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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 16.10.2018

+ OMP (COMM.) 438/2018

CEMENT CORPORATION OF INDIA LTD..... Petitioner

Through Mr.Jainendra Maldahiya,
Adv.

versus

STEEL AUTHORITY OF INDIA LTD. (SAIL).... Respondent

Through Mr.Santosh Kumar and
Mr.Shivam Parihar, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

I.A. No.14375/2018 (Delay)

This is an application seeking condonation of ten days delay in re-filing of the petition.

For the reason stated in the application, the delay is condoned and the application stands allowed.

I.A. No.14376/2018 (Exemption)

Allowed, subject to all just exceptions.

OMP(COMM) 438/2018 & I.A. No.14374/2018 (Stay)

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 Arbitral Award dated

17.05.2018 passed by the Sole Arbitrator adjudicating the disputes that had arisen between the parties in relation to the Agreement dated 26.06.1991 executed between the parties. The disputes between the parties are in a narrow canvas as to whether the Sole Arbitrator has erred in awarding interest in favour of the respondent from 31.12.2008 and also as to the principal amount on which such interest is payable.

2. Counsel for the petitioner submits that the petitioner had been declared 'Sick' under the erstwhile Sick Industrial Companies Act, 1985 and a scheme had been sanctioned by the Board for Industrial and Financial Reconstruction (BIFR) wherein, the respondent being an unsecured creditor, was to be paid only principal sum without interest. The principal amount owed to the respondent was only Rs.1,81,21,870.28 and therefore, the Arbitrator has erred in awarding the principal amount of Rs.442.06 lacs in favour of the respondent. It is further submitted that as per the scheme sanctioned by the BIFR no further interest on this principal amount was payable to any unsecured creditor including the respondent. The Arbitrator has therefore, erred in granting interest in favour of the respondent in the Impugned Award.

3. I have considered the submissions made by the counsel for the petitioner, however, I find no merit in the same.

4. A perusal of the scheme sanctioned by the BIFR shows that payment to the creditors, including the financial institutions and the respondent herein, was to be made in two Phases. While Phase-I was to be funded by the Government of India, Phase-II was to be funded

by sale of seven non-operating units of the petitioner. Equally, while the creditors included in Phase-I were not to get any interest and their dues were to be settled only on the principal sum, the creditors in Phase-II, including Goa Shipyard and ONGC, were entitled to claim interest from the petitioner. In this regard a few paragraphs from the scheme would be relevant and are reproduced hereinbelow:

“7. SANCTIONED SCHEME (SS)

The SS inter alia envisaging expansion/modernisation of three operating units vis Rajban, Tandur and Bokajan and closure and sale of 7 non-operating units vis. Mandhar, Kurkunta, Akaltara, Charkhi Dadri, Delhi Grinding Unit/Bhatinda Grinding Unit, Naya Gaon and Adilabad is envisaged to be implemented in two phases:

The 1st phase to be implemented during 2005-06 is to be entirely funded by GoI and envisages settlement of dues of secured and unsecured creditors, payment of 25% of wages/salary arrears or account of implementation of IDA pay scales and revision of pending Wage Settlements/ Awards for wage Board governed employees, VSS of employees and Retrenchment of Contract/ Adhoc workers of 7 non operating units, Expansion of Rajban Unit, partial Expansions of Bokajan Unit and partial Upgradation of Tandur Unit. VSS of the employees shall be as per the policy of the Government and retrenchment of adhoc contract workers of 7 closed units would be governed by the Industrial Disputes Act.

The 2nd Phase to be implemented during 2006-07 and 2007-08 is to be funded out of the sale proceeds of the 7 non operating units and envisages.

- i) Balance Technology upgradation of Tandur unit and expansion of Bokajan unit by 100% with two split grinding units at Silchar and Banderdeva;*
 - ii) Settlement of dues of two unsecured creditors (PSUs) on OTS basis;*
 - iii) Settlement of balance employees arrears;*
 - iv) Settlement of liabilities of 7 non-operating units.*
 - v) Payment to Walchanagar Industries Limited (WIL). WIL held a decree dated 16.05.2002 in suit no.1519-A/95 under which Rs.5.53 crores with interest@ 12% w.e.f. 30.01.1989 was payable to them. BIFR had permitted them to continue the suit vide order dated 21.01.2004. On 26.04.2004, the Delhi High Court directed CCI to deposit the amount within four weeks. The decree was executed by attaching the corporate office and another office of CCI by the High Court. Subsequently CCI has since deposited the arbitral award of Rs.5.53 crores with Delhi High Court. The Scheme provides payment of interest in the Phase II of the Scheme. However as the case is sub judice, claims of WIL would be settled as per order of the Hon'ble Delhi High Court.*
 - vi) Settlement of pending liabilities of erstwhile Yerraguntla Unit, and*
 - v) Repayment of Government Loans (including Non-Plan Loan received in 1st Phase).*
- 7.1 Settlement of dues of secured and unsecured creditors.*

The settlement of dues of FIs envisages payment of balance OTS dues as per the DRS circulated on 12.06.1998 without interest for the delayed period. Settlement of dues of Banks and Army Group Insurance Directorate (AGID), a secured creditor envisages payment of outstanding principal as at 31.3.1998 and waiver of balance dues. The dues of unsecured creditors will be also be settled at their outstanding principal.

