requirement not mandatory—Court may waive, partially or completely.

Held that, consequently, while upholding the validity of Section 19 of the 2006 Act, it has to be held that the requirement of pre-deposit thereunder is not mandatory and the court would be empowered to waive, either partially or completely, the requirement of pre-deposit in the same circumstances and conditions as explained in detail in the Punjab State Power Corporation Ltd.'s case (supra).

(Para 32)

Further held that, in the context of the present enactment, it also needs to be emphasized that while exercising any such discretion the Court will specially keep in mind the need to ensure timely and smooth flow of credit to small and medium enterprises to minimize the incidence of sickness among them which is one of the prime objectives of the legislation.

(Para 34)

Kanwaljit Singh, Sr.Advocate with
Parunjeet Singh, Advocate
for the petitioners (in CWP No.23368 of 2015)
for the appellants (in LPA No.1556 of 2015)

Gaurav Sharma, Advocate
for the petitioner (in CWP No.19099 of 2016).

Krishan K.Chahal, Advocate
for respondent – Union of India.

Munisha Gandhi, Addl.A.G.,Punjab with
Harleen Kaur, A.A.G., Punjab.

Tribhawan Singla, Advocate
for respondent No.1(in CWP No.19236 of 2015 and
LPA No.1556 of 2015) and
for respondent No.3 (in CWP NO.23368 of 2015)

Manuj Chadha, Advocate
for respondent No.5 (in LPA No.1556 of 2015).

Aakash Singla, Advocate
for respondent No.7 (in LPA No.1556 of 2015 and
CWP No.19236 of 2015).

HARINDER SINGH SIDHU, J.

(1) This judgment shall dispose of four cases i.e. CWP Nos.23368 and 19236 of 2015, LPA No.1556 of 2015 and CWP No.19099 of 2016, as similar issues are involved in all these cases.

For facility of reference, facts are being taken from CWP No.23368 of 2015.

(2) Prayer in this petition is for quashing Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short 'the 2006 Act') on the ground that the requirement of deposit of seventy-five per cent of the decretal amount as a pre-condition for entertaining an application/ appeal for setting aside the decree, award or any other order of the Micro and Small Enterprises Facilitation Council (for short 'the Council'), is onerous, oppressive and arbitrary.

(3) The petitioner is a partnership firm dealing in the business of supply and fixing of electrical equipment for Electricity Boards of Punjab and other States.

(4) Respondent No.3 filed a claim petition against the petitioners before the Council constituted under the 2006 Act for an amount of Rs.1,37,71,374/- being interest on account of delayed payments in respect of various purchase orders of Three Phase Conventional Type Transformers of different ratings between 13.11.2007 and 5.3.2009. The Council vide its award dated 30.9.2014 allowed the claim petition. Award for an amount of Rs.2,88,61,758/- along with future interest at three times the bank rate till the date of realization was passed against the petitioners. The petitioners filed CWP No.19189 of 2015 titled as ***M/s Mahesh Kumar Singla and another*** versus ***Punjab Transformers and Electronics Ltd. and others*** challenging the award being illegal and void. The writ petition was

disposed of vide order dated 28.9.2015 holding that the petitioners had an alternative remedy to challenge the award before the Civil Court in terms of Section 19 of the 2006 Act. Moreover, as per Section 19 of the 2006 Act, no application for setting aside any decree, award or other order made by the Council could be entertained without prior deposit of seventy-five per cent of the decretal amount, which had not been done. Accordingly, the writ petition was dismissed.

(5) The present petition has been filed challenging Section 19 of the 2006 Act to the extent of the requirement of deposit of seventy- five per cent of the amount of award as a pre-condition for entertaining an application thereunder.

(6) The petition came up for preliminary hearing on 2.11.2015 and notice of motion was issued. It was observed that the petitioners may file an application for setting aside the award before the competent authority.

(7) The petitioners have filed C.M. No.146 of 2017, wherein, it has been stated that after the filing of this petition, they had filed the application (Annexure A-1) before the Additional District Judge, Patiala for setting aside the award dated 30.9.2014. The respondent filed objection petition regarding the maintainability of the application on account of non-deposit of seventy five per cent of the amount awarded. Vide order dated 21.12.2016 (Annexure A-4) the Additional District Judge, Patiala allowed the objection petition, but subject to deposit of seventy-five per cent of the amount awarded within twenty days of the order.

