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

***Date of Decision: 14.12.2021***

+ **FAO(COMM) 200/2021**

**NATIONAL SEEDS CORPORATION LTD. & ANR.**

..... Appellants

Through Mr. Yashvardhan Ms. Smita  
Kant, Ms. Kartika Nagpal, Ms.  
Bhavya Bhatia, Advs.

versus

**RAM AVTAR GUPTA**

..... Respondent

Through Nemo.

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**NAVIN CHAWLA, J. (Oral)**

**CM 45014/2021 (Exemption)**

Allowed, subject to all just exceptions.

**FAO(COMM) No.200/2021 & CM 45013/2021**

1. This appeal has been filed challenging the Order dated 25.09.2021 passed by the learned District Judge (Commercial Court) – 02, Patiala House Court, New Delhi, dismissing the petition filed by the appellants under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') as not maintainable before the learned District Court for lack of pecuniary jurisdiction on the ground that the 'Aggregate Value' of the claims of the respondent

laid before the learned Sole Arbitrator exceeded ₹2,00,00,000/- (Rupees two crore).

2. The learned counsel for the appellants submits that the respondent had raised ten claims before the learned Sole Arbitrator. The first nine claims aggregated to an amount of ₹1,92,49,235/- (Rupees one crore ninety-two lakh forty-nine thousand two-hundred thirty-five). Claim no. 10 was for future and *pendente lite* interest which, in terms of the judgment of this Court in ***M/s Icon Controls Pvt. Ltd. v. M/s Alstom Projects India Ltd.***, 2012 SCC OnLine Del 5311, was not to be considered for the purposes of determination of the pecuniary jurisdiction. He also places reliance on the judgment of the Supreme Court in ***State of Maharashtra v. Mishrilal Tarachand Lodha & Ors.***, AIR 1964 SC 457, in support of his submission.

3. The learned counsel for the appellants further submits that Section 12 of the Commercial Courts Act, 2015 (hereinafter referred to as the 'Commercial Courts Act') makes a distinction between a 'suit' and an 'arbitration' for the purposes of determining the 'Specified Value' of the subject matter of the commercial dispute. He submits that while for a suit, Section 12(1)(a) of the Commercial Courts Act provides for interest up to the date of filing of the suit to be taken into account for determining such 'Specified Value', no such stipulation has been made for the purposes of a claim in an arbitration. He submits that Section 12(2) of the Commercial Courts Act states that it is the 'Aggregate Value' of the claim and counter-claim which shall determine the pecuniary jurisdiction of the Court. He submits that, therefore, interest claimed in the Statement of Claim cannot be

taken into account for determining the ‘Specified Value’ for the purposes of the pecuniary jurisdiction of the Court.

4. We have considered the submissions made by the learned counsel for the appellants, however, find no merit in the same.

5. Section 12 of the Commercial Courts Act, so far as is relevant for the purposes of adjudication of the present appeal, is reproduced hereinunder:

***“12.Determination of Specified Value.—***

*(1) The Specified Value of the subject-matter of the commercial dispute in a suit, appeal or application shall be determined in the following manner:—*

*(a) where the relief sought in a suit or application is for recovery of money, the money sought to be recovered in the suit or application inclusive of interest, if any, computed upto the date of filing of the suit or application, as the case may be, shall be taken into account for determining such Specified Value.*

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*(2) The aggregate value of the claim and counter-claim, if any as set out in the statement of claim and the counter-claim, if any, in an arbitration of a commercial dispute shall be the basis for determining whether such arbitration is subject to the jurisdiction of a Commercial Division, Commercial Appellate Division or Commercial Court, as the case may be.”*

6. Section 12(2) of the Commercial Courts Act clearly provides that ‘Aggregate Value’ of the claim and counter-claim, if any, in an arbitration of a commercial dispute shall be the basis for determining the pecuniary jurisdiction of the Court. Clearly, if the claim, as set out

in the Statement of Claim, includes a claim of interest till the date of invocation of arbitration, the same is required to be added in the ‘Aggregate Value’ of the claim for purposes of determining the pecuniary jurisdiction of the Court.

7. Merely because Section 12(1)(a) of the Commercial Courts Act specifically provides that the interest claimed till the date of filing of the suit is to be taken into account for determining the ‘Specified Value’, cannot detract from giving full effect to the ‘value of claim’ in an arbitration for purposes of Section 12(2) of the Commercial Courts Act. It is settled principle of interpretation of statute that words of a statute are first understood in their natural and ordinary sense, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary. In Section 12(2) of the Commercial Courts Act we find no reason to restrict the ambit and width of ‘value of claim’ in arbitration from its natural meaning of including interest claimed till the date of invocation of arbitration. There is no doubt to the proposition that where in relation to the same subject-matter, different words are used in the same statute, there is a presumption that they are not used in the same sense. However, this is only a presumption and cannot be placed in service where the meaning of the statute is otherwise unambiguous and clear.

8. The judgments in *M/s Icon Controls Pvt. Ltd.* (supra) and *Mishrilal Tarachand Lodha* (supra) relied upon by the learned counsel for the appellants can be of no assistance to the appellants. Both the above judgments were considering a plea whether the interest

*pendente lite* or future interest is to be considered for purposes of determining the pecuniary jurisdiction of the Court / the Court-fee payable in an appeal. In fact, observations were made that there is no dispute that interest claimed till the filing of the suit has to be added for such a purpose.

9. In the present case, claim no. 10 raised by the respondent before the learned Sole Arbitrator, reads as under:

**“CLAIM NO.:10**

**FOR FUTURE AND PENDENTE LITE INTEREST.**

**- A matter of calculation.**

*There is a statutory provision in the Arbitration and Conciliation (Amendment-2015) Act-1996, under Section 31(7)(a) and 31(7)(b) that where and in so far as an arbitral award is for the payment of money, the Arbitrator/ Arbitral Tribunal may include in the sum for which the award is made.*

*In this matter, the cause of action accrued from the date of completion of work i.e. 15-10-2015. The petitioner/claimant by virtue of above said enactment of Arbitration and Conciliation (Amendment – 2015) Act-1996, requests to award pendente lite interest @ 18% p.a. compounded quarterly on the sum due to the petitioner/claimant including damages from the date of cause of action till the date on which award shall be made.*

*Similarly under Section-31.7(b) of the Act-ibid the claimant requests to award future interest from the date of declaration of award till its actual payment in consonance to Section 31.7(b) of Arbitration and Conciliation (Amendment-2015) Act-1996.”*

10. A reading of the above claim would clearly show that though it was titled as 'for future and *pendente lite* interest', a claim was clearly made for interest from the date of cause of action, which was stated as the date of completion of work, that is, 15.10.2015, till the date on which the Award is made. This would therefore, be both for interest already accrued till the invocation of arbitration and *pendente lite*.

11. The portion of interest claimed till the date of invocation of arbitration would therefore, have to be taken into consideration under Section 12(2) of the Commercial Courts Act for determining the 'Aggregate Value' of the claim. There is no dispute, in the present case, that when such interest is added, the 'Aggregate Value' of the claim would exceed ₹2,00,00,000/- (Rupees two crore) making the petition under Section 34 of the Act beyond the pecuniary jurisdiction of the learned District Court.

12. We, therefore, find no infirmity in the Impugned Order. The appeal is, accordingly, dismissed. However, this shall not in any manner preclude the appellants from instituting a petition under Section 34 of the Act in accordance with law before the Court of competent jurisdiction.

13. There shall be no order as to costs.

**NAVIN CHAWLA, J**

**MANMOHAN, J**

**DECEMBER 14, 2021RN/P**