



2024:DHC:5343



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

+ **OMP (ENF.) (COMM.) 126/2021**

M/S RAMACIVIL INDIA

CONSTRUCTIONS PVT. LTD.

.....Decree Holder

Through: Mr. Avinash Trivedi, Ms.
Ritika Kaushik, Mr. Rhythem Nagpal and
Mr. Jatin Arora, Advs.

versus

UNION OF INDIA

.....Judgment Debtor

Through: Mr. Ruchir Mishra and Mr.
Mukesh Kumar Tiwari, Advs.

+ **OMP (ENF.) (COMM.) 9/2021**

SAPTRISHI BUILDERS PVT LTD

.....Decree Holder

Through: Mr. Shekhar Nanavaty and Mr.
Shubham Dhyani, Advocates.

versus

VEG SANCHAR VIHAR CGHS LTD

.....Judgment Debtor

Through: Mr. V.V. Gautam and Ms. Nitu
Barik, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGEMENT (ORAL)

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16.07.2024

OMP (ENF.) (COMM.) 126/2021

1. Arbitral proceedings between the petitioner and respondent

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culminated in an award dated 28 January 2016. Under the said award, the respondent-Union of India was required to pay the petitioner Ramacivil India Constructions Pvt Ltd, an amount of ₹ 2,99,55,403/- along with simple interest @ 11 % per annum from 29 January 2016 till the date of payment. It is one facet of this entitlement to interest which forms subject matter of controversy.

2. The award was challenged by the respondent-UOI before this court by way of OMP (Comm) 516/2016. The successful petitioner, on the other hand, moved the present OMP (Enf) (Comm) 126/2021 for enforcement of the award.

3. The respondent filed, along with OMP (Comm) 516/2016, IA 5809/2016 under Section 36¹ of the Arbitration and Conciliation Act, 1996², seeking stay of operation of the arbitral award. By order dated 11 August 2021, this Court granted stay of execution of the award

¹ 36. **Enforcement. –**

(1) Where the time for making an application to set aside the arbitral award under Section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the court under Section 34, the filing of such an application shall not by itself render that award unenforceable, unless the court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908:

Provided further that where the Court is satisfied that a prima facie case is made out that,—

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under Section 34 to the award.

Explanation.—For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015.

² “the 1996 Act” hereinafter



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subject to the respondent depositing the awarded amount, including interest till that date, with the Registrar General of this Court, within eight weeks. The deposit, as directed, was made by the respondent.

4. The petitioner subsequently filed IA 13756/2021 in OMP (Comm) 516/2016 for permission to withdraw the aforesaid amount deposited by the respondent. Before this Court, the petitioner offered to furnish a bank guarantee for an amount equivalent to the deposited amount. In that view of the matter, the prayer for release of the amount was allowed by this Court on 6 May 2022 in the following terms:

“2. By way of this application, the Applicant/ Respondent seeks the withdrawal of the awarded amount lying deposited with this Court. The Applicant states that in order to secure the Petitioner – the Applicant is willing to furnish a Bank Guarantee of the amount equivalent to the amount sought to be released.

3. In that light, the application is allowed, subject to Respondent furnishing a Bank Guarantee in the name of the Registrar General of this Court for an amount of Rs. 4.75 Crores within a period of two weeks from today, the said amount be released in favour of the Respondent. The Bank Guarantee shall be initially for a period one year and shall be kept alive till the final disposal of the present petition.

4. The matter be placed before the Ld. Registrar General for verification of the Bank Guarantee as and when the same is filed by the Applicant/ Respondent.”

5. The amount deposited by the respondent was ₹ 4,82,09,323/-. Pursuant to the order dated 6 May 2022, the petitioner furnished a bank guarantee for ₹ 4.75 crores, and in terms of the order, was allowed to withdraw the said amount. ₹ 7,09,323/- remained deposited with the Registrar General.