(8) Ld. Counsel for the petitioners has argued that the requirement of pre-deposit of seventy-five percent of the amount awarded as a pre-condition for entertaining the appeal is onerous and oppressive. It renders the remedy of appeal wholly illusory. Reliance was placed, primarily, on the decision of Hon'ble the Supreme Court in ***Mardia Chemicals Ltd.*** versus ***Union of India and others***[1], where Hon'ble the Supreme Court had declared Section 17(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "2002 Act") to be arbitrary and unconstitutional. As per Section 17(2) of the 2002 Act no appeal could be entertained before the Debt Recovery Tribunal unless the borrower had deposited seventy-five per cent of the amount claimed in the notice under Section 13(2) thereof.

---

[1] (2004) 4 SCC 311

(9) Ld. Counsel for the respondents, on the other hand, argued that the 2006 Act was the culmination of efforts spanning over two decades to introduce a mechanism to ensure timely realization and to protect the payments receivable by the Small Scale Industries. This is reflected in the Statement of Objects and Reasons of the Bill where among the objectives sought to be achieved by this Act are as follows:

> "2. In view of the above-mentioned circumstances, the Bill aims at facilitating the promotion and development and enhancing the competitiveness of small and medium enterprises and seeks to—
>
> xxxxxxxx
>
> (f) make provisions for ensuring timely and smooth flow of credit to small and medium enterprises to minimise the incidence of sickness among and enhancing the competitiveness of such enterprises, in accordance with the guidelines or instructions of the Reserve Bank of India.
>
> xxxxxxxxxx
>
> (k) make further improvements in the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 and making that enactment a part of the proposed legislation and to repeal that enactment."

The effort through the aforesaid legislation was to statutorily ensure that payment is made to the micro, small and medium enterprises supplier within forty-five days of the supplies being made (Section 15). Any disputes regarding the supplies made would be adjudicated within ninety days [Section 18(5)]. He argued that the aim and objective of the provision of pre-deposit is to ensure timely dispute resolution and flow of money to micro, small and medium supplier within a fixed time frame.

(10) He argued that Section 19 of the 2006 Act has been interpreted by Hon'ble the Supreme Court in ***Goodyear India Ltd.*** versus ***Norton Intech Rubbers (P) Ltd.***[2]. In that case, the Hon'ble Supreme Court dismissed the Special Leave Petition against the order of the High Court, wherein, it had been held that on a plain reading of Section 19 of the 2006 Act, the Court had no discretion to either waive or reduce the amount of seventy-five per cent of the award as a pre-

[2] (2012) 6 SCC 345

deposit for filing of the appeal. Only an extended period of six weeks was granted to the petitioner therein to deposit the amount.

(11) We have heard Ld. Counsel for the parties and perused the record.

> The impugned Section 19 of the 2006 Act is reproduced below: **"19. 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 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."

(12) Similar requirement of making a pre-deposit before entertaining appeals is found in many statutes. Some statutes have an express provision enabling the appellate/ revisional authority to reduce, waive or defer the payment, while some statutes do not contain such a provision.

(13) The validity of such statutes has come up for consideration before the Courts on numerous occasions and it has been consistently held that as the right to appeal is a creature of the statute, it can be conditional or qualified. The requirement about the deposit of the amount claimed as a condition precedent to entertainment of an appeal does not nullify the right of appeal and cannot be considered to be unconstitutional. Simultaneously, it has been held that even in the absence of an express provision to that effect, the Appellate Authority or Tribunal would have power to grant stay as incidental or ancillary to its appellate jurisdiction subject to there being a strong prima facie case established to the satisfaction of the Appellate Authority that the very purpose of the appeal would be frustrated or rendered nugatory if such stay was not granted.

(14) The case law on the subject was extensively reviewed by a Division Bench of this Court in ***Punjab State Power Corporation Limited*** versus ***The State of Punjab and others***[3]**,** where the validity of Section 62(5) of the Punjab Value Added Tax Act, 2005 (for short "VAT Act") which provided that no appeal shall be entertained, unless such appeal is accompanied by the proof of prior payment of twenty-five per cent of the total amount of tax, penalty and interest ordered to be paid in the order appealed against, was questioned.

