



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

Reserved on : 01.09.2023

Date of Decision : 04.09.2023

IN THE MATTER OF:

+ OMP (ENF.) (COMM.) 60/2021
M/S COBRA INSTALACIONES Y SERVICIOS, S.A & M/S
SHYAM INDUS POWER SOLUTION
PVT. LTD.(JV) Decree Holder

versus

HARYANA VIDYUT PRASARAN
NIGAM LTD.(HVPNL) Judgement Debtor

AND

OMP (ENF.) (COMM.) 61/2021
M/S COBRA INSTALACIONES Y SERVICIOS, S.A AND M/S
SHYAM INDUS POWER SOLUTION
PVT. LTD.(JV) Decree Holder

versus

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AND

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COBRA INSTALACIONES Y SERVICIOS, S.A AND M/S
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M/S COBRA INSTALACIONES Y SERVICIOS, S.A AND M/S
SHYAM INDUS POWER SOLUTION
PVT. LTD.(JV)

..... Decree Holder

versus

HARYANA VIDYUT PRASARAN
NIGAM LTD.(HVPNL)

..... Judgement Debtor

Present: Mr.Pankaj Kumar Singh, Advocate for decree holder i.e. M/s Cobra Instalaciones Y Servicios, S.A & M/s Shyam Indus Power Solution Pvt. Ltd.(JV).
Mr.Varun Kalra and Mr.Krishan Kumar, Advocates for judgment debtor i.e. Haryana Vidyut Prasaran Nigam Ltd. (HVPNL).

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. By way of present Execution Petitions filed under Section 36 of the Arbitration and Conciliation Act, 1996 (hereafter, '*the A&C Act*') read with Order XXI Rule 1 CPC, the Decree Holder seeks enforcement of common Award dated 29.07.2020 passed in ARB. PET. Nos.547/2018, 548/2018,



551/2018 and 549/2018 (hereafter, '*the Award*') by the Arbitral Tribunal comprising of a former Judge of this Court as the Sole Arbitrator (hereafter, '*the AT*').

2. By way of the Award, AT has awarded cumulative amount of Rs.5,54,09,437/-, including interest at the rate of 9% per annum from 29.07.2020 till the date of payment (hereafter, '*the Award amount*'), in favour of the Award Holder/Decree Holder (hereafter, '*the DH*').

3. Award Debtor/Judgement Debtor (hereafter, '*the JD*') challenged the award by filing Objections under Section 34, whereas the DH filed the present petition for execution of the Award under Section 36.

4. Record reveals that, in order to avoid facing any coercive action in these proceedings, the JD deposited the entire Award amount, along with the interest till the date of deposit, in this court on 19.05.2021, pursuant to an order dated 15.03.2021 passed in these proceedings. JD wanted to await the outcome of its challenge to the Award for which reason, apparently, it persuaded the court to defer passing any orders in these proceedings. Eventually, JD's objections under Section 34 were dismissed on 06.05.2022, which was not challenged. Consequently, the award attained finality and thus, executable without any impediment.

5. The DH withdrew the Award amount deposited by the JD in pursuance of order dated 02.08.2022, which had resulted in the satisfaction of the award put up for execution in these proceedings. However, the DH has kept the execution alive by demanding interest on the Award amount from 19.05.2021 till 06.05.2022 i.e., from the date of deposit of the Award



amount till the date of dismissal of the objections under Section 34 of the A&C Act.

6. Learned counsel for the DH contended that the deposit of Award amount by the JD in Court *per se* does not transfer its title to the DH, who could withdraw the said amount only subject to conditions imposed by the Court. As such, the withdrawal of the Award amount, was always conditional. The DH was not free to withdraw the said amount whenever he liked.

7. *Per contra*, learned counsel for the JD has vehemently opposed the above submissions by contending that the Award amount deposited by the JD on 19.05.2021 was in terms of Order XXI Rule 1 CPC, and as such the DH was free to withdraw the same. After the deposit, the interest ceased to accrue, and hence it is not liable to pay any interest post the deposit. The DH made no application in this regard and eventually withdrew the Award amount on dismissal of objections under Section 34 of the A&C Act.

