

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

%

Judgment delivered on: May 30, 2014

+

EX.P. 288/2011 & E.A. (OS) No. 618/2011

SIRI RAM SYAL & SONS (ENGINEERS) PVT. LTD. Decree Holder
Through Mr.Kailash Vasdev, Sr. Adv
with Mr. Shreyans Singhvi,
Ms. Ekta Mehta, Ms.Joanne
Pudussery and Mr. Umrao
Singh Rawat, Advs.

Versus

IRCON INTERNATIONAL LTD Judgement Debtor
Through Mr.K.R. Gupta, Adv. with Ms.
Priti, Adv.

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The decree holder has filed the present execution under Order XXI Rules 9 & 11(2) CPC read with Section 17 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”) for executing the award dated 27th November 1997 which was made a rule of the court vide judgment dated 20th August 2008 of this court in CS (OS) No.19A of 1998 and judgment dated 28th January 2010 and 9th July 2010 passed by the Division Bench of this court in FAO (OS) No. 459 of 2008 and Review Petition No. 122 of 2010 respectively.

2. The decree holder seeks the execution of the decree being the difference in the following amounts payable under the rates agreed between the parties being :-

- (a) US \$ 6,72,538/- being the difference payable under the exchange rates agreed between the parties.
- (b) BDT 84,04,325/- deducted towards 5% tax admittedly when no tax was deductible from the payment to the decree holder.
- (c) Interest @ 8% on US \$ from 20th September 2010 to 12th October 2011 being US \$ 57,045/-.
- (d) Interest on BDT @14% from 20th September 2010 to 12th October 2011 being BDT 12,47,523/-
- (e) *Pendent lite* and future interest till actual payment on the amounts payable by the judgment debtor to decree holder.

3. Mr.K.R. Gupta, learned counsel appearing on behalf of judgment debtor argued that the entire payment as per Award has already been received by the decree holder. Nothing is due. The execution petition is liable to be dismissed. Mr.Gupta has mainly relied upon the reply filed by his client wherein it was not denied that the award made in the present case was in foreign currency, i.e., US Dollars (USDs) and Bangladesh Takas (BDTs). He submitted that as acknowledged by the decree holders by his writing dated 3rd November, 2010, the decree holder received USD 16,95,414.27 and BDT 4,63,09,981.25. The USD amount which included interest upto 20th September, 2010 as per the award, was transferred to the bank account of the decree holder on 5th October, 2010. By the said writing dated 3rd November, 2010 the decree holder admitted the correctness of he said amount being as per the award, decree holder, except the claim of claimed interest for the period from 20th September, 2010 to 5th October,

2010. With regard to BDT payment, the amount payable as per the award upto 20th September, 2010 inclusive of interest was 4,63,09,981.25. However, on account of tax payable as per the statutory requirements, a sum of Rs. 84,04,325 BDT was withheld. The rest of the payment of 3,79,05,656.00 BDT was made.

By its letter dated 7th October, 2010, the decree holder requested that as his BD Taka Account has already been closed, the payment of BDT portion may be made to him in US Dollars. Accepting the said request, the respondent made payment of the BDT portion of the award to the decree holder in USD at the exchange rate current on the date of payment. Therefore, payment of BDT 37,905,656.00 was made to the decree holder converted into USD (=5,28,478.00 USD). This converted payment of BDT into USD was made on 4th November, 2010 by transfer to the bank account of the decree holder.

The total principal amount awarded in USD in favour of the decree holder was 8,34,120.34 USD from 21st September, 2010 to 4th October, 2010, comes to 2,742.31 USD. The total principal amount of BDT awarded in favour of the decree holder was 1,61,07,665 BDT. Interest on the said amount of 1,61,07,665 BDT @ 14% p.a. from 21st September, 2010 to 3rd November, 2010 comes to 2,71,844.44 BDT. Withheld amount towards taxes is BDT 84,04,325.