(15) Section 62 of the VAT Act, which was in issue in that case is reproduced below:

> "62. (1) An appeal against every original order passed under this Act or the rules made thereunder shall lie,
>
> (a) if the order is made by a Excise and Taxation Officer or by an officer-Incharge of the information collection centre or check post or any other officer below the rank of Deputy Excise and Taxation Commissioner, to the Deputy Excise and Taxation Commissioner; or
>
> (b) if the order is made by the Deputy Excise and Taxation Commissioner, to the Commissioner; or
>
> (c) if the order is made by the Commissioner or any officer exercising the powers of the Commissioner, to the Tribunal.
>
> (2) An order passed in appeal by a Deputy Excise and Taxation Commissioner or by the Commissioner or any officer on whom the powers of the Commissioner are conferred, shall be further appealable to the Tribunal.
>
> (3) Every order of the Tribunal and subject only to such order, the order of the Commissioner or any officer exercising the powers of the Commissioner or the order of the Deputy Excise and Taxation Commissioner or of the designated officer, if it was not challenged in appeal or revision, shall be final.
>
> (4) No appeal shall be entertained, unless it is filed within a period of thirty days from the date of communication of the order appealed against.

[3] 2016(2) RCR(Civil) 559

> (5) No appeal shall be entertained, unless such appeal is accompanied by satisfactory proof of the prior minimum payment of twenty-five per cent of the total amount of tax, penalty and interest, if any.
>
> (6) In deciding an appeal, the appellate authority, after affording an opportunity of being heard to the parties, shall make an order –
>
> (a) affirming or amending or canceling the assessment or the order under appeal;
>
> or (b) may pass such order, as it deems to be just and proper.
>
> (7) The appellate authority shall pass a speaking order while deciding an appeal and send copies of the order to the appellant and the officer whose order was a subject matter of appeal."

This Court framed the following questions for consideration:

> (a) Whether the State is empowered to enact Section 62(5) of the PVAT Act?
>
> (b) Whether the condition of 25% pre-deposit for hearing first appeal is onerous, harsh, unreasonable and, therefore, violative of Article 14 of the Constitution of India?
>
> (c) Whether the first appellate authority in its right to hear appeal has inherent powers to grant interim protection against imposition of such a condition for hearing of appeals on merits?"

Among the decisions relied on were ***Govt. of A.P.*** versus ***P. Laxmi Devi***[4] and ***Har Devi Asnani*** versus ***State of Rajasthan***[5].

(16) **In *P. Laxmi Devi's*** case, Hon'ble the Supreme Court upheld the validity of Section 47-A of the Stamp Act, 1899, introduced by the Indian Stamp Act (A.P. Amendment Act 8 of 1998), as per which, a party was required to deposit fifty per cent of the deficit stamp duty before a reference could be made to the Collector.

> The observations of Hon'ble the Supreme Court are as under:

---

[4] (2008) 4 SCC 720

[5] (2011) 14 SCC 160

"22. In this connection we may also mention that just as the reference under Section 47-A has been made subject to deposit of 50% of the deficit duty, similarly there are provisions in various statutes in which the right to appeal has been given subject to some conditions. The constitutional validity of these provisions has been upheld by this Court in various decisions which are noted below.

23. In Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad [(1999) 4 SCC 468] this Court referred to its earlier decision in Vijay Prakash D. Mehta v. Collector of Customs [(1988) 4 SCC 402] wherein this Court observed: (Vijay Prakash case [(1999) 4 SCC 468] , SCC p. 406, para 9)

> "9. Right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant."

24. In Anant Mills Co. Ltd. v. State of Gujarat [(1975) 2 SCC 175] this Court held that the right of appeal is a creature of the statute and it is for the legislature to decide whether the right of appeal should be unconditionally given to an aggrieved party or it should be conditionally given. The right to appeal which is a statutory right can be conditional or qualified.

25. In Elora Construction Co. v. Municipal Corpn. of Gr. Bombay [AIR 1980 Bom 162] the question before the Bombay High Court was as to the validity of Section 217 of the Bombay Municipal Act which required pre-deposit of the disputed tax for the entertainment of the appeal. The Bombay High Court upheld the said provision and its judgment has been referred to with approval in the decision of this Court in Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad [AIR 1968 SC 623] . This Court has also referred to its decision in Shyam Kishore v. Municipal Corpn. of Delhi [(1993) 1 SCC 22] in which a similar provision was upheld.

