

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2489 OF 2021

Konkan Railway Corporation Pvt. Ltd.
Having office at Belapur Bhavan,
Plot No.6, Sector II, CBD Belapur,
Navi Mumbai – 614.

..Petitioner

Vs.

M/s. B. T. Patil & Sons Belagum
(Construction) Pvt. Ltd.
Having Corporate office at Patson
House, 4112, Poona Bangalore Road,
Belgaum – 590 003.

..Respondent

Ms. Kiran Bhagalia a/w. Mr. Musharaf Shaikh i/b. Ms. Chitra Phadake, for the Petitioner.
Mr. Nikhil Sakhardande, Senior Advocate i/b. Mr. Mandar Soman, for the Respondent.

**CORAM : C.V. BHADANG, J.
RESERVED ON : 15 SEPTEMBER 2021
PRONOUNCED ON : 20 DECEMBER 2021**

Judgment :

. Rule made returnable forthwith. Mr. Soman, the learned counsel waives service for the Respondent. Heard finally by consent of parties.

2. The present Petition involves an issue about the calculation / computation of the amount payable to the Respondent – Decree holder under the award of the arbitrator.

3. The Petitioner is a Public Sector undertaking. The Petitioner had awarded a contract to the Respondent for construction of the BG Single Line Tunnel through shaft No.3 (Karbudhe) in Ratnagiri North Section vide an agreement dated 18 November 1993. As disputes and differences arose between the parties, the matter was referred to arbitration. The Arbitral Tribunal by an award dated 28 March 2007 allowed the claim of the Respondent with interest @12% per annum from the date of the award. A corrigendum was issued to the award on 17 April 2007, as to Claim No.9, with which we are not presently concerned.

4. According to the Petitioner, the calculation of the principal amount alongwith interest payable to the Respondent was made and after deducting taxes, the Petitioner under its advice dated 27 April 2007 informed the Respondent about the amount due and payable and issued a cheque in respect thereof which was accepted by the Respondent without any demur.

5. The Petitioner subsequently received a notice in Special Execution Proceeding No.503/2019 on the file of the learned Senior

Civil Judge at Ratnagiri directing the Petitioner to pay an amount of Rs.67,11,263/- to the Respondent. It appears that the Petitioner filed an Application for review of the order dated 27 January 2021 claiming that the said amount was not payable to the Respondent under the said award. The learned Executing Court by an order dated 24 February 2021 rejected the Application for review. Principally, the order dated 27 January 2021 and the one refusing to grant the Application for review dated 24 February 2021 are subject matter of challenge in this Petition.

6. It appears that the Petitioner had filed an Application (Exh.18) for amendment of its reply and Application (Exh.20) to withdraw from the joint pursis (Exh.16) and the undertaking. The Executing Court rejected Application (Exh.20) by an order dated 27 January 2021 and the Application (Exh.20) was rejected by an order dated 7 September 2020. By virtue of an amendment to the Petition, the Petitioner has incorporated challenge to both these orders also.

7. I have heard Ms. Kiran Bhagalia, the learned counsel for the Petitioner and Mr. Nikhil Sakhardande, Senior Advocate, for the Respondent. With the assistance of the learned counsel for the parties, I have gone through the record.

8. It is submitted by the learned counsel for the Petitioner that the present Petition only pertains to Claim No.10 which is in respect of the interest on Claim Nos.1 to 9 and 11. It is pointed out that as per Para No.4.10, the Arbitral Tribunal has held the Respondent to be entitled to simple interest @ 14% p.a. w.e.f. 7 December 1995 (the date when the final bill was passed) till 31 December 2000 and @ 12% p.a. w.e.f. 1 January 2001 till the date of the award. It is submitted that accordingly the calculation was made arriving at a total figure of Rs.2,48,03,572/-. The Petitioner had issued a cheque for Rs.2,12,99,602/- after deducting the taxes of Rs.35,03,970/- which was accepted by the Respondent without any demur. It is submitted that in reply (Exh.12) filed to the Execution Proceedings, there was an inadvertent error on account of a misconception and calculation made by the concerned Deputy Engineer which is not binding on the Petitioner. It is submitted that the concerned officer of the Petitioner, on the basis of a misinterpretation of the decision of the Supreme Court in *M/s. Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa*¹ had arrived at an incorrect figure. It is submitted that only the interest *pendente lite* gets merged in the amount of the award on which future interest has to be calculated. It is submitted that therefore, the Executing Court could not have acted on the basis of the reply filed or the joint pursis / undertaking (Exh.16). It is submitted that the issue is only regarding calculation /

1 (2015) ALL SCC 189

computation of the amount in terms of the award and cannot govern itself on the basis of any admission as such by the parties.

