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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 17.1.2019

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EX.P. 310/2015

KNR-PATEL (JV)

Through

..... Decree Holder
Dr. Amit George, Mr. Rishabh Dheer,
Mr. Swaroop George and Ms. Rajsree
Ajay, Advs.

versus

NATIONAL HIGHWAYS AUTHORITY
OF INDIA

Through

..... Judgement Debtor
Mr. Manish K. Bishnoi and Mr. Archit
Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

Ex. Appl. (OS) No.422/2018

1 This is an application moved in a disposed of Execution Petition.

2 The record shows that the matter was carried right up to the Supreme Court.

2.1 NHAI's Special Leave Petition, after being admitted, was allowed to a limited extent. The relief granted by the Supreme Court, vide its final order dated 03.03.2017, which, in fact, confirmed its interim order date 27.11.2015 was to the effect that interest would be paid by NHAI at the rate of 12% per annum.

2.2 There is no dispute amongst the counsel for the parties that interest at the rate of 12% per annum on the principal sum adjudged

by the Arbitral Tribunal has been paid by NHAI for the pre-award period.

3 The grievance, which brings the decree holder to the Court, is that NHAI has not paid future interest at the rate of 12% per annum after aggregating the principal amount, as adjudged, and the pre-award interest awarded by the Arbitral Tribunal.

4 Mr. Bishnoi, who, appears for NHAI/judgment debtor, draws my attention to the directions issued by the Arbitral Tribunal *vis-a-vis* the claim pertaining to interest. It is Mr. Bishnoi's submission that the Arbitral Tribunal had awarded future interest at the rate of 12% per annum on the "***entire amount awarded in respect of claims No.1, 2, 3, 5 and 6***" from the date of the award till the date of payment. It is Mr. Bishnoi's contention that, since the expression "***in respect of claims No. 1, 2, 3, 5 and 6***" follows the expression the "***entire amount***", it is implied that future interest would not run on the aggregate sum comprising the principal amount and the interest awarded for the pre-award period.

5 On the other hand, Dr. Amit George, who, appears for the decree holder, contends to the contrary.

6 Before I proceed further, I may also note that the decree holder had, in fact, filed a contempt petition before the Supreme Court to agitate its grievance. The contempt petition was, however, disposed of as withdrawn giving leave to the decree holder to take recourse to other remedies. This aspect is reflected in the order dated 04.09.2018 passed by the Supreme Court.

6.1 It is in this background that the decree holder has approached

this Court.

7 Thus, what is relevant, insofar as this application is concerned, are the operative directions of the Arbitral Tribunal in respect of the claim for future interest on the aggregate sum, which, as indicated above, according to the decree holder, should include the principal and pre-award interest (hereafter referred to “aggregate sum”).

7.1 The relevant part of the Arbitral Award, which is dated 08.08.2013, is extracted hereafter:

“As claim No. 1,2,3,5 & 6 have been sustained and justified to the extent mentioned against each, the AT after careful consideration, is of the view that the same rate of interest as provided in the contract, is justified for those claims and accordingly awards interest to the Claimant on the above claims for the period and at the rates set out below:

<i>i) Interest on claim No. 1, 2 & 3 from 13.09.2005, the date on which the Claimant referred the disputes to DRB till date of the award.</i>	<i>10% P.A. Compounded Monthly as per Appendix to bid read with Clause 60.8</i>
<i>ii) Interest on claim No. 5 & 6 for the period from 04.12.2007, the date on which the Claimant has appointed its Arbitrator to adjudicate disputes after notifying its intention to commence arbitration of these disputes till date of Award.</i>	<i>12% P.A. Simple interest.</i>

We award interest both past and future on Claims No. 1, 2

and 3 at 10% compounded monthly with effect from 13.09.2005 till award and award interest on claim nos. 5 & 6 from 04.12.2007 at 12% simple interest per annum till the date of Award. We further direct that in the event of default in payment of the claim as awarded, within a period of three months, from the date of award, the respondent shall pay interest at 12% per annum on the entire amount awarded in respect of claims 1, 2, 3, 5 and 6 from the date of the award till the date of payment. The respondent is directed to pay the above amounts as awarded to the claimants along with interest both past and future and cost of Rs.8,75,000/- (Rupees Eight Lac Seventy Five Thousand Only).”

