IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 11 OF 2024
IN
COMMERCIAL EXECUTION APPLICATION NO. 1374 OF 2018

Nishant Kanodia ...**Applicant**
V/s.
Savannah Lifestyle Pvt. Ltd. ...**Respondent**

Mr. Mutahhar Khan with Ms. Sanjana Khatri i/b Advani Law LLP, Advocate for the Applicant
Mr.Mandar Soman with Ms. Shruti Maniar, Ms. Shivani Bhandary and Ms. Kashmita Belwalkar i/b Solomon & Co., Advocate for the Respondents No. 1 and 2.

CORAM : ABHAY AHUJA, J.
DATE : 4th OCTOBER, 2024

P.C. :

1. This Interim Application as noted in the earlier orders of this Court seeks directions to the Respondent to pay the post award interest applicable on the impugned award.

2. The Applicant herein is a Decree Holder/original Claimant and the Respondent is the Judgment Debtor/original Respondent in the Execution Application.

3. By award dated 8th June, 2017, the sole Arbitrator granted a sum of Rs. 1,02,67,068/- along with interest @ 10% p.a. on the awarded

sum from 14 days of the date of the award till payment along with cost of Rs. 3 lacs to the Applicant. The operative part of the award at paragraph 81, is usefully quoted as under:-

> "81. After consideration of all the factual and legal submissions which have been presented to this Tribunal and for the reasons set out in full above, the Tribunal hereby awards as follows:
> (I) The Respondents are ordered and directed to pay an amount of Rs.1,02,67,068/- to the Claimant within 14 days of the date of this Award.
> (ii) The Claimant is ordered and directed to relinquish / transfer the 500 shares held by him in Respondent No.1 to Respondent No.2 or his designee immediately upon receipt of the amount outstanding under this Award from the Respondents.
> (iii) The Respondent is ordered and directed to pay an amount of Rs.3,00,000 to the Claimant within 14 days of the date of this Award by way of costs.
> (iv) The Respondent is ordered and directed to pay the Claimant interest at the rate of 10% p.a. on the amount outstanding under this Award from 14 days after the date of this Award until payment."

4. The Respondent challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 and the Petition was dismissed on 22nd October, 2018. Aggrieved by the said order, the Respondent filed an appeal before the Division Bench of this Court under Section 37 of the Arbitration and Conciliation Act,1996. By order dated 18th January, 2019, the Division Bench admitted the appeal on a condition that the Respondent deposit the amount of award with the Registry.

5. It is not in dispute that the Respondent deposited Rs. 40 Lacs towards the principal amount payable by the Respondent on 18th March, 2019. Rs. 10 lacs were deposited on 20th March, 2019 and Rs. 52,67,068/- was deposited on 4th May, 2019.

6. Thereafter, the appeal came to be dismissed on 12th August, 2021. Against the said dismissal the Respondent filed a Special Leave Petition ("SLP"), which also came to be dismissed on 24th September, 2021.

7. It is also not in dispute that on 4th September, 2023, this Court (Coram: S.M. Modak, J.) passed an order in Interim Application No. 4798 of 2022, whereby the Applicant was allowed to withdraw the amount of Rs. 1,02,67,068/- deposited with the Prothonotary & Senior Master along with accrued interest, however, recording in paragraph 4 of the said order that according to the award holder / Applicant, the interest component remains but he was ready to transfer his shares and was willing to execute the instrument of transfer in respect of the shares, provided that the Respondent came forward.

8. As noted above, in the order dated 4th September, 2023 and as can be seen from the operative part of the award reproduced above, one of the conditions of the award was that the Applicant herein/Award Holder was to transfer 500 shares held in Respondent No.1 to the Respondent No.2 after receipt of the amounts under the award.

9. Accordingly, pursuant to order dated 4th September, 2023, a sum of Rs. 1,31,85,522/- came to be withdrawn and deposited in the Applicant's account on 9th October, 2023.

