

\$-12

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 16th August, 2018

+

O.M.P. (ENF.) (COMM) 55/2017

M/S ARSS INFRASTRUCTURE PROJECTS LTD

..... Decree Holder

Through: Mr. Hitendra Nath Rath, Adv.

versus

CALCUTTA HALDIA PORT ROAD COMPANY LTD.

..... Judgement Debtor

Through: Mr. Siddharth Pandey & Mr. Gaurav Mishra, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This enforcement petition has been filed by the petitioner seeking enforcement of the Arbitral Award dated 10.05.2013 passed by the Sole Arbitrator. The operative portion of the Award, so far as is relevant to the present limited controversy is reproduced hereinbelow:-

“2.8 The AT held that the Claimant is entitled for award of interest on the cost of pavers of Rs. 2 crores claimed to be considered by them while submitting the auction bid. The Claimant has availed finance for purchase of auctioned machinery from Bank of India, Bhubaneswar mid Corporate Branch at the rate of interest of 15.25% from 14.09.2009 (The date of sanction of loan). The AT held that the Claimant is entitled to payment of interest by the Respondent from 14.09.2009 till the date of payment of the awarded amount of Rs. 2.00 crores under claim no-1. The Claimant has calculated the interest payable by the Respondent

from 14.09.2009 to 31.03.2013 as Rs. 1,06,48000/- which has been filed with the AT vide Claimant's letter dated 30.03.2013.

xxxxxx

2.11 In view of the foregoing paragraphs the AT held that the admissibility and quantification of Interest of Rs. 1,06,48000/- is tenable.

2.12 Taking into consideration the evidence, written and oral submissions by the parties and based on the findings in respect of Claim as brought out in the preceding paragraphs AT held that the Claimant is entitled for payment of Interest from the Respondent. Hence AT awards a sum of Rs. 1,06,48000/- to the Claimant from the Respondent against this Claim No 2 as interest from 14.09.2009 to 31.03.2013. The AT also awards future Interest that may be paid or accrued to the Bank from 01.04.2013 onwards till the date of release of amount of Rs. 2 crores to the Claimant by the Respondent under claim no-1

(emphasis supplied)

2. The respondent had challenged the said award by O.M.P. (Comm.) 557/2016 which was dismissed by this Court vide its order dated 28.02.2017. The respondent challenged the said order before the Division Bench as also before the Supreme Court, however, the same was also dismissed. The award has therefore, become final.

3. The respondent made a payment of Rs. 2,91,83,200/- after deducting TDS on 13.10.2017 and further amount of Rs. 1,38,46,164/- on 06.11.2017.

4. The limited controversy between the parties is whether the amount of Rs. 1,06,48,000/- awarded as interest by the arbitrator in favour of the petitioner for the period of 14.09.2009 to 31.03.2013 is to be added in the amount of Rs. 2 crores for calculating the post award interest awarded by the

arbitrator. To answer this controversy, Section 31(7) (b) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') prior to the amendment needs to be referred to and is being reproduced hereinbelow:-

“(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment”.

5. A reading of the above provision would show that unless the Award otherwise directs, the sum directed to be paid by the Arbitral Tribunal shall carry interest at the rate of 18% per annum from the date of the Award to the date of payment. In the present case, the arbitrator has awarded post award interest only on the amount of Rs. 2 crores which was the principal sum awarded by him in favour of the petitioner. As the arbitrator has not awarded the post award interest on the sum obtained upon adding the pre-award interest to the principal otherwise awarded by him, this Court in exercising its power under Section 36 of the Act cannot substitute such award or make amendments thereto.

6. Learned counsel for the petitioner has placed reliance on the judgment of the Supreme Court in ***Hyder Consulting (UK) Ltd. vs Governor State of Orissa***, (2015) 2 SCC 189, and also on the judgments of this Court in ***RDS Projects Ltd vs Chennai-Ennore Port Road Co. Ltd.***, 2016 SCC OnLine Del 5027, and ***M/s S.A. Builders Ltd. vs Municipal Corporation of Delhi*** 2017 SCC OnLine Del 7947, for the post-award interest being payable on both the principal sum as also the pre-award interest awarded by the Arbitrator.