4. The judgment debtor as per calculation of payment has remitted to the decree holder:

- i. On account of interest @ 8% p.a. on the total USD principal component of the award, namely, 8,34,120.34 USD from 21st September

- | | |
|--|------------------|
| 2010 upto 4 th October 2010. | USD 2,742.31 |
| ii. Interest @ 14% p.a on the total BDT principal component of the award ,namely, 1,61,07,665 BDT from 21 st September 2010 upto 4 th November 2010. | BDT 2,71,844.44 |
| iii. Withheld amount towards tax | BDT 84,04,325.00 |

The argument of the decree holder is that the payment made by the judgment debtor was not in time as per award therefore, the decree holder is entitled to the interest as fixed under the award. No objection certificate dated 3rd November 2010 was issued by the decree holder that the amounts are subject to verification. The rate of conversion was not to be changed from what it was agreed upon between the parties. The conversion rates have been made contrary to the agreement fixed rates. The payment made by judgment debtor is shown in items No. (ii) and (iii) in March, 2012 which was during the pendency of the present execution petition accepted by the decree holder without prejudice.

5. It is submitted that the decree holder has rightly informed the judgment debtor about the due payments and outstanding in its letter dated 11th November, 2010. In the said letter, it was also pointed out to the judgment debtor that the conversion rate is taken as on 4th November, 2010 against the agreement. The said amount should have been paid as per agreement.

6. The letter dated 11th November, 2010 addressed to the judgment debtor relied upon by the decree holder is reproduced hereunder:

“SHRI RAM SYAL & SONS (ENGINEERS) PRIVATE LTD.

Syal Farm, 6 Green Avenue, Vasant Kunj, New Delhi-1100 70

Dated : 11/11/2010

To,
IRCON INTERNATIONAL LTD.
C-4, DISTRICT CENTRE,
SAKET,
NEW DELHI -110070.

SUB: **JUDGMENT AND DECREE DATED 20.01.2010 PASS
IN FAO NO. 459/ 2008 AND ORDER DATED 09.07.2010
IN REVIEW APPLICATION NO. 122 OF 2010 BOTH
TITLED AS SIRI RAM SYAL & SONS (ENGINEERS)
PVT. LTD. VS. IRCON INTERNATIONAL LTD.**

KIND ATTENTION GM (C & A) Sh. Surinder Kumar

Dear Sir,

- (i) US \$ 16,95, 414 = 27 on 05.10.2010
- (ii) US \$ 5,28, 478 = 00 ON 04.11.2010

We would like to state that the following payments are due and outstanding which may kindly be made to us in order to comply with the judgment and decree passed by the Hon'ble High Court.

1. Regarding US \$ 16,95,414/-. The above payment has been made by including interest upto 20.09.2010 while the date of actual payment is 05.10.2010. Thus interest for the period from 21.09.2010 to 05.10.2010 is still payable to us.
2. Similarly the amount paid in BDT, Converted into US \$ includes interest upto 20.09.2010 though the actual date of payment is 04.11.2010. Thus interest for the period from 21.09.2010 to 04.11.2010 is still payable to us.
3. Difference in conversion rate : As per the agreement the Conversion rate from BDT to US \$, is fixed and is as under:-

1 US \$ = 31.5613 Taka

But despite repeated requests and meetings the above mentioned rate as per the agreement has been totally ignored and avoided and instead present date conversion rate as on 04.11.2010 has been taken which is without any basis and against the agreement and is not at all acceptable to us.

The payment should be made to us as per the agreement and fixed conversion rate mentioned in the agreement i.e. 1 US \$ = 31.5613 Taka be applied.

4. Taxes: No tax has ever been deducted till date from our US \$ and Bangladesh Taka Portion bills. As per the agreement the exemption from taxes and privileges are to be the same as enjoyed by IRCON.

But we regret to state that huge amount has been withheld by IRCON without any reason. The same should be released to us with immediate effect along with interest for the period the amount has been withheld.

The above payments may please be made to us within one week otherwise we will have no option but to take legal recourse.

Thanking you

Yours faithfully,

For Siri Ram Syal & Sons (Engineers) Pvt. Ltd.

