

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

+ **O.M.P. No.282/2003**

% **7th September, 2015**

M/S CORONATION CONSTRUCTION PVT. LTD. Petitioner
Through: Mr. Sudhir Makkar, Advocate with
Ms. Meenakshi, Advocate.

versus

I.R.C.O.N. INTERNATIONAL LTD. AND ANR. Respondents
Through: Mr. K.R. Gupta, Advocate with Mr.
Vikas Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This objection petition is filed under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act'). This objection petition is filed by the contractor/M/s. Coronation Construction Pvt. Ltd. Petitioner was awarded the work by the respondent no.1/M/s I.R.C.O.N. International Ltd. for supply of boulders from two sites in Haryana and Rajasthan. Respondent no.1 required these boulders for crushing them so that crushed stone can be used by the respondent no.1 in a contract awarded to it by the National Highways Authority of India (NHAI)

being the work of widening and strengthening of a four lane metallic road on the Delhi-Mathura section of the National Highway no.2 of the NHAI. The contract was divided into two parts being QCS-1 and QCS-2. Though there was a change with respect to QCS-2 site, the same is not material for the purpose of the present Award and is not being adverted to in detail.

2. With respect to the contract in question, disputes and differences arose whereby claims and counter claims were raised by the parties. These claims and counter claims have been decided by the impugned Award. The net position which emerges in terms of the Award dated 9.8.2002 was as per paras 289 to 291 of the Award and these paras read as under:-

“289. In view of the findings given above in respect of the claims and counter claims, the accounts inter se the parties emerge as follows:-

Amount Payable to the claimants	Amount payable to the respondents
Claim No.10 1,00,200	Counter Claim No.1: 1,23,88014 as on 31.3.2000
Claim No.12 46,53,934	Counter Claim No.2: 51,45,438
Claim No.14 <u>89,161</u>	Counter Claim No.3: 18,10,000
4843295	Counter Claim No.5: 15,30,300
	Counter Claim No.6: 42,52,866 as on 31.3.2000
	Counter Claim No.9: 79,073
	Counter Claim No.10: <u>26,318</u>
	2,52,32,009

290. In view of the aforesaid findings, I hold that the claimants are liable to pay Rs.1,03,88,714/- to the respondents with interest at the rate of 12% p.a with effect from 1.4.2000 till payment. I am awarding this rate of

interest keeping in view that the prime lending rate of interest has come down.

291. I thus, make the following award:-

- (I) That the claimants shall pay to the respondents Rs.1,03,88,714/- (one crore, three lakhs, eighty-eight thousand, seven hundred and fourteen).
- (II) That the claimants shall pay interest at the rate of 12% p.a. with effect from 1.4.2000 till payment on the aforesaid amount.
- (III) That the claimants shall pay Rs.50,000/- as costs to the respondents.
- (IV) That all other claims and counter claims stand rejected.

This award is made & pronounced on 9th August, 2002 AB-81 Shahjahan Road, New Delhi.”

3. The Arbitration Award dated 9.8.2002 was subsequently corrected by the Arbitrator by his amended Award dated 21.2.2003 and para 291 of the original Award was substituted for the following:-

“I thus make the following award:-

- (i) That the claimant shall pay to the respondent Rs.2,03,88,714/- (Rs. Two crore three lakhs, eighty eight thousand seven hundred and fourteen only).
- (ii) That the claimant shall pay interest at the rate of 12% per annum with effect from 1.4.2000 until payment on the previously mentioned amount.
- (iii) That the claimant shall pay Rs.50,000/- as costs to the respondent.
- (iv) That all other claims and counter claims stand rejected.”

4(i). On behalf of the petitioner, essentially two arguments were raised before this Court. The first argument which was raised was that once the petitioner as per the Award was held entitled to a sum of Rs.48,43,295/- as on 12.3.1994, then from the amount which became payable by the

petitioner to the respondent no.1 on 12.3.1994, the amount of Rs.48,43,295/- ought to have been deducted from the amount due from the petitioner to the respondent no.1 as on 12.3.1994. Putting it in other words, it was argued that it cannot be so done by the Arbitrator that the respondent no.1 is allowed claims alongwith interest as on 31.3.2000 instead of taking the principal amounts due to both the parties as on 12.3.1994, and after squaring of the principal amounts then arriving at the net amount due to the respondent no.1 on 12.3.1994 and only then direct payment of interest thereafter till 31.3.2000 (date as per the Award) and thereafter till the payment.