26. It may be noted that in Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad [AIR 1968

SC 623] the appellant had challenged the constitutional validity of Section 406(e) of the Bombay Municipal Corporation Act which required the deposit of the tax as a precondition for entertaining the appeal. The proviso to that provision permitted waiver of only 25% of the tax. In other words a minimum of 75% of the tax had to be deposited before the appeal could be entertained. The Supreme Court held that the provision did not violate Article 14 of the Constitution.

27. In view of the above, we are clearly of the opinion that Section 47-A of the Stamp Act as amended by A.P. Act 8 of 1998 is constitutionally valid and the judgment of the High Court declaring it unconstitutional is not correct."

(17) ***In Har Devi Asnani's*** *case (supra),* the constitutional validity of the proviso to Section 65(1) of the Rajasthan Stamp Act, 1998, which provided that no revision application shall be entertained unless it is accompanied by a satisfactory proof of the payment of fifty per cent of the recoverable amount was in issue.

(18) The Hon'ble Court observing that it had been the consistent view that the right of appeal or right of revision is not an absolute right and it is a statutory right which can be circumscribed by the conditions in the the statute, upheld the validity of the provision. It was observed:

"22. While coming to the aforesaid conclusions, this Court in P. Laxmi Devi case[(2008) 4 SCC 720] has relied on Anant Mills Co. Ltd. v. State of Gujarat [(1975) 2 SCC 175], Vijay Prakash D. Mehta v. Collector of Customs [(1988) 4 SCC 402] and Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad [(1999) 4 SCC 468] in which this Court has taken a consistent view that the right of appeal or right of revision is not an absolute right and it is a statutory right which can be circumscribed by the conditions in the grant made by the statute. Following this consistent view of this Court, we hold that the proviso to Section 65(1) of the Act, requiring deposit of 50% of the demand before a revision is entertained against the demand is only a condition for the grant of the right of revision and the proviso does not render the right of revision illusory and is within the legislative power of the State Legislature."

The conclusion of this Court in the case of ***Punjab State Power Corporation Limited*** (supra) on this aspect was as under:

> "24. From the reading of the judicial pronouncements noticed above, the inevitable conclusion is that right of appeal is a creature of a statute and it being a statutory right can be conditional or qualified. If the statute does not create any right of appeal, no appeal can be filed. Right to appeal is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant. In other words, while granting this right, the legislature can impose conditions for exercise of such right and there is no constitutional or legal impediment to imposition of such a condition. The requirement about the deposit of the amount claimed as a condition precedent to the entertainment of an appeal does not nullify the right of appeal. All that the statutory provision seeks to do is to regulate the exercise of the right of appeal. The object of the provision is to keep balance between the right of appeal and the right of the revenue to speedy recovery of the amount. The conditions imposed including prescription of a pre-deposit are meant to regulate the right of appeal and the same cannot be held to be violative of Article 14 of the Constitution of India unless demonstrated to be onerous or unreasonable. To put it differently, right of appeal being a statutory right, it is for the legislature to decide whether to make the right subject to any condition or not. In the light of the above enunciation, we proceed to examine Section 62(5) of the PVAT Act. A perusal of sub section (5) of Section 62 of the PVAT Act shows that pre-deposit of twenty five percent of the total amount of tax, interest and penalty is a condition precedent for hearing an appeal before the first appellate authority. Any challenge to the constitutional validity of this provision for pre-deposit before entertaining an appeal on the ground that onerous condition has been imposed and right to appeal has become illusory must be negatived and such a provision cannot be said to be ultra vires Article 14 of the Constitution of India. The object of the provision is to keep in balance the right of appeal conferred upon a person aggrieved with a demand of tax and

> the right of the revenue to speedy recovery of the tax. It is, thus, concluded that the State is empowered to enact Section 62(5) of the Act and the said provision is legal and valid. The condition of 25% pre-deposit for hearing first appeal is not onerous, harsh, unreasonable and violative of the provisions of Article 14 of the Constitution of India."

