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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 4th July, 2022+ FAO(OS) (COMM) 4/2022 & CM Nos. 770/2022, 771/2022 and 772/2022

CEMENT CORPORATION OF INDIA LTD. Petitioner

Through: Mr Sanjiv Ralli, Senior
Advocate with Mr Shankar K
Jha, Mr Manu Monga and Mr S.
Sharma, Advocates.

Versus

STEEL AUTHORITY OF INDIA LTD. Respondent

Through: Mr Samakash Goyal, Adv.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE AMIT MAHAJAN****VIBHU BAKHRU, J. (ORAL)**

1. Cement Corporation of India Limited (hereafter '**CCIL**') has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereafter '**the A&C Act**') impugning an order dated 16.10.2018 (hereafter '**the impugned order**') passed by the learned Single Judge in **OMP(COMM) 438/2018** captioned "**Cement Corporation of India Limited v. Steel Authority of India Limited**".

2. By the impugned order, the learned Single Judge rejected CCIL's application under Section 34 of the A&C Act seeking to set



aside the arbitral award dated 17.05.2018 (hereafter '**the impugned award**').

3. The impugned award was rendered in the context of the monetary claim preferred by the respondent (hereafter '**SAIL**').

4. CCIL and SAIL had entered into a long-term contract dated 26.06.1991 for the sale of granulated slag for a period of ten years. SAIL claimed that prior to that, CCIL was regular in making its payment till the month of June, 1991, however, thereafter, its payments became irregular. Admittedly, CCIL's financial condition had deteriorated at the material time, and it expressed its inability to immediately pay the dues. SAIL claimed that the parties reconciled their accounts and a sum of ₹3,65,91,609/- inclusive of interest was outstanding as on 31.03.1996.

5. CCIL's net worth was eroded, rendering it a sick industrial company within the meaning of Section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereafter '**the SICA**'). Accordingly, reference under the SICA was made to the Board of Industrial and Financial Reconstruction (hereafter '**the BIFR**'). It is stated that the said reference culminated in the BIFR sanctioning a rehabilitation scheme on 21.03.2006 (the Sanctioned Scheme). According to CCIL, it is liable to pay an amount of ₹442.06 lacs in terms of the Sanctioned Scheme and any further amount due to SAIL stood waived.



6. The dispute between the parties, essentially, arises in respect of SAIL's claim for interest payable in respect of the amounts due to it. SAIL claimed an amount of ₹3,65,91,609/- along with interest at the rate of 18% per annum with effect from 31.03.1996

7. CCIL disputed its liability to pay any interest and also failed to pay the amount, which was admittedly due to SAIL. In the circumstances, on 11.06.2011, SAIL made a request to commence arbitration proceedings before the Permanent Machinery of Arbitration (PMA).

8. The Arbitrator rendered her decision on 17.04.2013 holding that CCIL was liable to pay an amount of ₹1,81,22,564/- to SAIL without any interest.

9. Aggrieved by the said decision dated 17.04.2013, SAIL preferred a writ petition being W.P.(C)6228/2013 before this Court challenging the said decision (termed as 'an award'). This Court accepted the said challenge and found that in view of the decision of the Supreme Court in *M/s Northern Coalfield Ltd. v. Heavy Engineering Corporation Ltd. and Anr.: 2016 (6) SCALE 820*, the said decision rendered pursuant to a reference under the PMA, was not binding on the parties. By an order dated 21.02.2017, passed in the said writ petition, this Court referred the parties to arbitration and directed the parties to appear before the Sole Arbitrator (the Arbitral Tribunal) appointed by the Court.



10. The Arbitral Tribunal delivered the impugned award, whereby it awarded a sum of ₹442.06 lacs along with interest at the rate of 3% per annum from 31.12.2008 till the date of the award, in addition to costs quantified at ₹5,00,000/-. The Arbitral Tribunal also awarded future interest at the rate of 12% per annum on the awarded amount from the date of the award, if the same was not paid within a period of three months from the date.

11. Mr Ralli, learned senior counsel appearing for appellant, contended that the impugned award passed by the Arbitral Tribunal is beyond its jurisdiction. He submitted that in terms of the Sanctioned Scheme, CCIL's liability to SAIL was determined and quantified at ₹442.06 lacs. He submitted that the Sanctioned Scheme is binding on all the parties including all the creditors of CCIL and therefore, the award of interest, being contrary to the terms of the Sanctioned Scheme, is without jurisdiction. He referred to Section 18 of the SICA, in support of his contention. He emphasized that Section 22(1) of the SICA included a *non obstante* clause, whereby the Sanctioned Scheme has an overriding effect. He submitted that notwithstanding the merits of the claim made by SAIL, the Sanctioned Scheme had fixed the amount payable to SAIL at ₹442.06 lacs; therefore, no further amount was due and payable to SAIL. He also submitted that the Arbitral Tribunal had no jurisdiction to entertain any controversy in regard to the Sanctioned Scheme.