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6. OMP (Comm) 516/2016 came to be dismissed on 4 July 2023.
7. The petitioner, thereafter, moved IA 13048/2023 for release of the bank guarantee which had been deposited by the petitioner, and the remaining amount of ₹ 7,09,323/-. The said application was allowed by this Court *vide* order dated 19 July 2023, directing return of the bank guarantee deposited by the petitioner as well as unconditional release of the remaining deposited amount of ₹ 7,09,323/-.
8. Thus far, the proceedings in OMP (Comm) 516/2016 are relevant to the present case.
9. Adverting, now, to the trajectory of the proceedings in the present execution petition.
10. On 5 July 2023, Counsel for the parties sought an adjournment to examine whether, in view of the dismissal of OMP (Comm) 516/2016 on 4 July 2023, anything survived for adjudication in these proceedings. Thereafter, on 21 July 2023, this Court has recorded that Mr. Avinash Trivedi, learned Counsel for the decree holder, had handed over a calculation sheet showing the balance amount payable under the arbitral award. Mr. Trivedi clarifies that this “balance amount payable” was the interest for the period between 6 September 2021 till 16 July 2022, when the deposited amount was permitted to be released by this Court against Bank Guarantee. It is the entitlement of the petitioner to interest for this period which constitutes the only surviving issue of controversy, the arbitral award having been

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otherwise satisfied.

11. Learned Counsel for the parties have adopted diametrically opposite stands with respect to the entitlement of the petitioner to interest on the amount deposited by the respondent, for the period between the date of deposit and the date when release of the amount to the petitioner was permitted by this Court.

12. Mr. Trivedi submits that the petitioner is entitled to the interest for the intervening period. Mr. Mishra, learned Counsel for the respondent, obviously disputes this.

13. Mr. Mishra initially places reliance on the judgment of the Supreme Court in *Himachal Pradesh Housing and Urban Development Authority v. Ranjit Singh Rana*³, to which Mr. Trivedi responds that a coordinate Single Bench of this Court has considered the said decision in *South Delhi Municipal Corporation v. Radhey Shyam*⁴ and held that where the decree holder was prevented from enjoying the benefit of the amount deposited by the judgment debtor without furnishing of the bank guarantee or providing other security, the amount deposited would not constitute a deposit within the meaning of Order XXI Rule 1(1)⁵ of the Code of Civil Procedure,

³ (2012) 4 SCC 505

⁴ 2014 (4) ARB LR 524 (Delhi)

⁵ 1. Modes of paying money under decree. –

- (1) All money, payable under a decree shall be paid as follows, namely:
 - (a) by deposit into the Court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or
 - (b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or
 - (c) otherwise, as the Court which made the decree, directs.



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1908⁶. The sequitur would, therefore, be that the judgment debtor would not be entitled to the benefit of Order XXI Rule 1(4)⁷ of the CPC.

14. On the next date of hearing, Mr. Mishra cited the decision of a coordinate Bench of this Court in *Cobra Instalaciones Y Servicios v. Haryana Vidyut Prasaran Nigam Ltd.*⁸ to contend that the entitlement of the decree holder to interest in terms of the award on the amount deposited by the judgment debtor is no longer *res integra*. According to Mr. Mishra, the decision in *Cobra* has clearly held that the said amount would not carry any interest in view of Order XXI Rule 1(4) of the CPC.

15. In response, Mr. Trivedi submits that, unlike the situation which obtained in *Cobra*, where the decree holder was permitted even by the order of deposit to unconditionally withdraw the amount deposited, in the present case, the petitioner has been permitted to withdraw the deposited amount only subject to furnishing of a bank guarantee. In *Cobra*, Mr. Trivedi submits that the only condition imposed for permission to withdraw the deposited amount was that, if the decree holder ultimately failed, the amount withdrawn would be returned. As against this, in the present case, the petitioner-decree holder has had to furnish a bank guarantee as a condition for withdrawing the amount deposited by the judgment debtor. Where such a condition is imposed, he submits that this Court has, in *Radhe Shyam*, clearly held

⁶ “the CPC”

⁷ (4) On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).

⁸ 2023 SCC OnLine Del 5439, hereinafter cited as “*Cobra*”



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that the deposit cannot be treated as a deposit under Order XXI Rule 1(1)(a) of the CPC. This sequitur would be that benefit of Order XXI Rule 1(4) would not be available to the judgment debtor.