(19) It was held that the right to appeal is a statutory right and it can be circumscribed by the conditions in the grant. While granting this right, the legislature can impose conditions for its exercise. There is no constitutional or legal impediment to imposition of a condition for deposit of certain amount as a condition precedent to the entertainment of an appeal and such a condition does not nullify the right of appeal. This Court thus negatived the challenge to the constitutional validity of the requirement of pre-deposit before entertaining an appeal contained in Section 62(5) of the VAT Act.

(20) The judgment in ***Mardia Chemicals Ltd.'s*** case (supra) relied on by Ld. Counsel for the petitioners is clearly distinguishable. In that case, Hon'ble the Supreme Court had concluded that the proceedings under Section 17(2) of the 2002 Act, though termed as appeal were in fact not so. Actually, it was the initial action, which was brought before the Debt Recovery Tribunal raising a grievance against the measures taken by one of the parties to the contract. The proceedings under Section 17(2) of 2002 Act were in lieu of a civil suit which remedy would have been available but for the bar incorporated under Section 34 of that Act. The Hon'ble Court noticed that all the cases where the requirement of pre-deposit had been held to be valid were cases where such deposit was made a pre-condition for filing an appeal/ revision, and not at the very first instance. It was observed as under:-

> **"60.** The requirement of pre-deposit of any amount at the first instance of proceedings is not to be found in any of the decisions cited on behalf of the respondent. All these cases relate to appeals. The amount of deposit of 75% of the demand, at the initial proceeding itself sounds unreasonable and oppressive, more particularly when the secured assets/the management thereof along with the right to transfer such interest has been taken over by the secured creditor or in some cases property is also sold. Requirement of deposit of such a heavy amount on the basis of a one-sided claim alone, cannot be said to be a reasonable

> condition at the first instance itself before start of adjudication of the dispute. Merely giving power to the Tribunal to waive or reduce the amount, does not cure the inherent infirmity leaning one-sidedly in favour of the party, who, so far has alone been the party to decide the amount and the fact of default and classifying the dues as NPAs without participation/association of the borrower in the process. Such an onerous and oppressive condition should not be left operative in expectation of reasonable exercise of discretion by the authority concerned. Placed in a situation as indicated above, where it may not be possible for the borrower to raise any amount to make the deposit, his secured assets having already been taken possession of or sold, such a rider to approach the Tribunal at the first instance of proceedings, captioned as appeal, renders the remedy illusory and nugatory.
>
> xxxxxxxxxx
>
> 64. The condition of pre-deposit in the present case is bad rendering the remedy illusory on the grounds that: (i) it is imposed while approaching the adjudicating authority of the first instance, not in appeal, (ii) there is no determination of the amount due as yet, (iii) the secured assets or their management with transferable interest is already taken over and under control of the secured creditor, (iv) no special reason for double security in respect of an amount yet to be determined and settled, (v) 75% of the amount claimed by no means would be a meagre amount, and (vi) it will leave the borrower in a position where it would not be possible for him to raise any funds to make deposit of 75% of the undetermined demand. Such conditions are not alone onerous and oppressive but also unreasonable and arbitrary. Therefore, in our view, sub-section (2) of Section 17 of the Act is unreasonable, arbitrary and violative of Article 14 of the Constitution."

(21) The remedy under Section 19 of the 2006 Act is not the initial stage of adjudication as would be clear from a perusal of the relevant provisions in Chapter V of the 2006 Act. Aspects relating to time schedule for payments, interest on delayed payment, the resolution of disputes relating thereto etc. are dealt with in this Chapter comprising sections 15 to 25, of which Section 19 is a part.

(22) As per Section 15, the buyer is required to make payments in respect of supply of any goods or services on or before the date as agreed between him and the supplier in writing. In the absence of any agreement the payment is to be made before the appointed day, which is the day following immediately after the expiry of the period of forty-five days from the day of acceptance or the day of deemed acceptance. As per proviso to Section 15 in no case shall the period agreed upon between the supplier and the buyer in writing exceeded forty- five days from the day of acceptance or deemed acceptance. As per Section 16 where any buyer fails to make the payment to the supplier in terms of Section 15, the buyer is liable to pay compound interest with monthly rests to the supplier on the amount from the appointed day. Section 17 expressly states that for the goods or services received the buyer shall be liable to pay the amount with interest thereon as per Section 16.

