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

Date of decision: <u>01st August, 2018</u>

\+ O.M.P. (COMM) 220/2016

VEECON IMPEX INDIA & ORS. ..... Petitioners

Through: Mr.Arun Malik, Ms.Shruti Sharma & Ms.Ruchina Singh, Advs.

versus

NATIONAL AGRICULTURAL COOPERATIVE MARKETING FEDERATION OF INDIA LTD. ..... Respondent

Through: Mr.Aaditya Vijaykumar & Ms.Liza M. Baruah, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

<u>NAVIN CHAWLA, J. (Oral)</u>

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner challenging the Award dated 22.05.2015 passed by the Sole Arbitrator directing as under:-

> *"**<u>FINDINGS:</u>***
> *I. It is held that the claimant is entitled to claim interest on the outstanding amounts for all the three stages namely pre-reference period, pendent lite period and post-award period (para 7.2).*
> *II. It is held that the claimant is entitled to one time "Service Charges" in terms of the MoU (Para 7.3).*
> *III. It is held that the claimant is entitled to charge compound interest on the loan amount, for the period, during which the MoU and the addendum thereto was in vogue i.e. up*

to 23.3.2006 and not thereafter (Para 7.4).
IV. It is held that the claimants are entitle to appropriate the payments made by the respondent first towards the outstanding interest and the balance towards the principal (Para 7.5).
V. It is held that the claimant is entitled to charge interest @ 12% p.a. on the outstanding amount after the expiry of the period of MoU and addendum thereto i.e. from 24.3.2006 to the date of passing of the award. (Para 8.2).”

2. The Arbitrator in his Impugned Award has issued the following directions:-

> *“**DIRECTIONS:***
> *I. On the basis of the above findings, claimant is directed to work out afresh the sum due and payable by the respondent towards principal and the interest up to the date of Award, by a qualified Chartered Account, and to communicate the same, through Registered Post to the respondent, informing them, the total sum due and payable by them under the Award;*
> *II. On receipt of the above information about the sum due and payable by them under the award, the respondent shall pay the same to the claimant within a period of 30 days along with interest @ 12% p.a. for the intervening period.”*

3. The disputes between the parties have arisen in relation to the Memorandum of Understanding (MoU) dated 24.09.2004 whereunder the respondent had extended a facility of financing for the purchase of spices (cloves etc.), dry fruits and edible oil to petitioner no. 1. The Memorandum provided for charging of interest as under:-

> *“Interest on investment of NAFED*
> *NAFED shall charge interest as under from the PARTY on the funds invested by NAFED @ 7% P.A. upto a period of 4 months and 8% p.a. for next two months on specific request of the party.”*

4. The Memorandum further provided for charging of Service Charges as under:-

> *"Service Charges*
>
> *NAFED will charge services @ 1.0% from the PARTY on the ex-godown value of the stock upto 4 months and additional 0.05% for the extended period beyond 4 months."*

5. The petitioners having defaulted in making payment of the loan facility alongwith interest, the respondent invoked the Arbitration Agreement between the parties, which has resulted in the Impugned Award.
6. The limited grievance of the petitioners against the Impugned Award is that the Arbitrator has allowed the respondent to charge compound interest for the period during which the MoU and Addendum thereto were in operation, upto 23.03.2006. Relying upon the terms of the Memorandum, it is submitted that the respondent could have charged interest only at the rate of 7% per annum upto a period of four months of the loan facility being granted and thereafter at the rate of 8% per annum. It is submitted that admittedly, the amount of Rs. 12.72 Crores claimed by the respondent till the date of filing of its claim included compound interest. It is submitted that the petitioners are not aware of the rate of interest being charged in such calculation.
7. The learned counsel for the respondent on the other hand, relying upon the judgment of the Supreme Court in ***Hyder Consulting (UK) Limited v. Governor, State of Orissa***, (2015) 2 SCC 189, submits that the Arbitrator was within his rights under Section 31(7) of the Act to award compound interest in favour of the respondent. He further

submits that the Arbitrator in the Impugned Award and his final direction has directed the respondent to get the sum due and payable from the petitioners calculated through a qualified Chartered Accountant and therefore, the grievance of the petitioners that it is not aware of how the amount due and payable was calculated, cannot be sustained.

