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

+ **FAO(OS) 39/2009**

Date of Decision : 23rd July, 2009

SAMRAT PRESS Appellant
Through : Mr. Shiv Khorana, Advocate.

versus

UOI Respondent
Through : Mr. A.K. Bhardwaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE NEERAJ KISHAN KAUL

1. Whether the Reporters of local papers may be allowed to see the judgment? YES
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 (ORAL)

% **23.07.2009**

MUKUL MUDGAL,J.

1. This appeal challenges the judgment of the learned Single Judge dated 3rd October, 2008. By the said judgment, the learned Single Judge disposed

of the objections preferred by the Union of India against the Award dated 27th June, 2002, corrected on 10th October, 2002. The facts of the case are as follows:-

a. The appellants were awarded a contract by the respondents for printing of Sainik Samachar Weekly Magazine published in different Indian languages floated by the respondents. As per the appellant, the respondent had delayed and failed to provide the paper and manuscripts in time and delayed it which correspondingly delayed the execution on the part of the appellants on the scheduled date of publication. There had to be continuous supply of paper and manuscripts from the respondent to enable the appellant to publish the journal regularly.

b. The appellants further contended that despite the delay being entirely due to the fault of the respondent, the respondent had wrongly deducted amounts from the bills raised by the appellant. The appellants had invoked arbitration and contended before the Arbitrator that the respondent could not have deducted any amounts from the bills raised and were liable to pay the same to the appellants. The appellants had also claimed interest on the amount by stating that they being an ancillary industry, they were entitled for interest even under the Interest on Delayed Payments to Small Scale and

Ancillary Industrial Undertakings Act, 1993 (hereinafter referred to as ‘the Act’).

2. The Award was passed and the respondents were directed to pay the awarded amount along with 18% interest per annum on claims no.1 and 3 of the appellant from the date of the Award till actual realization. This Award came to be challenged before the learned Single Judge. In sum and substance, the learned Single Judge dismissed the objections preferred by the Union of India except the modification of the rate of interest in the operative portion of the judgment from 18% to 9%. The learned Judge in paragraphs 16, 17 and 18 of the judgment held as follows:-

“16. The claim No.2 of the respondent was for award of interest on the amounts subject matter of claim but @ 23% per annum under the provisions of Small Scale and Ancillary Industrial Undertakings Act, 1993. The arbitrator has, however, allowed interest at 18% per annum only and that too from 1st June, 1996 to September, 2001. The arbitrator having found the monies of the respondent to have been illegally withheld by the petitioner, was fully justified in awarding interest and no fault can be found with the award under the said head. The counsel for the respondent has before this court also sought interest @ 23% per annum relying upon Assam Small Scale Ind. Dev. Corp. Ltd. and Ors. v. J.D. Pharmaceuticals and Anr AIR 2006 SC 131 and M/s Kanhai Engineering (Towers) Pvt Ltd v M/s Telecommunications Consultants India Ltd 2007(3) R.A.J. 60 (Del) and argued that this court should modify the award to award interest @ 23% per annum. However, the respondent having not preferred any objection in this regard, I am not inclined to enhance the rate of interest. Even otherwise, in my view, in the last few years, except recently, the interest rates have been falling and the award of interest at 18% per annum is in consonance with the

prevailing laws.

17. The arbitrator has allowed the claim of the respondent of Rs.5,37,856/- for payment of bills for unprinted issues. The arbitrator has reasoned that the petitioner had in the meeting on 6th November, 1997 agreed that these bills for incomplete work will be processed subsequently but had not processed the same. The arbitrator did not find any merit in the objection of the petitioner in opposition to the said claim. Thus, being factual dispute, and nothing having been shown of the same being contrary to the agreement, no case for interference under Section 34 of the Act is made out. The Apex Court in Arosan Enterprises Ltd. v. Union of India AIR 1999 SC 3804 held findings of arbitrator purely based on appreciation of material on record cannot be interfered with. The last claim of the respondent which has been allowed by the arbitrator is of interest for the delay in the refund of security deposit. The agreement between the parties does not provide for anything required to be done prior to the refund of the security deposit. The arbitrator has on facts found that the security deposit ought to have been refunded in January, 1996 and further found the petitioner to have failed to refund the same without any reason, inspite of repeated reminders of the respondent and thus awarded interest at 18% per annum from July, 1996 till February, 1998 when the security deposit was refunded. The same also being a factual matter and nothing having been shown of the same being contrary to any part of the agreement, no ground for interference with the said part of the award is also made out.

18. The arbitrator has further awarded interest @ 18% per annum on the awarded amounts from the date of award till actual realization. Following Krishna Bhagya Jala Nigam Ltd. v G. Harischandra Reddy and Anr AIR 2007 SC 817 and Flex Engineering Ltd.(supra) I however modify this part of the award. The respondent shall be entitled to interest from date of award till realization @ 9% per annum.”

3. A perusal of the above findings demonstrates eloquently that the learned Single Judge upheld the finding of the Arbitrator that the appellant as a small scale and ancillary industrial undertaking was entitled to the

benefit of the Act. The Arbitrator had awarded interest @ 18% by placing reliance on the Act.