In a case filed by ... not legible ... of India, Indian Red Cross Society and Saint John Ambulance against CCI, the Company Law Board, vide order dated 16.01.2004 directed CCI to settle the principal alongwith maturity interest and 5% simple interest for the delayed period which is being contested by CCI, keeping in view the direction of Hon 'ble AAIFR's order dated 28.03.2000 which states that BIFR must ensure that when ordering repayment of dues of unsecured creditors, no discrimination should be made amongst unsecured creditors falling within the same classification of unsecured creditors so that similarly placed creditors get similar treatment", payment of their outstanding principal subject to waive of balance dues, have also been included in the phase.

As the settlement amount has to mainly come from GoI and funds availability being limited, CCI proposed that payment of dues of PSU creditors, viz. Goa Shipyard Limited and ONGC might considered in the 2nd phase i.e. out of sale proceeds of seven non- operating units CCI would take up with these PSUs through ministry. Majority of unsecured creditors (non PSUs) have agreed to accept outstanding principal in full and final settlement of their dues provided the same are paid within one year. Hence, all unsecured creditors except the 2 PSUs viz. Goa Shipyard and ONGC are proposed to be settled at their principal outstanding during the 1st phase and dues of Goa Shipyard and ONGC are proposed to be settled at their principal outstanding during the 2nd phase.

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8. COST OF SCHEME AND MEANS OF FINANCE

The Cost of Scheme and Means of Finance has been estimated at Rs.802.05 crores, as per details given below:

<i>COST OF THE SCHEME Repayment of OTS dues of secured/unsecured creditors</i>		<i>1st Phase</i>	<i>2nd Phase</i>		<i>Total</i>
			<i>1st year (2006-07)</i>	<i>2nd Year (2007-08)</i>	
<i>xxx</i>		<i>xxx</i>	<i>xxx</i>		<i>xxx</i>
<i>11</i>	<i>Pressing creditors- Liabilities of 7 Non operating units (As per Annexure 12)</i>	<i>-</i>	<i>76.37</i>	<i>48.67</i>	<i>125.04</i>

5. The scheme also had a list of annexures in which serial no.12 was “list of pressing creditors of non-operating”. The list states the liability owed by the petitioner to the respondent to be Rs.442.06 lacs.

6. A reading of the above scheme would clearly show that the respondent has been included in the list of ‘Pressing Creditors’ which were to be discharged in the second phase of the scheme and were entitled to claim interest on their dues. As the respondent was claiming interest, it was not included in the first phase which was to be funded by the Government of India and thus, have some sense of security in the repayment. The second phase was to be funded by the

sale of seven non-operating units of the petitioner, which as has now transpired could never be effected. The respondent therefore, continued to run a risk on its recovery.

7. The submission of the petitioner that the respondent was also included in the “unsecured creditor” list and therefore, as per the Scheme, was not entitled to the interest, cannot be accepted. There was clear distinction drawn between general unsecured creditors and the “Pressing Creditors” in the Scheme itself. This has also been considered by the Arbitrator in the Impugned Award while rejecting the submission of the petitioner. I therefore, find no infirmity in the Impugned Award on this aspect.

8. As far as the claim of interest is concerned, counsel for the petitioner submits that as the Scheme was in operation, the petitioner could not be saddled with the interest liability for the said period. I again do not find any merit in the said submission. Once it is found that the respondent was entitled to claim interest and that is why it was kept in Phase-II of the Scheme, the respondent cannot be denied such interest. The Arbitrator has, in any way, granted a very reasonable rate of interest in favour of the respondent. The Arbitrator has also taken note of the fact that even the respondent is in a bad financial stage and not awarding any interest in favour of the respondent would be against equity. In any case, this being a matter of exercise of discretion by the Arbitrator under Section 31(7) of the Act, cannot be interfered with by this Court, as it is not found to be unreasonable or perverse in any manner.

9. In view of the above, I find no merit in the present petition and the same is dismissed alongwith pending application. There shall be no order as to cost.

NAVIN CHAWLA, J

OCTOBER 16, 2018/Arya