

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

+ **EFA(OS) 31/2009**

NUMALIGARH REFINERY LTD. Appellant

Through: Mr. Sudhir Chandra, Sr. Advocate with
 Mr. Avneesh Garg and Mr. Parijat Sinha,
 Advocates.

versus

DAELIM INDUSTRIAL CO. LTD. Respondent

Through: Mr. Dharmendra Rautray and Ms. Tara
 Shahani, Advocates.

% Date of Decision : August 26, 2013

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL
HON'BLE MS. JUSTICE PRATIBHA RANI

J U D G M E N T

: REVA KHETRAPAL, J.

1. This Appeal under Order XXI read with Section 10 of the Delhi High Court Act, 1966 is directed against the order dated 29.7.2009 passed in Execution Petition No.242/2008 and order dated

7.8.2009 passed in E.A. No.415/2009 in Execution Petition No.242/2008.

2. Shorn of unnecessary details, the facts are that an award dated 23rd September, 2000 was made in the dispute between the Decree Holder (Respondent herein) and the Judgment Debtor (Appellant herein). The Arbitrators by a majority of 2:1 awarded the following sums to the Respondent:-

“In view of the above decisions, this Tribunal (by majority) awards that the Defendant (NRL) shall make the following payments to the claimant (DIC) within a period of two months (60 days) from the date of receipt of the award:

- 1) The sum of Rs.29.76 Crores.*
- 2) Interest pendente lite on the amount of Rs.29.76 Crores with effect from August 7, 1997 to the date of this Award at the rate of 12 per cent per annum.*
- 3) The amount of US\$ 170,000.*

In the event of failure on the Defendant (NRL) to pay the above awarded amounts under (1), (2) and (3) within the stipulated period indicated above, the Defendant (NRL) shall make further payment of interest at the rate of 18 percent per annum for the post award period on the above awarded amounts i.e. Rs.29.76 Crores plus the amounts of interest of pendente lite period and plus Rupee Value of US\$ 170,000 as prevalent on the date of Award.”

3. From the above, it is clear that the Arbitrators had awarded interest pendente lite on the principal amount of ₹ 29.76 Crores with effect from the date of the claim, i.e., August 7, 1997 to the date of the award, i.e., 23.9.2000 at the rate of 12% per annum and in the event of failure of the Appellant to pay the said awarded amounts

within the stipulated period, 18% interest per annum was to be paid for the post award period on the entire awarded amounts, i.e., ₹ 29.76 Crores plus pendente lite interest plus rupee value of US\$ 170,000 as prevalent on the date of the award towards costs of ICC. This is also clear from the extracted portion of the award reproduced hereinbelow:-

“Besides guidance from these decisions, the provisions of sub-section 7(a) and 7(b) of Section 31 of the Arbitration and Conciliation Act, 1996 (India) shall have to be taken into consideration for granting interest. Interest on post award period has been made mandatory at the rate of 18 percent per annum under sub-section 7(b) of 31 of the above Act.

In this case, pendente lite period is from August 7, 1997 to the date of this award. The post award period is from the date of award till date of payment.

....

Defendant (NRL) shall also be liable to pay interest at the rate of 18 percent per annum for the post award period...”

4. On 10.1.2001, the Appellant filed an application (being Misc. Arbitration No.1 of 2001) under Section 34 of the Arbitration and Conciliation Act, 1996 in the Court of the District Judge, Golaghat. The learned District Judge vide his judgment passed on 7.11.2001 set aside the award dated 23.9.2000. In 2002, the Respondent filed an appeal in the Guwahati High Court against the judgment dated 7.11.2001 passed by the learned District Judge. The Hon'ble Guwahati High Court vide its judgment dated 24.8.2006 allowed the appeal in part upholding the award of the Arbitral Tribunal except so

far as it related to countervailing duty to the extent of ₹ 8.78 Crores. The consequence of the said impugned judgment was that the award of the Arbitral Tribunal aggregating to the amount of ₹ 20.98 Crores was upheld. Being aggrieved by the said judgment, the Appellant filed a Special Leave Petition, being SLP(C) No.20989/2006. On 11.12.2006, the Respondent also filed a SLP, being SLP(C) No.4409/2007 against the said judgment dated 24.8.2006.