(23) Section 18 provides for reference of any dispute with regard to the amount due to the Council. The Council shall initially conduct conciliation or make a reference to any institution or centre for conducting conciliation, which conciliation is to be as per the Arbitration and Conciliation Act, 1996 (for short "1996 Act"). Where such conciliation is unsuccessful, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternative dispute resolution services for such arbitration and the 1996 Act shall apply to the dispute as if the arbitration was in pursuance to an arbitration agreement. As per sub-section (5) of Section 18, every reference is required to be decided within ninety days from the date of making such reference.

(24) As per Section 19, no application for setting aside any decree, award or other order made by the Council or any other institution to which it has been referred shall be entertained by any Court unless the appellant (not being a supplier) has deposited with such Court seventy-five per cent of the amount in terms of the decree, award or the order.

(25) The composition of the Council is specified in Section 21 as per which, the Council shall consist of not less than three but not more than five members from among different categories namely;

> (i) Director of Industries, or any other officer not below the rank of such Director, in the Department of the State Government having administrative control of the Small

Scale Industries or micro, small and medium enterprises; and

(ii) one or more office bearers or representatives of associations of micro or small industry or enterprises in the State; and

(iii) one or more representatives or banks or financial institutions lending to micro or small enterprises; or

(iv) one or more persons having special knowledge in the field of industry, finance, law, trade or commerce.

The relevant Sections are reproduced below:

"Section 15. Liability of buyer to make payment.- Where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

Section 16. Date from which and rate at which interest is payable.-Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

Section 17. Recovery of amount due.-For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.

Section 18. Reference to Micro and Small Enterprises Facilitation Council.-

1. Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

2. On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

3. Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

4. Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier locatedwithin its jurisdiction and a buyer located anywhere in India.

5. Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.

Section 19. 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 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.

20. Establishment of Micro and Small Enterprises Facilitation Council.- The State Government shall, by notification, establish one or more Micro and Small Enterprises Facilitation Councils, at such places, exercising such jurisdiction and for such areas, as may be specified in the notification.

Section 21. Composition of Micro and Small Enterprises Facilitation Council.-1. The Micro and Small Enterprise Facilitation Council shall consist of not less than three but not more than five members to be appointed from among the following categories, namely:

i. Director of Industries, by whatever name called, or any other officer not below the rank of such Director, in the Department of the State Government having administrative control of the small scale industries or, as the case may be, micro, small and medium enterprises; and

ii. one or more office-bearers or representatives of associations of micro or small industry or enterprises in the State; and

iii. one or more representatives of banks and financial institutions lending to micro or small enterprises; or

iv. one or more persons having special knowledge in the field of industry, finance, law, trade or commerce.

2. The person appointed under clause (i) of sub-section (1) shall be the Chairperson of the Micro and Small Enterprises Facilitation Council.

3. The composition of the Micro and Small Enterprises Facilitation Council, the manner of filling vacancies of its members and the procedure to be followed in the discharge

> of their functions by the members shall be such as may be prescribed by the State Government."

(26) Section 19 of the 2006 Act applies to an application for setting aside any decree, award or order, made either by the Council or any institution or centre providing dispute resolution services to which reference has been made by the Council. Thus, before the application under Section 19 is made, the matter in dispute between the parties as to the amount due, has already been adjudicated by an impartial forum envisaged in the 2006 Act by following the procedure prescribed in the 1996 Act. The application made under Section 19 of the 2006 Act, thus not being a stage of initial adjudication of the dispute consequent on a unilateral determination by one of the parties, unlike in the case of the Section 17(2) under the 2002 Act, the ratio of ***Mardia Chemicals Ltd's*** case (supra) is not attracted to this case.

(27) Accordingly, we find no merit in the plea of the petitioners that the condition incorporated in Section 19 of the 2006 Act that no application for setting aside any decree, award or other order shall be entertained by any Court unless the appellant (not being a supplier) has deposited seventy- five percent of the amount in terms of the decree, award etc. is arbitrary, illegal and unconstitutional.

