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

Date of decision: 5th December, 2018

\+ **O.M.P. 592/2011**

M/S HINDUSTANLATEX LIMITED ..... Petitioner

Through: Mr. C.N. Sreekumar, Mr. Amit Sharma & Ms. Malavika B. Pillai, Advocates (M-9810985706).

versus

M/S NATIONAL RESEARCH DEVELOPMENT CORPORATION & ANR ..... Respondents

Through: Mr. Jitesh Srivastava, Advocate with Mr. D.V. Singh (Legal consultant) (M-9868241083).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. **(Oral)**

1. The present petition has been filed challenging the award dated 23rd April, 2011, by which the Ld. Sole Arbitrator has awarded an amount of Rs.11,83,530/- to the Respondents. Costs of Rs.15,000/- have also been awarded to the Respondents. The Ld. Arbitrator has also awarded *pendente lite* and future interest. The operative portion of the award is extracted herein below:

> *"(i) A sum of Rs.11,83,530/- was payable on the date of commencement of proceedings. Accordingly a sum of Rs.11 ,83,530/-· is awarded to the claimant.*
> *(ii) The claimant shall also be entitled to pendent-elite and future interest till payment @18% p.a on the above said amount.*
> *(iii) The claimant is entitled to cost of Rs.15,000/- in*

view of peculiar facts and circumstances from the respondent.
The Award is announced to day on 23rd April 2011 at Delhi."

2. The facts leading to the passing of the impugned award are that the Respondent – National Research Development Corporation (*hereinafter, 'NRDC'*) entered into a Technology Transfer License Agreement under which the NRDC had transferred technology for manufacture of Disposable Blood Bags, Soft Shell Blood Oxygenator and Soft-Shell Cardiatory Reservoir with integral filter to the Petitioner. Under the terms of the license agreement, a non-exclusive license was granted to the Petitioner, which was to remain in effect from 31st January, 1991 for a period of ten years from the effective date i.e. 1st February, 1991. The actual manufacture commenced on 1st September, 1995 and the agreement subsisted until September, 2005. The Petitioner/licensee had to pay a sum of Rs. 16 lakhs as a consolidated sum and 3% royalty on the ex-factory sale price every year on 1st April and on 1st October. 30 days' grace period was also given for making of the said payments.

3. During the course of the contract, there were continuous delays in the payments made by the Petitioner/licensee. The last payment was made by the Petitioner upto 30th September, 2005. During the period of the contract, repeated requests were made by Petitioner for waiver of interest. The NRDC, did not grant any waiver. However, after receiving the last payment in 2005, sent a demand of Rs.57,56,534/- seeking payment of interest for the delayed payments. The said letter is relevant and is set out herein below:

"*No.NRDC/Royalty/H-122/3820/2006*

The Manager (Finance & Accounts)
M/s Hindustan Latex Limited
Poojapura
Thiruvananthapuram-695012
Kerala
Kind Attn: Sh. C. Santhosh Cherian
Sub: Request for payment of interest on delayed payment of royalty in respect of Blood Bags
Dear Sir,
We acknowledge with thanks the receipt of royalty payment upto 30th September, 2005.
You are aware that you have not sent the royalty payments on time and hence you are liable to pay default interest. In this connection we would like draw your kind attention to the Clause 5(ii) and (iii) of the agreement, where in it was clearly indicated that royalty is payable within 30 days from the stipulated dates and default interest @ 18% p.a. is payable on the overdue amounts (including any interest in arrear) from the due dates of payment till realization/recovery of such amount.
Accordingly a sum of Rs.57,56,534/- (Rupees fifty seven lakhs fifty six thousand five hundred thirty four only) is payable to the Corporation, as default interest, as per the details enclosed as Annexure - 1.
Since our Government Auditors are pressing us hard to recover the outstanding interest at the earliest, we are to request you to send the demand draft cheque immediately.
Expecting your utmost cooperation in the matter.
Thanking you,

Yours faithfully

(S.K. Sakhuja)
Company Secretary"

4. Since the interest amount was not paid by the Petitioner, arbitration

was invoked and the Sole Arbitrator was appointed. The Ld. Arbitrator framed the following points for consideration in the arbitral proceedings:

> *"(a) Whether there was any mutual current account between the parties?*
> *(b) Whether the claim of interest had been waived by the claimant and now it could not be claimed?*
> *(c) Whether the claims totally barred by time?*
> *(d) Whether the claimant is entitled to any amount, if so the amount?*
> *(e) Whether the claimant can claim compound interest?*
> *(f) Whether the claimant would be entitled to pendent-lite future interest over interest?*
> *(g) Whether either the parties would be entitled to cost of the proceedings?"*

5. The only issue that was to be adjudicated was in respect of interest. The Ld. Arbitrator after considering the evidence on record passed an award in the terms as extracted above.

6. The said award is under challenge before this Court. The first and foremost objection raised by counsel for the Petitioner is that the Ld. Arbitrator had held the last effective hearing on 26th August, 2009, however, the award was passed almost 20 months later i.e. on 23rd April, 2011. Ld. Counsel placed reliance on a judgment of this Court in ***Harji Engineering Works Pvt. Ltd. v. Bharat Heavy Electricals Ltd. (2008) 153 DLT 489*** to submit that when there is such a gross delay, the award is liable to be set aside. The second submission of Ld. Counsel for the Petitioner is that the amounts which were paid by the Petitioner were repeatedly adjusted towards the principal amount and not towards interest. Once the amount is adjusted towards principal, no interest is in fact payable. He relies on a judgment of

the Supreme Court in ***Gupreet Singh v. Union of India (2006) 8 SCC 457*** and ***Meghraj and Ors v. Bayabai and Ors. A.I.R. 1970 SC 161***. He submits that once the amount is adjusted towards the principal, no claim of interest can thereafter be made.

7. On the other hand, counsel for NRDC points out that there has been no waiver by the Respondent. In fact the detailed calculation was submitted by NRDC as to how the amount which was finally awarded was in fact due. The interest calculation by NRDC is set out below:

Royalty paid upto	Due Date	Actual date of payment	No of days delay	Royalty amount paid	Interest @ 6%	Interest @ 9%	Interest @12%	Interest @ 18%
31-03-05	1-May-05	28-Jan-06	272	2083911	93177	139765	186353.05	279530
30-09-05	1-Nov-05	10-Feb-06	101	1495745	24833	37250	49667	74500
30-09-04	1-Nov-04	31-Mar-05	151	1211099	30062	45093	60123	90185
31-03-04	1-May-04	19-Jan-05	264	1385490	60126	90190	120253	180379
30-09-03	1-Nov-03	23-Nov-04	388	1344733	85768	128653	171536	257304
31-03-03	1-May-03	25-Jun-04	421	1338941	92662	138993	185324	277986
TOTAL					386628	579944	773256	1159884

8. It is further submitted that as against the amount of Rs.82 lakhs which was demanded by NRDC, the Ld. Arbitrator has only awarded approximately Rs.11,80,000/-. There can be no fault found with the award inasmuch as it is a reasoned award and under the contract itself, the interest was payable under Clause 5(iii).

9. This Court has heard the submission of parties. A perusal of Clause 5 of the agreement clearly shows that the consolidated sum, the royalty and the interest were payable as per the agreement. Clause 5 of the agreement is extracted below:

> *"5. PAYMENT OBLIGATIONS;*
> *In consideration of the Licence hereby granted the Licensee shall pay to the Licensor.*

i) Premium of a consolidated sum of Rs.16.00 lakhs (Rs.Sixteen Lakhs only) in the following manner.
- Rs.12,00,000/ -(Rs.Twelve Lakhs) on or before the execution of these presents.
- Rs.2,00,000 / -(Rs.Two Lakhs) within three months of signing of this Agreement.
- Rs. 2,00,000 / - (Rs.Two Lakhs) within 15 days of commissioning of the Project.

ii) Royalty Three % on the ex-factory sale price from the time being of the ARTICLE, on the first day of April and on the first day of October every year regularly and punctually and in any event not later then the first day of May and first day of November immediately following, in every such year.
PROVIDED that the liability of the licensee to pay royalty under and in terms of this sub- clause (ii) shall accrue upon the commencement of the manufacture of the ARTICLE for commercial purposes at the PLANT including for any usage of the Article by the Licensee and shall continue for a minimum period of Ten years from such commencement.

