

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P. 448/2007

M/S DECOR INDIA PVT. LTD. Petitioner
Through: Mr. Amit Sibal, Advocate with
Ms. Bimla Sharma & Ms. Vidhi
Goel, Advocates.

versus

MINISTRY OF EXTERNAL
AFFAIRS Respondent
Through: Mr. R.V. Sinha, Advocate with
Mr. A.S. Singh, Advocate.

% Date of Decision : NOVEMBER 17, 2009

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

J U D G M E N T

MANMOHAN, J (ORAL)

1. Petitioner has filed the present petition under Section 34 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as “Act, 1996”) challenging the arbitral Award dated 3rd May, 2007 to the extent that it does not award interest in accordance with the provisions of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (hereinafter referred to as “SSI Act”).
2. Mr. Amit Sibal, learned counsel for petitioner-claimant submitted that the impugned Award is liable to be set aside only insofar as it

rejects petitioner-claimant's plea of compound interest on delayed payment at the rate prescribed under the SSI Act.

3. Mr. Sibal stated that the work order was admittedly placed upon petitioner-claimant on 5th March, 1993, whereas the SSI Act had come into force with effect from 23rd September, 1992. He further pointed out that the Arbitral Tribunal's findings that there was delay in payment and that interest was payable from 7th December, 1994 had not been challenged by either of the parties and had thus become final. Mr. Sibal also placed reliance upon the following provisions of SSI Act :-

1. Short, title, extent and commencement.

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(3) *It shall be deemed to have come into force on the 23rd day of September, 1992.*

2. Definitions.-

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(c) *"buyer" means whoever buys any goods or receives any services from a supplier for consideration;*

(d) *"goods" means every kind of movable property other than actionable claims and money;* (e) *"small scale industrial undertaking" has the meaning assigned to it by clause (j) of section 3 of the Industries (Development and Regulation) Act, 1951 (65 of 1951);*

xxx xxx xxx

(f) *"supplier" means an ancillary industrial undertaking or a small scale industrial undertaking holding a permanent registration certificate issued by the Directorate of Industries of a State 1*[or Union territory and includes,-*

(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956(1 of 1956)].

3. 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 one hundred and twenty days from the day of acceptance or the day of deemed acceptance.]

4. 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 3, 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 interest 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 one-and-a-half time of prime Lending Rate charged by the State Bank of India.

5. Liability of buyer to pay compound interest.- Notwithstanding anything contained in any agreement between a supplier and a buyer or in any law for the time being in force, the buyer shall be liable to pay compound interest (with monthly rests) at the rate mentioned in section 4 on the amount due to the supplier.

6. Recovery of amount due.-[(1) The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of sections 4 and 5, shall be recoverable by the supplier from the buyer by way of a suit or other proceeding under any law for the time being in force.

[(2) Notwithstanding anything contained in sub-section (1), any party to a dispute may make a reference to the Industry Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in that sub-section and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such dispute as if the arbitration or conciliation were pursuant to an arbitration agreement referred to in sub-section (1) of section 7 of that Act.]

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10. Overriding effect.-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

(emphasis supplied)

4. Mr. Sibal submitted that the S.S.I. Act is a special Statute with a narrow scope and applies only to interest on delayed payments for goods or services supplied by small scale industrial undertakings or ancillary industrial undertakings. He relied upon Section 10 of the S.S.I. Act which according to him gives the said Act overriding effect. Mr. Sibal submitted that the Act, 1996, qua the S.S.I. Act, was a general Act. Therefore, applying the principle of *generalia specialibus non derogant*, the S.S.I. Act, being the special statute, would prevail in the case of conflict between its provisions and those of the Act, 1996, which was a general statute qua the S.S.I. Act.

5. On the other hand, Mr. R.V. Sinha, learned counsel for respondent relied upon the reasoning given by the Arbitral Tribunal for rejecting the petitioner-claimant's claim for award of compound interest. The relevant portion of the impugned Award is reproduced hereinbelow :-

“(i) The claimants have taken a plea that they are entitled for compound interest as per “The interest on delayed payments to small scale and ancillary industrial undertakings Act, 1993”. We are not convinced with the plea of the claimants for the following reasons. The arguments given by the claimants to make the said Act applicable are not convincing as the items of the work are mostly such which are to be executed at site without the role of any small scale industrial unit. Further, the claimants have not been exerting their stand for the applicability

of the said Act from the beginning and the stand was taken belatedly as an after thought, showing that they themselves were not sure about the applicability of the said Act. As such the tribunal is of the opinion that the claimants are not entitled to get interest as per the Interest on delayed payments to small scale and ancillary industrial undertakings Act, 1993.”