9. The learned counsel for the first Respondent has supported the impugned order. It is submitted that the pre-award interest is not independent of the 'sum' awarded under Section 31(7)(a) of the Arbitration and Conciliation Act, 1996, as held by the Supreme Court in *Hyder Consulting (supra)*. It is submitted that the Petitioner cannot extricate itself out of the admissions in the reply (Exh.12) and the undertaking (Exh.16) and in any event, the amount has rightly been held to be payable to the Respondent under the Arbitral award.

10. I have carefully considered the rival circumstances and the submissions made.

11. The issue only pertains to the manner in which the interest has to be calculated / computed. Claim No.10 was regarding interest and the Arbitral Tribunal has granted the said Claim in the following terms.

4.10 Claim No.10 – Interest on Claim No.1 to 9 and Claim No.11.

The Claimants have asked interest to be paid w.e.f. date of completion till the date of payment @ 24% for

which they had already served notice on the Respondents. They have also submitted documents from their bankers as proof of prevailing Interest rates.

The Respondents mentioned that the payment of Interest is not permitted under clause 15.4 of GCC of KRCL and as such should not be paid on the sums due under the Contract. Further they pointed out that though they had taken action to constitute an arbitration tribunal vide their letter dated 16-05-03 after the disposal of SLP by the Hon. Supreme Court in Jan.'02, the Claimants refused to accept it and filed a writ petition in the High Court and continued to follow legal remedies. It was only in 2006 that they agreed to accept the appointment of Arbitrators.

The Tribunal based on facts presented before it considers that the Respondents had taken recourse to contest the High Court's appointment of an Arbitrator by filing a SLP in Supreme Court in 1996 and only after the disposal of SLP in 2002 that they decided to constitute an Arbitration Tribunal in 2003 and as such the major role for delay in the case is attributable to them. Tribunal thus considers the claim for Interest to be paid on the sum of the award to the Claimants. Tribunal is of the opinion that the Interest

rates which had been at a high of 16-18% in around 1995-96 has come down after 2001 and as such a differential rate of Interest be paid for claims against which amount has been awarded to the Claimants at a simple interest of I) 14% p.a. w.e.f. 07/12/95 (the date when final bill had been passed) till 31/12/2000, and ii) at 12% w.e.f. 1/1/2001 to the date of award.

(Emphasis supplied)

It can thus clearly be seen that as the Arbitral Tribunal found that the Petitioner (the Respondent before the Arbitral Tribunal) was responsible and had major role in the delay in deciding the claim, the interest was granted for the pre-award period in two parts. For the period from 7 December 1995 (the date when final bill had passed) till 31 December 2000, it is granted at a higher rate of 14% p.a. and for the subsequent period from 1 January 2001 to the date of the award i.e. 28 March 2007, it has been granted @ 12% p.a.

12. It is undisputed that the Petitioner has paid an amount of Rs.2,12,99,602/- to the Respondent by cheque under a covering letter dated 27 April 2007.

13. The Respondent filed the Execution Case in which the calculation of the amount for Claim No.10 to arrive at 'the sum of the award' the Respondent has given the computation as under.

Claim No.	Date. of Reference	Award				Total
		Principal	Int @ 14% (7.12.1995 to 31.12.2000)	Total (3+4 = 5)	Int. @ 12% (01.01.2001 to 28.03.2007)	
1	2	3	4	5	6	7
1A		4708893.75	3344991.7	8053885.45	6031808.57	14085694.02
9		2258267	1604173.88	3862440.88	2892703.67	6755144.56
11		2131429.5	1514074.08	3645503.58	2730232.49	6375736.08
		<u>9098590.25</u>	<u>6463239.67</u>	<u>15561829.91</u>	<u>11654744.73</u>	<u>27216574.65</u>
Less Amount Received						2,48,03,572.00