(28) Regarding the question as to whether the requirement of pre-deposit for entertaining the appeal, is a mandatory requirement or it should be read as directory, with an inherent power in the appellate authority to waive or reduce the amount where considered necessary, in ***Punjab State Power Corporation Ltd.'s*** case (supra) it was observed as under:

> "25. Now question (c) remains to be answered. With regard to the said question whether the first appellate authority in its right to hear appeal has powers to grant interim protection against imposition of such a condition for hearing of appeals on merits, the following facets of the argument would arise for our consideration:- (a) Inherent powers of the Court to grant interim protection; (b) Whether the expression "shall" used in Section 62(5) of the PVAT Act is mandatory or by implication would be read as directory meaning thereby whether the first appellate authority can grant partial or complete waiver of condition of pre-deposit; The legal position in this regard is being discussed hereinafter.

26. Taking up the issue of 'inherent powers of the Court', it may be observed that Constitution of India and the statutes confer different jurisdiction on the Court whereas "inherent powers" of the court are those necessary for ordinary and efficient exercise of jurisdiction already conferred. They are assuch result of the very nature of its organization and are essential to its existence and protection and for the due administration of justice. The inherent power of a court is the power to do all things that are reasonably necessary for administration of justice within the scope of court's jurisdiction. The basic principal is to be found in Maxwell On Interpretation of Statutes, eleventh Edition at page 350. The statement contained therein is that "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means as are essentially necessary to its execution." Learned counsel for the petitioners vehemently argued that the provision has to be read down to include the right to waive the condition by the appellate authority in an appropriate case. Main emphasis was laid by the learned counsel for the petitioners on the judgment of the Apex Court in ***Income Tax Officer, Cannanore vs. M.K. Mohamad Kunhi,*** AIR 1969 SC 430, wherein the question was whether the Income Tax Appellate Tribunal had the power under the relevant provisions of the Income Tax Act, 1961 to stay recovery of the realization of the penalty imposed by the departmental authorities on an assessee during the pendency of an appeal before it. After considering the matter, the Apex court held that the Appellate Tribunal has power to grant stay as incidental or ancillary to its appellate jurisdiction subject to there being a strong prima facie case and satisfaction that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal. … … ... xxx xxx xxx

30. Adverting to the second facet of the argument as to whether a statute is mandatory or directory, the same depends upon the intent of the legislature and not upon the language in which the intent is clothed. The issue has been considered by a Full Bench of this Court in ***CIT vs. Punjab Financial Corporation,*** (2002) 254 ITR 6 wherein it was noticed that the meaning and intention of the legislature must govern and these

are to be ascertained not only from the phraseology of the provision but also by considering its nature, design and the consequences which would follow from construing it one way or the other. The use of the word "shall" in a statutory provision, though generally taken in a mandatory sense does not necessarily mean that in every case it shall have that effect, that is to say, unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissive or directory in the sense that non compliance with those provisions will not render the proceedings invalid. The relevant portion reads thus:-

"6. Before proceeding further, we may notice some of the principles of interpretation of the statutes. These are

(1) The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it one way or the other-- Crawford on Statutory Construction (Edition 1940, art. 261, page 516). (2) The use of the word "shall" in a statutory provision, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissible or directory in the sense that non-compliance with those provisions will not render the proceedings invalid--***State of U. P. v. Manbodhan Lal Srivastava***, AIR 1957 SC 912 (headnote). (3) All the parts of a statute or sections must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction put to be on a particular provision makes consistent enactment of the whole statute. This would be more so if a literal construction of a particular clause leads to manifestly absurd

and anomalous results which could not have been intended by the Legislature. (4) The principle that a fiscal statute should be construed strictly is applicable only to taxing provisions such as a charging provision or a provision imposing penalty and not to those parts of the statute which contain machinery provisions--CIT v. National Taj Traders [1980] 121 ITR 535 (SC) (headnote)."

xxx xxx

32. Before we record our conclusion on question No.(c), noticed hereinbefore, it would also be apposite to refer to a five Judges Full Bench of this Court in ***Ranjit Singh vs. State of Haryana and others,*** (2012) 2 RCR (Civil) 353 to which one of us (Ajay Kumar Mittal,J.) was a member which was dealing with similar provision i.e. Section 13B of the Punjab Village Common Lands (Regulation) 1961 wherein entertainment of appeal was subject to deposit of amount of penalty imposed under sub section (2) of Section 7 of the said Act with the Collector. This court after considering the entire case law on the point and by reading down the provision held that Section 13B of the said Act would be read down to incorporate within it the power in appellate authority to grant interim relief in an appropriate case by passing a speaking order even while normally insistence may be made on pre-deposit of the penalty. In such a case, the appellate authority would have to give reasons for granting interim relief of stay.