8. It is seen that the Award amount deposited by the JD was kept in the form of an interest-bearing FDR. As per the DH, the FDR earned interest of Rs. 25,09,194/-. DH's total claim towards interest is Rs. 41,36,655/- and after adjusting the aforesaid interest amount earned on the FDR, DH is claiming the remaining sum of Rs. 16,27,461/-.

9. As noted above, the short issue involved is as to whether JD is liable to pay interest for the period between the date of deposit till the date of withdrawal of the deposit by the DH or dismissal of the objections, as in the present case.



10. It is pertinent to note that the JD had deposited the Award amount in the present execution proceedings in pursuance of the order dated 15.03.2021. While passing the said order, this Court had noted that in the objections filed by the JD under Section 34 of A&C Act, the impugned award was not stayed. It was clarified that the parties would comply with further orders that would be passed in the objections filed under Section 34 of the A&C Act.

11. The DH's contention about the withdrawal of the award amount by him being conditional does not characteristically change the nature of money in the hand of the DH, who was free to use the money upon its withdrawal, with the only conditionality that in case the JD succeeded in his objections and the award was set aside, the DH would be required to restitute the gains i.e., return the Award amount. DH chose to await the outcome of the JD's objections under Section 34 of his own volition, without there being any impediment in having access to the deposit either in the court order dated 15.03.2021 or otherwise.

12. Under Order XXI Rule 1(1)(a), payment of Award amount by JD by way of court deposit is permissible. Under Order XXI Rule 1(2), a court notice is required to be given to DH in case the Award amount is deposited in court under Sub-Rule (1)(a). Proviso to Rule 1 stipulates that in case DH refuses to accept the Award amount tendered to him, interest shall cease to run from the date of tender.

13. In the present case, DH was aware of the court order dated 15.03.2021. In fact, the order was passed in the presence of the DH,



whereby the court allowed JD to deposit the Award amount in court, and simultaneously permitted the DH to withdraw the same subject to conditionality mentioned in the order. On the day JD deposited the Award amount in court pursuant to the court order, the same amounted to ‘tendering’ the same to the DH as envisaged in the proviso to Order XXI Rule 1, who refused to accept the same (by not making an application for its withdrawal), and consequently, interest ceased to run on from the date of such deemed refusal.

14. DH was never denied access to the Award amount. The deposit was made available to the DH to be had subject to an obvious condition of returning the same if the award was set aside. DH withdrew the money pursuant to order dated 02.08.2022, only after JD’s objections under Section 34 were dismissed. DH was not required to await the outcome of the Objections, however, if it did choose to remain under a self-imposed embargo, then it can’t demand interest, for the reasons explained above.

15. Adverting now to the case law relevant to consider the issue involved in the present case. In P.S.L. Ramanathan Chettiar and Ors. v. O.R.M.P.R.M Ramanathan Chettiar¹, a decree was passed by the Trial Court in a suit for recovery. The decree was confirmed by the High Court. In the execution of decree, though the decretal amount was deposited, the Court permitted the decree holder to withdraw the decretal amount on furnishing security. The Supreme Court, while taking note of the divergent views of the Calcutta and Bombay High Courts, observed that judgement debtor’s depositing a sum in

¹ (1968) 3 SCR 367



Court to purchase peace by way of stay of execution of decree on the terms that decree holder could withdraw the amount on furnishing security, would not pass the title of money to the decree holder. It further observed as under:-

“12. On principle, it appears to us that the facts of a judgment-debtor's depositing a sum in court to purchase peace by way of stay of execution of the decree on terms that the decree- holder can draw it out on furnishing security, does not pass title to the money to the decree-holder. He can if he likes take the money out in terms of the order; but so long as he does not do it, there is nothing to prevent the judgment-debtor from taking it out by furnishing other security, say, of immovable property, if the court allows him to do so and on his losing the appeal putting the decretal amount in court in terms of Order 21 rule 1 C.P.C. in satisfaction of the decree.

