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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 3267 of 2019
Date of Decision: 20.05.2019

Reliance Retail Limited and another

-Petitioners

Vs

Shalimar Estates (P) Limited

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashish Chopra, Advocate,
for the petitioners.

Mr. Vikas Bahl, Sr. Advocate, with
Mr. Nikhil Sabharwal, Advocate,
for the caveator-respondent.

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RAJ MOHAN SINGH, J.

1. Petitioners have preferred this revision petition against the order dated 08.04.2019 passed by Additional District Judge-cum-Presiding Judge, Special Commercial Court at Gurugram vide which the petitioners have been directed to pay an amount of Rs.5,05,24,280/- calculated upto 12.02.2019 and also to pay due amount till date.

2. Grievance of the petitioners is that the calculation submitted by the decree holder is not as per the award. Petitioners have highlighted that service tax has been wrongly included in the calculation in violation of statutory provisions.

Service tax would be available only when the actual payment is made by the decree holder, therefore, the calculation submitted by the decree holder is claimed to be illegal. Secondly, the total amount of Rs.16,32,18,865/- is inclusive of property tax till March, 2010 i.e. Rs.5,50,290/-. The decree holder has not mentioned the aforesaid amount in its calculation. Thirdly, the claim in respect of Rs.9,62,351/- towards compensation of rent, Common Area Maintenance charges and service tax for the period 01.09.2011 to 07.09.2011 has been illegally claimed.

3. In order to appreciate the aforesaid contentions, it would be relevant to peruse the award.

4. Perusal of the award would show that under Claim No.I, the Arbitral Tribunal has recorded that appropriate service tax and property tax for the period in question will also be payable by the present petitioners.

5. While elaborating further, the Arbitral Tribunal recorded that the compensation from 21.06.2008 to 31.01.2010 amounts to Rs.8,19,44,006/- (inclusive of rent and service tax). For the period from 01.04.2010 to 31.08.2011, the compensation amounts to Rs.6,43,95,643/- (inclusive of rent and service tax). Thus, the total amount payable as compensation to the decree holder by the present petitioners is Rs.14,63,39,649/-.

6. To sum up the aforesaid, the Arbitral Tribunal allowed the claims No.I and II in the following manner:-

Claim No.I: Recovery of Rent along with Service Tax

Under this claim, an amount of Rs.14,63,39,649/- was quantified from 21.06.2008 to 31.08.2011.

Claim No.II: Recovery of Common Area Maintenance Charges (CAM) along with Service Tax

An amount of Rs.1,26,44,216/- was quantified for the total covered area in possession of the present petitioners from 21.06.2008 to 31.08.2011.

7. In both the aforesaid claims No.I and II, the decree holder-claimant was further held entitled to compensation for the period starting from 01.09.2011 till the period the petitioners retain the possession of the demised premises i.e. till delivery of possession that infact was done on 14.11.2011.

8. Under Claim No.XV, an amount of Rs.42,35,000/- was allowed towards recovery of costs of arbitral proceedings and costs of litigation. In total, the decree holder was held entitled to a sum of Rs.16,32,18,865/-. In addition, the decree holder was also entitled to be paid interest @ 15% per annum on the outstanding amount till the date of award and thereafter @ 18% per annum till the entire payment is made.

9. It has been clarified that no interest will be payable by

the petitioners on the aforesaid amount of Rs.42,35,000/- which is the costs of arbitral proceedings.

10. In view of decision on each of the claims of the decree holder and counter claim by the petitioners- Company, an award of Rs.16,32,18,865/- was made till the date of award in favour of the decree holder. The award was passed on 07.09.2011.

11. In view of quantification of the amount under Claim No.I and II, for the requisite period and the provision made for the period beyond 01.09.2011 till delivery of possession, the decree holder is entitled for further compensation/amount as shown in the award itself.

12. In view of above, a harmonious construction has to be made for execution of the award. All the contentions raised by the petitioners have to be seen in the context of calculations already submitted by the petitioners themselves on record.

13. Learned counsel for the petitioners has given a comparison chart of the decree holder and the petitioners as Annexure P18.

14. As per Serial No.A, petitioners themselves have shown the payable amount as Rs.16,32,18,865/- as on 31.08.2011 (without interest i.e. basic award).