33. It is, thus, concluded that even when no express power has been conferred on the first appellate authority to pass an order of interim injunction/protection, in our opinion, by necessary implication and intendment in view of various pronouncements and legal proposition expounded above and in the interest of justice, it would essentially be held that the power to grant interim injunction/protection is embedded in Section 62(5) of the PVAT Act. Instead of rushing to the High Court under Article 226 of the Constitution of India, the grievance can be remedied at the stage of first appellate authority. As a sequel, it would follow that the provisions of Section 62(5) of the PVAT Act are directory in nature meaning thereby that the first appellate authority is empowered to partially or completely waive the condition of pre-deposit contained therein in the given facts and

> circumstances. It is not to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws. Only when a strong prima facie case is made out will the first appellate authority consider whether to grant interim protection/injunction or not. Partial or complete waiver will be granted only in deserving and appropriate cases where the first appellate authority is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the condition of pre-deposit to continue as a condition precedent to the hearing of the appeal before it. Therefore, the power to grant interim protection/injunction by the first appellate authority in appropriate cases in case of undue hardship is legal and valid. As a result, question (c) posed is answered accordingly."

(29) It was concluded that provisions of Section 62(5) of the VAT Act were directory in nature and that the first appellate authority was empowered to partially or completely waive the condition of pre-deposit by necessary implication and intendment and in the interest of justice. This power was not to be exercised in routine but only on a strong prima facie case being made out and the first appellate authority being satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the condition of pre-deposit to continue as a condition precedent to the hearing of the appeal before it.

(30) Relying on the aforesaid decision, this Court in ***CWP No.12922 of 2014*** titled as ***Maruti Suzuki India Limited*** versus ***Union of India and others*** decided on October 27, 2016 had repelled the plea for quashing Section 45-AA of the Employees State Insurance Act, 1948 in so far as it imposes a condition of pre-deposit of twenty-five per cent of the demanded amount for entertaining the appeal on the ground of being unconstitutional. But it was held that the requirement of pre-deposit under Section 45-AA is not mandatory and the Appellate Authority is empowered to waive, either partially or completely, the requirement of pre-deposit in the same circumstances and conditions as explained in detail in the ***Punjab State Power Corporation Ltd.'s*** case (supra).

(31) ***Goodyear India Ltd.'s*** case (supra) relied on by the Ld. Counsel for the respondents is of no help to them as in that case neither the vires of the Section 19 of the 2006 Act was questioned nor any argument based on the inherent power of the Court was raised as is clear from the following observations:

> **"9.** 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."

(32) Consequently, while upholding the validity of Section 19 of the 2006 Act, it has to be held that the requirement of pre-deposit thereunder is not mandatory and the Court would be empowered to waive, either partially or completely, the requirement of pre-deposit in the same circumstances and conditions as explained in detail in the ***Punjab State Power Corporation Ltd.'s*** case (supra).

(33) As held in the ***Punjab State Power Corporation Ltd.'s*** case this power is not to be exercised in a routine manner or as a matter of course. The Court will consider the question of grant of interim protection/injunction only when a strong prima facie case is made out. Partial or complete waiver will be granted only in deserving and appropriate cases where the Court is satisfied that the entire purpose of the appeal would be frustrated or rendered nugatory because of the condition of pre-deposit for hearing the appeal.

(34) In the context of the present enactment, it also needs to be emphasized that while exercising any such discretion the Court will specially keep in mind the need to ensure timely and smooth flow of credit to small and medium enterprises to minimize the incidence of sickness among them which is one of the prime objectives of the legislation.

(35) Accordingly, the order dated 21.12.2016 (Annexure A-4) is quashed. The matter is remitted to the Court to decide the application for interim injunction/protection before the appeal/ petition is taken up for hearing in the light of the principles set out above.

(36) In cases where such application for interim injunction has not been decided the Court may decide such application in accordance with the principles set out herein.

(37) The writ petitions and the appeal stand disposed of.

Shubreet Kaur