



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

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Date of Decision: 03.11.2023

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OMP (ENF.) (COMM.) 123/2019

IN THE MATTER OF:

H.P. COTTON TEXTILE MILLS LTD

..... Decree Holder

Through: Ms. Shantha Devi Raman and
Mr. Mayank Ranjan Yadav,
Advocates

versus

THE ORIENTAL INSURANCE COMPANY LIMITED

..... Judgment Debtor

Through: Mr. Udyan Srivastava, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present second execution petition filed under Section 36 of the A&C Act, the decree holder is seeking to execute the remaining parts of the Award that could not be executed under the first execution petition No OMP (ENF.) (COMM.) 70/2017 which was disposed of vide order dated 31.08.2018. Decree holder claims that the award remains unsatisfied.
2. Learned counsel for the decree holder in this regard has referred to the Award to contend that arbitration cost and interest awarded under the award in execution were inadvertently not claimed in the first execution petition. The amounts having been awarded under the Award, there is no impediment for release of the same to the decree holder.
3. Learned counsel for the judgment debtor has filed objections thereby



contesting the present petition.

4. Learned counsel for the judgment debtor contends that the entire award stands satisfied in terms as the entire sum under the Award stands paid. In this regard, he invited the attention of the Court to the order dated 31.08.2018 passed by this Court at the time of disposal of the first execution petition.

5. To appreciate the controversy, it is deemed appropriate to extract the relevant portion of the impugned Award:-

“7. TRIBUNALS OPERATIVE DECISION

The Tribunal declares as follows:

1. Claimant is entitled to a total sum of Rs. 4,60,34,008/- under these heads:

i. Claimant is entitled to a sum of Rs. 3,70,70,829, i.e. the claim assessed by Mr. B.S. Chawla.

ii. A sum of Rs.67,53,739/- being the cost of repair/replacement of the building without depreciation.

iii. A sum of Rs.21,74,233/- being the difference between the actually realized amount and the assessed amount in relation to Salvage.

iv. A sum of Rs.35,207/- being the balance amount left towards debris removal cost.

However it is clarified that in pursuance of Interim Award dated 31.05.2014 passed by the Tribunal, Respondent had paid a sum of Rs.1,28,70,118/- to Claimant on 02.07.14 vide Cheque No. 061367. Thus, the aforesaid amount is to be adjusted in the total amount payable by the Respondent to the Claimant. On the said amount of Rs. 1,28,70,138/-, no interest shall be payable w.e.f. 02.07.14. In other words, interest on the said



amount shall be payable only upto 02.07.2014.

*Therefore, Respondent is directed to pay to Claimant the total amount of **Rs.3,31,63,870/-***

2. Interest payable should be as per the given classification-

*i. Interest at the rate of 12% p.a. is calculated from 01.12.2010 i.e., two and a half months after the date of loss up to date of reference. Date of reference herein is the date on which Arbitral Clause was invoked which is 30.5.2013. Therefore, Interest from 01.12.2010 up to 30.05.2013 i.e. 30 months @12% p.a. on the total amount of Rs.4,60,34,008/- comes out to be **Rs. 1,38,10,202.40/-***

*ii. Interest at the rate of 12% p.a. is calculated from next day of date of reference till the date of payment of the amount awarded in Interim Award. Date of reference is 30.05.2013 and date on which Claimant was paid is 02.07.2014. Therefore, Interest from 31.05.2013 up to 02.07.2014 i.e. 13 months and 3 days @12 p.a. on amount of Rs. 4,60,34,008/ comes out to be **Rs. 60,30,455.04/-***

*iii. Interest at the rate of 12% p.a. is calculated from 03.07.2014 till the date of Final Award. Date of Final Award is 19.10.2016. Therefore, Interest from 03.07.2014 up to 19.10.2016 i.e. 27 months and 16 days @ 12 p.a. on amount of Rs. 3,31,63,870/- comes out to be **Rs. 91,33,329.80/-***

iv. Interest at the rate of 12% p.a. to be calculated from the date of Award till actual realization.

3. All other Claims of the Claimant are hereby rejected.

4. Claimant is entitled to receive total costs and expenses of the Arbitration from the Respondent. Calculation to be done by the parties in this regard:-



- i. Tribunal directs Respondent to pay Claimant, its share of Arbitrator's fee and expenses inducing Tribunal's Administrative Expenses which comes out to be Rs.4,12,500/-.
- ii. Tribunal directs Respondent to pay Claimant, the fee and expenses of Claimant's Counsel, if certified.
- iii. Since, Respondent was not making any payments to its own nominated Arbitrator Hon'ble Mr. Kumar Bakhru, vide Order of the Tribunal, same was paid by the Claimant to him. The said amount comes to Rs.09,46,780/- paid by Claimant to him for & on behalf of the Respondent. This amount shall also be payable by Respondent to Claimant."

6. The decree holder earlier approached this Court by way of execution petition being OMP (ENF.) (COMM.) 70/2017 which came to be disposed of on 31.08.2018 with the following order:-

"The only dispute between the parties is with respect to the balance amount of Rs.46,81,892.83 being claimed by the Decree Holder as outstanding against the Award. This difference is on account of interest being claimed by the petitioner on the sum awarded by the Arbitrator in the Award.

Learned counsel for the Judgment Debtor submits that as far as the Post Award Interest is concerned, the Arbitrator has awarded interest only on the principal sum awarded, that is Rs. 3,31,63,870/-, and not on the pre and pendent lite interest which have been awarded in the Award or on the cost awarded in the Award. Final direction of the Arbitrator is reproduced hereinbelow:

"7. TRIBUNAL'S OPERATIVE DECISION

The Tribunal declares as follows:

1. Claimant is entitled to a total sum of Rs. 4,60,34,008/- under these heads:
 - i. Claimant is entitled to a sum of Rs. 3,70,70,829/-, i.e. the claim assessed by .Mr. B.S. Chawla.



