

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5801 OF 2023**

Centrient Pharmaceuticals India Pvt Ltd	...Petitioner
<i>Versus</i>	
Hindustan Antibiotics Ltd	...Respondent

**WITH
WRIT PETITION (ST) NO. 11851 OF 2023**

Hindustan Antibiotics Ltd	...Petitioner
<i>Versus</i>	
Centrient Pharmaceuticals India Pvt Ltd	...Respondents

Mr Aspi Chinoy, Senior Advocate, with Sanjeev Puri, Abhishek Shivpuri, & Avinash Tripathi, i/b Bachubhai Munim & Co, for the Petitioner in WP/5801/2023.

Mr D Ray Choudhuri, Senior Advocate, i/b DG Dhanure & Jyoti D Dhanure, for the Respondent in WP/5801/2023 and for the Petitioner in WPST/11851/2023.

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**CORAM G.S. Patel &
 Neela Gokhale, JJ.
DATED: 25th April 2023**

PC:-

1. There are two Petitions before us. Writ Petition No. 5801 of 2023 is by Centrient Pharmaceuticals India Pvt Ltd (“**CPIPL**”).

The Respondent is Hindustan Antibiotics Ltd (“**HAL**”), the Petitioner in Writ Petition (L) No. 11851 of 2023.

2. It all began in 1995 when the two parties entered into a Joint Venture Agreement (“**JVA**”) of 6th September of that year. They agreed to form a Joint Venture company to manufacture and market Penicillin-G. There were also certain ancillary agreements.

3. Some 20 years, the parties found themselves at loggerheads and their disputes were taken to arbitration resulting in an award dated 26th June 2015, by which an amount of Rs. 127.50 crores was made payable by CPIPL to HAL. The contentious portion for our purposes today is the award of interest. There is no dispute that the award said that interest would run at 12% per annum from the date of the claim until payment. The award did not use the words ‘simple interest’. This is the reason for much of the controversy that followed.

4. In September 2015, both parties filed applications before the Pune District Court under Section 34 of the Arbitration and Conciliation Act 1996 (“**Arbitration Act**”) challenging the award. The Arbitration Act was amended in 2015. But the arbitration petitions had been filed prior to the amendment. Parties proceeded on the footing that the amendment would not apply. Applications were made under Section 9 by HAL for security of the amount awarded. At this stage, HAL made no claim for compound interest. Its computation was entirely on the basis of simple interest. Later in 2015, HAL filed a Section 9 application asking for a deposit of Rs.

337.526 crores, again computing interest at 12% per annum simple interest.

5. On 29th September 2017, the Pune District Court noted the application that HAL had made but rejected it apparently on the ground that HAL had already instituted an Execution Application before the Pune District Court; hence, it held, the Section 9 Application was not maintainable. HAL filed an Arbitration Appeal under Section 37 before this Court. By an order of 19th June 2019 this Court remanded the Section 9 Application to the Pune District Court for reconsideration afresh. By then HAL had withdrawn its Execution Application. On 1st July 2019, the Pune District Court allowed HAL's Section 9 Application and directed CPIPL to deposit 50% of the amount awarded.

6. On 12th July 2019, both sides filed Arbitration Appeals against the order of 1st July 2019. In its Arbitration Appeal, HAL said that the amount then due with interest came to Rs. 376.186 crores, again a computation based on a reckoning of simple interest at 12% per annum. On 31st July 2019, this Court disposed of both Arbitration Appeals. It held that the Section 9 Application was not maintainable as the award had become enforceable and executable as a decree of the Court. This Court set aside the Pune District Court's order of 1st July 2019 but noted CPIPL's statement that it would furnish a bank guarantee for the principal amount. The direction to CPIPL was to furnish a bank guarantee of a nationalised bank for Rs. 150 crores and the order said that the furnishing of bank guarantee would be subject to HAL not executing the award.