5. By the judgment dated 6.9.2007, leave to appeal was granted in the SLP filed by the Appellant and the same was allowed in part. The said SLP which was allowed in part was disposed of as Civil Appeal No.4079/2007. By the same order, the Civil Appeal No.4080/2007 (arising out of the Respondent's SLP) was dismissed. The Hon'ble Supreme Court ordered as under:-

“ 14. The next claim is with regard to interest. The majority of the arbitrators have granted interest on the amount at the rate of 12 per cent pendente lite and post pendente lite at rate of 18 per cent but the minority arbitrator, Justice M.M.Dutt has granted 10 per cent interest uniformly. The grant of interest is discretionary and the majority of the arbitrators has rightly granted interest at the rate of 12 per cent pendente lite and at the rate of 18 per cent post pendent lite. Therefore, no exception can be taken to grant of such interest. Consequently, we affirm this finding of the majority of the Arbitrators and of the High Court.

[Interest at the rate of 12% P.I. & at the rate of 12% post P.I.]

15. Hence, as a result of our above discussion, we are of opinion that the claimant DIC is entitled to

Rs.2 crores for substituted material, Rs.8.9 crores for liquidity damages, Rs.0.2 crore as interest paid on the delayed funds i.e. Rs.11.1 crore (Rs.2 crore + Rs.8.9 crore + Rs.02 crore) and finally interest at the rate of 12 per cent pendente lite from the date of the claim petition till realization. The payment should be made within a period of six months from today failing which it will carry interest at the rate of 15 per cent per annum. The appeal arising out of S.L.P (C) No.20989 of 2006 is partly allowed. The order passed by the High Court is modified as indicated above. The claim of the DIC is decreed to the extent indicated above. However, the appeal arising out of S.L.P(C) No.4409 of 2007 filed by the DIC is dismissed. No order as to costs.”

6. On 14.9.2007, the Respondent filed an application under Order XIII Rule 3 of the Supreme Court Rules, 1966 for correction of a clerical error in the order dated 6.9.2007, consequent to which the Supreme Court on 4th January, 2008 passed the following order:-

“I.A. No.4 has been filed by the respondent for correction of some clerical error in the Judgment dated September 6, 2007 in Civil Appeal No.4079 of 2007.

We have heard learned counsel for the parties.

We do not find any error in the judgment except a minor error in paragraph 14 of the judgment with regard to interest. It should be read “Interest at the rate of 12 per cent pendente lite and at the rate of 18 per cent post pendente lite.”

With this minor modification I.A. No.4 in Civil Appeal No.4079 of 2007 is disposed of.”

7. Prior to the passing of the order dated 4th January, 2008, the Appellant on 4.10.2007 filed a review petition in the Supreme Court against the judgment and order dated 6.9.2007. In view of the order dated 4.1.2008 passed during the pendency of the review petition dated 4.10.2007, the Appellant filed an application for raising additional grounds in the review petition stating therein:-

“1. The petitioner/applicant is constrained to file this application for raising additional grounds in the above-mentioned review petition (filed against the judgment and order dt.06.09.2007) qua the order dt.04.01.2008, whereby interest @ 12% pendente lite and @ 18% post pendente lite on the amount payable by the petitioner/applicant to the respondent, has been granted by this Hon’ble Court, because the grant of interest itself has been challenged in the said review petition pending before this Hon’ble Court.

3. As such, it is submitted further that the said order dt.04.01.2008 passed in I.A No.4 modifying the said judgment and order dt.06.09.2007 may cause prejudice to the said grounds taken in the review petition and it may also be contended that the said order dt.04.01.2008 finally decides the issue with regard to interest even though the said review petition challenging the said issue is still pending.

4. In such circumstances, the petitioner/applicant craves leave of this Hon’ble Court to seek review of the said order dt.04.01.2008 granting interest on the following additional grounds (being numbered in order/subsequent to the grounds already raised in the review petition), taken without prejudice to one another as well as to the grounds taken in the said review petition.

GROUND

.....