13. The real effect of deposit of money in court as was done in this case is to put the money beyond the reach of the parties pending the disposal of the appeal. The decree- holder could only take it out on furnishing security which means that the payment was not in satisfaction of the decree and the security could be proceeded against by the judgment- debtor in case of his success in the appeal. Pending the determination of the same, it was beyond the reach of the judgment-debtor.

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15. The last contention raised on behalf of the respondent was that at any rate the decree-holder cannot claim any amount by way of interest after the deposit of the money in court. There is no substance in this point because the deposit in this case was not unconditional and the decree-holder was not free to withdraw it whenever he liked even before the disposal of the



appeal. In case he wanted to do so, he had to give security in terms of the order. The deposit was not in terms of Order 21 rule 1 C.P.C. and as such, there is no question of the stoppage of interest after the deposit.”

16. Pertinently, Order XXI Rule 1 CPC came to be amended in the year 1977 by Act 104 of 1976. A Constitution Bench of the Supreme Court in Gurpreet Singh v. Union of India² noted the objects and reasons for the amendment as under:-

“25. In the Objects and Reasons for amendment of Order 21 Rule 1, it was set out as follows :

The Committee notes that there is no provision in the Code in relation to cessation of interest on the money paid under a decree, out of court, to a decree-holder, by postal money order or through a bank or by any other mode wherein payment is evidenced in writing. The Committee is of the view that, in such a case, the interest should cease to run from the date of such payment. In case the decree-holder refuses to accept the postal money order or payment through a bank, interest should cease to run from the date on which the money was tendered to him in ordinary course of business of the postal authorities or the bank. Sub-rule (5) in Rule 1 Order 21 has been inserted accordingly”

The legislative intent in enacting sub-Rules (4) and (5) is therefore clear and it is that interest should cease on the deposit being made and notice given or on the amount being tendered outside the court in the manner provided. Mulla in his Commentary on the Code of Civil Procedure, 15th Edn., Vol. II at page 1583 has set out the effect of the rules as follows:

² (2006) 8 SCC 457



“Normal rule with respect to money decree is (i) the appropriation of payments towards satisfaction of interest in the first instance, and (ii) then towards principal amount. But this became inoperative, after the amendment of Rule 1 of Order 21 CPC. Section 60 of the Contract Act cannot be invoked for the application of the aforesaid normal rule.”

17. In Mathunni Mathai v. Hindustan Organic Chemicals Ltd. and Ors.³, an issue arose as to whether the decretal amount deposited by the judgment debtor in pursuance of an order of the Court was to be adjusted towards the principal amount due first or against interest and other charges. The Court took note of the unamended as well as amended Order XXI Rule 1 and observed as under:-

“4.

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The amended sub-rule (2) removes the doubt if there was any that the judgment-debtor is not absolved of the obligation of informing the decree- holder by written notice even in respect of deposit in court either directly or by registered post. The purpose of addition of the expression “either through court directly or by registered post acknowledgment due” is that the judgment-debtor should not only give notice of payment but he must ensure that the decree-holder has been served with the notice. The ratio laid down in Meghraj case applies now with greater rigour. The reason for the rule both in the unamended and amended provision appears to be that if the judgment- debtor intends that the running of interest should cease then he must intimate in writing and ensure that it is served on the decree-holder. Sub-

³ (1995) 4 SCC 26



rules (4) and (5) added in 1976 to protect the judgment-debtor provide for cessation of interest from the date of deposit or payment. But the cessation of interest under sub-rule (4) takes place not by payment alone but from the date of service of the notice referred to in sub-rule (2)..... ”