10. Since in view of the order in paragraph 81 (iv) of the award directing the Respondent to pay interest @ 10% p.a. on the amount outstanding under the award from the 14 days after the date of the award until the payment was not completely satisfied after the aforesaid withdrawal in as much as the amount withdrawn alongwith accrued interest by the Applicant was short, this Application came to be filed seeking directions to the Respondent to pay post award interest as applicable to the impugned award.

11. Mr. Khan, learned Counsel appearing for the Applicant has submitted that although the Applicant is entitled to interest @ 10% w.e.f. 22nd June, 2017, which is 14 days after the date of the award till the date of the order directing withdrawal, however, in view of the settled law, the claim of interest has been made only upto 31st August, 2023. That since the amount withdrawn from the account of Prothonotary & Senior Master was including interest accrued and out of the total interest of Rs. 63,55,315/-, that the Applicant is entitled to, only a sum of Rs. 29,16,454/- was received as the amounts in the Prothonotary & Senior Master's Account were short by Rs. 34,36,861/-, this Application had to be filed.

12. Mr. Khan also submits that under paragraph 81 (iii) of the award the Respondent was also ordered and directed to pay an amount of Rs. 3 lacs to the Applicant within 14 days of the date of the award by way of cost which has also not been paid till date and that the same also be directed to be paid in addition to the outstanding interest.

13. Mr. Khan would submit that, therefore, once the payments are received in accordance with the paragraph 81 (ii) and 81 (iii) of the Award, the Applicant would transfer the 500 shares to the Respondent

No.2, however, submitting that since no physical share certificates are with the Applicant, duplicate shares certificates would have to be issued to the Applicant by the Respondent No.1 and that his client is willing to give the necessary indemnity as well as pay for the publication cost with respect to the issuance of the duplicate share certificate.

14. When the matter was heard yesterday, after the learned Senior Counsel for the Respondents No.1 and 2 had submitted that subject to indemnity and publication with respect to the share certificates pursuant to which the duplicate share certificate could be issued in the name of the Applicant, the Application could be allowed and that this Court had, therefore, kept back the matter so that the minutes of order containing the exact working of interest could be filed. However, when the matter was called out in the afternoon session, the learned Advocate for the Respondent No.2, on instructions, had refused to agree with the minutes of order furnished by the learned Counsel for the Applicant and the following was passed:-

> "1. This matter had been heard in the morning session and had been kept back as the learned Senior Counsel for the Judgment Debtors and the learned Counsel for the Applicant had sought some time to tender a consent minutes of order.

2. When the matter was called out in the afternoon session, this Court was informed that the draft consent minutes were being worked out and the matter was kept back at 04:30 p.m. At 05:45 p.m. when the matter is once again called out, Mr. Khan, learned Counsel tenders across the bar consent minutes of order dated 3rd October, 2024. However, it is noted that the said consent minutes are signed only by the Advocate for the Applicant. Upon inquiring from the Advocate for the Respondents No.1 and 2, as to why they have not signed the same, this Court is informed that the entire payment has already been made to the Applicant and that therefore, the said consent minutes which records that payment of Rs.34,36,861/- is to be made within 1 week from the date of issuance of the duplicate share certificates is not acceptable to the Judgment Debtors.

3. This was the very understanding which was accepted by the learned Senior Counsel for the Judgment Debtors on the basis of which the draft consent minutes of order has been drawn up and now this Court is being informed that no payment is due and payable. Mr.Tulzapurkar, learned Senior Counsel for the Respondents had submitted in the morning session, that once duplicate share certificates are issued with respect to the 500 shares in the name of the Respondent No.2, the balance of the interest that would remain outstanding to be paid to the Applicant would be paid. Now, when the minutes are drawn up containing the said understanding, the Advocate appearing for the Judgment Debtors seeks to resile from the said understanding. In my view, such an approach is completely unethical and unacceptable. However, considering the fact that the Advocate has resiled from the submissions made in the morning sessions, this Court cannot accept the draft of the minutes of the order. Accordingly, list this matter on **4th October, 2024,** First on Board for hearing on the issue of interest.