(Mahesh Syal)
Director

Enclosed:

1. Copy of the letters of the acceptance dated 19.01.1989 from IRCON to SRS.”

7. The decree holder has filed the following calculation sheet showing balance amount payable:

		Claimed		Paid by IRCON				Balance	
1.	Difference payable under the Exchange Rate agreed between US\$ & B.D. Tk	US \$ 672538	B.D. Tk -	US \$ -	B.D. Tk -	Indian Rs. -	-	US\$ 672538.00	B.D. Tk -
2.	5% Tax	-	8404325	-	-	4952332	Due Tk 8404325 @ 31.5613 = US\$266286 (-) Paid Tk 8404325@0.58926 = Rs.4952332 @ 0.58926 = US\$100614 Thus Net Balance = US\$266286 (-) <u>US\$100614</u> <u>US\$100614</u>	165672.00	-
3.	Interest on US\$@ 8% from 20.09.2010 to 12.10.2011	57045	-	2742.31	-			54302.69	
4.	Interest on B.D.Tk from 20.09.2010 to 12.10.2011 @ 14%		1247523			278022			969501
	Total							892512.69	969501

Grand Total = US \$ 892512.69

B.D. Tk 969501@ 31.5613 = US\$30718.00

Grand Total Payable = US\$ 923230.69

8. As per “No Objection Certificate” issued by the decree holder, there are admissions having received the payment in view of award passed. From the said certificate, it appears that the decree holder asked for interest from 20th September, 2010 to 5th October, 2010 and the receipt of payment subject to verification. The submission of the judgment debtor is that the amount has been paid as per award which attained finality between the parties. Extract of “No Objection Certificate” issued by decree holder reads as under:

“SHRI RAM SYAL & SONS (ENGINEERS) PRIVATE LTD.

Syal Farm, 6 Green Avenue, Vasant Kunj, New Delhi-110 070

NO OBJECTION CERTIFICATE

This is to certify that we have received all payment with regard to the full and final settlement towards satisfaction of award dated 27.11.1997 in terms of Order dated 09.07.2010 passed in Review Petition No. 122/2010 in FAO (OS) 459 of 2008 decided on 28.01.2010 by Divisional Bench of Delhi High Court in the matter of Shri Ram Syal & Sons (Engineers) Pvt. Ltd. Vs. Ircon International Limited. The details of payment received are as under: -

Bangladesh Taka (BDT): 4,63,09,981.25

USD 1,6695,414.27

The abovementioned amount includes interest up to 20.09.2010 as per the court's order dated 09.07.2010 passed in Review Petition No. 122/2010 in FAO (OS) 459 of 2008. We acknowledge that the USD portion already stands transferred to our account on 05.10.2010, but we are eligible for interest amount on awarded amount from 20.09.2010 till the date of payments and the same be paid to us separately. We understand to give our consent to deduct applicable statutory tax on the said amount payable to us. In case, the liability of income tax is not to be borne by us, the same may be refunded at the earliest. The above amounts are subject to verification and conversion rate from BDT to USD as per contract agreement.

We have executed this No Claim Certificate of our own free will in the state of sound mind, fully understanding the meaning and substance of it

without any coercion or undue pressure from IRCON Int. Ltd. or anybody.

For and on behalf of M/s Siri Ram Syal & Sons (Engineers) Pvt. Ltd.

Sd/-

(Mahesh Syal)

Date: 3.11.2010

Place: New Delhi.

USD = 21.09.10 – 04.10.2010 : USD-2742.31

BDT = 21.09.10 – 03.11.2010 : BDT – 271844.44”

9. The judgment debtor has submitted that the interest at the rate of 8% p.a. on the said principal amount 8,34,120.34 USD from 21st September 2010 upto 4th October 2010, which comes to 2,742.31 USD. Interest on the said principal amount of 1,61,07,665 BDT at 14% p.a. from 21st September 2010 upto 3rd November 2010 comes to 2,71,844.44 BDT. Withheld amount towards taxes is BDT 84,04,325.

