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IN THE HIGH COURT OF DELHI AT NEW DELHI

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DECIDED ON: 15.03.2016

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EFA (OS) 8/2015

CM APPL.6445-6446/2015

POWER GRID CORPORATION OF INDIA LTD..... Appellant

Through: Mr. Tushar Mehta, ASG with Ms. Sharmila Upadhyay, Mr. Rajesh Chhetri, Mr. Rajeev Chhetri and Ms. Meenakashi Rawat, Advocates.

versus

**KLEN & MARSHALLS MANUFACTURERS
AND EXPORTERS LTD**

..... Respondent

Through: Ms. Mohna M. Lall with Ms. Geetali Talukdar, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J. (ORAL)

CM APPL.6446/2015 (condonation of delay)

1. Heard the counsel for the parties.
2. The respondent/decreed holder contends that the 182 days spent in filing of the appeal should not be condoned. It is urged that the appellant's submission that a copy of the order of 08.09.2014 was not uploaded, and that it was not made available, is unacceptable in the given circumstances. It is highlighted that the appellant/judgment debtor was represented in the Court when the order was dictated. During the hearing, on behalf of the appellant, it is urged that the

learned Single Judge has accepted the main submission with respect to the involuntariness and the compulsion on the part of the appellant in not complying with the terms of the contract and depositing the decretal amount within the time awarded due to the garnishee order issued by the Debts Recovery Tribunal dated 08.07.2003. It was submitted that the subsequent para of the said order dated 08.09.2014 is in variance and this came to light only after the examination of the text of the order.

3. We have considered the submissions and are of the opinion that the interest of justice would be best sub-served if the delay in filing the appeal is condoned.

4. CM APPL.6446/2015 is allowed.

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5. Issue notice in the appeal. Ms. Mohana M. Lall, Advocate accepts notice on behalf of respondent. With consent of the counsel for the parties, the appeal is heard finally.

6. The appellant is aggrieved by the two orders of the learned Single Judge dated 08.09.2014 (hereafter referred to as the first order) and 12.03.2015 (hereafter referred to as the second impugned order) made in the course of the execution proceedings in respect of the Award dated 09.05.2003.

7. The brief facts are that the parties referred their *inter se* dispute to Arbitration. The Tribunal on 09.05.2003 rendered the Award whereby the claimant/decreed holder was held entitled to a sum of US\$ 509408/- and a further amount of ₹82,752/-. The Tribunal also directed that in case these amounts were not paid within two months

(from the date of the Award), the judgment debtor was to pay 12% interest till date of payment. Apparently, the decree holder/claimant had approached the Court under Section 34 of the Arbitration and Conciliation Act, 1996, contending that some further amounts were due. This petition under Section 34 was disposed of finally on 03.11.2009. On 28.11.2011, the Division Bench modified the decree arising out of the Award after noticing that in the main body (of the Award), the Tribunal had determined the liability of the judgment debtor to pay 6% per annum on the sum of US\$ 186855 from 01.10.1999 till payment. This element was directed to be added and the decree which was to arise from the Award was accordingly modified.

8. In the light of the above development, the decree holder approached this Court claiming that the entire amount was not paid. It may be mentioned at this stage that on 08.07.2003, the judgment debtor/appellant received a garnishee order issued by the DRT. The decree holder was a party to the proceedings before the DRT. During the pendency of proceedings before it, the DRT in exercise of its powers to attach the amounts before the judgment, directed that the amounts payable by the judgment debtor/appellant were to be deposited with it. The judgment debtor moved the DRT and eventually deposited the amount of ₹2,38,26,258/- on 24.07.2003. In the light of the order of the Division Bench (in appeal, directing the modification of the Award), the appellant/judgment debtor deposited a further amount of US\$ 42265.07 on 19.03.2012 in satisfaction of the additional interest liability clarified by the Division Bench.

9. In the first impugned order, the decree holder had contended before the learned Single Judge that the default interest as it were (i.e. 12%, after lapse of two months) was payable and that the decree was not satisfied to that extent since no amounts were paid by the judgment debtor. The judgment debtor's defence to this submission was that the garnishee order of 08.07.2003 prevented it from complying with the terms of the Award and discharging its liabilities under the Award. The Single Judge in the first impugned order accepted the submission of the appellant/judgment debtor in the following terms: -

“7. In my view, this contention cannot be accepted for the reason that judgment debtor herein has left with no choice but to comply with the order of a legally constituted tribunal directing it deposit the decretal amount with it. There is an element of legal compulsion.

*7.1 The situation which is envisaged in the case of **Hindustan Construction Corporation** is entirely different. The court has quite correctly stated that where the judgment debtor in order to obtain a stay on the execution of the decree seeks to deposit the money in court, would not, amount to payment under Order 22 Rule 1 of the CPC to the decree holder, and, hence, interest would run.*

*7.2 The situation which has emerged in the instant case is not **pari materia** with the facts obtaining in the case of **Hindustan Construction Corporation Ltd.***

7.3 The learned counsel for the decree holder is not able to cite any precedent which would have bearing on facts of this case. There is no provision of law cited before me which would have me come to the conclusion that where judgment debtor deposits money in court/ tribunal pursuant to a specific direction in that

regard, interest will run in favour of the decree holder. This contention of the decree holder will thus have to be rejected. If one were to look to an analogous principle, the provisions of Order 21 Rule 46F of the CPC would perhaps be apposite.”

