04.09.2020

COURT NO. 19
ITEM NO. SL-4
nandy/biswas

(Direction for Affidavits)

WPA 6661 of 2020

(Via Video Conference)

India Power Corporation Limited & Anr.
Vs.
Union of India & Ors.

Mr. Shaktinath Mukherjee, Senior Advocate
Mr. Soumya Majumdar, Advocate
Mr. Soumabho Ghose, Advocate
Mr. Shounak Mirta, Advocate
Mr. Deepan Kumar Sarkar, Advocate
Mr. Rishav Dutt, Advocate
Mr. Zulfiqar Ali, Advocate
……for the Petitioners
Mr. S. N. Dutta, Advocate
……for the Respondent Nos. 1 to 4

This matter was heard ex parte on August 26, 2020 when the learned single Judge refused to pass an ad interim ex parte order. The matter has now come up before me after service upon the respondent authorities.

The dispute in question is with regard to the manner of calculation of the interest that may be payable by the petitioners to the respondent authorities.

The petitioners submit that the calculation made by the Railway Authorities is against the normal principle of calculation of interest. They rely upon paragraph 55(1) of the Supreme Court judgment passed in ***Central Bank of India Vs. Ravindra & Ors*** *reported in* ***(2002) 1 SCC 367***. The said paragraph may be quoted below:-

> *"(1) Though interest can be capitalised on the analogy that the interest falling due on the accrued date and remaining unpaid, partakes the character of amount advanced on that date, yet penal interest, which is charged by way of penalty for non-payment, cannot be capitalised. Further interest, i.e. interest on interest, whether simple, compound or penal, cannot be claimed on the amount of penal interest. Penal interest cannot be capitalised. It will be opposed to public policy."*

The case of the petitioners is that the interest on interest cannot be charged, i.e., penal interest cannot be charged in a compound manner. Prima facie, I am satisfied with the contention of the petitioners.

Counsel on behalf of the Railway Authorities has vehemently argued that the contract contains an arbitration clause and, therefore, the writ Court should not interfere in this matter. He has submitted that since there has been no allegation made in the writ-petition with regard to any fraud having been committed by the respondent authorities, there can be no question of injuncting a bank guarantee.

Another vital aspect is required to be looked into. With regard to the same contract, interest had been charged for delay for an earlier period. With regard to the same, the matter had travelled up to the Supreme Court and the petitioners have deposited Rs.5.44 crores with the Registrar General of this Court. The present lis is with regard to penal interest chargeable on the subsequent period. Upon examination of the interest calculation-sheet (page 150 of the writ-petition) it appears that the Railway Authorities have compounded the interest and charged the penal interest. The figure of penal interest covering the entire period comes to Rs.9.20 crores as per calculation of the Railway Authorities. It is to be noted that out of this, amount of Rs.5.44 crores is already deposited with the Registrar General of this Court. With regard to the balance, amount of Rs.3.76 crores has been calculated by the Railway Authorities for the subsequent period. In the view of the Court, this figure should actually be Rs.3.60 crores.

After having heard the parties, I am of the view that this matter with regard to the calculation and whether the bank guarantee should be invoked, needs to be decided in this jurisdiction. It is clear that Railway Authorities have calculated the interest in a manner that is not allowed in law. Therefore, I am of the view that the invocation of the bank guarantee that has been threatened by the Railway Authorities by letters dated July 21, 2020 and August 17, 2020 are required to be stayed.

The above direction for injunction on the Railway Authorities from proceeding with invocation of the bank guarantee is subject to the writ-petitioners depositing a sum of Rs.3.6 crores (being the actual amount chargeable) calculated on simple interest basis.

Accordingly, the petitioners are directed to deposit a sum of Rs.3.60 crores within two weeks from date with the Registrar General of this Court. In the event, the amount is not deposited, the Railway Authorities shall be at liberty to encash the bank guarantee.

Let affidavit-in-opposition be filed within six weeks from date, reply be filed within two weeks thereafter. The matter will appear in the monthly list of November 2020.

(Shekhar B. Saraf, J)