The said amount i.e. interest @ 14% on the total B.D.Tk. principle component of the award from 21st September, 2010 upto 4th March, 2010 and withheld amount which was calculated upto 4th November, 2010 after converting into Indian currency at the exchange rate as current on 5th March 2012 and sum of Rs.52,47,510/- has been remitted to the decree holder vide cheque no. 744883 dated 16th March 2012 by registered post on 21st March 2012. The said rate of exchange at the time of making of payment is Rs.49.2250 equivalent to 1 US Dollar and Re.1 equivalent to 0.58926 BDT. The case of judgment debtor is that in view of the same, the entire payment as per award is paid and it is wrongly claimed by the decree holder that the decree holder is entitled to the contractual rate of conversion. It is argued by judgment debtor that as the award has been made a rule of the court and the

same is only to be satisfied. The interest and withhold amount in BDT was paid in Indian currency by converting the foreign currency into Indian currency at the conversion rate prevailing on the date of payment.

10. It is averred in the rejoinder by the decree holder that it was agreed between RIP Roads & Highway Department, Govt. of Bangladesh and the judgment debtor that a fixed conversion rate for payment in US\$ instead of Bangladesh Taka be adopted and would be applicable. But the judgment debtor had fixed the conversion rate from US\$ to BD Taka with the decree holder on back to back basis, which was applicable for escalation payments also. It was therefore agreed between the parties and a policy was made that irrespective of any conversion rate on a given point of time, a fixed conversion rate would be applicable between the decree holder and the judgment debtor for all times to come.

11. It is also stated that after the fixed conversion rate from USD to BDT was agreed, a letter dated 21.12.1988 was issued by the Decree Holder, which was agreed by the judgment debtors vide letter dated 19.01.1989, which is part of the agreement between the parties. It is stated that as per the said agreed fixed rate of conversion was 1 USD = BDT 31.5613. Learned counsel has referred few decisions in support of his submission and stressed that the fixed conversion rate from US\$ to BDT was agreed by the judgment debtor in their letter which was part of the agreement between the parties therefore, the terms of agreement and admission made in the correspondence cannot be ignored. Thus, the decree holder is entitled for the amount claimed in the execution petition.

12. Mr. Gupta has submitted that the decisions referred do not help the case of the decree holder as the facts in the present case are different. In the said decisions it was held that where an award directs payment of a sum of

money in a foreign currency and the court while pronouncing judgment provides for its rupee equivalent at the rate of exchange prevailing on the date of award, the court will not be pronouncing judgment “according to the award” if in the meantime the rate of exchange has varied, because at the date of the judgment the foreign currency equivalent of the amount in rupees provided in the judgment would be different from the foreign currency sum directed to be paid by the award. He argued that there is no dispute with regard to proposition of law. In the present case the interest and withheld amount was paid in Indian currency on the principal amount at the rates prevailing on the date of payment. The entire payment was made as per award. Further demand of the decree holder is that the conversion has been contrary to the fixed rate of agreement and is not payable. It is argued by Mr.Gupta that once the award was passed which has become decree under Section 36 of the Act, the decretal amount has to be paid as per decree and not as per agreed fixed rate of the agreement.

13. I agree with Mr.Gupta, learned counsel for the judgment debtor, that once the award attains finality between the parties, the amount is to be paid in terms of the award which become decree. When the award becomes decree, the Executing Court cannot go beyond the decree. In the present case, the decree holder itself earlier correctly understood the position and accepted the full and final payment in view of “No Objection Certificate” dated 3rd November, 2011. The decree holder appears to have changed its stand which is not permissible in law. It is specifically mentioned in the said “No Objection Certificate” in which it was agreed by the decree holder that the said certificate is issued as per its own free will and in state of sound mind and fully understanding the meaning and substance of it without any coercion or undue pressure from the judgment debtor. As far as the

argument of the decree holder that the said “No Objection Certificate” was issued subject to verification if the said certificate is read carefully, the said statement was made apparently with regard to deduction of tax (withheld amount) towards liabilities of income tax liabilities and refund thereto in case the said liabilities are not borne by the decree holder. In the present case, the judgment debtor later on agreed to refund the withheld amount therefore now at this stage, no advantage can be derived by the decree holder. The amount was to be paid as per award. The claims of the decree holder are unreasonable, an afterthought and against the law.

14. This Court is of the view that once the award become the decree and it attains the finality between the parties. The amount payable by the judgment debtor as per decree and not as per agreement between the parties. Ultimately the decree is guiding factor and enforceable under the law. The executing court cannot go behind the decree. The contention of the decree holder in this regard is rejected.