iii) Interest @ 18% per annum on all overdue amounts (including any interest in arrear) from the due dates of payments till realization/recovery of such amount by the Licensor, provided that interest on interest in arrear shall not be charged until the expiry of the period fixed by the Corporation.
EXPLANATION: For the purpose of computation of royalty.

i) -the manufacture of the ARTICE" shall deem to commence or take place when such ARTICLE is in a marketable / consumable / usable state) including the ARTICLE in storage or ready for the Licensee's own use or otherwise.)

ii) ex-factory sale price" shall deem to be the total price from time to time declared to, and accepted by, the authority under the Central Excise & Salt Act, 1947 or any other authority of Govt. of India, or in the absence of such declaration, as published/ communicated to the trade or the public in this behalf, the price relevant for the purpose of sub-clause (ii) of Clause 5 is deemed to be the highest price so declared /published/communicated during the six month period for which the royalty is to be calculated(without any deduction being made there from on account of any discount or rebate whatever.

iii) All payments due under this clause 5 shall be made within 30 days from the stipulated dates and without any deduction, withholding or adjustment except to the extent required by law."

10. Coming to the first objection of the Ld. Counsel for the Petitioner, there is no doubt that there has been a twenty month delay in the pronouncement of the award by the Ld. Arbitrator. Though, the proper course of action in arbitration proceedings would be to pass awards within a reasonable period after the last effective hearing, in the present case, the twenty months' period, in view of the judgment in ***Harji Engineering Works Pvt. Ltd. v. Bharat Heavy Electricals Ltd. (supra)*** does appear to be unreasonable. In the said judgment, a delay of three years was sufficient for the Court to set aside the award as it defeats the fundamental basis for alternative dispute redressal. The delay in the present case is almost two years and there can be no justification for such a delay.

11. Apart from the above, a perusal of the award itself shows that the Ld. Arbitrator has made some fundamental errors in the award. Firstly, though Article 25 of the Limitation Act is referred to by the Ld. Arbitrator and

relied upon by the counsel for the Petitioner, the extracted provision is article 26 of the Limitation Act which has no application in the present case. Article 25 which relates to interest and the limitation within which interest should be charged, reads as under:

For money payable to Three When the accounts are the plaintiff for money years found to be due from the defendant to the plaintiff on accounts stated between them	*Three years*	*When the interest becomes due.*

The interest in respect of each of the royalty payments would have become due within three years from the date when the said instalment itself was due i.e. within three years from 1st April and 1st October. There is no discussion in the award as to how the limitation period was calculated and in respect of which instalments, the claim for interest is within limitation. The objection as to limitation having been specifically raised, the quoting of the wrong provision and no discussion as to the various instalments, the dates when they were paid and whether the claim was within limitation, are fundamental errors in the award. Admittedly, the notice for arbitration was issued on 19th May, 2006 after the last payment was made by the Petitioner.

12. Insofar as the calculation of the interest which has been done by the Ld. Arbitrator i.e. to the tune of Rs.11,83,530/- there is no calculation given in the award. Counsel for the Respondent has relied on a chart which was

handed over to the Ld. Arbitrator which has been extracted hereinabove. The Ld. Arbitrator does not even mention the periods for which the said interest has been awarded in the discussion portion of the award. The Arbitrator is bound to give reasons for the award.

13. The Ld. Arbitrator has also recorded that under Clause 8A, waiver has been granted to the Petitioner. However, this submission would not support the case of the Petitioner inasmuch as the same very clause itself records that further claims can be raised by the Respondent. Thus, considering Clause 8A and the finding above that waiver has not been granted, since the pronouncement of the award was considerably delayed i.e., by almost 20 months and since the basic provisions of law have been wrongly quoted and the discussion in respect of interest is found lacking, the award is not sustainable.

14. The same is accordingly set aside.

PRATHIBA M. SINGH
JUDGE

DECEMBER 05, 2018
Rahul/Vrinda