- ii. A sum of Rs. 67,53,739/- being the cost of repair/replacement of the building without depreciation.
- iii. A sum of Rs. 21,74,233/- being the difference between the actually realized amount and the assessed amount in relation to Salvage.
- iv. A sum of Rs. 35,207/- being the balance amount left towards debris removal cost.

However it is clarified that in pursuance of Interim Award dated 31.05.2014 passed by the Tribunal, Respondent had paid a sum of Rs. 1,28,70,138/- to Claimant on 02.07.14 vide Cheque No. 061367. Thus, the aforesaid amount is to be adjusted in the total amount payable by the Respondent to the Claimant. On the said amount of Rs.1,28,70,138/-, no interest shall be payable w.e.f. 02.07.14. In other words, interest on the said amount shall be payable only upto 02.07.2014.

Therefore, Respondent is directed to pay to Claimant the total amount of **Rs.3,31,63,870/-**

2 .Interest payable should be as per the given classification-

i. Interest at the rate of 12% p.a. is calculated from 01.12.2010 i.e., two and a half months after the date of loss up to date of reference. Date of reference herein is the date on which Arbitral Clause was invoked which is 30.5.2013. Therefore, Interest from 01.12.2010 up to 30.05.2013 i.e. 30 months @12% p.a. on the total amount of Rs.4,60,34,008/- comes out to be **Rs. 1,38,10,202.40/-**.

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iii. Interest at the rate of 12% p.a. is calculated from 03.07.2014 till the date of Final Award. Date of Final Award is 19.10.2016. Therefore, Interest from 03.07.2014 up to 19.10.2016 i.e. 27 months and 16 days @ 12 p.a. on amount of Rs. 3,31,63,870/- comes out to be **Rs.91,33,329.80/-**.

iv. Interest at the rate of 12% p.a. to be calculated from the date of Award till actual realization.

3. All other Claims of the Claimant are here hereby rejected.

4. Claimant is entitled to receive total costs and expenses of the Arbitration from the Respondent. Calculation to be done by the parties in this regard:-

i. Tribunal directs Respondent to pay Claimant, its share of Arbitrator's fee: and expenses including Tribunals Administrative Expenses which comes out to be Rs. 4,12,500/-.

ii. Tribunal directs Respondent to pay Claimant, the fee and expenses or Claimant's Counsel, if certified.

iii. Since, Respondent was not making any payments to its own nominated Arbitrator Hon'ble Mr. Kumar Bakhru, vide Order of the Tribunal, same was paid by the Claimant to him. The said amount comes to Rs. 09,46,780/- paid by Claimant to him for & on behalf of the Respondent. This amount shall also be payable by Respondent to Claimant."

A reading of the above would show that in paragraph 2(iv), the Arbitrator has awarded Post Award Interest only on the principal sum of Rs.3,31,63,870/- and not on the pre-reference or pendent lite interest awarded in paragraph 2(i) to 2(iii) or on the cost awarded in paragraph 4 of the Award. Therefore, I am unable to agree with the contention raised by the learned counsel for the Decree Holder that interest is payable even on the said amounts.



Learned counsel for the Judgment Debtor however, admits that an amount of Rs.7,57,948/- as on 29.01.2018 would remain due and payable. It is submitted that this amount has accrued as, though the demand draft for making the payment had been duly prepared, there was delay in depositing the same before this Court.

Be that as it may, the Judgment Debtor shall pay this amount of Rs.7,57,948/- to the Decree Holder within a period of three weeks from today.

The Execution Petition and the pending applications are disposed of with the above directions, with no order as to cost.

Dasti.”

7. A reading of the aforesaid order would show that in so far as the interest component is concerned, this Court directed the judgment debtor to pay sum of Rs.7,57,948/- to the decree holder, which admittedly stands paid.

8. Coming next to the issue of arbitration cost, it is pertinent to note that in terms of Section 31A of the A&C Act, the Arbitral Tribunal has the discretion to determine and award the same. The Arbitral Tribunal in the present case awarded the cost. Paragraph 4 of the Tribunal's operative decision is unambiguous that the cost was awarded on three counts that is towards judgment debtor's share of Arbitrator's fees and expenses including Tribunal's administrative expenses quantified at Rs.4,12,500/-; amount of fee payable by the judgment debtor to its own nominated arbitrator (that was paid on its behalf by the decree holder) quantified at Rs.9,46,780/- and fee and expenses of the decree holder's counsel, if certified. It is apparent that under the last count, no quantification was recorded in spite of the fact that a



cost statement dated 09.06.2016 mentioning the fee of the counsel was placed on record and available before the Arbitral Tribunal.

9. Learned counsel for the judgment debtor states that the amount of Rs.4,12,500/- as well as Rs.9,46,780/- already stands paid and, in this regard has referred to the averments made in the objections filed and placed on record in the present petition.

10. As noted above that the cost statement dated 09.06.2016 relied upon by the decree holder was available before the Tribunal on the date of passing of the award yet the same was made subject to certification. It is pertinent to note that neither any invoice nor any proof of payment was either placed before the Arbitral Tribunal nor in either of the execution petitions filed before this Court.

11. In view thereof, the decree holder cannot, under the garb of this execution petition, seek a claim that was not quantified in the award due to failure of the parties to furnish proof. In execution proceedings, the court cannot go behind the award and enable decree holder to fill in the gaps by producing evidence to quantify costs.

12. Consequently, the petition is dismissed.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 03, 2023

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