4. The Union of India has accepted the judgment of the learned Single Judge and the appellant is aggrieved only by the directions in paragraph 18 of the judgment extracted above which reduces the awarded interest from 18% per annum to 9% per annum from the date of the award till actual realization. Reference was placed by the learned Single Judge to the judgments of the Hon'ble Supreme Court in the cases of **Krishna Bhagya Jala Nigam Ltd. v. G. Harishchandra Reddy and Anr.** and **Flex Engineering Ltd. v. Antartica Construction Co. and Anr.** 2007 (2) **Arb.LR 387 (Delhi)**.

5. The learned Single Judge had based its reasoning for reduction of the interest post-award on the aforesaid two judgments of the Hon'ble Supreme Court. However, Mr. Khorana, the learned counsel for the appellant has contended that in view of the mandate of the Act, the learned Single Judge was not right in reducing the interest. While doing so, we have noticed that the learned Single Judge had upheld the award of the Arbitrator and granted interest under the Act @ 18% per annum from 1st June, 1996 till September, 2001 which was obviously by following the mandate of the Act. It is not in

dispute that the said finding about the applicability of the Act has not been challenged by the respondent-Union of India. The learned Single Judge of this Court had an occasion to deal with the purpose of the Act in a judgment reported in the case **M/s. Kanhai Engineering (Towers) Pvt. Ltd. vs. M/s. Telecommunications Consultants India Ltd.** which reads as follows: -

“6. The Act is a legislation intended for the benefit of Small Scale Industries and Ancillary Undertakings. It seeks to prevent delay in flow of institutional credit due to such Small Scale Industries and Ancillary Undertakings. The main purpose of the Act as stated in the Objects and Reasons is to provide for and regulate the payment of interest on delayed payments to Small Scale Industries and Ancillary Undertakings. Sections 4 and 5 of the Act being relevant are reproduced herein below:

“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 such rate which is five per cent points above the floor rate for comparable lending.

Explanation. -- For the purposes of this section, “floor rate for comparable lending” means the highest of the minimum lending rates charged by scheduled banks (not being co-operative banks) on credit limits in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949.”

“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.”

7. Small Scale Industries and ancillary undertakings, by the very nature, are those industries which work on smaller capital and infrastructure. Invariably such industries would be more sensitive to any blockade of their working capital. It is also not uncommon that such industries and undertakings are dependent upon interest bearing loans and facilities that are provided by banks and financial institutions. The Act, firstly seeks to create a disincentive for a debtor or lender of/and to such industries and undertakings to withhold their dues by prescribing a higher rate of interest on the dues of the small scale industries and ancillary undertaking, than would normally be payable to other creditors. Secondly, it seeks to insulate the small scale industries and ancillary undertakings against the erosion of their capital on account of the said industries/undertakings having to pay a higher rate of interest on the loans and facilities taken by them from banks and financial institutions, than they may be entitled to recover under the law from their debtors.”

6. In our view, we are in entire agreement with the felicitous reasoning of the learned Single Judge which truly reflects the objects of the Act and hereby reiterate and affirm the said reasoning.

7. Mr.Bhardwaj, the learned counsel for the respondent has contended that the amount was actually not awarded under the Act by seeking reference to the various provisions of the Act such as definition of “appointed day” etc. In our view, such a course of action is not available to the respondent who have chosen to accept the judgment of the learned Single Judge dated 3rd August, 2008 and have not filed an appeal against the said judgment. Accordingly, we are satisfied that the judgment of the learned Single Judge

is unexceptionable except to the extent that it seeks to reduce the interest from the date of the award till the actual realization from 18% to 9% per annum.

8. The judgment referred to by the learned Single Judge namely **Krishna Bhagya Jala Nigam** (supra) and **Flex Engineering Ltd.** (supra) did not arise under the provisions of this Act which awards special rate of interest to micro, small and medium enterprises. Undoubtedly, in the matter of awarding interest, the Court has discretion, which due to changing economic conditions is to be governed by the law laid down in not only the two judgments in the case of **Krishna Bhagya Jala Nigam** (supra) and **Flex Engineering Ltd.** (supra) but also the judgments of the Hon'ble Supreme Court noticed by the Division Bench judgment of this Court in **M/s. India Furnishers vs. Punjab National Bank** in **FAO(OS) No. 261/2001** decided on 22nd April, 2009, that is, **Rajendra Construction Co. vs. Maharashtra Housing & Area Development Authority and Others** 2005 (6) SCC 678; **McDermott International Inc. v. Burn Standard Co. Ltd. and others** 2006 (11) SCC 181; **Rajasthan State Road Transport Corporation v. Indag Rubber Ltd.** (2006) 7 SCC 700 and **Krishna Bhagya Jala Nigam Ltd. v. G.Harischandra** 2007 (2) SCC 720. However, while exercising the

discretion of awarding interest in cases governed by the Act, the Court is duty bound to award the rate of interest mandated in the Statute.

9. Accordingly, the appeal is allowed to the aforesaid extent by restoring as per the Award, the interest from 9% to 18% per annum from the date of the award till actual realization. The rest of the judgment of the learned Single Judge is affirmed. The appeal stands disposed of accordingly. All the pending applications also stand disposed of.

10. No orders as to costs.

(MUKUL MUDGAL)
JUDGE

(NEERAJ KISHAN KAUL)
JUDGE

JULY 23, 2009
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