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

% **Decided on : 20.01.2016**

\+ EFA(OS) 3/2016

NTPC LIMITED ..... Appellant

Through: Mr.R.P.Bhatt, Sr.Adv. with Mr.Yakesh Anand, Ms.Sonam Anand and Mr.Nimit Mathur, Advocates

versus

M/S V U SEEMON ..... Respondent

Through: Mr.Jayant K.Mehta, Mr.Abhay Anand Jena and Ms.Bina Gupta, Advocates

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

CAVEAT 57/2016

Since, the caveator is represented through counsel, the caveat stands discharged.

C.M.Nos.2088/2016 & 2089/2016 (for exemption)

Exemption is allowed subject to just exceptions.

Both the applications stand allowed.

EFA(OS) 3/2016 & C.M.No.2087/2016 (for stay)

1. The appellant/judgment debtor is aggrieved by the judgment and order of the learned Single Judge accepting the decree holder's calculations. This Court had in an appeal under Section 39 of the

Indian Arbitration Act, 1940 upheld the judgment and order of the learned Single Judge which had rejected the present appellant's objections against the award dated 03.05.1999 in the dispute between the appellant and respondent. The award – which stood confirmed and became rule of the Court required payment of 18% interest. The Supreme Court in an appeal by Special Leave filed by the present appellant had reduced the interest payable from 18% to 12%.

2. The appellant's contention in execution proceedings was that as the entire principal amount of ₹72,92,449/- along with 9% interest calculated from 16.10.1990 to 17.11.2009 had been deposited in court on 16.12.2009 (as against the decree being 07.08.2009), it was now only required to pay the difference of interest at the rate of 3% per annum (i.e., the difference between 12% and 9%, the former being the bank rate which accrued on the fixed deposits created by the order of the Court). The decree holder/respondent, on the other hand, contended that a larger amount was payable as it was entitled to apply the rule of appropriation which was nowhere adversely affected and had to be applied . According to the decree holder the rule of appropriation enabled it to first appropriate or adjust the interest amount payable after which appropriation was towards interest costs and thereafter the remainder if any towards principal.

3. The appellant contends that in accordance with the Supreme Court's directions, the liability to pay the outstanding amount was strictly confined to the difference between what had accrued as interest and what was payable as a consequence of the Supreme

Court's judgment i.e. 12%. This amount, was according to the appellant, approximately ₹43 lakhs (inclusive of ₹2,00,000/- costs). The final balance directly payable by the appellant to the respondent would be the amount of ₹43 lakhs minus TDS, (i.e. ₹18,00,000 approximately) thus bringing the total to roughly ₹25 lakhs.

4. In support of this contention, learned Senior counsel relied upon the ruling of the Supreme Court in ***H.P. Housing & Urban Development Authority v. Ranjit Singh Rana*** 2012 (4) SCC 505 where the expression 'payment' was dealt with. It was submitted that according to this decision payment in court constituted compliance with the award and the decree arising therefrom. Consequently, only the differential amount of interest was payable. Further, ***Union of India vs. M.P.Trading and Investment Rac. Corp. Ltd.*** (Civil Appeal 8077-8779/2015 decided on 28.09.2015) was cited in support of the submission that in such eventualities, it is only differential amounts which are payable.

5. Learned counsel for the decree holder/respondent stated that the learned Single Judge had correctly accepted the applicability of the rule of appropriation. He relied upon a decision in ***Bharat Heavy Electricals Limited vs. R. S. Avtar Singh and Co.*** AIR 2013 SC 252. The Court there had relied upon a previous larger, five judge Bench judgment in ***Gurpreet Singh vs. Union of India*** 2006 (8) SCC 457 which had explained the rule of appropriation and applied it in the case of arbitral award. ***Gurpreet Singh***'s case (supra) had stated as follows:

> *"20.……It was also held that 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 direction, adjustments be made firstly in payment of interest and costs and thereafter in payment of the principal amount, subject of course, to any agreement between the parties."*

6. The propositions applicable in such cases were further listed in ***R. S. Avtar Singh and Co.***'s case (*supra*) in para 24 which endorses that the rule of appropriation would generally apply by reason of Order 21 Rule 1 (b) in such cases. The extract from the said judgment is as follows:

> *"31. From what has been stated in the said decision, the following principles emerge:*
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> *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 cost and thereafter towards payment of the principal amount subject, of course, to any agreement between the parties.*
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> *31.2 The legislative intent in enacting sub-rules (4) and (5) is clear to the 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 XXI Rule 1 sub-clause (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 cost 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 cost 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 re-appropriation."

7. This Court is of the opinion that the appellant's contentions are unmerited. The judgment in ***H.P. Housing & Urban Development Authority's*** (supra) cannot be construed as an authority given that in that case the entire amount difference including interest was deposited in the court. We notice that ***M.P.Trading and Investment Rac. Corp. Ltd.***'s case (*supra*) merely followed ***H.P. Housing & Urban Development Authority's*** (*supra*) without dwelling upon the rule of

appropriation enunciated in ***Gurpreet Singh'***s case (*supra*) by a larger Bench. Furthermore, ***R. S. Avtar Singh and Co.***'s case (*supra*) too applied the appropriation principle in the case of an arbitration award.

8. For these reasons, we are of the opinion that the impugned judgment and order of the learned Single Judge does not call for interference. It is however clarified that any amount paid towards deductions made towards TDS in accordance with law would be deemed as payment towards discharge of appellant's liabilities. The balance, if any, shall be paid on or before 30.01.2016 inclusive of interest as on date if not made earlier.

9. The appeal is accordingly dismissed.

Dasti.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

JANUARY 20, 2016
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