7. CPIPL furnished a bank guarantee of Rs. 150 crores.
8. HAL filed a Special Leave Petition (“SLP”) before the Supreme Court challenging this Court’s order of 31st July 2019. In this SLP, HAL had a computation sheet. This continued to show interest being computed at 12% per annum simple interest. On 13th November 2019, the Supreme Court dismissed the SLP.
9. The decision of the Supreme Court in *BCCI v Kochi Cricket*,¹ held inter alia that the amended Section 36(3), i.e., introduced by the 2015 amendment, would apply even to arbitration petitions that had been filed before the 2015 amendment.
10. By 2019, HAL had instituted execution proceedings and CPIPL had sought a stay of execution of the award and the decree.
11. It seems that it is in HAL’s execution application (and in HAL’s reply to CPIPL’s application for stay) that HAL for the first time said that the decretal amount was Rs. 1091 crores. It computed this, for the first time, on the basis of 12% compound interest, i.e., it said that the award was for 12% compound interest with annual rests. A copy of that computation is available to us at page 821 of CPIPL’s Petition. Indeed, it does show that the amount of Rs. 1090.69 cores is arrived at by claiming annual rests, i.e., by compounding.
12. It is not disputed before us that the award does not say compound interest. It is also not disputed that where an order or a

1 (2018) 6 SCC 287.

decree is silent as to simple or compound interest, the well settled norm or default is simple interest and not compound interest. In other words, where compound interest is awarded — and this is rare — it must be so specifically stated.

13. On 20th January 2020, HAL brought execution proceedings before a District Court in Punjab. On 9th March 2020, in view of this Execution Application, CPIPL filed an application under Section 36 of the Arbitration Act for a stay of the arbitral award. It filed that application before the Pune District Court. In parallel, CPIPL filed its objections to HAL's execution proceedings in Punjab. Later, it seems that HAL filed a reply to CPIPL's stay application before the Pune District Court. Here again, HAL said that the amount due was Rs. 1091 crores, also on the basis of compound interest, i.e., interest compounded annually.

14. On 21st April 2022, HAL filed a reply in the execution proceedings to CPIPL's objections and sought immediate execution. Yet again HAL's claim was Rs. 1091 cores. A further application on similar lines followed on 24th March 2022. Then both sides continued to file replies and rejoinders and on 8th February 2023 the Executing Court in Punjab dismissed CPIPL's objections. CPIPL went higher to the Punjab and Haryana High Court. In the meantime, the Executing Court in Punjab issued orders for attachment of CPIPL's property proceeding on the basis that the amount due was that which we have seen at page 821 Rs. 1090.69 cores computed as compound interest.

15. CPIPL failed in the Punjab and Haryana High Court but was granted six weeks' time to obtain a stay order in its Section 36 Application before the Pune District Court.

16. On 18th March 2023, the Petitioners pointed out to the Pune District Court that the decretal amount was Rs. 127.50 crores plus 12% simple interest and that the decretal amount then was Rs. 408 crores as on 14th February 2023. It seems, however, that the Pune District Court relied on the warrant of attachment levied by the Executing Court in Punjab to hold that the amount due was Rs. 1090.69 crores and then made the impugned order staying execution, operation and implementation of the award subject to deposit of a bank guarantee of Rs. 1090.69 cores of any nationalised bank within three weeks. CPIPL was also given the liberty to "consider the bank guarantee of Rs. 150 crores" already submitted.

17. On 24th March 2023, CPIPL sought a modification of the order to rectify the amount. HAL opposed that application and filed a reply claiming that the amount of Rs. 1090 crores had been "confirmed". On 17th April 2023, the Pune District Court dismissed the modification application saying that it was not expected to calculate the decretal amount and interest as that was to be done by the Executing Court.

18. What CPIPL seeks in its Petition is obvious. Mr Chinoy on instructions states that CPIPL has already furnished a bank guarantee of the State Bank of India in the amount of Rs. 410 crores, computed as on 6th April 2023.

19. CPIPL's Petition thus is directed against the order requiring a bank guarantee for Rs. 1090 cores and the solitary prayer at page 69 is this:

“(i) Rule be issued, records and proceedings of the case be called for and after examining the legality, validity and propriety thereof quash and set aside the order dated 17 April 2023 (Annexure P-2) passed by the Learned Pune District Court in the application on behalf of the Petitioner for modification of the order dated 18 March 2023 (Annexure P-1) in CMA No. 746/2015 filed before the Learned Pune District Court and modify the order dated 18 March 2023 (Annexure P-1) to the limited extent of rectifying the amount of Rs. 1090.69 crores to Rs. 410 crores;

(ii) Pending the hearing and final disposal of the Petition, grant ad interim stay on the operation, implementation and operation of the arbitral award.”

