OD-3

ORDER SHEET

APOT/292/2024
WITH
EC/88/2021
IA NO: GA/1/2024

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

AMIYA STEEL PRIVATE LIMITED
VERSUS
STEEL AUTHORITY OF INDIA LIMITED

BEFORE:
The Hon'ble JUSTICE SOUMEN SEN
AND
The Hon'ble JUSTICE APURBA SINHA RAY
Date : 11th November, 2024

Appearance:
Mr. S.N. Mitra, Sr. Adv.
Mr. D.N. Sharma, Adv.
Mr. Shailendra Jain, Adv.
Ms. Swati Agarwal, Adv.
...for the appellant

Mr. Arijit Basu, Adv.
...for the respondent

The Court: The appeal is arising out of an order passed by the learned Single Judge in the execution proceeding whereby the judgment-debtor was absolved from paying further interest after 6th August, 2021 when eight several cheques aggregating to a sum of Rs.3,89,04,600/- towards the principal amount awarded in favour of the award-holder by the award dated 30th September, 2008 was received by the award-holder and duly recorded by the executing Court in its order dated 23rd August, 2021.

During the execution proceeding, the learned Single Judge after taking into consideration the amendment to Section 31(7)(b) of the Arbitration and Conciliation Act, 1996, by the Act 3 of 2016, determined the rate of interest at 15.75%. The said amendment came into effect on and from 23rd October, 2015. In the execution proceeding, an order was passed on 27th February, 2024 by which the award-debtor was directed to "pay interest of 15.75% <u>on the awarded amount</u> being Rs.3,89,04,600/- <u>from 30.9.2008 till the date of payment</u>" by 7th March, 2024. (emphasis supplied)

Admittedly, this amount was not paid by that time and the period to deposit the said amount was extended till 29th July, 2024.

It appears that on 29th July, 2024, the award-debtor made over a demand draft of Rs.7,86,26,498/- on the basis that the interest at the rate of 15.75% shall be calculated from 30th September, 2008 (that is the date of the award) till 29th July, 2024 (that is the date when the principal amount was paid).

The learned Single Judge accepted the said payment towards full and final satisfaction of the award in view of Order XXI Rule 1(a) read with Order XXI Rule 5 of the Code of Civil Procedure. The learned Single Judge was of the view in Section 36 of the Arbitration and Conciliation Act, 1996, the provisions of the Code of Civil Procedure, 1908 have been made applicable and in enforcing the award, the executing Court shall follow the provisions of the Code of Civil Procedure and enforce the award in the same manner as if it were a decree of the Court. The learned Single Judge has taken into consideration Order XXI Rule 1(b) that speaks about all money payable under a decree which is to be paid to the decree-holder by the mode as specified therein and also Sub-Rule (5) of Rule 1 of Order XXI which stipulates that on any such amount as enumerated in Sub-Rule (1)(b), interest, if any, shall cease to run from the date of such payment.

On such perspective, it was interpreted that the direction in the order dated 27th February, 2024 could only mean that the interest at the rate as stipulated therein was to be paid till the date of payment of the principal amount and not for any period beyond it although the interest on the principal amount is paid much later.

The Arbitration and Conciliation Act is a complete code in itself. It is both substantive and procedural in nature. Section 36 of the Arbitration and Conciliation Act refers to the Code of Civil Procedure only for the purpose of enforcement of the award in the mode and manner prescribed under the Code of Civil Procedure which could be by attachment or garnishee proceeding or by any order made permissible under the said Act.

On the rate of interest the arbitrator in paragraph 15.12 has observed:

> "*On the rate of interest claimed by the claimant, I am personally of the view that a businessman by utilizing money in his business can get a return of much more than 18% per annum. However, taking total view of the case, I am inclined to agree with the advocate of the respondent, that interest should not be paid by the respondent on the loss of profit. However, this would start accruing if the amount given as award is not paid to claimant within a reasonable period.*"

The award would attract interest if the principal amount is not paid within a reasonable period. Admittedly, the principal amount was not paid since the award was under challenge. It was only on 6th August, 2021 that the principal amount was deposited. The question that arises is whether by reason of the aforesaid deposit the award debtor shall be absolved from payment of interest on the said sum till the actual amount is paid. The award-debtor does not dispute now that interest was payable till 6th of August, 2021. However, it disputes a claim in so far as the interest is payable beyond 6th August, 2021 till the interest amount was actually paid on 29th July, 2024.

On construction of paragraph 15.12 of the award the claimant was entitled to interest. In absence of any rate specified, it can be either on 8% under the unamended provision or at a rate of 2% higher than the current rate of interest prevalent on the date of award from the date of award to the date of payment. In terms of Section 31(7)(b) of the Arbitration and Conciliation Act, 1996 as amended by the Amendment Act, 2015. The learned Single Judge awarded interest at the rate of 15.75% in the order dated 27th February, 2024.

Even if we take into consideration Order XXI Rule 1(b) and Order XXI Rule 5 of the Code of Civil Procedure, the award-debtor was required to deposit on 6th August, 2021 the amount payable under the award meaning thereby the principal and the interest payable under the award on that date. Order 21 Rule 1 requires all money payable under a decree in certain manner. On the date when the principal amount was deposited the interest amount payable under the award was not paid or deposited in court. Under the unamended Section 31(7)(b), if the award is silent with regard to interest, the award shall carry interest at the rate of 18% per annum from the date of the award to the date of payment. The award allowed interest if the principal amount is not paid within a reasonable time. However it is silent with regard to the rate of interest. Accordingly, what was required to be paid on that date was the principal amount along with the interest which has been subsequently varied to 15.75%. The entire sum was payable under the award.

In the order dated 27th February, 2024, the learned Single Judge has clearly stated that "the award-debtor shall pay interest of 15.75% on the awarded amount being Rs.3,89,04,600/- from 30.9.2008 till the date of payment" (emphasis supplied).

The said order is not under challenge. The said order has attained finality. The said order mandates payment of interest till the date of actual payment of all sums payable under the award. The payment of the principal amount is not "all money" required to be paid under the award. It is no doubt that the award-debtor would be entitled to adjustment of the amount deposited or paid on 6th August, 2021. However, till the entire amount is paid under the award, the liability is not discharged and no satisfaction can be recorded.

On such consideration, the appeal is allowed.

The award-debtor shall pay interest at the rate of 15.75% on the principal sum on and from September, 2021 till the date of impugned judgment within a period of eight weeks from date. In the event the said sum is not paid within a period of eight weeks, the interest shall be paid till the date of actual payment.

The appeal and the application are disposed of.

(SOUMEN SEN, J.)

(APURBA SINHA RAY, J.)

bp/R.Bhar