

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

% **Reserved on: 18.11.2021**

Pronounced on: 25.11.2021

+ **OMP (ENF.) (COMM.) 77/2021**

M/S IPEX INFRASTRUCTURE (P) LTD Decree Holder

Through: **Mr.Sachin Sood & Ms.Priya Soni,**
Advocates

Versus

HINDUSTAN CONSTRUCTION COMPANY

..... Judgment Debtor

Through: **Mr.Rishi Agrawala & Ms.Shruti**
Arora, Advocates

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

1. Decree holder has filed the present petition under the provisions of Section 36(1) of Arbitration and Conciliation Act, 1996 read with Order XXI Rule 11 CPC with regard to arbitral award dated 08.01.2019 passed by the learned Arbitrator.

2. The grounds raised in the present petition by the decree holder are that in case Ref No. DAC/ 1600/03-17, titled as *M/s IPEX Infrastructure (P) Ltd Versus Hindustan Construction Company Ltd.*, an arbitration Award dated 08.01.2019 was passed by the learned arbitrator, whereunder decree holder was awarded amount of Rs.8,35,33,837/- with future interest at the rate of

12% p.a. from the date of award till the date of payment of the awarded amount. The Award in question was challenged by the judgment debtor under Section 34 of the Act, which was dismissed by this Court vide order dated 20.05.2019 [in OMP (COMM) 208/2019]. Thereafter, decree holder issued a statutory notice dated 27.05.2019 to the judgment debtor under the Insolvency and Bankruptcy Code, 2016 demanding the payment in terms of awarded amount. Since judgment debtor failed to make the payment, therefore, decree holder filed a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal (NCLT), Mumbai, against the judgment debtor, wherein it claimed an amount of Rs.8,81,51,219/- from judgment debtor towards awarded amount along with interest @12% p.a. and Rs.8,00,000/- as cost of arbitration proceedings. In the meanwhile, appeal preferred by the judgment debtor under Section 37 of the Act (against dismissal of petition under Section 34 of the Act) was also dismissed vide order dated 30.08.2019 [in F AO (OS) (COMM) 207 of 2019].

3. During pendency of petition filed by the decree holder before the NCLT, judgment debtor preferred a writ petition [WP (C) No. 1074/2019] before the Hon'ble Supreme Court challenging Section 87 of the Arbitration

and Conciliation Act, 1996 as well as provisions of Insolvency and Bankruptcy Code, 2016, wherein judgment debtor undertook to pay the amount of Rs.8.81 Crores within a period of 12 weeks to the decree holder and also sought a stay before NCLT at the stage of pronouncement of judgment. However, since judgment debtor failed to pay the agreed amount within the stipulated period, as undertaken before the Hon'ble Supreme Court, decree holder filed a contempt petition [Contempt Pet. (C) No. 85/2020] against the judgment debtor. The said petition was disposed of by the Hon'ble Supreme Court vide order dated 07.02.2020 holding that *prima facie* contempt was made by the judgment debtor and last opportunity was granted to make payment within two weeks in compliance of order dated 13.09.2019.

4. Pursuant to order dated 07.02.2020 passed by the Hon'ble Supreme Court in the contempt petition, judgment debtor made payment of Rs.8,81,51,219/- on 19.02.2020 to the decree holder.

5. Pertinently, the grievance raised in the present petition by the decree holder is that the payment towards the arbitral Award was made by the judgment debtor on 19.02.2020 and thereby, judgment debtor was under the obligation to pay interest @12% p.a. on the awarded amount till then, in

terms of the Award. However, payment of Rs.8,81,51,219/- made by judgment debtor did not include interest till 19.02.2020.

6. During the course of hearing, learned counsel for decree holder drew attention of this Court to Para-20 of the petition, wherein the calculation of amount payable till 19.02.2020 has been spelt out. The relevant portion thereof reads as under:-

a) Arbitral award amount	Rs.8,35,33,837/-
b) Interest on the awarded amount @ 12% from 09.01.2019 to 19.02.2019	Rs.1,11,77,514/-
c) Awarded cost of Arbitration proceeding	Rs.8,00,000/-
Total amount due on 19.02.2020	Rs.9,55,11,351/-

7. Learned counsel for decree holder further submitted that after payment of Rs.8,81,51,219/- on 19.02.2020, balance amount of Rs.73,60,132/- is due and pending towards the decree holder and so, vide letter dated 24.02.2020 decree holder asked the judgment debtor to make the balance payment, which was not replied to and, therefore, decree holder has approached this Court by way of this petition.

8. To the contrary, learned counsel for judgment debtor submitted that the claim raised by the decree holder in the present petition does not call for

any interference by this Court, as payment of Rs.8,81,51,219/- has already been made in compliance of directions passed by the Hon'ble Supreme Court.

9. The rival contentions raised by learned counsel appearing from both the sides were heard and material placed on record has been carefully perused.

10. It is not disputed that the arbitral tribunal has awarded an amount of Rs.8,35,33,837/- together with future interest at the rate of 12 percent per annum from 08.01.2019 i.e. the date of the award till date of payment on the awarded amount in favour of decree holder and against the judgment debtor. Filing of petition under Section 34 of the Act by the judgment debtor against the arbitral Award as well as Section 9 of the Insolvency and Bankruptcy Code, 2016 by the decree holder before NCLT is also not disputed.

