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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 24.07.2024

+ O.M.P. (COMM) 81/2024

PULIN COMTRADE LIMITED

.....Petitioner

Through: Mr. Aditya Srinivasan, Mr. Shreyas
Jain, Mr. Rishabh Kanojiya, Advs.

versus

THE HANDICRAFTS AND HANDLOOMS EXPORTS
CORPORATION OF INDIA LTD

.....Respondent

Through: Mr. Rishabh Rana, Mr. Akshay,
Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: JASMEET SINGH,J (ORAL)

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("1996 Act") seeking to set aside the impugned Arbitral Award dated 20.09.2023 *qua* Issue No. III passed by the Sole Arbitrator. The learned Sole Arbitrator *qua* Issue No. III, has held as under:-

"56. Thus, this issue is answered accordingly, that the Claimant is found entitled to simple interest @ 6.80% p.a. on the sum of Rs.2,47,80,709/- from 01.04.2017 till the filing of the Claim on 27.12.2022 (read as 31.12.2022)."



2. The facts in brief encapsulating the present case are that the parties had entered into an Agreement dated 13.09.2012 whereby the petitioner would place indents and the respondent would place an order for import of Bullion as consignment stock and/or letter of credit, stand-by letter of credit and buyer's credit.
3. Subsequently, the parties entered into another Agreement dated 25.02.2014.
4. The basis for the dispute between the parties was the respondent's failure to pay the acknowledged due amount of ₹2,44,50,849/- along with interest, in terms of Clause 6.6 of the Agreement dated 13.09.2012 and Clause 9.1 of the agreement dated 25.02.2014, which required the petitioner to deposit amounts with the respondent who, in turn, were required to place these amounts in term deposits and credit the interest accruing on such deposits to the petitioner.
5. Since the disputes arose between the parties, the petitioner invoked Arbitration vide legal notice dated 23.08.2022 and thereafter, filed an application under Section 11 of 1996 Act seeking appointment of an Arbitrator being ARB.P. No. 1163/2022 and a sole Arbitrator was appointed by a coordinate bench of this court *vide* order dated 09.12.2022
6. The case of the petitioner before the learned Sole Arbitrator was that (i) the respondent had failed to maintain FDRs in respect of the amounts that had been deposited with the petitioner, (ii) the Respondent had thereafter illegally withheld the amounts owed to the Petitioner together with interest that was to accrue on such deposited amounts; and (iii) the respondents had misappropriated such amounts



deposited by the Petitioner, in dereliction of its fiduciary duties and in breach of the terms of the Agreements.

7. The learned Sole Arbitrator passed the impugned Arbitral Award on 20.09.2023 whereby the learned Arbitrator allowed the claims of the petitioner to the tune of Rs. ₹3,44,69,966/- along with cost of Rs. 5,57,480/- along with future interest and pendente lite at rate of 9%.
8. Pursuant to the Arbitral Award dated 20.09.2023, the respondent made the entire payment of the awarded amount to the petitioner.
9. Since the petitioner was unhappy with the non-grant of interest for the period of 01.04.2015 to 31.03.2017, the petitioner moved an application under Section 33 of 1996 Act seeking interest for the period of 01.04.2015 to 31.03.2017.
10. The said application was rejected by the learned Sole Arbitrator on 06.11.2023. The operative portion of the said order reads as under:-

“12. The issue (iii) related to the claim of Rs. 10,51,99,624/- made by the Claimant towards prelitigation interest @ 18% p.a.. This sum was calculated from the year 2014-2015. This Tribunal found the claim of 18% interest per annum as being unjustified. With regard to the periods, it was noted that between 31.03.2015 and 31.03.2017, the amount lying with the Respondent, payable to the Claimant rose from about Rs.2.44 crores to about Rs.2.47 crores. Therefore, the pre-litigation interest was found payable from 01.04.2017 onwards, @6.80% p.a. and on the sum of Rs. 2,47,80,709/-.

13. It is crystal clear that there is no cause for any confusion calling, for clarifications. Nor can the year of 2017 be considered as a clerical or typographical error. Nor is there any case for changing this year in the Award as prayed for.

14. The prayer (b) in the application reads as below:



“b. Grant interest for the period of 01.04.2015 to 31.03.2017”

What is sought is clearly in the manner of a relief on merits and would depend on a hearing and the making of an additional Award. This is not covered by the provisions of section 33 of the Act. In fact it would also tantamount to seeking a Review of the Award, which is again beyond the scope of section 33 of the Act.”

(Emphasis Supplied)

11. Hence, the present petition has been filed.
12. This Court *vide* order dated 19.02.2024 clarified the order dated 13.02.2024 that the limited notice is issued. Paragraph 3 of the order dated 19.02.2024 reads as under:-

“3. One of the issues raised in this petition is that interest has not been awarded on the sum of more than Rs.2.44 crores which stood to the credit of the Petitioner for the period 1st April, 2015 to 31st March, 2017. Notice in the present petition is accordingly restricted to this issue alone.”

