THE HIGH COURT OF TRIPURA
A G A R T A L A

CRP 18 OF 2015

The Oil & Natural Gas Corporation Limited (ONGC),
A Public Limited Company, incorporated under
Companies Act, 1956, having its registered
Office at Jeevan Bharati Building,
124-Indira Chowk, New Delhi-110001 and one
of its unit at ONGC Badharghat Complex,
Tripura Asset, Agartala-799014, within the
Jurisdiction of Agartala, Tripura West.

...... Petitioner.

– V e r s u s –

M/S. Astra Construction Private Limited,
Having registered office at D-43,
Sujan Singh Park, New Delhi,
PIN-110003 and Head Office at
E-2, Defence Colony,
New Delhi-110024.

..... Respondent.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioner : Mr. S.K. Deb, Sr. Advocate,
Mr. P.B. Dhar, Advocate.

For the respondent : Mr. P. Rathor, Advocate,
Mr. D.C. Saha, Advocate.

Date of hearing & judgment : 31.03.2015.

Whether fit for reporting : **YES**.

JUDGMENT & ORDER (ORAL)

The undisputed facts of the case are that a dispute arose between the parties which was referred to arbitration. The arbitrator passed an award of Rs.2,76,59,226/- in favour of the respondent and against the Oil and Natural Gas Corporation Limited (ONGC). He also awarded *pendente lite* interest @ 15% per annum from 25.04.2003 to 12.09.2007, the date of the award. Future interest @ 18% per annum was awarded w.e.f. 13.09.2007.

2. Aggrieved by the award, the ONGC filed objections under section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) before the District Forum which were dismissed on 30-10-2009. Thereafter, the ONGC filed Arbitration Appeal No.01 of 2010 in this Court and during the course of the appeal, it prayed for stay of the operation of the award. A learned Single Judge of the Agartala Bench of the Gauhati High Court which then exercised jurisdiction passed an order dated 30-04-2010 in C.M. Application No.18 of 2010 which reads as follows:-

> *"Heard Mr. Deb, learned senior counsel for the applicant as well as Mr. Rathor, learned counsel for the respondent.*
>
> *The applicant, by the present application, has prayed for stay execution of the judgment and order dated 30.10.2009 passed in Misc. (Arb) No. 10/2007 affirming the award dated 12.9.2007 passed by the learned Arbitrator and rejecting the application filed under Section 34 of the Arbitration and Conciliation Act, 1996.*
>
> *Having heard the learned counsel for the parties and upon perusal of the judgment and order impugned in the connected appeal as well as considering the averments made in the objection filed by the respondent, I am of the view that an interim order is called for in this case.*
>
> *In view of the above, the operation of the impugned judgment and order dated 30.10.2009 passed in Misc. (Arb) No. 10/2007 shall remain*

> *stayed subject to deposit of 50% of the awarded amount by the applicant before the Registry of this Court within a period of two months from today.*
>
> *Misc. case stands disposed of.*"

3. It is not disputed that pursuant to the said order, the ONGC deposited an amount of Rs.3,39,85,057/-. Finally, the appeal filed by the ONGC was dismissed by a learned Single Judge of this Court on 27-08-2012. The SLP filed by the ONGC before the Apex Court was also dismissed on 05-02-2013.

4. The only dispute in the present case is how the amount of Rs.3,39,85,057/- deposited by the ONGC has to be appropriated.

5. On behalf of the ONGC, it is contended by Mr. S. Deb, learned Senior Counsel, that in terms of the order of the learned Single Judge, the ONGC deposited Rs.3,39,85,057/- out of which Rs.3,80,000/- was towards the cost of arbitration, Rs.1,81,86,666/- towards 50% of the *pendente lite* interest and Rs.1,39,26,610/- towards future interest. It is submitted that since the learned Single Judge had ordered that 50% of the awarded amount be deposited, the amount of Rs.3,39,85,057/- should be divided both towards principal and interest proportionately i.e. 50% of the interest and 50% of the principal amount was paid/ deposited by the ONGC in terms of the order.

6. On the other hand Mr. P. Rathor, learned counsel appearing for the respondent-contractor, submits that in terms of Order XXI of the Code of Civil Procedure (CPC) and the judgments

of the Apex Court in ***Gurpreet Singh v. Union of India, [(2006) 8 SCC 457]*** and ***Bharat Heavy Electricals Limited v. R.S. Avtar Singh and Company, [(2013) 1 SCC 243]*** the amount of Rs.3,39,85,057/- has first to be appropriated against costs and interest and thereafter whatever was remaining was adjusted against principal and no interest has been claimed against the principal amount adjusted.