18. In Himachal Pradesh Housing and Urban Development Authority and Anr. v. Ranjit Singh Rana⁴, apparently the judgement debtor, while filing objections against the impugned award, deposited the award amount before the High Court. The objections were rejected and the intra-Court appeal was pending. In the execution proceedings, the judgement debtor filed objections. An issue arose before the High Court as to whether the decree holder was entitled to interest from the date of award till the date of actual payment to the decree holder. The High Court held that the decree holder was entitled to the post award interest from the date of the award till the date of the actual payment. This decision was challenged before the Supreme Court. The question to be determined was whether deposit of the entire award amount by the judgment debtor in the High Court amounted to the payment to the decree holder and the judgement debtor's liability to pay interest from the date of the award ceased from that date. The Supreme Court considered the definition of expression 'payment' and observed here as under:-

“15. The word “payment” may have different meaning in different context but in the context of Section 37(1)(b); it means extinguishment of the liability arising under the award. It signifies satisfaction of the award. The deposit of the award

⁴ (2012) 2 SCC (Civ.) 639



amount into the Court is nothing but a payment to the credit of the decree- holder. In this view, once the award amount was deposited by the appellants before the High Court on 24-5-2001, the liability of post-award interest from 24-5-2001 ceased. The High Court, thus, was not right in directing the appellants to pay the interest @ 18% p.a. beyond 24-5-2001.”

19. In Union of India and Anr. v. M.P. Trading and Investment Rac. Corporation Ltd.⁵, the Supreme Court while seized with a similar issue observed as under:-

“4. In the present case, we find that the amount was to be deposited in a fixed deposit at the request made by the respondent and it is not seen that the respondent has made any request before the High Court for withdrawal of the amount deposited as per the directions by the High Court. However, it is submitted that the appellants have not deposited the full amount in terms of the award.

5. In the above facts and circumstances of the case, we are of the view that the appellants shall be entitled to interest as per award from the date of award till the principal amount was deposited in the High Court on 3-3-2003. From the said date of 3-3-2003 till it was withdrawn, the respondent shall be entitled only to the interest accrued on the principal amount in terms of the fixed deposit made as per the direction by the High Court. However, the respondent shall be entitled to the interest in terms of the award on the balance of the award amount which the appellants failed to deposit in Court, as per the award.”

20. Learned counsel for the decree holder has contended that the decisions in Ranjit Singh Rana (Supra) and M.P Trading (Supra) both

⁵ 2015 SCC OnLine SC 868



rendered by two Judge Bench, did not consider the earlier decision rendered by a three Judge Bench in Ramanathan Chettiar (Supra).

21. Although learned counsel for the decree holder has also referred to a decision of Division Bench of this Court in Adidas India Marketing Pvt. Ltd. v. Hicare India Properties Pvt. Ltd.⁶, however, the said decision is stayed by the Supreme Court in SLP(C) No.6978/2016, which is pending consideration.

22. The decision of Division Bench of this Court in Delhi Development Authority v. Bhai Sardar Singh & Sons⁷, was rendered in the context of dismissal of an application filed by the judgement debtor seeking a direction for refund of the amount deposited in the Court. Taking note of the decision in Chettiar (Supra), the Division Bench noted that the amount deposited in the appeal filed against the dismissal of the objections against the arbitral award, was not released to the decree holder till passing of the order. It was observed that the amount lying in deposit in the appeal was not a deposit made in the executing court in terms of Order XXI Rule 1 and as such the deposit could not be construed as direct payment made to the decree holder. The decision of the Division Bench was carried to the Supreme Court. Noting the controversy, the Supreme Court⁸ after traversing through the entire gamut of case law, instructively held as under:-

“13. Sub-rule 1 to Rule 1 of Order XXI of the Code prescribes three modes for paying money under a decree, namely : (a) by