13. Mr. Rana, learned counsel for the respondent has taken two objections i.e. (a) that the present petition is barred by limitation; (b) that the respondent has duly complied with the Arbitral Award dated 20.09.2024, which is duly acknowledged by the petitioner *vide* letter dated 07.12.2023, therefore the petitioner cannot at this juncture raise an objection regarding non-payment of interest from the period of 01.04.2015 to 31.03.2017. The letter dated 07.12.2023 which reads as under: -



Akshya Dev <akshaylegal7@gmail.com>

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Balance outstanding_Arb. P. No. 1163/2022_Pulin Comtrade Limited

3 messages

Manoj Kumar <manoj_kumar@smcindiaonline.com>
To: consultant@hec@gmail.com
Cc: rishabhsham@gmail.com, akshaylegal7@gmail.com

Thu, Dec 7, 2023 at 5:42 PM

Without Prejudice

Dear Sir/ Madam,

This is with reference to the subject mentioned above. We hereby acknowledge the receipt of payment of Rs. 3,50,27,446/- in terms of award passed by the Hon'ble Sole Arbitrator Ms. Asha Menon in the Arb. P. No. 1163/2022. However we have noticed that the directions passed in the award has not been fully complied as pendente lite interest @ 9% p.a. and future interest @ 9% p.a. has not been calculated for the purpose of payment, which is as under :

<u>HHEC Pendente lite & future Interest calculation</u>	
-	-
Pendente lite interest	
Award Amount	34489966
Date of filing SOC (read as)	01-01-2023
Date of Award	20-09-2023
Pendent lite interest days	262
Rate of Interest	9%
Pendent lite interest(In Rs.)	2226854
Future Interest	
For future interest principle amount	35027446
Rate of Interest	9%
Days on 30.11.2023	71
Future Interest (In Rs.)	613220



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Total interest amount as on 01.12.2023 (In Rs.)	074 28,40,

We request you to immediately release the pending interest amount pursuant to the arbitral award dated 20th September, 2023 under intimation to us.

Thanks and regards

Manoj Kumar | Vice-President

(Corporate Affairs & Legal)

SMC Group of Companies.

88, Netaji Subhash Marg Darya Ganj, New Delhi 110002

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14. In accordance with the said letter, it is stated that the respondent also made a payment of Rs. 28 lakhs towards interest, as the respondent wanted to put closure to the disputes between the parties.
15. Learned counsel for the respondent further states that the Email dated 07.12.2023 is to be construed as a full and final settlement of all the claims.
16. I have heard the learned counsel for the parties.
17. In the present case, as far as the objection pertaining to the limitation is concerned, the application under Section 33 filed by the petitioner seeking interest for a period of 01.04.2015 to 31.03.2017 was disposed of by the learned Sole Arbitrator on 06.11.2023 and the present petition has been filed on 03.02.2024 (i.e. within 90 days of 06.11.2023).
18. In this regard, Section 34(3) of 1996 Act reads as under:

“Section 34(3)

. . . .



(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

19. In my view, since the petition was filed on 03.02.2024, the petition is filed within 90 days as prescribed under section 34(3) of 1996 Act from the date of the disposal of the application filed under section 33 of 1996 Act, i.e. 06.11.2023.
20. In view of the aforesaid observations, the present petition is within limitation.
21. As regards the second objection raised by the learned counsel for the respondent regarding non-payment of interest from the period of 01.04.2015 to 31.03.2017 is concerned, the learned Sole Arbitrator in paragraph 40 has observed as under:-

“40. It has been admitted by the Claimant in the SOC that from time to time, the outstanding money had been adjusted and that, even as per Respondent’s audited books of account, the total outstanding was Rs.6,69,54,985.65 as on 31.03.2014 indicating that all transactions/deposits stood adjusted as on that date (Annexure P-8). It is this Rs.6,69,54,985.65, due to subsequent adjustments that came to about Rs.2,44,50,848.96 as on 31.03.2015 (Annexure P-9) as per the letter of the Respondent dated 22.06.2015. Mr Suman Kumar, did submit that in the year 2013 a sum of Rs 3 crores had been deposited



with the Respondent but only a sum of Rs. 1.5 crores had been placed in an FDR as has been recorded in Annexure P3 as the last item. It was his contention that the Respondent had misappropriated the balance Rs. 1.5 crores by putting it to their own use and depriving the Claimant of the interest earnings. The Tribunal finds that the interse communications between the parties records that there have been adjustments made by the Respondent which have not been challenged by the Claimant. As a result of such adjustments, the amount had come down to Rs. 2,44,50,848.96 as on 31.03.2015.”