7. At the outset, the first thing which may be noted is that the order of the learned Single Judge was passed in the presence of both the parties. The order only says 50% of the awarded amount be deposited. There is nothing in the order which would indicate that the appropriation of the amount would be proportionately 50% towards interest and 50% towards principal. Order XXI Rule 1 provides that when an amount is deposited by the judgment debtor after notice to the decree holder, then interest on the said amount will cease after the said date.

8. This provision came up for consideration before a Constitution Bench of the Apex Court in ***Gurpreet Singh's*** case (supra) wherein after referring to Order XXI Rule 1, the provisions of the Contract Act and Order XXXIV of the CPC, the Apex Court held as follows:-

> *"**26**. Thus, in cases of execution of money decrees or award-decree, or rather, decrees other than mortgage decrees, interest ceases to run on the amount deposited, to the extent of the deposit. It is true that if the amount falls short, the decree-holder may be entitled to apply the rule of*

appropriation by appropriating the amount first towards the interest, then towards the costs and then towards the principal amount due under the decree. But the fact remains that to the extent of the deposit, no further interest is payable thereon to the decree-holder and there is no question of the decree-holder claiming a reappropriation when it is found that more amounts are due to him and the same is also deposited by the judgment-debtor. In other words, the scheme does not contemplate a reopening of the satisfaction to the extent it has occurred by the deposit. No further interest would run on the sum appropriated towards the principal."

9. This question also came up for consideration before the Apex Court in ***Bharat Heavy Electricals Limited's*** case (supra) wherein after referring to ***Gurpreet Singh's*** case (supra) and the provision of Order XXI of the CPC, the Apex Court held as follows:-

*"**31**. From what has been stated in the said decision, the following principles emerge:*

***31.1**. The general rule of appropriation towards a decretal amount was that such an amount was to be adjusted strictly in accordance with the directions contained in the decree and in the absence of such directions adjustments be made firstly towards payment of interest and costs and thereafter towards payment of the principal amount subject, of course, to any agreement between the parties.*

***31.2**. The legislative intent in enacting sub-rules (4) and (5) is a clear pointer that interest should cease to run on the deposit made by the judgment-debtor and notice given or on the amount being tendered outside the Court in the manner provided in Order 21 Rule 1(1)(b).*

> ***31.3****. If the payment made by the judgment-debtor falls short of the decreed amount, the decree-holder will be entitled to apply the general rule of appropriation by appropriating the amount deposited towards the interest, then towards costs and finally towards the principal amount due under the decree.*
>
> ***31.4****. Thereafter, no further interest would run on the sum appropriated towards the principal. In other words if a part of the principal amount has been paid along with interest due thereon as on the date of issuance of notice of deposit interest on that part of the principal sum will cease to run thereafter.*
>
> ***31.5****. In cases where there is a shortfall in deposit of the principal amount, the decree-holder would be entitled to adjust interest and costs first and the balance towards the principal and beyond that the decree-holder cannot seek to reopen the entire transaction and proceed to recalculate the interest on the whole of the principal amount and seek for reappropriation."*

10. It would be pertinent to mention that the decision in ***Bharat Heavy Electricals Limited's*** case also arises out of arbitration proceedings. In both the cases relied upon by Mr. Rathor, the Apex Court clearly held that the general rule of appropriation of the amount deposited or paid in pursuance of a decree is that when any such amount is deposited in the absence of any specific directions as to how the adjustments are to be made, then the amount must be appropriated first towards payment of interest and costs and only thereafter towards payment of the principal amount. In the order of the learned Single Judge

quoted hereinabove, there is nothing to show that there was any direction that the amount would be appropriated proportionately to costs and interest. Even when the amount was deposited by the ONGC, there was no such stipulation that the amount has been deposited and may be adjusted proportionately 50% towards principal and 50% towards interest and fully towards costs. When there was neither any specific direction of the Court nor any specific direction when the amount was deposited, the decree holder was fully entitled to appropriate the amount firstly against costs and interest and then against the principal amount.

11. I have seen the calculation filed both by the decree holder as well as by the judgment debtor. There is virtually no difference in the calculations and whereas the decree holder has shown the amount payable on 30-06-2010 to be Rs.6,01,64,092/-, according to the ONGC , this was Rs.6,01,52,502/-, i.e. a difference of hardly Rs.12,000/-. The basic problem is that the ONGC has adjusted this amount deposited on 30-06-2010 towards 50% of the interest payable till that date and the remaining towards costs and principal. On the other hand, the decree holder has adjusted the amount firstly towards costs and interest and the balance, if any, towards the principal.

12. In view of the law cited by Mr. Rathor, I am of the considered view that the method followed by the decree holder is the proper method in the absence of any specific direction either in the Court's order or in the letter sent by the judgment debtor while

depositing the amount and, therefore, I find no merit in the petition which is accordingly dismissed.

13. Send down the lower court records forthwith.

CHIEF JUSTICE