10. In the later portion of the first impugned order, however, the Single Judge directed as follows: -

“8.1 As directed in the award, if payment was not made within two months, judgment debtor was required to pay interest @ 12% p.a. from the date of the award in respect of amounts mentioned in paragraph 33(iii) of the award.

8.2 Accordingly, the decree holder would be entitled to claim interest for the period between 09.05.2003 till 23.07.2003.”

11. In the second impugned order, the decree holder’s contentions with respect to payment of further interest on account of non-compliance with the directions in the Award towards timely payment within the two months’ period and leading to interest on interest were accepted and the calculations furnished by the decree holder (extracted in paragraph 5 of the second impugned order) were taken on record. The learned Single Judge here invoked the rule of appropriation enunciated by the Supreme Court in *Gurpreet Singh v. UOI* (2006) 8 SCC 457 and *Bharat Heavy Electricals Ltd. v. R.S. Avatar Singh & Co.*, (2013) 1 SCC 243.

12. Learned Additional Solicitor General who appears for the appellant argues that the both impugned orders are erroneous. It is firstly urged that the question of interest would be calculable - in the event of default in making the payment and has to be reckoned after

the two months' period elapses and not in the manner indicated by the learned Single Judge in the first impugned order. It is further argued that with the passing of the garnishee order on 08.07.2003, the question of making payments thereafter to the decree holder could not have arisen. Counsel highlights that the learned Single Judge in the first impugned order accepted the proposition that there was an element of involuntariness and that the judgment debtor could not have defied the garnishee order (in paragraph 7 - 7.3) nevertheless he proceeded to hold - after ignoring the earlier part of his own reasoning - that interest was payable in the circumstances of the case from 09.05.2003 itself. It was submitted that the second impugned order is unsustainable for the reason that the rule of appropriation would apply under normal circumstances. In other words, if there were no impediments in the payment, it would be up to the decree holder to appropriate the amounts according to its choice - first appropriating itself towards interest liability and thereafter liquidating the principal amounts due etc. However, in the present case, since the garnishee order itself placed an embargo, the question of any further liability to make payments did not arise.

13. Ms. Mohana M. Lall, learned counsel for the decree holder urges that the appellant virtually accepted the liability as is evident from the second impugned order. She points out to paragraph 11 & 12 of the second impugned order to say that the counsel for the appellant had sought time to make payments which precludes it from maintaining the appeal. It is urged besides that as a matter of fact nothing prevented the appellant from depositing the amount with the

DRT immediately on receipt of the garnishee order; instead the deposit was made on 24.07.2003.

14. As the factual narrative would disclose, from the tenor of the Award, the appellant was liable to pay certain amounts; a default interest liability was fastened upon it. The first impugned order to the extent it holds that the default interest liability would be from the date of the Award, in the opinion of the Court cannot be faulted. However, at the same time, the Single Judge - by the same order also noticed - that the appellant was prevented from complying with the terms of the Award on account of the garnishee order dated 08.07.2003. This is not only fortuitous as far as the appellant is concerned and also the matter of great co-incidence; 08.07.2003 also happened to be the last date for complying with the terms of the Award. The appellant had stated before the Single Judge that as on that date, the cheque had been prepared towards discharge of the entire liability. The Single Judge in fact accepted the appellant's contentions about its inability on account of the garnishee order to deposit on or after 08.07.2003.

15. This *ipso facto* in the opinion of this Court should have been sufficient for the further finding that the appellant could not be held responsible towards discharge of the decretal amount after 08.07.2003 except in the manner indicated by the garnishee order. Here the submission of the decree holder that the amounts were in fact deposited on 24.07.2003, in the opinion of this Court, is of little relevance. This is because the moment the appellant was prevented from compliance - within the time granted by it, it matters little whether the garnishee order was complied with immediately or within

the reasonable time thereafter. In the present case, the amount was deposited on 24.07.2003. As things stood then - as indeed even now, the decree holder cannot access the amount. The object of directing the default interest was to ensure timeliness in compliance and not penalize the judgment debtor for the tardiness in payment - certainly not in compliance with an unrelated order.

16. So far as the second impugned order is concerned, this Court is of the opinion that it entirely rests on the assumption that further amounts were payable towards interest liability w.e.f. 09.05.2003 having regard to the payments made on 24.07.2003. So far as the 6% liability directed to be complied with by the appellant by virtue of the Division Bench's order is concerned, there appears to be no dispute as the amounts were paid in full on 19.03.2012.

17. We are of the opinion that both the impugned orders cannot be sustained; they are accordingly set aside. The appeal is allowed in the above terms.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

MARCH 15, 2016
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