THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J.UMA DEVI

CIVIL REVISION PETITION NO.7284 OF 2017

ORDER: (per SK,J)

This civil revision petition under Article 227 of the Constitution arises out of the order dated 22.11.2017 passed by the Judge, Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad, in I.A.No.52 of 2016 in C.O.P.No.113 of 2016. This I.A. was filed by the petitioner herein under Section 35(2) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996'), praying for stay of operation of the Award dated 05.10.2015 in Case No.21/C/IFC/2013/19801 till disposal of the main O.P., which was filed under Section 34 thereof to set aside the Award. By the order under revision, the Court below opined that the bank would have to deposit Rs.3,35,25,786/-, taking into account the sum of Rs.61,05,472/- already deposited, towards the balance of 75% of the award amount. This amount was directed to be deposited in two equal instalments – the first to be paid by 12.12.2017 and the second by 29.12.2107. The Court below added a rider that in the event the amount was not paid, the main O.P. under Section 34 of the Act of 1996 itself would stand rejected. Subject to compliance by payment of the two instalments, the Award under challenge stood stayed till disposal of the main O.P.

Be it noted that the amount of deposit directed to be made was in terms of Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short, 'the Act of 2006'). Aggrieved by the aforestated order, in the context of the amount directed to be deposited, the petitioner is before this Court.

Heard Sri S.Niranjan Reddy, learned senior counsel representing Sri K.V.Rusheek Reddy, learned counsel for the petitioner, and Sri K.K.Waghray, learned counsel on caveat for the second respondent.

Perusal of the Award under challenge in the main O.P. before the Court below reflects that the Arbitral Tribunal, the Andhra Pradesh Micro and Small Facilitation Council, Hyderabad, directed payment of Rs.74,43,821/- towards the principal amount and interest as per the Interest on Delayed Payments to Small and Ancillary Industries Undertakings Act, 1993 (for short, 'the Act of 1993'), at the rate of three times the State Bank of India Prime Lending Rate (PLR) prevailing as on date with monthly rests, in terms of Section 16 of the Act of 2006, till such date the full and final payment was made.

According to the petitioner, the SBI PLR as obtaining in July, 2016, was 9.15% and applying the same for the period from July to October, 2016, the interest payable was computed on the principal amount of Rs.74,43,821/- and deposit was made of a sum of Rs.61,05,472/-. Countering this calculation, the second respondent filed a statement calculating the interest due and payable on the principal amount at varying PLR rates of the State Bank of India from February, 2011, up to May, 2013.

Upon considering these rival calculation Memos, the Court below accepted the calculation offered by the second respondent and taking into account the sum already deposited, the Court below directed payment of Rs.3,35,25,786/- towards the balance of the 75% of the Award amount.

The statutory scheme obtaining under the Act of 2006 indicates that any application for setting aside an Award made by the Council should be entertained by a Court only if the applicant deposits 75% of the amount in terms of the decree or Award in the manner directed by such Court.

Section 16 of the Act of 2006 deals with the date from which and the rate at which interest is payable. This Section reads as under:

> 'Where any buyer fails to make payment of the amount to the supplier, as required under Section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly *rests* to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.'

It is also relevant to note that under Section 32 of the Act of 2006, the Act of 1993 stood repealed. Therefore, as matters stand, the interest payable in terms of Section 16 of the Act of 2006 would be at three times the bank rate notified by the Reserve Bank of India.

Viewed in the context of the aforestated statutory scheme, it is clear that the concluding portion of the Award dated 05.10.2015 lacks clarity. On the one hand, the Arbitral Tribunal directed payment of interest as per the repealed Act of 1993 at the rate of three times the State Bank of India PLR prevailing as on date and, on the other, it directed that such interest should be paid in terms of Section 16 of the Act of 2006. This aspect of the matter was not even looked into by the Court below while quantifying the deposit required to be made at this stage.

No doubt, the calculation made by the petitioner is equally wanting as the payment of interest would have to be in terms of para 5(d) of the Award and it would not be open to the petitioner to calculate the interest amount only for three months.

Sri S.Niranjan Reddy, learned senior counsel, fairly concedes this aspect. Having stated so, the learned senior counsel offered a Memo of calculation.

It appears that the Reserve Bank of India, prior to 2015, issued a Bank Rate of Interest and also a Marginal Cost Lending Rate of Interest. Going by the lesser rate of interest out of the aforestated two rates, Sri S.Niranjan Reddy, learned senior counsel, would concede that 75% of the total principal and interest payable thereon would come to Rs.1,91,07,652.60. After giving credit to the sum of Rs.61,05,472/- already deposited, the petitioner would therefore have to deposit a further sum of Rs.1,30,00,000/- approximately.

However, as the Court below did not address these aspects at all and baldly accepted the calculation made by the second respondent, again at the PLR of the State Bank of India, we are of the opinion that the Court below needs to adjudicate this aspect of the matter at this stage itself so as to correctly quantify the amount of deposit to be made by the petitioner in terms of Section 19 of the Act of 2006. As it is now admitted before us that the petitioner would, in any event, have to deposit at least Rs.1,30,00,000/-, it shall do so within four weeks from the date of receipt of a copy of this order.

The order under revision is accordingly set aside and I.A.No.52 of 2016 in C.O.P.No.113 of 2016 is remitted to the file of the Judge, Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad, for consideration afresh of the said I.A. on its own merits and in accordance with law, keeping in mind the observations made hereinabove. This exercise shall be completed expeditiously and preferably within four weeks from the date of receipt of a copy of this order. The stay granted by the Court below shall continue to operate pending disposal of the I.A. afresh.

The civil revision petition is allowed to the extent indicated above.

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

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SANJAY KUMAR,J

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J.UMA DEVI,J

Date:21.12.2017

GJ