(ii) The second aspect which has been argued is that even the amount due to the respondent no. 1 as on 12.3.1994 has to be segregated into two parts. The first part of this amount due on 12.3.1994, being the unadjusted amount of mobilization advance lying with the petitioner of the respondent no.1, only thereon on such amount there will be liability of the petitioner in terms of the contract to pay interest @ 20% per annum on the unadjusted amount of mobilization advance, but on the second part of this amount due on 12.3.1994 which was the amount of unadjusted amount of mobilization advance on 12.3.1994 (and forming part of the amount due as found by the Arbitrator to the respondent no.1 on 12.3.1994), this balance amount of Rs.20

lacs was the amount not paid to the petitioner by the respondent no.1 under the subject contract towards mobilization advance but was an *ad hoc* advance paid under an independent contract as per which the petitioner had to hire equipment to the respondent no.1 and which did not have interest clause at 20% per annum and thus on this amount of Rs.20 lacs petitioner cannot be burdened with interest @ 20% per annum. In sum and substance what is argued on behalf of the petitioner is that firstly the net amount due to the respondent no.1 be determined as on 12.3.1994 by adjusting the amount awarded to the petitioner against the amount due to the respondent no.1 as per the Award of the Arbitrator on 12.3.1994, and then/secondly the net amount payable to the respondent no.1 as on 12.3.1994 be divided into two parts with one part bearing contractual rate of interest @ 20% per annum and the other part of the liability be not burdened with the contractual rate of interest of 20% inasmuch as qua the hiring contract, there is no contractual clause of interest @ 20%.

5. The first part of the argument urged on behalf of the petitioner before this Court was crystallized by me in the Order dated 3.8.2015 and which Order reads as under:-

“1. At para 289, internal page no.53 of the Award, claims and counter claims awarded to the petitioner/claimant and the respondents/owners have been given.

2. On behalf of the petitioner it is argued that essentially almost the entire dispute between the parties will come to an end if counter claim no.1 amount awarded is seen not as on 31.03.2000, but as on 12.03.1994, since the damages which have been awarded to the petitioner/claimant by the Award is as on 12.03.1994 qua one part of the contract stated as QCS-2.

3. In essence what is argued on behalf of the petitioner/claimant is that once petitioner/claimant has been awarded Rs.48,43,295/- as on 12.03.1994 by the Arbitrator, and no objections have been filed by the respondents to this amount awarded to the petitioner/claimant, then from when the amount is due to the respondents under counter claim no.1, the amount of Rs.48,43,295/- will be reduced from the counter claim no.1 amount as on 12.03.1994 and not as on 31.03.2000 as has been done by the Arbitrator under the Award.

4. Learned counsel for the petitioner/claimant states that if this is done, then without prejudice to the rights of the petitioner/claimant, the disputes will stand completely resolved.

5. In my opinion, *prima facie*, the issue in the present case therefore boils down to what is the amount due to the respondent no.1 with respect to the counter claim no.1 as on 12.03.1994. It may be noted that counter claim no.1 of the respondent no.1 is the claim towards unadjusted portion of mobilisation advance paid by the respondent to the petitioner/claimant. Counter claim no.1 as awarded in favour of the respondent by the Arbitrator against the petitioner/claimant is for the unadjusted amount of mobilisation advance along with interest till 31.03.2000, whereas as per the petitioner/claimant the counter claim no.1 must be of a net principal amount due as on 12.03.1994 to the respondent no.1 i.e. after reducing from counter claim no.1 as on 12.03.1994 the amount of Rs.48,43,295/- awarded to the petitioner/claimant which was due to petitioner/claimant on 12.03.1994.