20. HUL's petition is altogether more ambitious. Before us it is said that there should be at least a cash deposit of some percentage of the claim as it now stands with simple interest at roughly Rs. 410 cores. HUL has an arbitration award in its favour but has been since 2015 been denied the fruits of that award. At every stage it has been opposed and thwarted in execution of the award. There are large amounts due by HAL to various persons including workmen and it is in desperate need of an infusion of cash and hence this order is necessary.

21. The prayers in HAL's Petition are somewhat peculiar. We find them at pages 32 and 33 and they read as follows:

“(a) Rule may be issued.

(b) This Hon’ble Court may be pleased to issue Writ or Certiorari or any other writ, order, direction in like nature thereto quash and set aside the impugned order below Exhibit 63 dated 18th March 2023 passed by the Ld. District Judge-2, Pune in Civil M.A. No. 746 of 2015 being Exhibit ‘A’ to the writ petition.

ALTERNATIVELY

(c) The said order below Exhibit 63 dated 18th March 2023 passed by the Ld. Distinct Judge-2, Pune in Civil M.A. No. 746 of 2015 be modified to the extent that instead of submitting Bank Guarantee, the amount of Rs. 1090.69 Crores be directed to be paid to the Petitioner/Decree Holder;

OR IN FURTHER ALTERNATIVE

(d) In view of grave urgency, pending the hearing and final disposal of the above writ petition, this Hon’ble Court may be pleased pass an ex-parte ad-interim order directing the Respondent /JD to pay to the Petitioner / Decree Holder / HAL 60% of the said amount of Rs. 1090.69 Crores towards part satisfaction of Award/ Decree and the balance amount may be directed to be deposited in the form of Bank Guarantee in favour of the Petitioner – Hindustan Antibiotics Ltd / Decree Holder in accordance with law;

(e) In default, the Directors, Company Secretary & Other Principal Officers of the Respondent/JD company may be directed to be taken into custody in accordance with law;

(f) Pending the hearing and final disposal of the above writ petition, this Hon’ble Court may be pleased to direct the Respondent/JD to disclose all office addresses in India and abroad and its assets both movable and immovable in this Hon’ble Court immediately in accordance with law;

(g) Pending the hearing and final disposal of the above writ petition, this Hon'ble Court may be pleased to direct the District Judge-2 at Pune to forthwith take action against the Respondent/ JD company, their Directors, Principal Officers, Company Secretary and Authorized Officer and other concerned officers for filing a forged, false and fraudulent and alleged bank guarantees of Rs. 410 Crores and also of Rs. 150 Crores in terms of said application dated 17th April 2023 filed by the Petitioner being Exhibit 'K' to the writ petition.

(h) Cost of this Writ Petition may kindly be provided for;

(i) Ad-interim / interim reliefs in terms of prayer clause (d),(f) and (g) of the petition may kindly be granted;

(j) Any other such relief as this Hon'ble Court may deem fit and proper in the nature and circumstances of the present case may kindly be granted in favour of the Petitioner/Decree Holder in the interest of justice."

22. We confess that we are unable to understand why prayer clause (b) is at all inserted because the 18th March 2023 order clearly granted protection to HAL. The alternative prayer clause (c) is again misdirected because the claim it makes is once again for Rs. 1090.69 cores. This, as we have already seen, clearly cannot be sustained, and is not even sought to be defended. The award simply has no provision for compound interest. That is only a calculation made by HAL itself in its execution application for the first time. Prayer clause (d) is really what is pressed before us for a partial cash deposit, but again this is on the basis that the amount of Rs. 1090.69 crores is indeed payable.

23. Viewed like this, HUL's petition is untenable. It must fail on both grounds. No case is made out for the figure of Rs. 1090.69 crores and this is demonstrably and demonstratively to be facially incorrect. It is not even sought to be defended before us.

