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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ OMP (ENF.) (COMM.) 50/2024, EX.APPL.(OS) 319/2024,
EX.APPL.(OS) 778/2024
CEC-HCC JV

.....Decree Holder

Through: Mr. Dayan Krishnan, Sr. Adv. with
counsel

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA

.....Judgement Debtor

Through: Mr. Santosh Kumar, SC with Mr.
Aditya Ramni, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
08.07.2024

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1. This is a petition seeking enforcement of the arbitral award dated 25.02.2012.
2. The issue in controversy lies within a narrow compass. By way of the majority award, interest was awarded in favour of the decree-holder and against the judgment-debtor. Paragraphs 6.2.2 and 6.2.3 of the award are relevant in this regard, and read as under:

“6.2 MAJORITY AWARD ON DISPUTE NO.1

Under the circumstances, and considering all arguments by both the parties, and on the basis of the findings and conclusions as stated above, the Tribunal makes its award as follows.

6.2.1 The Respondent shall pay a sum of Rs. 5,77,95,169 towards the total balance outstanding amount on account of construction of embankment with fly ash under item No. 2.02 (b) (as per Exhibit – C- 1/24/Annexure 2).



6.2.2 The Respondent shall pay interest at 10% compounded monthly in terms of Clause 60.8 on the outstanding amount from the respective dates of cause of action given in Annexure- 2 till the date of award.

6.2.3 The amounts awarded as above on Dispute No.1 together with interest shall be paid by the Respondent within a period of 90 days from the date of this award. In the event of failure to pay the amounts within 90 days, Simple interest at 10% per annum shall be payable by the Respondent on the total amounts including interest from the date of award till the date of actual payment.”

3. The judgment-debtor challenged the award by filing a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (“the Act”), which was dismissed on 06.07.2012.
4. Against the said order, the judgment-debtor filed an appeal under Section 37 of the Act being FAO (OS) 381/2012, which was partially allowed by the Division Bench on 08.11.2012.
5. Aggrieved by the judgment of the Division Bench, the decree-holder filed an SLP against it. The Hon’ble Supreme Court, on 24.08.2023, allowed the Civil Appeal of the decree-holder, set aside the judgment of the Division Bench and restored the award.
6. The judgment-debtor filed a review petition before the Hon’ble Supreme Court against the judgment dated 24.08.2023, however, the same was dismissed on 06.02.2024.
7. Paragraph 28 of the judgment of the Hon’ble Supreme Court dated 24.08.2023 is important and reads as under:

“28. In view of the findings recorded earlier, this court is of the opinion that all the appeals have to succeed. Therefore, C. A. No. 4658/2023, C. A. No. 4659/2023; C. A. No. 4660/2023; C. A. No.



4661/2023 and C. A. No. 4662/2023 are allowed; all judgments of the Delhi High Court, which were the subject matter of challenge in those appeals are set aside. The awards, which were the subject matter of challenge, and to the extent they were set aside, are hereby upheld and restored. The direction in the awards, to the extent they required compounded monthly interest payments, are modified. Instead, the NHAI shall pay uniform interest on the amounts due, on the head concerned, i.e., construction of embankment, to the extent of 12% from the date of award to the date of payment, within eight weeks from today. All the above appeals are allowed in these terms. There shall be no direction to pay costs.”

8. Mr. Krishnan, learned senior counsel for the decree-holder states that in view of the above paragraph, the amount awarded in favour of decree-holder under Dispute No. 1 was to carry interest at the rate of 10% compounded monthly, and it is only the post award interest which has been modified by the judgment of the Hon’ble Supreme Court.

9. To buttress his submissions, he relies upon Section 31(7) of the Act which reads as under:

“31. Form and contents of arbitral award.-

.....

(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.



Explanation.- The expression “current rate of interest” shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).”