6. It is well settled that an arbitral award is liable to be interfered by this Court only if the same is contrary to a Statute or a contract or opposed to public policy. (See ***Delhi Development Authority Vs. R.S. Sharma and Company, New Delhi*** reported in (2008) 13 SCC 80).

7. In my opinion, in the present case the Arbitral Tribunal's award is liable to be interfered with as the said Award is contrary to the provisions of SSI Act and is opposed to public policy because it is an admitted position that petitioner-claimant was a registered small scale industrial unit as of 27th March, 1990, which entered into a contract dated 5th September, 1993 with respondent for supply of furniture, furnishings and execution of interior works at the respondent's Regional Passport Office. Consequently, petitioner-claimant is a “supplier” and the respondent is a “buyer” under Sections 2(c) and (f) of SSI Act. Accordingly, the impugned Award is contrary to Sections 3, 4 and 5 of SSI Act which squarely apply to the present case and do not exclude work “executed at site” or services rendered for “execution of interior works” from the purview of SSI Act. If the supplier is a small scale industrial unit, as in the present case, the SSI Act applies irrespective of the fact whether petitioner-claimant had supplied goods or services.

8. In my opinion, since the petitioner-claimant had supplied goods and services to the respondent who had failed to make payment as required under Section 3 of SSI Act, respondent is liable to pay compound interest on the delayed payment as prescribed under Sections 4 & 5 of SSI Act. In fact, in the present case petitioner-claimant had explicitly asked for compound interest under SSI Act by way of its letter dated 27th July, 1993. In the said letter, petitioner-claimant had stated as under :-

July 27, 1993

THE DIRECTOR (EST.)

MINISTRY OF EXTERNAL AFFAIRS

AKBAR BHAWAN

CHANAKYAPURI

NEW DELHI

M/S S.K. DAS CONSULTANTS

A-3 DEFENCE COLONY

NEW DELHI- 110 024.

*SUBJECT: INTERIOR WORKS OF RPO OFFICE AT BHIKAJI
CAMA PLACE N.D.*

Dear Sir,

Our 8th R.A. Bill still remains to be paid even though it is nearly two months since we submitted the same as against the contract agreement stipulation of 7 days. While the originally contracted has been completed long back now even the various miscellaneous extra/additional works have been completed. As a result the amount now due to us from MEA has become big and beyond our capacity and is causing serious financial problems for us in spite of our availing of substantial bank loans and over drafts at 22.5% interest.

In this context we have to draw your attention to the recently promulgated Govt. regulation regarding payment of interest to SSI's (a copy of which is enclosed) which entitles us to 27.5% Compound Interest. In view of the good relations we have enjoyed during the course of the work we have never pressed for this even though there have been earlier delay but now the situation is getting beyond our control as the pressure from our suppliers, sub-contractors etc. is paralyzing our working. As such, if our payment is not received within a week we shall be forced to insist upon the full interest as payable by law since we are a registered SSI.

Further, you had asked us to submit bills of the major capital item purchases which has been done by us even though we are not contractually bound to do so. In this regard, we again have to reiterate that the schedule of the rates chargeable to you are as per our tendered and accepted Rates in the agreement. The cost prices of the components of the work are quite irrelevant and delaying our payments on this pretext is incorrect and un-business like. Our pending running payments should therefore be immediately released.

As you have queried we have to inform you that the purchase bill furnished for item like A.C. Units are for the basic core item & does not include the overheads installation cost & accessories etc.

Thanking You,

*Yours faithfully,
For DÉCOR INDIA PVT. LTD.
Sd/-*

9. The aforesaid letter was followed by petitioner's letters dated 21st September, 1993, 9th November, 1993 and several other letters thereafter. Consequently, the finding of the Arbitral Tribunal that the petitioner-claimant had not been asking for applicability of SSI Act from the beginning and the said stand was taken belatedly, is *ex facie* wrong.