16. Mr. Trivedi further contends that there is a fundamental difference between the nature of deposit envisaged by Order XXI Rule 1(1)(a) of the CPC and the deposit that was made by the respondent in the present case. He submits that Order XXI Rule 1(1)(a) of the CPC applies to payment of money payable under a decree by deposit into the Court, towards satisfaction of the decree. As against that, he submits that the deposit in the present case was made on an application filed by the respondent under Section 36(3)⁹ of the 1996 Act, as a condition for grant of stay to the respondent. The deposit was not, therefore, by way of satisfaction of the decree, as envisaged by Order XXI Rule 1(1)(a) of the CPC. This, he further submits, is apparent from the fact that the order of deposit was not made in the present proceedings but in the Section 34 proceedings initiated by the respondent challenging the arbitral award. Conflating the deposit made under Section 36(3) of the 1996 Act with the deposit made under Order XXI Rule 1(1)(a) of the CPC, he submits, would be

⁹ (3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908:

Provided further that where the Court is satisfied that a prima facie case is made out that,—

(a) the arbitration agreement or contract which is the basis of the award; or
(b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under Section 34 to the award.

Explanation.—For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015.



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fundamentally erroneous in law.

17. I have applied my mind to the submissions made by both sides.

18. At a first glance, the distinction that Mr. Trivedi seeks to draw between the deposit made in the present case and the deposit made in terms of Order XXI Rule 1(1)(a) of the CPC, I must confess, appeared substantial. Once the mists are cleared, however, the distinction is seen to be more one of form than of substance. In case the distinction that Mr. Trivedi seeks to draw between the deposit made by the judgment debtor as a condition for obtaining stay of the arbitral award and the deposit made before the Court under Order XXI Rule 1(1)(a) of the CPC is to be accepted, the sequitur would be that all proceedings which relate to the entitlement of the decree holder with respect to the deposit made by the judgment debtor would have to be preferred and decided in the Section 34 proceedings. Mr. Trivedi's argument is that the deposit that was made by the respondent was not in terms of Order XXI Rule 1(1)(a) of the CPC, but in terms of the order passed by this Court on the application under Section 36(3) of the 1996 Act. Facially, no doubt, the argument is correct. The petitioner, therefore, approached the Section 34 Court with IA 13756/2021 and, later, with IA 13048/2023, seeking permission to withdraw the amount deposited by the respondent. The permission, as sought, was granted by this Court. In IA 13756/2021, permission was granted subject to the petitioner furnishing a bank guarantee, as, at that time, OMP (Comm) 516/2016 was still pending. After OMP (Comm) 516/2016 came to be dismissed on 4 July 2023, the petitioner's IA 13048/2023 was allowed by directing release of the bank guarantee

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submitted by the petitioner and directing the Registry to release the balance amount of ₹ 7,09,323/- unconditionally.

19. The direction for deposit of the amount of ₹ 4,82,09,323/-, by the respondent and the direction for release of the said amount to the petitioner were both, therefore, passed by this Court in OMP (Comm) 516/2016.

20. Mr. Trivedi sought to submit that, as these directions were passed in OMP (Comm) 516/2016, deposit, made in terms of the order dated 11 August 2021 passed in that case, could not be treated as relevant to examine the petitioner's entitlement to interest on the said amount between the date of deposit and the date of release of the amount to the petitioner. There is, he reiterates, a distinction between deposit made as a condition imposed by the Court under Section 36(3) for grant of stay of execution of the award, and deposit made before the executing court under Order XXI Rule 1(1)(a) towards satisfaction of the award.

21. I may note here that the petitioner has actually received the said amount, along with interest which has accrued on it, as the amount had been directed to be deposited in a fixed deposit account. What the petitioner now seeks is that, over and above the said interest, which the amount has earned, the petitioner should be held to be entitled to additional interest on the said amount at the rate awarded by the Arbitral Tribunal.

