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

+ OMP (ENF.) (COMM.) 70/2017 & I.A. Nos.6223/2017,12127/2017,
11648/2018

H.P. COTTON TEXTILE MILLS LTD. Decree Holder
Through Ms.Shantha Devi Raman and
Mr.Arihant Jain, Advs.

versus

THE ORIENTAL INSURANCE CO. LTD. Judgment Debtor
Through Mr.Udyan Srivastava and Mr.Jatin
Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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31.08.2018

The only dispute between the parties is with respect to the balance amount of Rs.46,81,892.83 being claimed by the Decree Holder as outstanding against the Award. This difference is on account of interest being claimed by the petitioner on the sum awarded by the Arbitrator in the Award.

Learned counsel for the Judgment Debtor submits that as far as the Post Award Interest is concerned, the Arbitrator has awarded interest only on the principal sum awarded, that is Rs. 3,31,63,870/-, and not on the pre and *pendent lite* interest which have been awarded in the Award or on the cost awarded in the Award. Final direction of the Arbitrator is reproduced hereinbelow:

“7. TRIBUNAL'S OPERATIVE DECISION

The Tribunal declares as follows:

1. Claimant is entitled to a total sum of Rs. 4,60,34,008/- under these heads:

- i. Claimant is entitled to a sum of Rs. 3,70,70,829/-, i.e. the claim assessed by Mr. B.S. Chawla.*
- ii. A sum of Rs. 67,53,739/- being the cost of repair/replacement of the building without depreciation.*
- iii. A sum of Rs. 21,74,233/- being the difference between the actually realized amount and the assessed amount in relation to Salvage.*
- iv. A sum of Rs. 35,207/- being the balance amount left towards debris removal cost.*

However it is clarified that in pursuance of Interim Award dated 31.05.2014 passed by the Tribunal, Respondent had paid a sum of Rs. 1,28,70,138/- to Claimant on 02.07.14 vide Cheque No. 061367. Thus, the aforesaid amount is to be adjusted in the total amount payable by the Respondent to the Claimant. On the said amount of Rs.1,28,70,138/-, no interest shall be payable w.e.f. 02.07.14. In other words, interest on the said amount shall be payable only upto 02.07.2014.

*Therefore, Respondent is directed to pay to Claimant the total amount of **Rs.3,31,63,870/-***

2 .Interest payable should be as per the given classification-

- i. Interest at the rate of 12% p.a. is calculated from 01.12.2010 i.e., two and a half months after the date of loss up to date of reference. Date of reference herein is the date on which Arbitral Clause was invoked which is 30.5.2013. Therefore, Interest from 01.12.2010 up to 30.05.2013 i.e. 30 months @12% p.a. on the total amount of Rs.4,60,34,008/- comes out to be **Rs. 1,38,10,202.40/-**.*

ii. Interest at the rate of 12% p.a. is calculated from next day of date of reference till the date of payment of the amount awarded in Interim Award. Date of reference is 30.05.2013 and date on which Claimant was paid is 02.07.2014. Therefore, Interest from 31.05.2013 up to 02.07.2014 i.e. 13 months and 3 days @ 12 p.a. on amount of Rs.4,60,34,008/- comes out to be **Rs. 60,30,455.04/-**.

iii. Interest at the rate of 12% p.a. is calculated from 03.07.2014 till the date of Final Award. Date of Final Award is 19.10.2016. Therefore, Interest from 03.07.2014 up to 19.10.2016 i.e. 27 months and 16 days @ 12 p.a. on amount of Rs. 3,31,63,870/- comes out to be **Rs.91,33,329.80/-**.

iv. Interest at the rate of 12% p.a. to be calculated from the date of Award till actual realization.

3. All other Claims of the Claimant are here hereby rejected.

4. Claimant is entitled to receive total costs and expenses of the Arbitration from the Respondent. Calculation to be done by the parties in this regard:-

i. Tribunal directs Respondent to pay Claimant, its share of Arbitrator's fee: and expenses including Tribunals Administrative Expenses which comes out to be Rs. 4,12,500/-.

ii. Tribunal directs Respondent to pay Claimant, the fee and expenses of Claimant's Counsel, if certified.

iii. Since, Respondent was not making any payments to its own nominated Arbitrator Hon'ble Mr. Kumar Bakhru, vide Order of the Tribunal, same was paid by the Claimant to him. The said amount comes to Rs. 09,46,780/- paid by Claimant to him for & on behalf of the Respondent. This amount shall also be payable by Respondent to Claimant."

A reading of the above would show that in paragraph 2(iv), the Arbitrator has awarded Post Award Interest only on the principal sum of Rs.3,31,63,870/- and not on the pre-reference or *pendent lite* interest awarded in paragraph 2(i) to 2(iii) or on the cost awarded in paragraph 4 of the Award. Therefore, I am unable to agree with the contention raised by the learned counsel for the Decree Holder that interest is payable even on the said amounts.

Learned counsel for the Judgment Debtor however, admits that an amount of Rs.7,57,948/- as on 29.01.2018 would remain due and payable. It is submitted that this amount has accrued as, though the demand draft for making the payment had been duly prepared, there was delay in depositing the same before this Court.

Be that as it may, the Judgment Debtor shall pay this amount of Rs.7,57,948/- to the Decree Holder within a period of three weeks from today.

The Execution Petition and the pending applications are disposed of with the above directions, with no order as to cost.

Dasti.

NAVIN CHAWLA, J

AUGUST 31, 2018/Arya