**THE HON'BLE SRI JUSTICE SANJAY KUMAR**
**AND**
**THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

**CIVIL REVISION PETITION NOs.5551 AND 5552 OF 2016**

**C O M M O N   O R D E R**
(*Per* Hon'ble Sri Justice Sanjay Kumar)

These Civil Revision Petitions under Article 227 of the Constitution arise out of the common order dated 11.07.2016 passed by the learned Principal District Judge, Visakhapatnam, in E.P.No.45 of 2015 in O.P.No.989 of 2001 and E.P.No.46 of 2015 in O.P.No.96 of 2002. The petitioner in these revisions is Essar Oil Limited, the decree holder, which filed the aforestated execution petitions. E.P.No.45 of 2015 in O.P.No.989 of 2001 was filed by it for attachment of the amounts of Hindustan Shipyard Limited, the judgment-debtor, lying in TDRs in various banks for realizing the sum of Rs.78,67,64,928/-. E.P.No.46 of 2015 in O.P.No.96 of 2002 was filed by it for attaching the immovable properties of the judgment-debtor in Visakhapatnam District, for realization of the sum of Rs.118,28,63,086/-. By the common order under revision, the Court below dismissed both the execution petitions.

Arbitration proceedings initiated between the parties hereto in relation to turnkey contracts of the years 1992 and 1995, awarded to the decree holder by the judgment-debtor for executing works for the Oil and Natural Gas Commission (ONGC) culminated in arbitration awards dated 20.04.2001 and 24.10.2001. As per the majority opinion of the Arbitrators (2:1), the judgment-debtor was required to pay the decree holder Rs.13,27,16,682/- with pre-award interest thereon at 12% per annum (under the award dated 20.04.2001) and a sum of U.S.$ 4,117,582.19 and Rs.16,88,233/-

with pre-award interest thereon at 12% per annum (under the award dated 24.10.2001). The minority opinion of one Arbitrator was to the effect that these amounts would be payable to the decree holder only when ONGC released the corresponding funds. Certain counter-claims put up by the judgment-debtor in relation to the contract of the year 1992 were rejected by the Arbitrators. Aggrieved by these two arbitration awards, the judgment-debtor filed petitions under Section 34 of the Arbitration and Conciliation Act, 1996 (for brevity, 'the Act of 1996') in O.P.Nos.989 of 2001 and 96 of 2002 before the learned Principal District Judge, Visakhapatnam. By separate orders dated 10.10.2002 and 01.11.2002, the learned Principal District Judge, Visakhapatnam, confirmed the awards in respect of the claims of the decree holder but remanded the issue of the judgment-debtor's counter-claims to the Arbitrators. Aggrieved by the confirmation of the awards, to the extent indicated above, the judgment-debtor preferred C.M.A.Nos.255 and 624 of 2003 before this Court. By common judgment dated 29.09.2004, this Court allowed both appeals and set aside the awards in their entirety. Aggrieved, the decree holder approached the Supreme Court and by common judgment dated 02.07.2015 passed in Civil Appeal Nos.3353 and 3355 of 2005, the Supreme Court reversed the decision of this Court and restored the awards insofar as the claims of the decree holder were concerned. The Supreme Court categorically held that the payments due under the arbitration awards would have to be made by the judgment-debtor and that the ONGC was not liable to make the said payments.

The decree holder thereupon filed the subject execution petitions for realizing its dues under the awards which stood confirmed by the highest Court. E.P.No.45 of 2015 was initially filed for realizing Rs.56,08,26,619/-, which was thereafter enhanced to Rs.78,67,64,928/- by including post-award interest at the rate of 18% per annum. Similarly, E.P.No.46 of 2015 was filed for realizing a sum of Rs.93,07,50,473/- but was thereafter amended, seeking a sum of Rs.118,28,63,086/- by including post-ward interest at the rate of 18% per annum. The judgment-debtor contested the decree holder's claim of post-award interest and the foreign exchange conversion rate. Calculation memos were also filed by both parties. However, the Court below dismissed both the execution petitions *vide* the common order now under revision.

It may be noted that as regards the counter-claims of the judgment-debtor which were remanded to the Arbitrators, an award was passed on 29.08.2003. The majority (2:1) rejected the counter-claims while the dissenting Arbitrator allowed them. Aggrieved by the majority award, the judgment-debtor filed O.P.No.44 of 2004 before the learned II Additional District Judge, Visakhapatnam. By judgment dated 22.02.2016, the O.P. was allowed and an amount of Rs.5,04,60,635/- was awarded to the judgment-debtor with interest. Aggrieved thereby, the decree holder filed C.M.A.No.243 of 2016 before this Court. The said C.M.A. is still pending consideration. Be that as it may.

Heard Sri VLNGK Murthy, learned senior counsel representing Sri J.Raghu, learned counsel for the petitioner/decree holder and Sri P.Rajasekhar, learned counsel for the respondent/judgment-debtor.

Parties shall hereinafter be referred to as arrayed before the Court below.