8. I have considered the submissions made by the counsels for the parties. Admittedly the MoU between the parties provides for the rate of interest to be charged from the petitioners during the period of the same. The rate of interest is 7% p.a. upto a period of four months and 8% p.a. for the next two months. Therefore, only simple interest was to be charged from the petitioners under the MoU . There is also no provision in the MoU which provides for liquidated damages that can be charged by the respondent incase of default on the part of the petitioners to repay the loan facility within the time granted. The Arbitrator while awarding the claim of the respondent of Rs. 12.72/- crores has accepted that the respondent had included compound interest in the same. The Arbitrator allowed the claim of the respondent on the basis that the witness of the respondent had stated in his evidence that the respondent had taken a loan from a bank and the petitioners had not objected to the charging of the compound interest in their Written Statement/reply to the Statement of Claim. The relevant findings of the Arbitrator are reproduced hereinbelow:-

> ***"ANALYSIS & CONCLUSION:***
> *(iii) The charge of interest on interest i.e. compound interest has been held to be not against the Public Policy in India but there has to be agreement for the same. The Supreme Court in*

<u>Central Bank of India vs. Ravinder (2002) I SCC 367</u> held as under:

> *"36. The English decisions and the decisions of this Court and almost all the High Courts of the country have noticed and approved long established banking practice of charging interest at reasonable rates on periodical rests and capitalizing the same on remaining unpaid. Such a practice is prevalent and also recognised in non-banking money lending transactions. The legislature has stepped in from time to time to relieve the debtors from hardship whenever it has found the practice of charging compound interest and its capitalization to be oppressive and hence needing to be curbed. <u>The practice is permissible, legal and judicially upheld excepting when superseded by legislation. There is nothing wrong in the parties voluntarily entering into transactions, evidence by deeds incorporating covenant or stipulation for payment of compound interest at reasonable rates</u>, and authorising the creditor to capitalize the interest on remaining unpaid so as to enable interest being charged at the agreed rate on the interest component of the capitalized sum for the succeeding period. Interest once capitalized, sheds its colour of being interest and becomes a part of principal so as to bind the debtor/borrower." (emphasis supplied)*

(iv) Let us apply the above principles to the facts at hand. In this case admittedly the claimant had taken loan from the bank and thereafter given Rs.30 Crores to the respondent under the business tie-up arrangement. It was a commercial transaction. The respondent in none of their letters took up any objection that they had never agreed to pay the compound interest. They have not taken any such plea in their Written Statement/Reply to the Statement of Claim.

In view of the above, on the facts at hand, I am persuaded to hold that the claimant is entitled to charge compound interest on the loan amount, for the period, during which the MoU and the addendum thereto was in vogue i.e. up to 23.3.2006 and not *thereafter."*

9. In passing the above Award, the Arbitrator has clearly ignored the terms of the MoU. It has also taken note of a bare statement made on behalf of the respondent that it had taken a loan from the bank to extend the same to the petitioners. No loan document was placed on record. It was also not shown what interest was being paid by the respondent to such bank. Therefore, not only is the Award against the terms of the MoU but also, there is no evidence led by the respondent to claim damages for the default of the petitioners at compound rate of interest.

10. In ***Hyder Consulting (UK) Limited (Supra),*** the question before the Supreme Court was whether the Arbitrator can award compound interest in exercise of its power under Section 31(7)(b) of the Act. Hon'ble Mr. Justice H.L. Dattu , former Chief Justice of India has noted the question before the Court in the above judgment in the following words:-

> *"The question before this Court is, whether the decision of this Court in State of Haryana v. S.L. Arora and Co., wherein it is held that an award of interest on interest from the date of award is not permissible under sub-section (7) of Section 31 of the Arbitration and Conciliation Act, 1996 (for short "the 1996 Act"), is in consonance with earlier decisions of this Court."*

11. This Judgment did not deal with the question whether the Arbitrator in exercise of its power under Section 31(7)(a) of the Act can award compound interest in ignorance of the terms of the agreement between the parties. The above Judgment, in my opinion, will have no

application to the facts of the present case.

12. I may also highlight that the Arbitrator has not even mentioned as to what is the rate of interest being awarded in favour of the respondent or being charged by the respondent till 23.03.2006 and forms part of Rs. 12.72 crores claimed by the respondent.

13. In view of the above, the Impugned Award so far as it allows charging of the compound interest by the respondent till 23.03.2006 is set aside.

14. With the consent of the parties the Award is modified to the limited extent that the respondent is entitled to charge interest at the contractual rate i.e. at the rate mentioned in the MoU till 23.03.2006 on the principal sum remaining outstanding from the petitioner. Thereafter, the respondent shall be entitled to charge interest at the rate of 12% per annum as awarded by the Arbitrator. All the remaining directions in the Impugned Award shall remain except for the above.

15. The petition is disposed of with the above directions, with no order as to cost.

NAVIN CHAWLA, J.

AUGUST 01, 2018/*rv*