

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

CR No.1827 of 2017 (O & M)  
Date of Decision:26.02.2018

DLF Universal Limited and another

...Petitioners

Versus

Koncar Generators and Motors Limited

...Respondent

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Chetan Mittal, Senior Advocate with  
Mr. Udit Garg, Advocate  
for the petitioners.

Mr. Sachit Sahijpal, Advocate  
for the respondent.

**ANIL KSHETARPAL, J.**

While enforcing a foreign arbitral award, what would be the relevant date to determine the rate of conversion of foreign currency into Indian rupee is the issue.

Learned counsel for the petitioners has submitted that rate of conversion has to be the date when the award was passed or in the alternative when the execution was filed or at the most when the Court decided the application under Section 48 of the Arbitration and Conciliation Act, 1996 ('The Act' – for short) whereas learned counsel for the respondent contended that rate of conversion has to be with reference to final decision on the objections under Section 48 of 'the Act'.

Learned Court has ordered that the relevant date for conversion of the awarded amount from Euros to rupees would be the date when

objections under Section 48 of the 1996 Act were finally disposed of. It would be appropriate to reproduce Sections 48 and 49 of the 1996 Act:-

***“48. Conditions for enforcement of foreign awards.—***

*(1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court proof that—*

*(a) the parties to the agreement referred to in section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or*

*(b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*

*(c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or*

*(d) the composition of the arbitral authority or the*

*arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place ; or*

*(e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.*

*(2) Enforcement of an arbitral award may also be refused if the Court finds that—*

*(a) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or*

*(b) the enforcement of the award would be contrary to the public policy of India.*

*2[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—*

*(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or*

*(ii) it is in contravention with the fundamental policy of Indian law; or*

*(iii) it is in conflict with the most basic notions of morality or justice.*

*Explanation 2.—For the avoidance of doubt, the test as*

*to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.*

*(3) If an application for the setting aside or suspension of the award has been made to a competent authority referred to in clause (e) of sub-section (1) the Court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.*

**49. Enforcement of foreign awards.**—*Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that Court.”*

Undisputed facts are that in the year 2002 International Chamber of Commerce appointed Arbitral Tribunal consisting of 3 Arbitrators to conduct arbitration. Arbitral Tribunal passed an award on 12.05.2004. The concluding portion of the award reads as under:-

*- rules that Respondents no.1 and no.2 shall jointly and severally pay to the Claimant the amount of Euros 18,411.40 for the storage and maintenance of the goods with interest at 5% per year starting from the date of Award;*

*“- rules that Respondents no.1 and no.2 shall jointly and severally pay the amount of Euros 960, 308.41 with interest at 5% per year starting on 31*

*October 1999 until the final repayment;*

*- rules, in accordance with article 31 of the ICC Rules, that Respondents no.1 and no.2 shall jointly and severally bear the costs of the arbitration i.e. Euros 5, 545.40 relating to the lawyer expenses of the Claimant, Euros 99,482.70 relating to the arbitration fees paid to the ICC, Euros 3,389.57 of guaranty expenses relating to the repayment of Respondents no.1 and no.2's arbitration fee to the ICC, Euros 6,852 relating to the arbitrations costs in Paris, all these amounts with interest at 5% per year from the date of the Award.”*

Respondent filed an execution petition before the learned Civil Judge (Senior Division), Gurgaon for enforcement and execution of the award. Later on execution petition was transferred to the Court of learned Additional District Judge, Gurgaon. Petitioner herein filed objections under Section 48 of the 1996 Act on 18.02.2009. Thereafter, the petitioner filed an application under Section 34 of the 1996 Act for setting aside the award, which was dismissed by the Court on 28.04.2010. Petitioner filed the first appeal before the High Court. The appeal filed by the petitioner was withdrawn vide order dated 15.10.2010 realizing that the application under Section 34 of the 1996 Act was not maintainable.

During the pendency of the first appeal before this Court, the petitioner deposited a sum of Rs.7.5 crores before the learned Executing Court. It was ordered that Rs.7.5 crores would be released to the respondent on furnishing of Bank guarantee of a Scheduled Bank of India.

the 1996 Act was dismissed on 02.04.2011.

Petitioner filed a revision petition in this Court on 03.07.2011, which was admitted and this Court passed the following order:-

*“Learned counsel for the respondent does not seriously dispute that debatable issues requiring thorough consideration are involved in the present revision petition, however, he has laid stress on the plea that after passing of the order dated 2.4.2011, the award having become a 'decree' and that too a money decree, the interest of the respondent-Company be secured by directing the petitioner-Company to make deposits in Euro Currency since the payment under the agreement was envisaged in Euro Currency.*

*Counsel for the parties heard at length.*

*The prayer for deposit in Euro Currency is untenable as admittedly on a previous occasion, the parties had themselves agreed for a deposit of Rs.7.5 crores before the Executing Court to secure their interests and, therefore, I find no compelling reason to deviate from such an arrangement.*

*Serious debatable issues are involved, which require detailed consideration.*

*Admitted. To be listed for hearing within three months.*

*The operation of the impugned order dated 2.4.2011 (P.19) is stayed subject to the petitioners*

*depositing another sum of Rs.50 lacs within four weeks from the receipt of certified copy of this order, in addition to Rs.7.5 crores deposited earlier with the Executing Court. The Executing Court on such compliance shall deposit the total amount in a fixed deposit receipt in a Nationalized Bank under a scheme fetching a maximum rate of interest. The aforesaid amount shall be disbursed to the successful party on the final adjudication of the lis”*

Ultimately, the revision petition filed by the petitioner was dismissed by this Court vide order dated 01.10.2014. Respondent filed an application for execution of the money-decree on 18.08.2014. Thereafter, the execution petition remained pending as dispute between the parties arose what was relevant date for conversion to Rupee from Euro. Learned Executing Court vide order dated 03.02.2017 opted to take 01.07.2014 i.e. the day when objections under Section 48 filed by the petitioner were finally dismissed as the relevant date for determining the rate of the conversion to Rupee.