10. I am further of the opinion that the Arbitral Tribunal is bound to apply the provisions of SSI Act to the delayed payment because there is no conflict between the provisions of Section 31(7) of Act, 1996 and Sections 3, 4 and 5 of SSI Act. In fact, Section 31(7) of Act, 1996 reads as under :-

“31. Form and contents of arbitral award. –

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(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of

the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment.”

(emphasis supplied)

11. Though a Constitution Bench of the Supreme Court in the case of ***Central Bank of India Vs. Ravindra and Ors.*** reported of (2002) 1 SCC 367 has held that 1956 amendment in Section 34 of Code of Civil Procedure was intended to deprive the Court of its power to award interest on interest, that means, interest on the interest adjudged, I am of the opinion that by way of a statutory fiction the interest rate, as stipulated in the SSI Act, is deemed to have been agreed upon between parties and the same would deemed to be the rate of interest payable between the date on which the cause of action arose and the date on which Award was made. Moreover, even if there is a conflict between Section 31(7) of Act, 1996 and Sections 3, 4 and 5 of SSI Act, the later Act would prevail in view of the non-obstante clause contained in Section 10 of SSI Act. I may also mention that the SSI Act was specially amended in 1998 in light of and with specific reference to the new Act, 1996. Though 1998 amendment of Section 6(2) of SSI Act specifically takes into account the new Act, 1996, there was no amendment to the provision of Section 10 which provides for overriding effect over any inconsistent provision of any other Act.

12. The other submission that the learned Arbitrator Tribunal was not bound to apply the provisions of the S.S.I. Act is not tenable in law as it would be contrary to the objects of both the Arbitration Act and the S.S.I. Act. It would lead to an anomalous situation where the provisions of the S.S.I. Act would apply in the case of a suit but not in the case of arbitration. This would discourage small scale and ancillary undertakings from including arbitration clauses in their contracts or submitting to arbitration. Since the object of the Arbitration Act is to promote arbitration for the speedy resolution of disputes, the said contention would be directly contrary to this object by discouraging small scale undertakings from using arbitration as a mode of dispute resolution. The said contention also would, of course be contrary to the provisions of the S.S.I. Act.

13. I may also mention that this Court in ***Anant Raj Agencies Vs. D.D.A and Anr.*** reported in ***2005(1) Arb. L.R. 590 (Delhi)*** has upheld the application of provisions of SSI Act to arbitration proceedings under the Act, 1996. The relevant observations of this Court in the aforesaid case are as under:

“68. Laying a challenge to claim No. 6, Ms Aanusuya Salwan learned counsel for DDA urged that the claim was wrongly allowed by the learned arbitrator pertaining to the applicability of the rate of interest. Counsel urged that in view of the provisions of the Indian Interest Act, 1978, interest which could be awarded could not be more than the rate of interest paid by scheduled banks on fixed deposits.

69. Claim No. 6 was for interest at the rate of 24.2% p.a. with quarterly rests on the amount of final bill

w.e.f. 15.1.1990 till date of payment. It may be clarified that date of payment was the sum which was paid by DDA as per DDA's version as the amount payable and paid accordingly.

70. As noted above, work was completed on 15.7.1989. Claimant gave benefit of 6 months and claimed interest w.e.f. 15.1.1990.

71. Learned arbitrator has awarded interest at the rate of 17.5% p.a. with quarterly rests. Learned arbitrator has relied upon a notification issued by the Government of India, being Ex. C-63.

72. Learned arbitrator has also taken note of the fact that the claimant had issued a notice to DDA pointing out that if amount was not paid, claimant would be charging interest.

73. Ex.C-63 is nothing but The Interest on Delayed Payments to Small Scale & Ancillary Industrial Undertakings Act, 1993.

74. The Act came into force on 2.4.1993. As per the Act, small scale and ancillary industrial undertakings were entitled to interest 5% points above the floor rate for comparable lending Floor rate being the highest of the minimum lending rates charged by scheduled banks.

75. Award shows that learned arbitrator has taken note of bank certificates being Ex. C-80 and C-82 and thereupon has awarded interest at the rate of 17.5% p.a. with quarterly rates w.e.f. 14.1.1990.