15. The aforesaid figure is not in dispute as per

comparative chart submitted by learned counsel for the petitioners. Petitioners have questioned the calculation of Rs.9,62,351/- under Serial No.D i.e. compensation for rent, CAM and service tax for the period 01.09.2011 to 07.09.2011.

16. Perusal of the award shows that the assessment has been made in terms of rent along with service tax and recovery of Common Area Maintenance (CAM) charges along with service tax. Even by submitting the calculations vide Annexure P15, petitioners have given necessary payable amount in total (A+B) for the period 21.06.2008 to 31.08.2011. The total payable amount (including rent+CAM+legal costs etc.) was assessed to be Rs.16,32,18,865/-. For the period 01.09.2011 to 07.09.2011 rent +CAM of 07 days was assessed to be Rs.9,62,351/- i.e. the subject mater of Serial No.D in the recent comparison chart submitted by the petitioners. For the period 21.06.2008 to 07.09.2011, interest @ 15% was calculated as Rs.3,01,65,094/- i.e. Serial No.G of the comparison chart Annexure P-18 submitted by the petitioners.

17. Petitioners have questioned the aforesaid amount on the strength of Note-II appended with Annexure P-18 on the premise that as per the Finance Act, upto 30.06.2011, the landlord (service provider) was liable to pay service tax to the government only after receipt of payment from the service

recipient. Hence, it is a case of no interest payable to the government in respect of service tax component upto 30.06.2011 and therefore, the decree holder is not entitled for interest on service tax till 30.06.2011. For 08.09.2011 to 13.11.2011 for rent+CAM on 67 days, an amount of Rs.90,73,591/- was assessed and the same is the subject matter of Serial No.i.

18. As per the comparison chart, there is no difference in the calculation submitted by both the parties. For the period 08.09.2011 to 04.02.2013, interest @ 18% was assessed to the tune of Rs.3,51,87,124/-. The aforesaid payment forms Serial No.H in the comparison chart submitted by the petitioners as Annexure P-18, wherein the petitioners have contested the aforesaid amount by showing difference of Rs.38,34,631/- on the strength of Note-II appended with the calculations. Significantly, the interest @ 18% per annum is calculated for the period 07.09.2011 to 04.02.2013. The aforesaid period falls beyond the date of 30.06.2011 even as per Note-II. Whether the service tax is to be paid by the decree holder or not is a subjective thing at this stage, particularly when entire payment calculated by the petitioners as per comparative chart Annexure P-15 has already been deposited. Non-payment or payment of service tax by the decree holder would attract different

consequences, for which petitioners at this stage have no locus to question.

19. The net amount deposited by the petitioners as per Annexure P-15 was Rs.6,48,97,934/-. The aforesaid assessment/calculations were admitted by the petitioners while giving previous calculations vide Annexure P-15 in the execution.

20. Now, the dispute is being raked up with reference to new calculations submitted by the petitioners as on 12.02.2019. The comparison of claims would show the claim of the decree holder is in consonance with the calculations submitted by the petitioners themselves in Annexure P-15. There is not even a slightest difference in the claim projected by the decree holder. On the other hand, the petitioners have raked up the issue with reference to Note-II appended with Annexure P18.

21. Perusal of the award itself would show that necessary details have already been given by the Arbitral Tribunal under Claims No.I, II and XV. The payable amount was assessed to the tune of Rs.16,32,18,865/- to which the interest was payable as recorded in the award itself. Service tax and rent were inclusive of the amount assessed from 21.06.2008 to 31.03.2010 i.e. Rs.8,19,44,006/- and for the period 01.04.2010 to 31.08.2011 amounting to Rs.6,43,95,643/-.

22. In the aforesaid tally of Rs.14,63,39,649/-, an amount of Rs.1,26,44,216/- under Claim No.II was added for total covered area in possession of the petitioners from 21.06.2008 to 31.08.2011. Under both the Claims No.I and II, the decree holder was further entitled to compensation for the period from 01.09.2011 till delivery of actual possession. The assessment made by the petitioners themselves on earlier occasion cannot be allowed to be questioned by them at this fag end of the litigation.

23. There has to be a finality to the *lis*.

24. Since all the calculations are available before the Executing Court, therefore, the Executing Court has not faulted in observing that all the contentions have been answered in the award itself.

25. In view of above, the impugned order cannot be said to be non-speaking.

26. This revision petition is found to be totally devoid of merits and the same is accordingly, dismissed.

20.05.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No