Two issues were raised before the Court below in the execution proceedings – firstly, whether the decree holder was entitled to post-award interest and secondly, the foreign exchange conversion rate to be adopted for making the payment due under the award dated 24.10.2001.

As regards the first issue, the decree holder claimed a total sum of Rs.78,67,64,928/- in E.P.No.45 of 2015 by including post-award interest at the rate of 18% per annum, while the judgment-debtor calculated the sum due to the decree holder at Rs.22,08,03,791/-, by excluding such interest. Similarly, in E.P.No.46 of 2015, the decree holder laid a claim for Rs.118,28,63,086/- by relying upon the foreign exchange conversion rate obtaining as on the date of filing of the execution petition and also seeking post-award interest at the rate of 18% per annum, while the judgment-debtor asserted that the decree holder's entitlement under this award was only Rs.5,03,50,425.62 ps. The calculation by the judgment-debtor was on the basis of the foreign exchange rate obtaining as on the date of the contract and by excluding post-award interest.

Perusal of the common order under revision reflects that the Court below did not even address the second aspect relating to the applicable foreign exchange rate and merely limited its consideration to the decree holder's entitlement for post-award interest. Citing statute and case law, the Court below opined that the decree holder was not entitled to claim such interest and basing thereon, it held that the execution petitions were not maintainable as they were filed contrary to the awards. The Court below accordingly dismissed both the execution petitions giving liberty to the decree holder to file fresh execution petitions for enforcement of its rights strictly in terms of the awards.

Sri VLNGK Murthy, learned senior counsel, would argue that the understanding of the Court below as to the decree holder's entitlement to post-award interest is erroneous and unsustainable. Learned senior counsel would place reliance upon Section 31 (7)(b) of the Act of 1996 in support of his contention that the Court below misdirected itself while considering this issue.

*Per contra,* Sri P.Rajasekhar, learned counsel, would strive to support the view taken by the Court below and contend that the decree holder specifically claimed post-award interest before the Arbitrators but the awards passed in its favour were silent on this aspect. He would therefore argue that the exclusionary clause in Section 31(7)(b) of the Act of 1996 would stand attracted.

Section 31 of the Act of 1996 deals with the form and contents of an arbitral award and sub-section (7) thereof deals with interest payable when the award is for payment of money. This sub-section contains two clauses, which are extracted hereunder:-

> "7(a) Unless otherwise agreed by the parties, where and in so far as an Arbitral award is for the payment of money, the Arbitral Tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.
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> (b) A sum directed to be paid by an Arbitral award shall, unless the award otherwise directs, carry interest at the

rate of eighteen per centum per annum from the date of the award to the date of payment."

Clause 7(a) deals with payment of interest up to the date of the award while Clause 7(b) pertains to post-award interest and makes it clear that if the award otherwise directs, such a direction in relation to post-award interest contained in the award would prevail. However, if the award contains no direction in relation to post-award interest, the statute itself provides for interest being paid at the rate of 18% per annum from the date of the award till the date of payment. Sri P.Rajasekhar, learned counsel, would however contend that there was a specific claim for post-award interest by the decree holder which was rejected, by implication, as the awards in relation to both contracts were silent on that aspect. It would therefore be necessary to examine the claims of the decree holder before the Arbitrators. The claim statement in relation to the contract of 1992 reflects that the decree holder, being the claimant therein, prayed as under:-

"The claimants therefore prays to the Hon'ble Arbitrator to pass an award in its favour as against the Respondents to the following:

(i) For a sum of US $ and Rs.as shown in Annexure 1A, 2A, 3A, 4A, 5A, 5B & 6A.

(ii) For a subsequent interest @ 24% from the date of reference till the date of the award.

(iii) For the cost of the Arbitration."

Similarly, in its claim statement relating to the contract of 1995, the decree holder prayed as under:-

"The Claimant therefore prays to the Honourable Arbitrator to pass an award in its favour as against the Respondents to the following:

(i) For a sum of US $ and Rs. As shown in Annexure 1A, 2A & 3A toward the amount Claimed and interest thereon.

(ii) For a subsequent interest @ 24% from the date of reference till the date of the award.

(iii) For the cost of the Arbitration."

It is no doubt true that in the body of the claim statements, the decree holder stated to the effect that, in terms of the contractual clauses, it would be entitled to interest at 12% per annum on the unpaid amounts till the date of payment. However, except for a reference to the contractual clauses in this regard, the prayers in both claim statements were specifically limited to payment of subsequent interest at 24% from the date of reference till the date of the award.

We are therefore not inclined to accept that the decree holder actually prayed for post-award interest in either of the two arbitration cases. Further, perusal of the awards passed in both the cases manifests that there were no arguments for or against grant of such interest and in consequence, there was absolutely no discussion as to post-award interest. On the other hand, the majority opinion expressed in the awards dealt at length with the interest payable on the amounts awarded up to the date of the award and remained significantly silent as to the entitlement of the decree holder to post-award interest.

