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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **EX.P. 374/2012 & EA (OS) Nos.384, 533 of 2013**
DELHI PAPER PRODUCTS CO PVT LTD

..... Decree Holder

Through : Mr Apar Gupta & Ms Garima Jain,
Advs.

versus

**INDIAN METEOROLOGICAL
DEPARTMENT & ANR**

..... Judgement Debtors

Through : Mr R V Sinha & Mr R N Singh, Advs

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **05.10.2016**

1. The Decree Holder (hereafter 'DH') has filed the above captioned petition for execution of the award dated 24.04.2012.

2. The relevant extract of the said award is as under:-

“56. Therefore, the claim of the Claimant is allowed only on Rs.15,09,491.00 commencing from 07.06.2002 to the date of issue of the award compounded monthly similar to the statement of claim submitted by them vide annexure C29. The amount shall bear interest in the same manner till the date of actual payment. The part payments released by the Respondents shall take affect by reducing such amounts on the date of payment. The prayer of the Claimant for awarding cost of proceeding in their favour is rejected since not justiciable. This is in reference to the claims of the Claimant, as at para 6 (A to E) above.”

3. The petition filed by the Judgement Debtors (hereafter 'JDs') under Section 34 of the Arbitration and Conciliation Act, 1996

(hereinafter 'the Act') impugning the said award has already been rejected and the said award has thus, become final.

4. The JDs filed a calculation sheet along with their reply to the present execution petition contesting the claim of the DH for recovering a sum of ₹76,94,265.17/-. As per JDs' calculation, only an amount of ₹44,19,934/- was payable to the DH under the award.

5. The DH has disputed the aforesaid calculation as the JDs have not taken into account that the interest awarded by the arbitrator is to be compounded with monthly rests. The calculations filed by the DH in support of its claim indicates that if the compound interest (with monthly rests) is applied, an aggregate sum of ₹76,94,265.17/- would be outstanding as on 30.11.2012, in terms of the award.

6. The learned counsel appearing on behalf of the JDs does not dispute that if compound interest is calculated on monthly rests, the amount as indicated by the DH in the petition would be correct.

7. After pleadings in the present petition were completed, the JDs filed another affidavit; this time disputing the awarded amount itself. It is stated by the JDs that prior to the commencement of arbitral proceedings and in any event prior to publishing of the award, JDs had also made other payments, which were not accounted for by the arbitrator while making the award. It is further claimed that the fact that such payments were made was discovered by the JDs after the award was published, therefore, the details of payments made could not be informed to the arbitrator.

8. The learned counsel appearing on behalf of DH countered the aforesaid submissions and submitted that the payments as reflected in the affidavit are not correct. The dispute involved was regarding recovery/withholding of payments and the JDs had admittedly issued letters to the Pay and Accounts Office, DGS&D for recovery /withholding the sums due to DH. As per the practice, the Pay and Account Office had withheld such sums against the other supplies made prior to the commencement of the arbitral proceedings. He contended that, therefore, the approach of the JDs, which only considered payments for the supplies involved in the arbitral proceedings, was flawed.

9. I have the learned counsel for the parties.

10. It is apparent from the rival contentions that the issue whether any payments were made by the JDs prior to the commencement of the arbitral proceedings is highly contentious and the same cannot be considered in the present proceedings. Admittedly, the said defence was not taken either before the arbitrator or in the petition filed under Section 34 of the Act. No such defence was also taken in the response filed to the present petition as the reply filed by the JDs is also silent on this aspect.

11. It is necessary to bear in mind that the present proceedings are only for the enforcement of the award and this Court cannot go behind the award, which has to be enforced as a decree.

12. During the course of arguments, the learned counsel for DH

stated, on instructions, that to put a quietus to the disputes, he would not press for the interest due from 30.11.2012 till the date of deposit of the amount in the Court if the balance amount deposited by the JDs in this Court is released in favour of DH. The DH is bound down to the said statement.

13. In view of the aforesaid statement, it is directed that the balance amount deposited by the JDs in this Court is directed to be released to the DH along with interest accrued thereon. However, it is clarified that the DH would be released from the statement if the JDs seek to further agitate this matter.

14. In view of the above, the petition and the pending applications are disposed of.

VIBHU BAKHRU, J

OCTOBER 05, 2016

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