7.2 A perusal of the aforesaid extract of the Arbitral Award would show that the Arbitral Tribunal has granted interest for both pre-award period and post-award period. The submission made by Mr. Bishnoi that since the expression ‘*the entire amount awarded*’ is followed with the expression ‘in respect of claims 1, 2, 3, 5 and 6’ and, therefore, it is suggestive of the fact that it ought not to include the pre-award interest, to my mind, is a submission I am not persuaded to accept.

7.3 The fact (and this is an aspect which was vehemently argued by Mr. Bishnoi) that interest was claimed by the decree holder by way of a separate claim (i.e. claim No. 7) would not dislodge the decree holder’s contention that it is entitled to post-award interest on the aggregate sum as it is often the case when parties lodge their claims before an Arbitral Tribunal they have a separate head under which interest is claimed. The Arbitral Tribunal, after adjudging as to whether claims with regard to the principal amount, under various

heads, are tenable or not, proceed to decide as to whether against those claims, interest ought to be paid.

7.4 In this case, the Arbitral Tribunal has done exactly that and, as noted above, in the extract from the award, that interest has been awarded on the claims. In fact, what the Arbitral Tribunal has done is awarded interest for the pre-award period at the rate of 10% compounded monthly, which was pared down by the Supreme Court vide its orders dated 27.11.2015 and 03.03.2017.

7.5 The Supreme Court, as has been correctly argued by Dr. George, did not examine the issue as to what would be the sum on which future interest was to be paid.

7.6 The issue raised by Mr. Bishnoi is no longer *res integra* in view of the judgment of the Supreme Court in *Hyder consulting (UK) Limited Vs. Governor, State of Orissa*, (2015) 2 SCC (Civ.) 38. The relevant observations, as contained in the majority but concurrent judgments of Hon'ble Mr. Justice S.A. Bobde and Hon'ble Mr. Justice Abhay Manohar Sapre, for the sake of convenience, are set forth hereafter:-

“...Per se: Hon'ble Mr. Justice S.A. Bobde:

7. Thus, when used as a noun, as it seems to have been used in this provision, the word "sum" simply means "an amount of money"; whatever it may include - "principal" and "interest" or one of the two. Once the meaning of the word "sum" is clear, the same meaning must be ascribed to the word in clause (b) of sub-section (7) of Section 31 of the Act, where it provides that a sum directed to be paid by an Arbitral Award "shall carry interest" from the date of the Award to the date of the payment i.e. post-award. In other words, what clause

(b) of sub-section (7) of Section 31 of the Act directs is that the "sum," which is directed to be paid by the Award, whether inclusive or exclusive of interest, shall carry interest at the rate of eighteen per cent per annum for the post- award period, unless otherwise ordered.

8. *Thus, sub-section (7) of Section 31 of the Act provides, firstly, vide clause (a) that the Arbitral Tribunal may include interest while making an award for payment of money in the sum for which the Award is made and further, vide clause (b) that the sum so directed to be made by the Award shall carry interest at a certain rate for the post award period.*

9. *The purpose of enacting this provision is clear, namely, viz. to encourage early payment of the awarded sum and to discourage the usual delay, which accompanies the execution of the Award in the same manner as if it were a decree of the court vide Section 36 of the Act.*

10. *In this view of the matter, it is clear that the interest, the sum directed to be paid by the Arbitral Award under clause (b) of sub-section (7) of Section 31 of the Act is inclusive of interest pendent lite.*

11. *At this juncture, it may be useful to refer to Section 34 of the CPC, also enacted by Parliament and conferring the same power upon a court to award interest on an award i.e. post-award interest. While enacting Section 34, CPC, Parliament conferred power on a court to order interest "on the principal sum adjudged" and not on merely the "sum" as provided in the Arbitration Act. The departure from the language of Section 34 CPC in Section 31 (7) of the Act, 1996 is significant and shows the intention of Parliament.*