***M/s.JAGDISH RAI AND BROTHERS V/s. UNION OF INDIA[1]***, relied upon by the Court below, is not at all relevant to the case on hand as it arose under the Arbitration Act, 1940, wherein payment

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[1] AIR 1999 SC 1258

of post-award interest, under Section 29 thereof, was altogether different.

Section 31(7)(b) of the Act of 1996 introduced a wholly new concept of granting interest at the rate of 18% per annum as a matter of statutory right from the date of the award till realization unless the arbitration award stated otherwise.

This provision fell for consideration recently in ***HYDER CONSULTING (UK) LTD. V/s. STATE OF ORISSA***[2]. Though the main issue that fell for consideration before the Supreme Court was whether post-award interest would also be payable upon the interest granted by the Arbitral Tribunal under Section 31(7)(a) of the Act of 1996, the observations made on the grant of post-award interest are of relevance. The opinion of Hon'ble Sri Justice Sapre, concurring with that of Hon'ble Sri Justice Bobde, held to the effect that pre-award interest is at the discretion of the Arbitral Tribunal while post-award interest on the awarded sum is the mandate of the statute – the only difference being that of rate of interest, i.e., if the Arbitral Tribunal awarded post-award interest at a particular rate in its discretion then it would prevail, or else the party would be entitled to claim such interest at the statutory rate specified in Section 31(7)(b) of the Act of 1996. Even the dissenting opinion of the Hon'ble The Chief Justice held that it is only if the Arbitral award is silent on the question of whether there would be any post-award interest that clause (b) of Section 31(7) would be applicable and in such a situation/position it would be mandatory as per law that the award should carry interest at the rate of 18% per annum from the date of the award till the date of payment. It

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[2] (2015) 2 SCC 189

was categorically observed that the term used in the given clause is 'shall' and therefore, if applicable, the imposition of interest as per clause (b) would be mandatory.

Earlier, in ***STATE OF HARYANA V/s. S.L.ARORA AND COMPANY***[3], the Supreme Court concluded that Section 31(7)(b) of the Act of 1996 is intended to ensure prompt payment by the award-debtor once the award is made and if the award is silent with regard to the interest from the date of the award or does not specify the rate of interest from the date of award, then the party in whose favour an award is passed would be entitled to interest at 18% per annum from the date of award.

This being the settled legal position, the understanding thereof by the Court below, after referring to ***HYDER CONSULTING (UK) LTD.***[2], defies comprehension. Para 15 of the common order under revision indicates the misconception of the Court below as to the legal position. According to the Court below, the right to claim future interest at 18% per annum from the date of the award till the date of payment is available only in a case where 'the said sanction is made by way of an order in the arbitration proceedings'. The Court below opined that the right to claim post-award interest at 18% per annum is not automatic as having been sanctioned under law. The Court below therefore completely misunderstood the scope and intent of Section 31(7)(b) of the Act of 1996 and its understanding thereof not only militates against the express language of the provision but also its interpretation by the Supreme Court. Contrary to what the Court below stated, it is only when the arbitration award does not categorically deal with post-

[3] (2010) 3 SCC 690

award interest that Section 31(7)(b) of the Act, 1996 would have automatic application and confer upon the decree holder the right to such interest at the statutory rate of 18% per annum from the date of the award till the date of realization.

The further misconception of the Court below was that, in the present case, the awards denied the decree holder post-award interest. As already stated *supra*, the claim statements did not stake an express claim for post-award interest and the awards were completely silent on the issue. Rejection of post-award interest by implication therefore does not arise in such a situation. All the more so, when the majority opinion expressed in the awards granted interest up to the date of the award. Had it been the intention of the Arbitrators to deny post-award interest, having granted pre-award interest, they would have recorded specific reasons therefor. In any event, denial of post-award interest by implication cannot be read into the awards in question. Rejection of the claim of the decree holder for post-award interest by the Court below based on this misconception of the legal and factual position therefore cannot be countenanced.

Sri VLNGK Murthy, learned senior counsel, advanced arguments supported by case law in relation to the second issue pertaining to the applicable foreign exchange conversion rate. However, as the Court below completely ignored this aspect of the matter and rejected the execution petitions by only considering the first issue as to post-award interest, we are of the opinion that this issue cannot be adjudicated in these revisions as the Court below did not apply its mind to it at all.

That apart, the Court below did not also examine the calculation statements filed before it, having come to the erroneous conclusion that post-award interest could not be granted. We therefore restore and remit both the execution petitions to the Court below for consideration afresh keeping in mind the observations made *supra* as to grant of post-award interest. We make it clear that we have not gone into the second issue relating to the applicable foreign exchange conversion rate and it is for the Court below to independently examine the same on its own merits.

Both the Civil Revision Petitions are accordingly allowed to the extent indicated above and the execution petitions are restored to the file of the learned Principal District Judge, Visakhapatnam, who shall endeavour to dispose of the same expeditiously as the issue dates back to 1992 and 1995.

Pending miscellaneous petitions in both the CRPs, if any, shall stand closed in the light of this final order. No order as to costs.

**SANJAY KUMAR,J**

**U.DURGA PRASAD RAO,J**

**27th JANUARY, 2017**

**PGS**