24. The question is whether we should, or indeed whether we can, in exercise of our writ jurisdiction modify the order of the Section 36 Court and direct a partial cash deposit, i.e., a percentage of the Rs. 410 crores. It is our considered view that this is not within our jurisdictional remit under Article 226 of the Constitution of India. We cannot lose sight of the fact that what we are concerned with here is a form of judicial review. We are not sitting in appeal and it is not for us to modify those conditions. The mistake that the Pune District Court made was in declining to examine what is the amount that is required to be secured. It could not have proceeded simply on the basis that some amount had been ordered by the Executing Court in Punjab without seeing how the claim before that Court came to be made and whether that claim was supported by the initial award/decreed. To proceed as the Pune District Court did is to permit the unthinkable: that at some point after having obtained a decree of simple interest, a decree holder could in execution simply swap that simple interest for compound interest and seek execution for an amount that is over twice the amount decreed. We believe the Pune District Court fell into material error. The error is not only one of the incorrect exercise of judicial authority and discretion but is also one that fails to exercise a jurisdiction under Section 36 vested in that Court.

25. Section 36 of the Arbitration Act deals with enforcement. It was substituted by the 2015 amendment. The entire section reads as follows:

“36. Enforcement.—(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908):

Provided further that where the Court is satisfied that a Prima facie case is made out that,—

- (a) that the arbitration agreement or contract which is the basis of the award; or
- (b) the making of the award, was induced or effected by fraud or corruption, it shall stay the award unconditionally

pending disposal of the challenge under section 34 to the award.

Explanation.—For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016).”

26. Obviously, discretion is an integral part of Section 36(3). But what is equally important is that reasons are to be recorded in writing for the exercise of that discretion. The fact that another Court had passed some order in execution is in itself not a reason especially when there is an application before a Court pointing out that the claim before the Executing Court proceeded on a fundamentally incorrect basis. That claim by HAL effectively sought to go behind the decree and to rewrite the terms of the award or decree by substituting simple interest or compound interest.

27. As to HAL’s plea that we should substitute conditions of stay and substitute our discretion for that of the District Court under Section 36, we believe that is impermissible. There is nothing per se exceptionable about the conditional grant of stay, i.e., making a subject to the provision of a bank guarantee or the furnishing of security. What is exceptionable is the amount and the computation that is ordered to be furnished a security. That is surely irrational and not borne out by any part of the record. It is contrary to the award or the decree itself and therefore no Court could have made

an order for stay subject to providing security for an amount that included compound interest.

28. On behalf of HAL it is submitted that both bank guarantees are “forged”. This is a remarkable submission given that both bank guarantees, (i.e., for Rs. 150 cores and then for Rs. 410 crores) are from the State Bank of India. The State Bank of India in its communications which are shown to us have clearly accepted that they had issued the bank guarantees and confirm the issuance. In paragraph 2 the State Bank of India has repeated the usual caution following RBI Master Circular requiring that the bank guarantees be verified. This does not mean nor it can read to mean that these are forged.

29. But if this is the stand of HAL, then it is one more reason to dismiss HAL’s Petition because forgery is not a matter that can ever be taken up in a Writ Petition to begin with.

30. In this view of the matter, we see no purpose in keeping both Petitions pending. Consequently, in both petitions we issue Rule, make it returnable forthwith. The Rule is discharged in the HAL Writ Petition (L) No. 11851 of 2023. In CPIPL’s Petition, Rule is made absolute in terms of prayer clauses (i) at page 69 set out above. In the facts and circumstances of the case, there will be no order as to costs.

31. Both sides make complaints against the other that the Section 34 Application is not being heard. Mr Puri, learned senior counsel

for CPIPL informs us that the Section 34 Applications have been listed on 8th June 2023. To all this long history that we have tried to condense somewhat, we can only say now enough is enough. Both sides will proceed to a hearing on 8th June 2023 or so soon thereafter as the District Court can schedule a fixed time. We ordinarily would not do this but having regard to the amount of unnecessary time, energy and, needless to say, money being spent on this litigation, we request the learned Judge to dispose of Section 34 at his or her earliest convenience and preferably by the third week of July 2023. We do not encourage either side to file other applications. A final disposal of the Section 34 one way or the other will make the position clear for both sides.

(Neela Gokhale, J)

(G. S. Patel, J)