22. Significantly, an identical claim has been examined by the

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Supreme Court in *U.O.I. v. M.P. Trading and Investment RAC Corporation Ltd*¹⁰, to which reference is contained in para 19 of the judgment of the coordinate Bench in *Cobra*. Paras 4 and 5 of the report in *MP Trading*, which have been reproduced by the coordinate Bench in para 19 of *Cobra* may be reproduced once again here:

“4. In the present case, we find that the amount was to be deposited in a fixed deposit at the request made by the respondent and it is not seen that the respondent has made any request before the High Court for withdrawal of the amount deposited as per the directions by the High Court. However, it is submitted that the appellants have not deposited the full amount in terms of the award.

5. In the above facts and circumstances of the case, we are of the view that the appellants shall be entitled to interest as per award from the date of award till the principal amount was deposited in the High Court on 3-3-2003. *From the said date of 3-3-2003 till it was withdrawn, the respondent shall be entitled only to the interest accrued on the principal amount in terms of the fixed deposit made as per the direction by the High Court.* However, the respondent shall be entitled to the interest in terms of the award on the balance of the award amount which the appellants failed to deposit in Court, as per the award.”

(Emphasis supplied)

23. In *Cobra*, the facts of the case and the issue arising for consideration have been thus distilled by the coordinate Bench:

“4. Record reveals that, in order to avoid facing any coercive action in these proceedings, the JD deposited the entire Award amount, along with the interest till the date of deposit, in this court on 19.05.2021, pursuant to an order dated 15.03.2021 passed in these proceedings. JD wanted to await the outcome of its challenge to the Award for which reason, apparently, it persuaded the court to defer passing any orders in these proceedings. Eventually, JD’s objections under Section 34 were dismissed on 06.05.2022, which was not challenged. Consequently, the award attained finality and thus, executable without any impediment.



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5. The DH withdrew the Award amount deposited by the JD in pursuance of order dated 02.08.2022, which had resulted in the satisfaction of the award put up for execution in these proceedings. However, the DH has kept the execution alive by demanding interest on the Award amount from 19.05.2021 till 06.05.2022 i.e., from the date of deposit of the Award amount till the date of dismissal of the objections under Section 34 of the A&C Act.

8. It is seen that the Award amount deposited by the JD was kept in the form of an interest-bearing FDR. As per the DH, the FDR earned interest of Rs. 25,09,194/-. DH's total claim towards interest is Rs.41,36,655/- and after adjusting the aforesaid interest amount earned on the FDR, DH is claiming the remaining sum of ₹ 16,27,461/-.

9. As noted above, the short issue involved is as to whether JD is liable to pay interest for the period between the date of deposit till the date of withdrawal of the deposit by the DH or dismissal of the objections, as in the present case.”

24. This Court has, thereafter, proceeded, before advertng to the various decisions of the Supreme Court on the point, to observe thus:

“11. The DH’s contention about the withdrawal of the award amount by him being conditional does not characteristically change the nature of money in the hand of the DH, who was free to use the money upon its withdrawal, with the only conditionality that in case the JD succeeded in his objections and the award was set aside, the DH would be required to restitute the gains i.e., return the Award amount. DH chose to await the outcome of the JD’s objections under Section 34 of his own volition, without there being any impediment in having access to the deposit either in the court order dated 15.03.2021 or otherwise.

12. Under Order XXI Rule 1(1)(a), payment of Award amount by JD by way of court deposit is permissible. Under Order XXI Rule 1(2), a court notice is required to be given to DH in case the Award amount is deposited in court under Sub-Rule (1)(a). Proviso to Rule 1 stipulates that in case DH refuses to accept the Award amount tendered to him, interest shall cease to run from the date of tender.

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13. In the present case, DH was aware of the court order dated 15.03.2021. In fact, the order was passed in the presence of the DH whereby *the court allowed JD to deposit the Award amount in court, and simultaneously permitted the DH to withdraw the same subject to conditionality mentioned in the order.* On the day JD deposited the Award amount in court pursuant to the court order, the same amounted to ‘tendering’ the same to the DH as envisaged in the proviso to Order XXI Rule 1, who refused to accept the same (by not making an application for its withdrawal), and consequently, interest ceased to run on from the date of such deemed refusal.