4. The Respondent No.2 is directed to remain present in Court tomorrow. It is made clear that irrespective or whether the Respondent No.2 remains present or not or is represented or not in the Court tomorrow, this Court will hear the matter on the basis of the pleadings of the Advocate's present and pass appropriate orders."

15. Today, Mr. Soman, learned Counsel appears for the Respondents and seeks to take a different line of argument from what was submitted by the learned Senior Counsel yesterday. Mr. Soman would submit that since the amounts were deposited by the Respondent on 18th March, 2019, 20th March, 2019 and 4th May, 2019, the interest calculation should be from those dates of deposit and since the SLP was dismissed on 24th September, 2021, the interest calculation should end on the date of the dismissal of the SLP.

16. In my view, without commenting on the conduct of the Respondent No. 2 to somehow or the other wanting his way out: on one day, engaging Senior Counsel and instructing him in one way and on the other day replacing him and engaging another Counsel to take a different line of argument, the submission made by Mr. Soman is only stated to be rejected.

17. It is settled law that until and unless the monies are paid to the Claimants or monies are realised by the Claimants, the interest continues to run from the date as mentioned in the award till the Award is satisfied. As can be seen from the paragraph 81 (iv) of the Award, the direction of the Arbitrator is to pay interest @ 10% p.a. on

the outstanding amounts under the award from 14 days' after the date of the award until payment. As noted above, the 14 days' ended on 21st June, 2017 and therefore, the interest calculation is from 22nd June, 2017 till 31st August, 2023.

18. There has been no dispute raised with respect to the cost that has to be paid under paragraph 81 (iii) of the Award nor the rate of interest under paragraph 81(iv) of the Award nor the interest calculation if the same was to be paid from the date as claimed by the Applicant. In fact as noted above, all the challenges way upto the Hon'ble Supreme Court have been rejected. There has also been no dispute raised on behalf of the Respondent with respect to the procedure to be adopted for issuance of duplicate shares.

19. Accordingly, having heard the learned Counsel and having considered their submissions, the following order is passed:-

ORDER

i. The Applicant shall prefer an application in writing to the Respondent No.1 for issuance of duplicate share certificates in respect of the subject 500 shares of Respondent No. 1 company, as recorded in para 81 of the Award dated 8th June 2017. Such an application shall be made within a period of one week from today.

ii. The Application seeking the duplicate share certificates shall be accompanied with an indemnity given by the Applicant, confirming that the Applicant has not dealt with these subject shares in any manner whatsoever and seeking to indemnify the Respondent No. 1 from any loss or damage in that regard.

iii. Upon receipt of the application, the Respondent No. 1 shall forthwith issue a public notice with respect to the original share certificate for the subject shares, in Free Press Journal and Navshakti, having wide circulation in Mumbai. The Applicant shall bear the cost for the same.

iv. Within two weeks of issuance of the public notice, the Respondent No. 1 shall issue the duplicate share certificate for the subject shares to the Applicant.

v. Immediately after the issuance of the duplicate share certificates by the Respondent No. 1, the Respondents No. 1 & 2 agree and undertake to make payment of Rs.34,36,861/-, being the balance amount and payment of cost of Rs.3,00,000/- under the Award dated 8th June 2017 to the Applicant. Such payment shall be made within a period of one week from the date of the issuance of the duplicate share certificate(s).

vi. Upon receiving the amount of Rs. 37,36,861/-, the Applicant shall submit the following documents to Respondent No. 1 in order to transfer the subject shares, in compliance with the Award dated 8th June 2017 :

a. Form SH-4, being the instrument of transfer as per Section 56 of the Companies Act, 2013, duly executed on behalf of the Applicant.
b. A Deed of Transfer duly executed on behalf of the Applicant.
c. The duplicate share certificate(s) for the subject shares.

20. The Interim Application is accordingly allowed and disposed as above.

(ABHAY AHUJA, J.)

NIKITA YOGESH GADGIL Digitally signed by NIKITA YOGESH GADGIL Date: 2024.10.05 12:37:31 +0530