6. Learned counsel for respondent no.1 will, without prejudice to the rights of respondent no.1, bring to Court on the next date of hearing, the amount and account of unadjusted amount of mobilisation advance given

by the respondent no.1 to the petitioner, along with interest, payable by the petitioner/claimant to the respondent no.1 due as on 12.03.1994.

7. Learned counsel for respondent no.1 states that the respondent no.1 should also be allowed to give amounts due under different counter claims as on 12.03.1994, but surely this is not in any manner being challenged by the petitioner/claimant that if with respect to any other counter claims awarded by the Arbitrator to the respondent, amounts are found due to the respondent against the petitioner as on 12.03.1994, the same can be considered. The respondent no.1 can therefore also bring the details of other counter-claims as awarded by the Award which would be due to the respondent no.1 as on 12.03.1994.

8. List for further proceedings on 7th August, 2015.

9. It is made clear that no adjournment shall be granted and respondent no.1 shall ensure that it will bring the necessary documents and the amount/account figures to the Court on the next date of hearing.”

6. Pursuant to this Order, learned counsel for the respondent no.1 has filed before this Court with an index dated 7.8.2015, the statement with respect to amounts due to the respondent no.1 from the petitioner as on 12.3.1994 alongwith breakages of the same. A reading of the counter claim filed by the respondent no.1 shows that as on 12.3.1994 respondent no.1 was entitled to from the petitioner and in terms of the Award a sum of Rs.1,14,81,533/-. This amount of Rs.1,14,81,533/- will have two components. The first component is the unadjusted amount towards mobilization advance alongwith contractual rate of interest @ 20% per annum and the second part comprises of the *ad hoc* advance amount to the petitioner from the respondent no.1 of a sum of Rs.20 lacs which under the

independent hiring contract was not to carry any interest. The amount of Rs.1,14,81,533/- is a total of two figures of Rs.88,52,483/- and a figure of Rs.26,29,050/- being the amount of total interest on the total unadjusted advance of Rs.88,52,483/- lying with the petitioner of the respondent no.1 and which figure of Rs.88,52,483/- comprises within it the figure of Rs.20 lacs given as *ad hoc* advance under the separate hiring contract.

7. Learned counsel for the respondent no.1 had sought to make an endeavour by placing reliance on Clause 67.2 of the Contract to argue that each claim should be treated by the Arbitrator separately by passing a separate Award on each claim and with the consequential effect as per the respondent no.1 being that the Arbitrator has rightly awarded the Counter Claim no.1 with interest from 1.4.2000 till payment and also other counter claims with interest from 1.4.2000, but, the argument of the counsel for the respondent no.1 is misconceived because in law, adjustment cannot be prevented so as not to take place on a specific earlier date merely because each claim and counter claim had to be treated separately. Once within the same contract there are amounts which are due from each party to the other, then, on a common date being 12.3.1994, firstly, adjustment will have to take place with respect to the respective claims awarded to each party and only

thereafter on the net amount due which will be payable to another party, can interest be claimed. If this is not done, absurd proposition will result because respondent no.1 will get rate of interest of return of 20% from 12.3.1994 whereas under the Award claimant only has to get return of 12% interest from 12.3.1994. I therefore reject the argument of the respondent no.1 that what is the net amount due as on 12.3.1994 should not be determined by adjusting as on 12.3.1994 the claims found to be due to each party against the other as on 12.3.1994.

8(i) Now taking the date of first adjustment to be made as on 12.3.1994, it is seen that as on this date, the petitioner is entitled to a sum of Rs.48,43,295/- and the respondent no.1 is entitled under Counter Claim no.1 to a sum of Rs.1,14,81,533/-. Since the amount due to the petitioner as on 12.3.1994 is lesser than the figure of Counter Claim no.1 awarded to the respondent no.1, only the figure under Counter Claim no.1 is taken for adjustment. As discussed below the amounts due to the respondent no.1 under other counter claims awarded will stand as they are without any changes thereto.