7. He further submits that under the unamended Act, there was an

automatic stay on the operation of the Award during the pendency of the petition filed under Section 34 of the Act by the respondent, and therefore, the petitioner should be held entitled to interest even on the pre-award interest awarded by the Arbitrator.

8. I am unable to agree with the submissions made by the learned counsel for the petitioner. In the present case, the Arbitrator in paragraph 2.12 has clearly recorded that the respondent shall remain liable to pay interest till the date of release of the amount of Rs. 2 crores to the petitioner. The pre-award interest awarded by the Arbitrator was also on the said amount of Rs. 2 crores and was calculated till 31.03.2013. The Arbitrator has therefore, not awarded interest in favour of the petitioner on the pre-award interest awarded by him in the Award.

9. In *Hyder Consulting (supra)*, the Supreme Court has held that the Arbitrator would be within his jurisdiction to award interest on the pre-award interest awarded by him by adding the same to the principal sum awarded. The Supreme Court had interpreted the words “sum directed to be paid by the Arbitral Award” and held that the same may include both the principal sum as well as the pre-award interest awarded by the Arbitral Tribunal. However, the Supreme Court was not dealing with the situation where the Arbitral Tribunal restricted the post award interest to the principal sum awarded in the Arbitral Award.

10. In *SA Builders Limited (supra)*, this Court was again confronted with the position where the Arbitral Tribunal, pursuant to the remand by the Division Bench, had clarified that the interest would be payable on the amount of claims awarded, plus interest awarded for the pre-reference and *pendete lite* period. This Judgment therefore, would be of no assistance to

the claim made by the petitioner.

11. In ***RDS Project Limited*** (*supra*), the Arbitral Tribunal had again directed that the future interest would be payable on the “awarded amounts”, which as explained by the Supreme Court in ***Hyder Consulting (UK) Limited*** (*supra*), would include both the principal amount plus the interest directed to be paid by the Arbitral Tribunal for the pre-award period. This Judgment therefore, again is of no assistance to the petitioner and the question involved in the present enforcement petition.

12. In the present enforcement petition, as explained earlier, the Arbitral Tribunal has awarded post award interest only on the amount of Rs. 2 crores to the petitioner and has not awarded any interest on the pre-award interest.

13. As far as submission based on automatic stay on the enforcement of the Award during the pendency of petition under Section 34 of the Act is concerned, the same is stated to be rejected. In enforcement proceedings this Court had no jurisdiction to modify the Award. The jurisdiction the this Court is limited only to ensure that the Award is implemented.

14. Learned counsel for the petitioner next contended that the Arbitral Tribunal has awarded interest “that may be paid or accrued to the bank from 01.04.2013 onwards”. In this regard he placed reliance on a certificate issued by the Bank of India certifying that the total interest due on the principal amount of Rs. 2 crores for the period of 01.04.2013 to 31.10.2017 would be Rs. 1,48,50,000/- and therefore, this is the amount that should be paid by the respondent.

15. The learned counsel for the respondent refutes the same by contending that the Sole Arbitrator had taken the rate of interest as 15.25% while calculating the *pendete lite* interest awarded and therefore, the same

rate of interest should be applied for even the post award interest.

16. I am unable to agree with the submissions made by the counsel for the respondent. The Arbitrator in the Award has clearly directed the respondent to pay post award interest as may be paid or accrued to the bank by the petitioner. In light of the certificate issued from the bank certifying that the rate of interest was 16.20% for the period 01.04.2013 to 31.10.2017 and the amount therefore, due and payable was Rs. 1,48,5000/-, the respondent was liable to pay the said amount to the petitioner.

17. In view of the above, the respondent shall recalculate the amount remaining due and payable to the petitioner till the date of further payment. Such payment shall be made to the petitioner within a period of four weeks from today alongwith a detailed calculation on how it has been arrived at. Incase the petitioner claims that some further amount is due and payable, it shall submit its own calculation to the respondent within a period of two weeks thereafter. Any further amount due shall be paid by the respondent within three weeks thereafter.

18. Incase the dispute still remains, the petitioner shall be at liberty to file a fresh Execution Petition claiming the balance amount if any, payable by the respondent.

19. The petition is disposed of with the above directions. The respondent shall also pay cost quantified at Rs. 25,000/- to the petitioner.

NAVIN CHAWLA, J.

AUGUST 16, 2018/pv