12. *It is settled law that where different language is used by Parliament, it is intended to have a different effect. In the Arbitration Act, the word "sum" has deliberately not*

been qualified by using the word "principal" before it. If it had been so used, there would have been no scope for the contention that the word "sum" may include "interest." In Section 31(7) of the Act, Parliament has deliberately used the word "sum" to refer to the aggregate of the amounts that may be directed to be paid by the Arbitral Tribunal and not merely the "principal" sum without interest.

13. Thus, it is apparent that vide clause (a) of sub-section (7) of Section 31 of the Act, Parliament intended that an award for payment of money may be inclusive of interest, and the "sum" of the principal amount plus interest may be directed to be paid by the Arbitral Tribunal for the pre-award period. Thereupon, the Arbitral Tribunal may direct interest to be paid on such "sum" for the post-award period vide clause (b) of sub-section (7) of Section 31 of the Act, at which stage the amount would be the sum arrived at after the merging of interest with the principal; the two components having lost their separate identities.

Per se Hon'ble Mr. Justice Abhay Manohar Sapre

27. Section 31(7)(a) employs the words "...the arbitral tribunal may include in the sum for which the award is made interest...". The words "include in the sum" are of utmost importance. This would mean that pre-award interest is not independent of the "sum" awarded. If in case, the Arbitral Tribunal decides to award interest at the time of making the award, the interest component will not be awarded separately but it shall become part and parcel of the award. An award is thus made in respect of a "sum" which includes within the "sum" component of interest, if awarded.

28. Therefore, for the purposes of an award, there is no distinction between a "sum" with interest, and a "sum" without interest. Once the interest is "included in the sum" for which the award is made, the original sum and the interest component cannot be segregated and be seen

independent of each other. The interest component then loses its character of an "interest" and takes the colour of "sum" for which the award is made.

29. There may arise a situation where, the Arbitral Tribunal may not award any amount towards principal claim but award only "interest". This award of interest would itself then become the "sum" for which an award is made under Section 31(7)(a) of the Act. Thus, in a pre-award stage, the legislation seeks to make no distinction between the sum award and the interest component in it.

30. Therefore, I am inclined to hold that the amount award under Section 31(7)(a) of the Act, whether with interest or without interest, constitutes a "sum" for which the award is made.

31. Coming now to the post-award interest, Section 31(7)(b) of the Act employs the words, "A sum directed to be paid by an arbitral award...". Sub-clause (b) uses the words "arbitral award" and not the "arbitral tribunal". The arbitral award, as held above, is made in respect of a "sum" which includes the interest. It is, therefore, obvious that what carries under Section 31(7)(b) of the Act is the "sum directed to be paid by an arbitral award" and not any other amount much less by or under the name "interest". In such situation, it cannot be said that what is being granted under Section 31(7)(b) of the Act is "interest on interest". Interest under sub-clause (b) is granted on the "sum" directed to be paid by an arbitral award wherein the "sum" is nothing more than what is arrived at under sub-clause (a)...."

8. In view of the principle enunciated by the Supreme Court and my reading of the operative portion of the Award passed by the Arbitral Tribunal, I am of the opinion that NHAI would have to pay future interest on the aggregate sum, which would include the

adjudged principal amount and the pre-award interest awarded by the Arbitral Tribunal.

8.1 Accordingly, necessary calculations will be carried out on this basis by NHAI and an additional amount, if payable, would be released to the decree holder.

8.2 The amount will be released by the judgment debtor within four weeks from today, failing which the decree holder will have liberty to move to the Court.

9. At this stage, Dr. George graciously concedes that since the decree holder had not taken recourse to an appropriate remedy, the additional amount i.e. by way of interest, as directed to be paid, should be factored in only till 03.03.2017. The said statement is taken on record.

10. The application is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

JANUARY 17, 2019

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