10. Mr. Krishnan also relies upon the judgment of the Hon’ble Supreme Court in **Hyder Consulting (UK) Limited vs. Governor, State of Orissa** (2015) 2 SCC 189, and more particularly paragraphs 4, 8 and 9 which read as under:

“4. Clause (a) of sub-section (7) provides that where an award is made for the payment of money, the Arbitral Tribunal may include interest in the sum for which the award is made. In plain terms, this provision confers a power d upon the Arbitral Tribunal while making an award for payment of money, to include interest in the sum for which the award is made on either the whole or any part of the money and for the whole or any part of the period for the entire pre-award period between the date on which the cause of action arose and the date on which the award is made. To put it differently, sub-section (7)(a) contemplates that an award, inclusive of interest for the pre-award period on the entire amount directed to be paid or part thereof, may be passed. The sum" awarded may be the principal amount and such interest as the Arbitral Tribunal deems fit. If no interest is awarded, the "sum" comprises only the principal. The significant words occurring in clause (a) of sub-section (7) of Section 31 of the Act are "the sum for which the award is made". On a plain reading, this expression refers to the total amount or sum for the payment for which the award is made. Parliament has not added a qualification like "principal" to the word "sum", and therefore, the word "sum" here simply means "a particular amount of money". In Section 31(7), this particular amount of money may include interest from the date of cause of action to the date of the award.

.....

8. Thus, sub-section (7) of Section 31 of the Act provides, firstly, vide clause (a) that the Arbitral Tribunal may include interest while making an award for payment of money in the sum for which the



award is made and further, vide clause (b) that the sum so directed to be made by the award shall carry interest at a certain rate for the post-award period.

9. The purpose of enacting this provision is clear, namely, to encourage early payment of the awarded sum and to discourage the usual delay, which accompanies the execution of the award in the same manner as if it were a decree of the court vide Section 36 of the Act.”

11. It is submitted by the learned senior counsel that the sum due and payable to the decree-holder will include interest under Dispute No. 1 at 10% compounded monthly, as that is the sum awarded to the decree-holder. It is stated that the Hon’ble Supreme Court has only modified post-award interest and not the pre-award interest.

12. Mr. Krishnan further draws my attention to a similar award to state that that was forming part of the judgment of the Hon’ble Supreme Court and hence was not contested by the judgment-debtor. He states that paragraph 28 of the judgment dated 24.08.2023, in fact, applies to an arbitral award between the same parties which forms part of the batch because in that case, the Arbitral Tribunal had awarded 12% of interest compounded annually for post-award period, which submissions have been accepted by the judgment-debtor by their conduct.

13. I have heard learned counsels for the parties.

14. The judgment of the Hon’ble Supreme Court, to my mind, deals with all the awards under challenge and categorically states that to the extent they directed payment of compounded monthly interest payments, the said direction needs to be modified.

15. Paragraph 6.2.2 of the award directs payment of compound interest at



the rate of 10% every month to the decree-holder.

16. To my mind, it is this direction which has been modified by the Hon'ble Supreme Court.

17. The reliance upon ***Hyder Consulting (UK) Limited*** (supra) is misplaced in the present case as the judgment of the Hon'ble Supreme Court is clear in its directions.

18. During the course of hearing, the decree-holder was given the option to approach the Supreme Court seeking clarification of the judgment dated 24.08.2023, which was not acceptable to the decree-holder.

19. Mr. Krishnan, learned senior counsel for the decree-holder further states that the Hon'ble Supreme Court in aforementioned paragraph 28 directed the payment of 12% interest from the date of award till date of payment, meaning thereby that the direction of the Arbitral Tribunal to pay 10% compounded interest till the date of award has not been interfered with.

20. I am unable to agree with the same, as in paragraph 6.2.3 of the award, the Arbitral Tribunal has awarded simple interest at the rate of 10% from the date of award till the date of payment and according to my mind, that amount of interest has been increased to 12% from the date of award till the date of payment.

21. In this view of the matter, the amount lying in the Registry on calculations made at the rate of 12% from 25.02.2012 till the date of payment which comes out to Rs. 14,21,98,283.75/- (less 5 crores) shall be released to the decree-holder or its authorized representative within 2 weeks from today. The balance amount along with accrued interest shall be released to the judgment-debtor.

22. With these directions, the petition is disposed of.



23. In case in view of my findings recorded hereinabove there are any other amounts due and payable, the decree-holder is at liberty to file an application.
24. The petition is disposed of.
25. The calculation handed over in Court is taken on record.

JASMEET SINGH, J

JULY 8, 2024/DM

Click here to check corrigendum, if any

(Corrected and released on 15.07.2024)