XI. FOR THAT the grant of interest @ 12% pendente lite and @ 18% post pendente lite on the amounts that may become payable by the petitioner/applicant to the respondent upon disposal of the said review petition is neither judicious exercise of the discretion vested in this Hon'ble Court nor in keeping with the provisions of section 34 of the Code of Civil Procedure, 1908 and section 3 of the Interest Act, 1978 and the rate ought to be such that it does not create an unnecessary burden upon any party; and as submitted in the review petition, the rate of interest granted by this Hon'ble Court in the instant case is much higher than the prevailing rate of interest in relation to commercial transactions and foists upon the petitioner an unreasonable burden and liability, which under the law, the petitioner is not liable to pay; and

XII. FOR THAT in view of the grounds raised in the review petition and the additional grounds raised in respect of the order dt.04.01.2008 in this application, this Hon'ble Court ought to grant another opportunity of hearing so as to enable the petitioner/applicant to expound the issues raised by issuing notice in the review petition."

8. The above review petition was dismissed by the Supreme Court on 11.3.2008. On 2.7.2008, the Respondent filed Execution Petition before this Court for execution of decree for a sum of ₹ 34,22,19,014.06. During the pendency of the Execution Petition, on 20th August, 2008, a curative petition was filed by the Appellant against the order dated 6.9.2007 as well as the order dated 11th March, 2008 passed in the review petition. On 19.12.2008, the Appellant in

the curative petition filed an application raising additional grounds. The following grounds which are relevant for the purposes of the decision of the present appeal are reproduced hereunder:-

“XVIII. FOR THAT:

(a) The award of interest on wrong interpretation of sub-section 7(b) of Section 31 of Arbitration and Conciliation Act, 1996 and wrongly holding in the award “Interest on post award period has been made mandatory at the rate of 18% per annum under sub-section 7(b) of 31 of the above Act” and ignoring the fact that interest rate in India is much lower than 18% p.a and 0% in Korea;”

.....

XXXII. FOR THAT the grant of interest @ 12% pendente lite and @ 18% post pendente lite on the amounts that may become payable by the petitioner to the respondent upon disposal of the said review petition is neither judicious exercise of the discretion vested in this Hon’ble Court nor in keeping with the provisions of section 34 of the Code of Civil Procedure, 1908 and section 3 of the Interest Act, 1978 and the rate ought to be such that it does not create an unnecessary burden upon any party; and as submitted in the review petition, the rate of interest granted by this Hon’ble Court in the instant case is much higher than the prevailing rate of interest in relation to commercial transactions and foists upon the petitioner an unreasonable burden and liability, which under the law, the petitioner is not liable to pay;

.....

XL. FOR THAT this Hon’ble Court ought to have appreciated that the Ld.Arbitral Tribunal while

awarding interest has wrongly proceeded with the understanding that “interest on past award period has been made mandatory at the rate of 18 percent per annum under sub section 7(b) of section 31” of the said Act and awarded interest accordingly. It is submitted that interest on post award period has not been made mandatory @18% p.a. under Section 31(7)(b) of the said Act, as has been held by the Hon’ble Arbitral Tribunal, on the basis of which, the Tribunal awarded interest at the said rate.”

9. The aforesaid curative petition filed by the Appellant was dismissed by the Hon’ble Supreme Court on 28.4.2009.

10. In Execution Petition No.242/2008, a learned Single Judge of this Court by his order dated 29.7.2009 after observing that there was a difference in the calculation in the exact decretal amount due to the Decree Holder held that what in fact appeared to be payable by the Judgment Debtor to the Decree Holder was “*interest @ 12% pendente lite on the sum of ₹ 11.1 crores and interest @ 18% per annum on the sum of ₹ 11.1 crores plus the pendente lite interest and rupee value of US\$ 170,000 as prevalent on the date of the award. 18% interest was payable for the period of six months from the date of the order of the Supreme Court i.e. ending on 5th March, 2008. For any delay beyond 5th March, 2008 in making payment of the above amount, it was to carry interest @ 15% per annum*”. Accordingly, the learned Single Judge directed that the Appellant/Judgment Debtor will make payment of the entire sum as claimed in paragraph 12 of the Execution Petition filed by the Respondent/Decree Holder together with future interest upto the date

of payment. In other words, interest would be payable at the rate of 18% per annum on the amount due upto 5th March, 2008 and 15% per annum from 6th March, 2008 till the date of payment.

11. On 6th August, 2009, the Appellant filed a review petition, being E.A. No.415/2009 seeking review of the order dated 29th July, 2009 passed by the learned Single Judge, which was dismissed by the learned Single Judge by his order dated 7th August, 2009.