The order passed by the learned Executing Court dated 03.02.2017 has been challenged before this Court by filing this revision petition.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the paper-book.

Learned counsel for the petitioner has submitted that the relevant date for determining the rate of conversion of Indian rupee into foreign currency should be the date of the award. He submits that as per

Section 49 of the 1996 Act, the foreign award passed is enforceable being a deemed decree of a Court. In the alternative, he has submitted that the objections filed by the petitioner under Section 48 of 'the Act' were dismissed by the learned Additional District Judge, Gurgaon on 02.04.2011. He submits that at the most the relevant date for conversion to rupee can taken as 02.04.2011.

On the other hand, learned counsel for the respondent has submitted that Section 48 of the 1996 Act lays down conditions for enforcement of the foreign award. He submits that once the Court records its satisfaction that the foreign award is enforceable, only then the award shall be deemed to be a decree of the Court. He, therefore, submits that objections under Section 48 of the 1996 Act filed by the petitioner were finally dismissed by the High Court on 01.07.2014. Hence, learned Executing Court has correctly determined the relevant date for conversion of Euro to Rupee, as the award became deemed decree of the Court on that day.

Learned counsel for the petitioner has drawn the attention of the Court to the judgment passed by the Hon'ble Supreme Court 1984 (Supplement) SCC 263 "Forasol vs. Oil and Natural Gas Commission". He has referred to different paragraphs of this judgment to assert that the Hon'ble Supreme Court had held that the date of decree shall be the relevant date for applying conversion rate. Hence, he submitted that the award being deemed decree, the conversion rate as applicable on the date of award should have been applied.

The judgment passed by the Hon'ble Supreme Court in the

reference and made the award on 21.12.1974 and the award was filed in Delhi High Court and decree in terms thereof was passed by the Court. Judgment passed is not with reference to Arbitration and Conciliation Act, 1996 and hence not applicable.

Learned counsel for the petitioner has referred to various of the judgments passed by the different High Courts deciding on different facts and situations. This Court does not feel that reference to aforesaid judgments would be necessary. On the other hand, learned counsel for the respondent has referred to a judgment passed by Delhi High Court in the case of “Progetto Grano S.P.A. Vs. Shri Lal Mahal Limited” in Execution Petition No.52 of 2012 cited as MANU/DE/1361/2014.

He has submitted that Delhi High Court has held that the relevant date for conversion of Euros to Rupees has been correctly taken by the learned Executing Court to be the date on which objections under Section 48 of the 1996 Act were finally decided i.e. on 01.07.2014. He has also drawn the attention of the Court to the order passed by the Hon'ble Supreme Court in SLP No.27041-2014 decided on 21.11.2014 against the judgment passed by the Delhi High Court in Progetto Grano S.P.A. (supra). The Special Leave Petition was declined.

Enforcement of the foreign award is governed by Part 2 of 'the Act'. Section 49 deals with the situation when the foreign award is enforceable and binding. Section 48 which has been extracted above lays down conditions for enforcement of the foreign award. Section 49 provides that where the Court is satisfied that the foreign award is enforceable under this Chapter, the foreign arbitral award shall be deemed to be a decree of that Court. Section 49 clearly spells out that before a foreign award is

considered enforceable as a deemed decree of that Court, the Court is required to record a satisfaction that the foreign award is enforceable under this Chapter. Such determination finally comes when objections under Section 48 of 'the Act' are finally decided. In this case objections under Section 48 of 'the Act' came to be decided finally only on 01.07.2014 when the revision petition filed by the petitioner against dismissal of the objection petition under Section 48, was finally dismissed.

It is the petitioner, who has been delaying the execution of the foreign award by filing applications-objections as noticed in the previous part of the judgment. Previously, the petitioner filed an application under Section 34, although it was not maintainable, which was dismissed. Petitioner filed an appeal in this Court, which was withdrawn. Thereafter the petitioner started prosecuting objections under Section 48, which were again dismissed by the Court of learned Additional District Judge, Gurgaon and thereafter the petitioner filed the revision petition, which was dismissed on 01.07.2014. During the pendency of the civil revision, interim order was operative which came to vacated only on final decision.

In the considered opinion of this Court, the petitioner cannot be permitted to draw benefit by delaying the execution of the award. Conversion rate of a foreign currency fluctuates. A foreign award passed, which has been found to be binding and enforceable has to be given effect to. It will be totally inequitable for the decree-holder, if the relevant date for conversion from Euro to Rupee is with reference to any previous date before the date when the award was finally held to be enforceable by the Indian Courts. The requirement to convert the decreetal amount into Indian

Power Company Limited vs. General Electric Company” 1994 Supplement

(1) SCC 644.

In view of the discussion made above, this Court does not find any reason to differ with the conclusion arrived at by the learned Executing Court determining the relevant date for conversion of Euro to Rupee as 01.07.2014 i.e. the day when the objections under Section 48 were finally dismissed.

Hence, revision petition is dismissed.

26.02.2018  
*sheetal*

**(ANIL KSHETARPAL)**  
**JUDGE**

Whether Speaking/Reasoned: Yes/No  
Whether Reportable : Yes/No