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

\+ EX.P. 270/2015 & EA (OS) Nos. 632-633/2015, 1172/2015 & 867/2016

PATEL ENGINEERING LTD ..... Decree Holder

Through: Mr D. S. Chadha with Ms Jaskirat Kaur, Advocates.

versus

NTPC LTD. ..... Judgement Debtor

Through: Mr Tarkeshwar Nath and Mr Onkar Nath, Advocates for R-1.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **22.12.2016**

VIBHU BAKHRU, J

1. Patel Engineering Ltd (hereafter 'PEL') has filed the present petition for enforcing the arbitral award dated 26.03.2013 (hereafter 'the arbitral award').

2. The learned counsel appearing for PEL states that a sum of ₹34,61,77,870/- was received by PEL from NTPC Ltd. (hereafter 'NTPC') in accordance with the joint reconciliation of the amounts due, which was carried out by the accountants of both the parties. He submits that at the time of joint reconciliation, PEL had agreed that the sum as paid by NTPC would discharge the arbitral award, however, an error has crept into the said calculation inasmuch as the post award interest has not been calculated on the sum of pre-award interest granted by the Arbitral Tribunal. He submitted

that in terms of the decision of the Supreme Court in ***Hyder Consulting (UK) Ltd. v. Governor, State of Orissa*****:** **(2015) 2 SCC 189,** post award interest will necessarily have to be calculated on pre-award interest awarded by an arbitral tribunal.

3. The learned counsel appearing for NTPC has countered the aforesaid submission by contending that the accountants of both the parties had conducted joint reconciliation and had computed the amount payable in accordance with the terms of the arbitral award; therefore, no further amount could be claimed by PEL.

4. I have heard the learned counsel for the parties.

5. At the outset, it is relevant to refer to the operative paragraph of the arbitral award that relates to the award of interest. The same is set out below:-

> "The claimant has been deprived of its dues for years together and thus, it would be in the interest of justice to compensate the claimant for the period of deprivation by way of interest. Keeping the present day trend in mind, we feel interest @ 12% p.a. would meet the ends of justice. Even though the amounts awarded in favour of the claimant have been withheld from different dates, however, we feel that justice would be done to the parties if the date of commencement of interest- is reckoned from 20.09.2010 , i .e. the date when the Arbitral Tribunal was constituted upto the date of payment of the amount by the respondent.
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> xxxx xxxxx xxxx
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> If the respondent settles the amount awarded in terms of the award within a period of three months from receipt of a copy thereof, no interest would be payable for the said period of

> three months. If no payment is made within the above said period of three months, interest would accrue in favour of the claimant for this period as well."

6. A plain reading of the extract of the arbitral award as quoted above indicates that the Arbitral Tribunal had awarded interest at the rate of 12% p.a. on "*the amounts awarded in favour of the claimant*" from the date on which the Arbitral Tribunal was constituted - that is, 20.09.2010 - till the date of payment. A plain reading of the arbitral award leaves no manner of doubt that the word *"amounts"* mentioned by the Arbitral Tribunal refers to the amounts awarded against various claims other than interest. The Arbitral Tribunal had not included pre-award interest in the sum on which post award interest was awarded; in fact, the Arbitral Tribunal has made no distinction on the quantum on which pre-award and post-award interest is awarded and has simply awarded interest at the rate of 12% p.a. on the amounts from the date when the Arbitral Tribunal was constituted till the date of payment. In view of the express language of the arbitral award, there is no scope to interpret that post award interest would also be payable on pre-award interest as contended.

7. The Arbitral Tribunal had further expressly stated that although under Section 31(7)(b) of the Act, the arbitral tribunal is empowered to award interest at the rate of 18% p.a. but it was restricting the rate of interest to 12% p.a. The contention of the learned counsel that interest at the rate of 12% p.a. would also run a pre-award interest is not sustainable in view of the plain language of the arbitral award as mentioned above.

8. The decision of the Supreme Court in the case of ***Hyder Consulting***

(UK) Ltd. *(supra)* has no application to the facts of this case. In that case, the issue considered by the Supreme Court was whether the word 'sum' under Section 31(7)(b) of the Act would also include pre-award interest. In that context, the Supreme Court had explained that the word sum awarded as referred to in Section 31(7)(a) of the Act would also include pre-award interest and consequently post award interest under section 31(7)(b) of the Act would also be payable on pre-award interest included in the sum awarded. This decision is not an authority for the proposition that where the arbitral tribunal had specifically awarded post-award interest on certain amount, the court while enforcing the arbitral award, is empowered - by virtue of the provisions of Section 31(7)(b) of the Act - to enhance the amount on which the arbitral tribunal has awarded post award interest by including therein pre-award interest.

9. The question as to whether an arbitral tribunal has declined post award interest on certain amount has to be ascertained on the plain language of the arbitral award. In cases where an arbitral tribunal restricts the amount on which post award interest is payable, the court cannot while enforcing the award enhance the same. In the present case, the Arbitral Tribunal has restricted the post award interest only to amounts awarded other than pre-award interest. Thus, in view of the language of the arbitral award, the contention of the learned counsel for PEL cannot be sustained.

10. The parties had thus calculated interest - both pre-award and post award - only on the amounts awarded other than interest; and, in my view rightly so. The contention now advanced on behalf of PEL is clearly an afterthought and unmerited.

11. PEL does not dispute that if the interest at the rate of 12% p.a. is calculated on amounts awarded (other than pre-award interest) from the date of constitution of the Arbitral Tribunal till the date of payment, the entire payment has been made by NTPC. Thus, no further orders are required to be passed in this petition.

12. The petition is disposed of. All pending applications also stand disposed of.

VIBHU BAKHRU, J

DECEMBER 22, 2016
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