

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
CHAMBER SUMMON NO.324 OF 2017
IN
EXECUTION APPLICATION NO.37 OF 2017

DO-IT Computer JV ...Plaintiff
Versus
The Municipal Corporation of Greater Mumbai ...Defendant

Mr Simil Purohit, *with Debashree Mandpe i/b Ganesh & Co, for the Decree Holder.*
Mr UJ Makhija, *with Sandeep Patil, RY Sirsikar, for MCGM.*

CORAM: G.S. PATEL, J
DATED: 7th February 2018

PC:-

1. Heard.

2. The Application is by the MCGM, the original Judgment Debtor. It seeks that a bank guarantee dated 17th April 2017 for Rs.47,76,92,708/- be allowed to be substituted by a Bank Guarantee of Rs.35,78,38,434.93. The bank guarantee in the higher amount was furnished pursuant to an order dated 4th April 2017 (The Hon'ble the Chief Justice & GS Kulkarni J).

3. The claim arises out of an award dated 14th May 2015 in favour the Decree Holder.

4. The original claimant Do-It Computers JV (“**DICJV**”) sought execution of this award. A copy of the award itself is annexed. It is clear that this contained as many seven distinct claims. An amount was claimed for usage of JCB’s. There was also a claim for rate revision.

5. The operative portion of the award is in paragraph 45 at pages 40 and 41. There is also a tabulation at page 59 which shows how the Decree Holder has computed the claim (as of 30th November 2017). I will reproduce the table for convenience from page 59.

Sr No	Particulars	Principal Amount	Interest Amount	Total Amount (Principal Amount plus Interest)	Reference
1	Revised Rate	27,07,03,562.45	<u>11,34,63,633.82</u>	38,41,67,196.27	Page No.3 to 9
2	JCB Dumper Operation	<u>2,14,84,835.55</u>	<u>96,05,449.24</u>	<u>3,10,90,284.79</u>	Page No.11
3	5% Linear Escalation	73,76,589.00	37,77,217.76	1,11,53,806.76	Page No.13
4	Idle Charges	7,28,20,350.00	3,72,88,009.36	11,01,08,359.36	Page No.15
5	Weighment Charges	15,24,470.00	7,80,612.17	23,05,082.17,	Page No.17 to 19
6	Arbitration Cost	15,10,000.00	5,77,730.14	20,87,730.14	Page No.21
Total		37,54,19,807.00	16,54,92,652.49	54,09,12,459.49	
Note : As of now, the Interest amount is calculated upto 30.11.2017 only. Thereafter, the interest @ 15% p.a. will have to be calculated till the actual date of payment.					

6. Now Item 1 is disputed only in regard to the interest

component. Item 2 is entirely disputed. Items 3, 4, 5 and 6 are not disputed at all and it is now clear from an order of Tated J of 9th November 2017 that the Decree Holder was allowed to withdraw an amount of Rs.35,78,38,434.9 without prejudice. The remainder was to be invested for a period of 90 days till the present controversy was resolved, parties being required to reconcile calculations.

7. Mr Makhija for the MCGM says that no amount is due and the balance deposit should now be returned to the MCGM

8. Mr Purohit for DICJV says that correctly read — as he puts it, “ as a whole” — the award gave his clients, the Decree Holder, DICJV, interest at 15% in paragraph 42 of the award, including on the rate revision said to have been granted from Rs.260 per metric ton to 286 per metric ton. Hence, the claim for interest against Sr.No.1 above. Similarly, he says that certain portions of the award make it clear that the Decree Holder was entitled to its claim for JCB dumper operations. It is only inadvertent that this remained to be included in the operative portion of the Award. The earlier portions of the award make it clear that this claim for entitlement found favour with the Arbitrator.

9. On the face of it, I cannot accept these arguments from Mr Purohit. The reasons are many. This defence is raised only in response to a Chamber Summons filed by the MCGM which says that the Execution Application filed by the DICJV significantly inflates the claims. Second, these claims for interest against Item 1 and the whole of Item 2 do not feature at all in the operative portion

of the Award. It was always open to the Decree Holder/Claimant to move the Arbitrator for a clarification, a supplemental award or an amendment to the existing award if appropriate. What the argument really amounts is a sort of reverse challenge by which in reply to MCGM's Chamber Summons the Award is sought to be, if not set aside, at least upgraded to the Decree Holder's liking. That is not something I believe in a Court in execution can at all do. Finally, whether Mr Purohit says it or no, accepting this argument would really amount to going behind the decree and quite literally seeing if it was properly passed, and, if found not, modifying the decree. That is no part of the role of a Court in Execution.

10. I have disallowed by my previous order dated 14th December 2017 the interest claimed on arbitration costs.

11. The Chamber Summons will succeed but with a modification following the 9th November 2017 order i.e. that the amount that is deposited and invested by the Prothonotary and Senior Master will be returned to the MCGM with all accumulated interest. The Prothonotary and Senior Master will act on production of an authenticated copy of this order and will issue the refund within a period of two weeks from today.

12. This order is no reflection on the remedies of the Decree Holder. He may pursue these as advised before the Arbitrator. All contentions in that behalf are kept open.

(G. S. PATEL, J)