11. Pertinently, judgment debtor had approached the Hon'ble Supreme Court seeking stay of proceedings before the NCLT, however, had furnished an undertaking to pay amount of Rs.8.81 crores and Rs.26.21 crores to decree holder within 12 weeks. The relevant portion of order dated 13.09.2019 passed by the Hon'ble Supreme Court [in IA No. 139647/2819 and IA No. 139485/2819 in Writ Petition(s)(Civil) No. 1874/2819] reads as

under:-

“The two interlocutory applications are filed for two reliefs. One is to stay further proceedings before the National Company Law Tribunal, and the second is to direct respondent Nos. 5-8 Union of India-National Highways Authority of India NHPC Ltd., IRCON International Ltd. and NTPC limited to pay off amounts due under the Awards of Arbitrators which have not been stayed by any Court, amounting to a sum of Rs.6,070 crores.

Dr. Singhvi, learned senior counsel, states that his client will pay the Operational Creditors in these two interlocutory applications, amounts of Rs.8.81 crores and 26.21 crores within a period of 12 weeks from today. We record the aforesaid statement.

We also issue notice to the respondents in the two interlocutory applications.

Dasti service, in addition, is permitted.

List the matter on 04th October, 2019.

Dr. Singhvi further states that this order which is passed by us at 11.45 a.m. today, will be communicated orally to the NCL T which, apparently, is taking up these matters today.”

12. Against non-compliance of undertaking given by the judgment debtor before the Hon’ble Supreme Court on 13.09.2019, decree holder preferred a contempt petition [Contempt Petition (C) No. 85/2929 in Writ Petition (C) No. 1974/2919] wherein in Para-4(iii) it has been averred as under:-

“4(iii) An Arbitration Award dated 08.01.20;19 was passed by the Learned Sole Arbitrator in case Ref. No. DAC/1600/03-17 titled M/s IPEX Infrastructure (P) Ltd. Versus Hindustan Construction Company Ltd. The Petitioner was awarded an amount of Rs.8,35,33,837/- (Eight crores thirty-five lakhs thirty-three thousand and eight hundred and thirty-seven rupees) together with future interest at the rate of 12 percent per annum from 08.01.2019 i.e. the date of the award till date of payment on the awarded amount. The amount payable in terms of the award at present is 9,5,50,023/- Nine Crores Thirty Five Lakhs Fifty thousand and twenty three rupees) as on 9.12.2019.”

13. In the said contempt petition, the Hon’ble Supreme Court vide order dated 07.02.2020 directed as under:-

“Having heard the learned counsel for the parties, we are prima facie of the view that contempt has been committed. However, as a last opportunity, a period of two weeks from today is given within which to deposit the amounts that had to be deposited within 12 weeks from 13.09.2019, as per our order dated 13.09.2019.

The Contempt Petition is accordingly disposed of.”

14. Pursuant to order dated 07.02.2020, the judgment debtor made payment of Rs.8.81 crores to the decree holder.
15. It is noted that when judgment debtor approached Hon’ble Supreme

Court seeking stay of proceedings before the NCLT, it undertook to pay within twelve weeks the amount of Rs.8.81 crores i.e. the amount claimed by the decree holder in its petition before the NCLT i.e. the awarded amount of Rs.8,35,33,837/- + interest @ 12% from the date of Award till the date of filing of the petition i.e. 27.05.2019 as Rs.38,17,382 + Rs.8,00,000/- towards awarded cost of arbitration proceeding, to the decree holder. However, judgment debtor failed to honour the aforesaid undertaking given before the Hon'ble Supreme Court, the decree holder filed the contempt petition, wherein the Hon'ble Supreme Court vide order dated 07.02.2020 gave last opportunity to the judgment debtor to make the payment of Rs.8.81 crores within two weeks in compliance of order dated 13.09.2021.

16. In the considered opinion of this Court, the aforesaid direction of Hon'ble Supreme Court relates to the root of the matter i.e. direction to the judgment debtor to pay the amount claimed by the decree holder before NCLT as on the said date i.e. 27.05.2019, as awarded by the Arbitral Tribunal. The spirit of the said direction is to honour the arbitral Award in its true essence. The arbitral Award is very clearly worded that *“the awarded amount of Rs.8,35,33,837/- has to be paid together with future interest at the rate of 12 percent per annum from 08.01.2019 i.e. the date of*

the award till date of payment on the awarded amount in favour of decree holder”. So, upon payment of Rs.8,81,51,219/-crores to the decree holder, the judgment debtor cannot now claim that it has already honoured the arbitral award by complying the directions of Hon’ble Supreme Court vide order dated 07.02.2020. Meaning thereby, on the date of payment to the decree holder i.e. 19.02.2020, the judgment debtor was required to pay interest @12% p.a. on the awarded amount from the date of the Award till 19.02.2020 when payment was made and not till 27.05.2019, when petition before the NCLT was filed, based on which undertaking was furnished before the Hon’ble Supreme Court to pay the amount of Rs.8.81 crores. That is to say, after making payment of Rs.8,81,51,219 to the decree holder on 19.02.2020, the judgment debtor is still left with the liability to pay balance amount of interest accruing for the period 27.05.2019 till 19.02.2020. The judgment debtor is under the obligation to honour the arbitral Award in its true letter and spirit and cannot escape from paying the balance amount of interest due towards it.

17. In view of what has been opined by this Court herein above, judgment debtor is directed to pay the balance amount of interest, which is due and payable to decree holder from 27.05.2019 with interest @12% p.a. till the

date of realization.

18. With directions as aforesaid, the present petition is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 25, 2021

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