12. The sole submission raised before us by Mr. Sudhir Chandra, learned senior counsel for the Appellant is that in paragraph 15 of its judgment dated 6th September, 2007 the Supreme Court had made a conscious departure from what it had held in paragraph 14 of the same judgment with regard to post-pendente lite interest. It is submitted that while in para 14 the award of 18% post pendente lite interest by the Arbitrators was affirmed, in the operative portion of the judgment of the Supreme Court, i.e., para 15, it was categorically stated that the interest to be paid till the date of realization was 12% pendente lite and for the failure to pay the amount within six months from the date of the order of the Supreme Court, interest was payable @ 15% per annum. In other words, it is the submission of Mr. Chandra that the Supreme Court did not intend awarding post pendente lite interest at the rate of 18% per annum. According to Mr. Chandra, the Supreme Court in paragraph 14 of the judgment clearly observed that the grant of interest is discretionary and hence for the purpose of execution the Supreme Court in para 15 of the judgment awarded interest at the rate of 12% pendente lite from the date of the claim petition till realization with the direction that the payment

should be made within a period of six months from the date of the order, failing which it will carry interest at the rate of 15% per annum. Mr. Chandra contends that the interpretation placed by the learned Single Judge on para 14 and para 15 of the judgment of the Supreme Court would mean allowing the Respondent/Decree Holder to claim compounding of interest, i.e., the claim of 18% interest on the total of the principal amount of ₹ 11.1 Crores and interest at the rate of 12% (₹ 4,16,99,000/-) thereon.

13. We have heard the learned senior counsel for the Appellant at length and we do not find any force in the submissions made before us. First, a look at paragraph 12 of the Execution Petition No.242/2008, wherein the Decree Holder has shown the calculation of the amount due to it thus:-

“12. The judgment Debtor in terms of the judgment of the Hon’ble Supreme Court dated 06.09.2007 and order dated 4.1.2008 owes the Decree Holder the amount shown below as on 2nd July, 2008.

(A)

(a) Principal amount = 11,10,00,000.00

(b) Interest @ 12% = 4,16,99,000.00

(from 7.8.1997 to 23.9.2000)

(3 years 1 month 17 days)

Total (a) + (b) = 15,26,99,000.00

Interest @ 18% on (a) + (b)

(from 24.9.2000 to 29.2.2008)

(7 years 5 months 6 days) = 20,43,11,262.50

Total (A) = 35,70,10,262.50

(B)

ICC-Fee (NRL's share) = 78,79,500.00
(USD 1,70,000/- converted
@ 46.35 Indian Rupee/per USD)

Interest @ 18%
(from 24.9.2000 to 29.02.2000)
(7 days 5 months 6 days) = 1,05,42,771.00

Total (B) = 1,84,22,271.00
Total (A) + (B) = 37,54,32,533.50

Part-payment received on
29.2.2008 = (-) 4,98,97,205.00

Amount due (AD)
(as on 29.02.2008) = 32,55,35,328.00

Interest @ 18% on amount due (AD)
(from 1.3.2008 to 5.3.2008)
(5 days) = 8,13,838.32.00

Interest @ 15% on amount due (AD)
(from 6.3.2008 to 2.7.2008)
(3 months 27 days) = 1,58,69,847.24.00

Grand Total = 34,22,19,014.06.00

Rupees Thirty Four Crores Twenty Two Lakhs
Nineteen Thousand Fourteen and Paise Six”.

14. From the aforesaid calculations submitted by the Decree Holder, it is clear that the principal amount works out to ₹ 11,10,00,000/-. Interest at the rate of 12% per annum from the date of the institution of the claim till the date of the award (i.e., from