15. Now, as far as the question of calculation of decretal amount is concerned, the following chart indicates the amount payable by the judgment debtor to decree holder as per award :

Bangladesh Taka (BDT)		US Dollar (USD)	
Principle Amount	1,69,21,488.00	Principle Amount	8,39,177.15
Less set aside by Court	<u>8,13,123.00</u>	Less set aside by Court	<u>5,057.00</u>
In the subsequent orders passed on 20.8.2008, 28.1.2010 and 9.07.2010	1,61,08,365.00	In the subsequent orders passed on 20.8.2008, 28.1.2010 and 9.07.2010	8,34,120.15
Plus pendent-lite interest from 10.04.1995 to 27.11.1997 allowed on BDT 42,53,755 (50,66,878 minus 8,13,123 @ 12% p.a.	13,37,380.57	Plus pendent-lite interest from 10.04.1995 to 27.11.1997 allowed on US\$ 45,514.08 (50,571.08 minus 5,057 @ 8% p.a.	7,154.70

Plus interest on BDT 1,61,08,365 from 27.11.1997 upto 20.09.2010 @ 14%	2,88,64,235.68	Plus interest on USD 83,420.15 from 27.11.1997 upto 20.09.2010 @ 8%	8,54,139.42
	4,63,09,981.25		16,95,414.27

Payment made by the judgment debtors

	Bangladesh Taka (BDT)		US Dollar (USD)	
(i)	Paid on 03.11.2010	3,79,05,656.25 (*)	Less paid on 05.10.2010	16,95,414.27 (**)
(ii)	Balance withheld amount towards tax	84,04,325.00		Nil
(iii)	Plus interest from 21.09.2010 upto 03.11.2010 @ 14% p.a.	2,71,844.40	Paid interest from 21.09.2010 upto 05.10.2010	2,742.31 (***)
	Total	86,76,169.40	Net Balance	Balance Nil
	Less Paid on 16.03.2012	86,76,169.40 (***)		

(*) Paid in USD, at DH's request vide his letter dated 07.10.2010, at the exchange rate current on the date of payment. Receipt acknowledged vide DH's no objection certificate dated 03.11.2010.

(**) Receipt acknowledged vide DH's no objection certificate dated 03.11.2010.

(***) Paid in Indian currency vide consolidated cheque dated 16.03.2012 for Rs.52,47,510/- at the exchange rate current on 05.03.2010.

16. It is the admitted position that the under two heads mentioned above, being (ii) & (iii), i.e. interest of 14% on the total BDT i.e. 2,71,844.40 and withheld amount towards tax i.e. BDT 84,04,325.00 was calculated upto 4th November, 2010 but the amount i.e. Rs.52,47,510 in Indian currency at the conversion rate prevailing was sent on 21st March, 2012. There was delay in paying the interest. The decree holder is entitled for interest for the said period i.e. between 5th November, 2010 to 21st March, 2012 if already not

paid. The same is payable at the conversion rate prevailing upto the date of making the said amount. In fact on these two heads calculated interest was calculated upto 4th November, 2010. But the payment was made during the pendency of the execution petition. Nothing has been explained by the judgment debtor why the interest between 21st September, 2010 to 4th November, 2010 was not paid at that time. The said amount was remitted to the decree holder by Cheque No.744883 dated 16th March, 2012 by registered post on 21st March, 2012. Therefore, the decree holder is entitled for the interest as per award for the said period in the following manner:

“Interest @14% per annum on the principal component of the award i.e. BDT 1,61,07,665 and withheld amount BDT 84,04,325.00 from the period 4th November, 2010 to 21st March, 2012 by converting the foreign currency into Indian currency at the conversion rate prevailing on the date of payment.”

17. If the said amount is not paid by the judgment debtor within 10 weeks from today, the decree holder is at liberty to file an execution on the basis of fresh calculations as per my order.

18. As far as the present execution petition is concerned, the prayers made therein cannot be granted as the decree holder has furnished the incorrect calculation contrary to the mandate of the decree. Thus, the execution is liable to be dismissed.

19. No costs.

(MANMOHAN SINGH)
JUDGE

MAY 30, 2014