76. Learned arbitrator ignored that the Act relied upon came into effect on 2.4.1993 and, therefore, said Act could not form the basis of interest w.e.f. 14.1.1990. Posit on therefore would be that the claimant would be entitled to interest as per Interest Act 1978 w.e.f. 14.1.1990 till 2.4.1993 and thereafter as per The Interest on Delayed Payments to Small Scale & Ancillary Industrial Undertakings Act, 1993.

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93. Claim Nos. 16 and 17 pertained to claim for interest from 14.1.1990 till date of reference of pendente lite and future interest respectively.

94. Learned arbitrator has awarded interest @17.5% p.a. w.e.f. 14.1.1990.

95. For the reasons stated while modifying claim No. 16 as awarded, award pertaining to claim Nos. 16 and 17 is modified, in that, interest awarded w.e.f. 14.1.1990 to 1.4.1993 is reduced to 12.5% p.a. with quarterly rests and thereafter effective from 2.4.1993 as awarded.

96. is No. 4518/1996 accordingly stands disposed of. Award dated 23.12.1995 is made a rule of the court with modifications as aforesaid. Post decretal interest is awarded to the petitioner from date of decree till date of payment @ 12% p.a. from date of decree till date of payment.”

14. In fact, the Supreme Court in ***Assam Small Scale Industrial Development Corporation Ltd. and Ors. Vs. J.D. Pharmaceuticals and Another*** reported in (2005) 13 SCC 19 has held as under :-

“37. We have held hereinbefore that clause 8 of the terms and conditions relates to the payments of balance 10%. It is not in dispute that the plaintiff had demanded both the principal amount as also the interest from the Corporation. Section 3 of the 1993 Act imposes a statutory liability upon the buyer to make payment for the supplies of any goods either on or before the agreed date or where there is no agreement before the appointed day. Only when payments are not made in terms of Section 3, Section 4 would apply. The 1993 Act came into effect from 23-9-1992 and will not apply to transactions which took place prior to that date. We find that out of the 71 suit transactions, Sl. Nos. 1 to 26 (referred to in the penultimate para of the trial court judgment), that is supply orders between 5-6-1991 to 28-7-1992, were prior to the date of the 1993 Act coming into force. Only the transactions at Sl. Nos. 27 to 71 (that is supply orders between 22-10-1992 to 19-6-1993), will attract the provisions of the 1993 Act.

38. The 1993 Act, thus, will have no application in relation to the transactions entered into between June 1991 and 23-9-1992. The trial court as also the High Court, therefore, committed a manifest error in directing payment of interest at the rate of 23% up to June 1991 and 23.5% thereafter.

39. Mr Chowdhury has placed reliance upon a Full Bench decision of the Guwahati High Court in *Assam SEB v. Shanti Conductors (P) Ltd.* which having regard to the non obstante clause contained in Sections 4, 5 and 10 of the 1993 Act opined that interest payable thereunder shall embrace within its fold even the contracts which might have been entered into prior to the enforcement of the Act stating:

“However, in such a case interest on the delayed payment which is made after the coming into force of the Act of 1993 would be calculated under the Act from the date of the enforcement of the Act and not from the date of payment prescribed under the agreement.”

With respect, we do not subscribe to the said view as payment of interest at an enhanced rate cannot be made in relation to the transactions where Section 3 will have no role to play.

40. We, therefore, are of the opinion that in relation to the transactions made prior to coming into force of the said Act, simple interest at the rate of 9% per annum, which was the bank rate at the relevant time, shall be payable both prior to date of filing of the suit and pendente lite and as future interest in terms of Section 34 of the Code of Civil Procedure. Interest, however, will be payable in terms of the provisions of the 1993 Act (compound interest at the rate of 23.5% per annum) in relation to the transactions made after coming into force of the Act, both in respect of interest payable up to the date of institution of the suit and pendente lite and till realisation. The judgment and decree to that extent requires to be modified. It is directed accordingly.”

(emphasis supplied)

15. Consequently, the petitioner-claimant is entitled to interest at the rates specified in SSI Act between the date on which cause of action arose, that means, 7th December, 1994 and the date on which Award was made, that means, 3rd May, 2007. Petitioner would further be entitled to interest at the rate 18% per annum from the date of Award to the date of payment. The impugned Award is modified to this extent. With the aforesaid observations, present petition stands allowed.

MANMOHAN, J.

NOVEMBER 17, 2009

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