7.8.1997 to 23.9.2000) comes to ₹ 4,16,99,000/- and interest at the rate of 18% on the principal amount and the interest pendente lite for a period of 7 years 5 months 6 days (from 24.9.2000 to 29.2.2008) comes to ₹ 20,43,11,262.50, totalling ₹ 35,70,10,262.50. The ICC fee on conversion works out to ₹ 78,79,500/- and with interest at the rate of 18% to ₹ 1,05,42,771/- from 24.9.2000 to 29.2.2008. The grand total of the aforesaid amount comes to ₹ 37,54,32,533/- (₹ 35,70,10,262.50 + ₹ 1,05,42,771/-). After deducting the part payment received on 29.2.2008, the amount due as on 29.2.2008 comes to ₹ 32,55,35,328.50. Interest at the rate of 18% on amount due is calculated to be in the sum of ₹ 8,13,838.32 from 1.3.2008 to 5.3.2008 (five days) and thereafter interest at the rate of 15% per annum is calculated from 6.3.2008 to 2.7.2008. Thus, on interpretation of the Calculation Chart reproduced above, interest at the rate of 18% was payable post award for a period of 6 months, i.e., from 6.9.2007 till 5.3.2008 and thereafter at the rate of 15% per annum till realisation. This is also in line with the direction given by the Supreme Court in paragraph 15 of the judgment that payment should be made within a period of six months from the date of the judgment, i.e., September 6, 2007, whereafter (i.e. from 5.3.2008) it will carry interest at the rate of 15% per annum, meaning thereby that interest at the rate of 18% per annum on the amount due was to be paid upto 5th March, 2008 and at the rate of 15% per annum from 6th March, 2008 till the date of payment and this is exactly the manner in which the Decree Holder has calculated the interest.

15. We are fortified in coming to the aforesaid conclusion by the order dated 4th January, 2008 passed by the Supreme Court directing that the portion in parenthesis at the foot of para 14 should read as *“Interest at the rate of 12% pendente lite and at the rate of 18% post pendente lite”*, passed in I.A. No.4 in Civil Appeal No.4079/2007. The Respondent contended before the Supreme Court that the portion in parenthesis was the summation of what was stated in para 14 and that the award of the Arbitrators of 18% post pendente lite interest was affirmed and this was in essence accepted by the Supreme Court in the order dated 4th January, 2008. As regards the submission of the Appellant with regard to compounding of interest, we find on a cumulative reading of paras 14 and 15 of the judgment of the Supreme Court dated 6th September, 2007 (as clarified on 4th January, 2008) that in essence what is payable by the Appellant to the Respondent is interest at the rate of 12% pendente lite on the sum of ₹ 11.1 Crores and interest at the rate of 18% per annum on the sum of ₹ 11.1 Crores plus the pendente lite interest and rupee value of US\$ 170,000 as prevalent on the date of the award. Interest at the rate of 18% was payable for the period of six months from 6.9.2007, i.e., the date of the order of the Supreme Court ending on 5th March, 2008 as clarified in para 15 of the judgment. For any delay beyond six months in making payment of the above amount, it was to carry interest at the rate of 15% per annum till realization. This is also clear from the fact that the Supreme Court has clearly stated in para 15 that the order passed by the High Court is modified as indicated above, meaning thereby that 18% interest would be payable till 5.3.2008 and

thereafter interest at the rate of 15% per annum would become payable.

16. Before parting with the case, we may note that learned senior Counsel for the Appellant in the course of his submissions had placed reliance on the judgments of the Supreme Court rendered in *State of Rajasthan and Anr. vs. Nav Bharat Construction Co., (2002) 1 SCC 659* and *Pure Helium India (P) Ltd. vs. Oil & Natural Gas Commission, (2003) 8 SCC 593* in support of his case. In *Pure Helium India (P) Ltd. (supra)*, which was a case under the Arbitration Act, 1940, the Supreme Court in para 57 of the judgment specifically observed that in order to do complete justice to the parties in exercise of jurisdiction under Article 142 of the Constitution of India, it was thought appropriate to direct that the award shall carry interest at the rate of 6% per annum instead and in place of 18% per annum. It was specifically stated that this however shall not be treated as a precedent. In the case of *State of Rajasthan (supra)*, the District Court had awarded interest at the rate of 15% from the date of the decree, which was modified by the Supreme Court to 6% per annum considering the dispute involved and the overall circumstances. We do not see the relevancy of the aforesaid judgments. In any event, the Supreme Court in the instant case has upheld the award of post pendente lite interest at the rate of 18% per annum for a period of six months and thereafter reduced the interest to 15% per annum till the date of realization.

17. We, therefore, affirm the findings of the learned Single Judge and dismiss the appeal as being without merit. There will be no order as to costs.

**REVA KHETRAPAL
JUDGE**

**PRATIBHA RANI
JUDGE**

August 26, 2013
km