22. Thereafter, while dealing with Issue No. III, the learned Sole Arbitrator in the Arbitral Award held as under: -

“ISSUE NO.III

53. *The Claimant has sought a sum of Rs.10,51,99,624/- towards interest which they claim @ 18% compounded annually. Learned counsel for the Claimant submitted that this sum was calculated on the admitted amount as in the year 2014-15 of a sum of Rs.2,44,50,848.96/- i.e. letter dated 22.06.2015 (Annexure P-9). However, the Claimant has failed to justify the claim for interest @ 18% p.a. that too compounded annually under the head of pre-litigation interest. It is clear from the records that as per the two Agreements there is no interest specified for the amount deposited by the Claimant with the Respondent. However, it is beyond question that the Respondent was obligated to place all excess amounts they were holding in the account of the Claimant for adjustments in future transactions, placed in FDRs. Obviously, FDRs used to fetch interest which was ploughed back into the account of the Claimant, again in accordance with the terms of the Agreements.*

54. *In these circumstances, the Claimant would certainly be entitled to pre-litigation interest on the amount due to them.*



While nothing exists to justify a compound rate of 18%, the working of the Agreements would justify the grant of that which was denied to the Claimant and that is the interest earned through FDRs, which at present is 6.8% p.a. on an FDR for one year.

55. It is evident that over time the sum of about Rs.2.44 crores, as confirmed standing in the account of the Claimant as on 31.03.2015, rose to a sum of Rs.2.47 crores (approx.) payable to them at the end of the financial year on 31.03.2017. There is nothing to show that any effort has been made by the Respondent to place this amount in FDRs and plough back the interest. Thus from 31.03.2017, the Claimant would be entitled to interest fixed at the rate of 6.80% p.a.

56. Thus, this issue is answered accordingly, that the Claimant is found entitled to simple interest @ 6.80% p.a. on the sum of Rs.2,47,80,709/- from 01.04.2017 till the filing of the Claim on 27.12.2022 (read as 31.12.2022).”

23. A perusal of the aforesaid quoted paras shows that the learned Sole Arbitrator has taken a note of the fact that a sum of Rs. 2.44 crores was standing to the credit of the petitioner on 31.03.2015, which after certain adjustments rose to Rs. 2.47 crores at the end of Financial Year on 31.03.2017. Hence, for the entire period from 31.03.2015 to 31.03.2017, the amount of Rs. 2.44 crores was duly maintained towards the credit of the petitioner and the additional sum of Rs. 3,00,000/- is not the interest but an internal adjustment made by the respondent.
24. The clause 8.4 of the agreement categorically mandates that term deposits and the interest accrued on term deposits are to be credited to the benefit of the petitioner. Clause 8.4 of the agreement reads as under:-



“8.4 The funds deposited by SMC to HHEC for establishing the letter of credit shall be placed in term deposits for a period mutually agreed. The interest accrued on the term deposits shall be credited to SMC on accrual/ due basis after deduction of the applicable tax deduction at source as per the Income Tax Act.”

25. The learned Sole Arbitrator in the impugned Award dated 20.09.2023 and in the order dated 06.11.2023 while dealing with the application under Section 33 of 1996 Act, has failed to deal with or consider the said clause 8.4 of the agreement.
26. The finding of the learned Arbitrator in the order dated 06.11.2023 to say that since the amount lying with the Respondent payable to the Claimant rose from about Rs. 2.44 crores to about Rs. 2.47 crores from the periods between 31.03.2015 and 31.03.2017, therefore the pre-litigation interest is payable from 01.04.2017 onwards does not have any basis. The direction of calculation of interest from 01.04.2017 and exclusion of period from 31.03.2015 to 31.03.2017 is contrary to the express terms in the agreement between the parties.
27. The Hon'ble Supreme Court in ***Indian Oil Corporation Ltd vs Shree Ganesh Petroleum***, (2022) 4 SCC 463, observed that the learned Sole Arbitrator has to operate within the terms of the Agreement executed between the parties and not ignore specific terms of the Agreement. The operative portion reads as under:

“44. An Arbitral Tribunal being a creature of Contract, is bound to act in terms of the Contract under which it is constituted. An Award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the Contract or has ignored



the specific terms of a Contract.”

28. In the instant case, the learned Arbitrator has failed to appreciate contractual terms subsisting between the parties while rejecting interest under Issue No. III, therefore the said finding is perverse, as no reasons have been given by the learned Arbitrator as to why Clause 8.4 is not applicable or not to be adhered to. In this view, the objection of the petitioner to the Award *qua* issue No. III is upheld.
29. For the said reasons, the petition is allowed and the finding in the Arbitral Award dated 20.09.2023 *qua* Issue No. III is set aside. The petitioner is at liberty to take further appropriate steps in accordance with law.
30. In case a fresh petition under section 11 of 1996 Act is filed, the petitioner and the respondent are at liberty to raise all appropriate pleas *qua* issue No.III.

JASMEET SINGH, J

JULY 24, 2024 / (MS)

(Corrected and released on 13.08.2024)

Click here to check corrigendum, if any