⁶ MANU/DE/4397/2015

⁷ 2009 SCC OnLine Del 519

⁸ Delhi Development Authority v. Bhai Sardar Singh and Sons, 2020 SCC OnLine SC 1450



deposit of money in the court which is to execute the decree, which deposit can be through postal money order or through bank; (b) by making payment to the decree holder by postal money order or through bank or any other mode wherein payment is evidenced in writing; or (c) as the court which made the decree directs. Sub-rule 3 prescribes the details which have to be furnished by the judgment debtor where money is paid by postal money order or through bank under clauses (a) or (b). Sub-rule 3 also permits the judgment-debtor to stipulate apportionment or adjustment where amount is payable to more than one person or towards the principal sum or interest or cost. Sub-rule 2, which applies to payment made under clauses (a) or (c) sub-rule 1, requires the judgment debtor to give notice to the decree holder either through the court or directly to the decree holder by registered post, acknowledgement due. Sub-rule 4 states that where an amount is paid under clause (a) or (c) of sub-rule 1, interest, if any, shall cease to run from the date of service of notice referred to in sub-rule 2. As per sub-rule 5, where amount is paid under clause (b) of sub-rule 1, interest, if any, ceases to run from the date of such payment.

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15. A reading of the aforesaid sub-rules clarifies that when money is paid under a decree, the interest, if any, shall cease to run either from the date of direct payment or from the date of service of notice to the decree holder, wherever applicable. Sub-rules 4 and 5 do not stipulate that the interest would stop running only and only when the entire amount as per the decree shall stand paid. This Court, as will be seen below, has held that money even when paid in part towards the decree would cease to accrue interest to the extent of the amount paid.

16. The Constitution Bench of this Court in Gurpreet Singh (supra) had examined the 'stage-wise' appropriation rule as



expounded in Prem Nath Kapur v. National Fertilizers Corporation of India and had, after referring to the provisions of Order XXI Rule 1 and Order XXIV of the Code, observed that the former applies to post-decretal stage and the latter applies to pre-decretal stage. In the context of Rule 1 of Order XXI it was observed as under:

“15. Order 21 Rule 1 provides the modes of paying money under a decree. It stipulates that all monies payable under a decree shall be paid : (a) by deposit into the court whose duty it is to execute the decree, or (b) out of court, to the decree-holder in the manner provided, or (c) otherwise, as the court which made the decree directs. Sub-rule (2) provides that where a payment is made by deposit into the court or as directed in the decree, the judgment-debtor shall give notice thereof to the decree-holder either through the court or directly to him by registered post acknowledgment due. On any amount paid by way of deposit into the court or as directed under the decree, interest, if any, shall cease to run from the date of the service of the notice referred to in sub-rule (2). Thus, Order 21 Rule 1 after its amendment in the year 1976 also contemplates the deposit of the decree amount into court and the giving of notice thereof to the decree-holder and provides further for cessation of interest from the date of notice to the decree-holder of such deposit.”

23. From disposition of law extracted hereinabove, it is clear that if the JD has intimated the DH with a notice of deposit and the Award amount is available for withdrawal to the DH unconditionally i.e., without any



condition of furnishing security or otherwise, the liability of JD would cease on the date of deposit.

24. In the present cases, the JD had deposited the Award amount in the execution proceedings with the requisite notice in terms of the Order XXI Rule 1 CPC. The notice was served on the date of deposit i.e., 19.05.2021 on the DH. There were no fetters upon the DH to withdraw the said amount, as admittedly there was no stay of the impugned award in the objections filed by the JD under Section 34 of the A&C Act. The failure of the DH to take steps in preferring an application for withdrawal of the Award amount would not enure to the disadvantage of the JD. The deposit alongwith its due notice to the DH was sufficient discharge of the onus put on the JD in terms of Rule 1 Order XXI CPC.

25. Admittedly, as noted above, the Award amount alongwith the interest at the awarded rate calculated till 19.05.2021, has already been withdrawn by the DH, alongwith the interest that had accrued on the deposit being kept in the form of FDR.

26. The award having already been satisfied, the present petitions are disposed of.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 4, 2023

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