Balance Receivable

24,13,002.65

Add: Interest on balance amount for failure to pay

in 30 days as per the direction of Tribunal at the rate

of 12% from the date of award 29.03.2007 to 31.10.2018

33,58,899.69

57,71,902.35

14. It can thus clearly be seen that on the principal amount, the Respondent has first calculated the interest @ 14% p.a. from 7 December 1995 to 31 December 2000 and after arriving at an amount inclusive of such interest, the further interest @ 12% from 1 January 2001 to 28 March 2007 has been calculated, which in my considered view, is clearly unsustainable. The award nowhere stipulates that the interest for the subsequent period from 1 January 2001 till passing of the award has to be calculated on the principal sum alongwith the interest for the previous period i.e. from 7 December 1995 to 31 December 2000. If such an interpretation is

made and the manner of computation of the interest by the Respondent is accepted, it will result into grant of pre-award interest much in excess of 14% p.a. which was never the object of the award. Although, on behalf of the Respondent, reliance is placed on the decision of the Supreme Court in *Hyder Consulting*, in my humble opinion, the issue involved in the said case was entirely different than the dispute and the issue in the present Petition.

15. In *Hyder Consulting*, a two Judge Bench had made a reference to the Larger Bench to examine the correctness of the decision in *State of Haryana Vs. S. L. Arora and Co.*¹. Precisely, the question was whether the decision of the Supreme Court in *S. L. Arora and Co.* (wherein it is held that an award of interest on interest, 'from the date of award,' is not permissible under sub-Section 7 of Section 31 of Arbitration and Conciliation Act, 1996) is in consonance with earlier decisions of the Court. The Supreme Court by majority view held that S.L. Arora's case is wrongly decided. The issue which essentially fell for the decision of the Supreme Court was regarding the 'post award interest'.

16. The issue in the present case is purely of the interpretation and the manner of calculation of the pre-award interest in terms of the award passed by the Arbitral Tribunal on Claim No.10 in which the pre-award interest is granted in two parts. Thus, in my humble

1 (2010) 3 SCC 690

opinion, the issue involved in the present Petition is one of the 'pre-award interest', in terms of the award of the Tribunal, quite to the contrary from the issue involved in the case of *Hyder Consulting* which related to interpretation of Section 31(3), in the context of post award interest.

17. Coming to the admission / concession made in the reply (Exh.12) and the joint pursis (Exh.16), in my considered view, the same cannot override the express terms of the award. It is necessary to emphasise that the Executing Court is required to execute the award, as it is and as it stands and the issue cannot be governed by any concession/admission, so as to result into any estoppel. Thus, the Executing Court has to examine the computation of interest vide Claim No.10 and to execute the same in accordance with the letter and spirit of the award and not govern itself by any admission, which may result into any unjust enrichment at the cost of the Petitioner, which is a Public Sector undertaking.

18. I have perused the pursis (Exh.16) and although the concerned officer has signed on behalf of the Petitioner, it is not shown as to whether there was any specific authority given on behalf of the Petitioner -Corporation to admit the correctness of the computation of Rs.67,11,263/- as on 31 October 2018. In any event, the Executing Court as noticed earlier, has to go by the terms of the

award and to execute it and the computation and calculation of the amount alongwith interest being a matter of mathematical calculations, will not govern itself by any admission of the parties or otherwise, particularly when the public money of the Petitioner – Corporation is involved.

19. In the result, the Petition is allowed. The impugned orders are hereby set aside. The Applications (Exh.18 and 20) stand allowed, as prayed.

It will be open to the Respondent – Decree holder to file a fresh computation of the amount after calculating the interest @ 14% and 12% on the principal amount, for the two periods separately and then to claim the balance amount, if any. If such an Application alongwith calculation / computation is filed, the Executing Court shall pass appropriate orders for recovery of the amount, if any, in terms of the said award.

In the circumstances, there shall be no order as to costs.

20. At this stage, the learned counsel for the Respondent prays for some protection as the Petitioner – Corporation has deposited an amount approximately Rs.65 Lakhs before the Executing Court. He pointed out that if the amount is withdrawn by the Corporation, it may prejudice the Respondent.

21. The learned counsel for the Petitioner states that the Petitioner being a Corporation and a Public Sector undertaking, the interest of the Respondent are sufficiently protected.

22. Considering the over all circumstances, it is directed that the amount deposited by the Corporation before the Executing Court shall not be permitted to be withdrawn for six weeks.

C.V. BHADANG, J.