(ii) Firstly from this amount of Rs.1,44,81,533/- an amount of Rs.20 lacs have to be straightaway deducted because this amount of Rs.20

lacs is the *ad hoc* advance paid by the respondent no.1 to the petitioner under the separate hiring contract which does not contain any clause of payment of interest by the petitioner to the respondent no.1, much less at a huge rate of 20% per annum. By reducing the amount of Rs.20 lacs from Rs.88,52,483/-, it is found that the respondent no.1 will be entitled to a sum of Rs.68,52,483/- because principal has to be reduced from the principal and hence the principal amount due to the respondent no.1 from the petitioner as on 12.3.1994 will become Rs.88,52,483/- minus Rs.20 lacs i.e Rs.68,52,483/-. From this principal amount of Rs.68,52,483/- an amount of Rs.48,43,295/- due and payable to the petitioner under the Award as on 12.3.1994 will have to be reduced and therefore as on 12.3.1994 a principal sum of Rs.20,09,188/- will become due to the respondent no.1 from the petitioner and on this amount, contractual rate of interest @ 20% per annum will be payable in terms of the interest granted by the Award till 1.4.2000, after which the date, the Arbitrator has awarded interest @ 12% per annum on this amount till payment.

(iii) So far as the balance amount of Rs.20 lacs is concerned being the difference between Rs.88,52,483/- and Rs.68,52,483/- this amount is the *ad hoc* advance under the independent hiring of contract and once there is no

contractual rate of interest of huge rate of 20%, in my opinion interest @ 12% by the Arbitrator to the respondent no.1 would suffice on this amount of Rs.20 lacs. I may note that the Supreme Court in its recent trend of judgments has held that Courts should not unnecessarily award high rate of interest and these judgments are in the cases of ***Rajendra Construction Co. Vs. Maharashtra Housing & Area Development Authority and Others, (2005) 6 SCC 678; McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others, (2006) 11 SCC 181; Rajasthan State Road Transport Corporation Vs. Indag Rubber Ltd., (2006) 7 SCC 700; Krishna Bhagya Jala Nigam Ltd. Vs. G. Harischandra Reddy and Another, (2007) 2 SCC 720 and State of Rajasthan and Another Vs. Ferro Concrete Construction Private Limited (2009) 12 SCC 1.***

9. In view of the above, the Award so far only as Counter Claim no.1 awarded to respondent no.1 will stand modified in that respondent no.1 under Counter Claim no.1 will be awarded a sum of Rs.20,09,188/- alongwith interest @ 20% per annum from 12.3.1994 till 1.4.2000 and thereafter on the amount due as on 1.4.2000 interest @ 12% per annum simple. The Counter Claim nos. 2, 3, 5, 6, 9 and 10 as awarded by the Arbitrator for the amount of Rs.51,45,438/-, Rs.18,10,000/- Rs.15,30,300/-,

Rs.42,52,866/-, Rs.79,073/- and Rs.26,318/- will remain intact with interest payable thereon in terms of the Award.

10. I may at this stage note that during the pendency of the arbitration proceedings, on account of certain litigations under Section 138 of the Negotiable Instruments Act, 1881 and also otherwise petitioner has paid various amounts to the respondent no.1. The awarded amount above therefore will stand suitably reduced (and which aspect/amounts will be decided in execution proceedings) subject to the condition that any payment made by the petitioner to the respondent no.1 will first be taken towards accumulated interest under all counter claim heads awarded and only on satisfaction of the accumulated interest, the principal amount of Rs.20,09,188/- or awarded under Counter Claim nos. 2, 3, 5, 6, 9 and 10 will be then reduced in view of the Constitution Bench judgment of the Supreme Court in the case of *Gurpreet Singh Vs. Union of India (2006) 8 SCC 457*. It is again clarified that there is no modification made by this Court with respect to the amounts awarded to the respondent no.1 under Counter Claim nos. 2, 3, 5, 6, 9 and 10 and in regard to these counter claims awarded to the respondent no.1 with interest, the Award as it is will stand.

11. Petition is therefore partly allowed by modifying and reducing the Counter Claim no.1 as granted by the Award but sustaining rest of the Award. Parties are left to bear their own costs.

SEPTEMBER 07, 2015
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VALMIKI J. MEHTA, J.