12. There is no dispute between the parties that the rehabilitation scheme sanctioned by the BIFR (the Sanctioned Scheme) is binding



on the creditors of CCIL including SAIL. The Arbitral Tribunal had also held that the terms of the Sanctioned Scheme were sacrosanct. Concededly, in terms of the Sanctioned Scheme, a sum of ₹442.06 lacs was payable to SAIL from the sale proceeds of certain non-operating units of CCIL. The Arbitral Tribunal also noted that despite a lapse of more than twelve years, CCIL was not able to discharge its liability. Considering the facts and circumstances including the sickness of CCIL, the Arbitral Tribunal awarded interest at the rate of 3% per annum by exercising its discretion under Section 31(7) of the A&C Act.

13. As noted above, CCIL's challenge to the impugned award rests on the premise that the Sanctioned Scheme proscribed grant of any interest and therefore, the impugned award is in conflict with the Sanctioned Scheme. According to CCIL, this error vitiates the impugned award on the ground of patent illegality.

14. A plain reading of the Sanctioned Scheme indicates that it contains no provisions prohibiting any claim of interest on the amount due and payable to SAIL.

15. Mr Ralli contended that the same ought to be inferred from a tabular statement, which indicates the costs of the scheme and means to finance the same. He submitted that the costs of the scheme included an amount of ₹442.06 lacs payable to SAIL.

16. The Arbitral Tribunal had interpreted the Sanctioned Scheme



and found that it did not limit the amount payable to SAIL to the principal amount outstanding. The impugned order also indicates that the learned Single Judge had examined the question whether the Sanctioned Scheme proscribed grant of interest. The learned Single Judge found that the dues payable to creditors of CCIL were to be discharged in two phases. The first phase was funded by the Government of India. Certain creditors were proposed to be settled in the first phase, by payment of the principal amount outstanding. SAIL was not included in the unsecured creditors, whose dues were to be so discharged by the payment of principal in the first phase. SAIL was included as a part of the pressing creditors, whose dues were to be discharged in the second phase. Funds for discharging the dues were not to be provided by the Government of India but were to be raised by the sale of non-operating units. It is material to note that the second phase was to be implemented in the years 2006-07 and 2007-08. The learned Single Judge found that the Sanctioned Scheme did not specifically proscribe grant of interest on the dues as owed by CCIL to SAIL.

17. The Arbitral Tribunal had accepted that the Sanctioned Scheme was binding; however, it is apparent that it had not accepted that the Sanctioned Scheme proscribed grant of any interest. The learned Single Judge has also examined the Sanctioned Scheme and found that the payments in the second phase were not free from uncertainties as the funds for the same were to be realized from sale of non-operating units. And, it did not foreclose the right of pressing creditors to claim



interest. As noted above, CCIL's challenge rests on the assumption that the impugned award is, *ex facie*, contrary to the Sanctioned Scheme. This contention has not been accepted by either the Arbitral Tribunal or the learned Single Judge.

18. It is trite law that the scope of interference with an arbitral award is restricted to the grounds as set out under Section 34 of the A&C Act. Unless the Court finds that the arbitral tribunal's view is not a possible one and such error vitiates the award; the arbitral award cannot be interfered with.

19. In the present case, this Court is unable to accept the contention that the Arbitral Tribunal's decision to award interest at the rate of 3% per annum on the amount concededly owed by CCIL to SAIL, would warrant any interference on the anvil of the standards as stated above.

20. In view of the above, the impugned order passed by the learned Single Judge, declining to interfere with the impugned award, cannot be faulted.

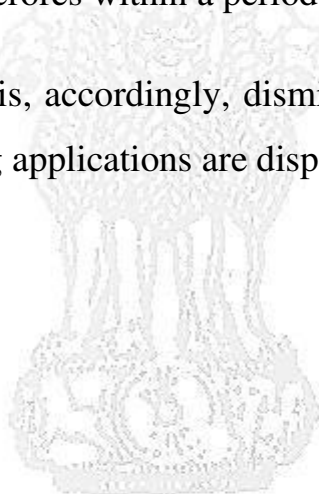
21. Before concluding, it is apposite to note that during the course of the proceedings before this Court on 26.04.2022, Mr Ralli, learned senior counsel appearing for CCIL, had made a statement that CCIL is willing to pay a sum of ₹4.42 crores to SAIL within a period of six weeks. The learned counsel appearing for SAIL was directed to obtain instructions in this regard. Mr Goel, learned counsel who appears for SAIL, states that pursuant to the orders passed by this Court on



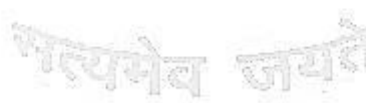
26.04.2022, an Internal Committee has been constituted by SAIL and CCIL's offer to pay a sum of ₹4.42 crores is under active consideration.

22. In view of the above, notwithstanding the dismissal of the present appeal, SAIL is directed to consider accepting the offer made by CCIL to put a quietus to the disputes. SAIL shall communicate its decision to CCIL within a period of three weeks. If SAIL accepts the said offer; CCIL is bound down to the statement made on its behalf, to pay the amount of ₹4.42 crores within a period of six weeks thereafter.

23. The above appeal is, accordingly, dismissed with the aforesaid observations. All pending applications are disposed of.



VIBHU BAKHRU, J



AMIT MAHAJAN, J

JULY 4, 2022
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