14. *DH was never denied access to the Award amount. The deposit was made available to the DH to be had subject to an obvious condition of returning the same if the award was set aside. DH withdrew the money pursuant to order dated 02.08.2022, only after JD’s objections under Section 34 were dismissed. DH was not required to await the outcome of the Objections, however, if it did choose to remain under a self-imposed embargo, then it can’t demand interest, for the reasons explained above.”*

25. Thereafter, the decision in ***Cobra*** notes the judgment of the Supreme Court in ***P.S.L. Ramanathan Chettiar v. O.R.M.P.R.M Ramanathan Chettiar***¹¹, in which the Supreme Court held:

“15. The last contention raised on behalf of the respondent was that at any rate the decree-holder cannot claim any amount by way of interest after the deposit of the money in court. There is no substance in this point because the deposit in this case was not unconditional and the decree-holder was not free to withdraw it whenever he liked even before the disposal of the appeal. In case he wanted to do so, he had to give security in terms of the order. The deposit was not in terms of Order 21 rule 1 CPC and as such, there is no question of the stoppage of interest after the deposit.”

26. ***Cobra***, thereafter, notes that, after the decision in ***Ramanathan Chettiar*** had come to be rendered, Order XXI Rule 1 of the CPC was amended by the Code of Civil Procedure (Amendment) Act, 1976, in 1977. The amendment introduced, in Order XXI Rule 1, sub-rules (4)

¹¹ (1968) 3 SCR 367



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and (5). A Constitution Bench of the Supreme Court, in **Gurpreet Singh v. U.O.I.**¹², held that “the legislative intent in enacting sub-rules (4) and (5) is therefore clear and it is that *interest should cease on the deposit being made and notice given* or on the amount being tendered outside the court in the manner provided”.

27. **Cobra** next notes the judgment of the Supreme Court in **Himachal Pradesh Housing and Urban Development Authority**, which examined the concept of “payment”, within the meaning of Order XXI Rule 1(1)(a) of the CPC:

“15. The word “payment” may have different meaning in different context but in the context of Section 37(1)(b); it means extinguishment of the liability arising under the award. It signifies satisfaction of the award. The deposit of the award amount into the Court is nothing but a payment to the credit of the decree-holder. In this view, once the award amount was deposited by the appellants before the High Court on 24-5-2001, the liability of post-award interest from 24-5-2001 ceased. The High Court, thus, was not right in directing the appellants to pay the interest @ 18% p.a. beyond 24-5-2001.”

(Emphasis supplied)

28. Thereafter, **Cobra** notes the decision in **MP Trading**, as well as the judgment of a Division Bench of this Court in **D.D.A. v. Bhai Sardar Singh**¹³. Paras 15 and 16 of **Bhai Sardar Singh** also merits reproduction thus:

“15. A reading of the aforesaid sub-rules clarifies that when money is paid under a decree, the interest, if any, shall cease to run either from the date of direct payment or from the date of service of notice to the decree holder, wherever applicable. Sub-rules 4 and 5 do not stipulate that the interest would stop running only and

¹² (2006) 8 SCC 457

¹³ 2009 SCC OnLine Del 519



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only when the entire amount as per the decree shall stand paid. This Court, as will be seen below, has held that money even when paid in part towards the decree would cease to accrue interest to the extent of the amount paid.”

29. Following the above precedential peregrination, the coordinate Bench in **Cobra** arrives at the following conclusion:

“23. From disposition of law extracted hereinabove, it is clear that if the JD has intimated the DH with a notice of deposit and *the Award amount is available for withdrawal to the DH unconditionally i.e., without any condition of furnishing security or otherwise, the liability of JD would cease on the date of deposit.*

24. In the present cases, the JD had deposited the Award amount in the execution proceedings with the requisite notice in terms of the Order XXI Rule 1 CPC. The notice was served on the date of deposit i.e., 19.05.2021 on the DH. *There were no fetters upon the DH to withdraw the said amount, as admittedly there was no stay of the impugned award in the objections filed by the JD under Section 34 of the A&C Act. The failure of the DH to take steps in preferring an application for withdrawal of the Award amount would not enure to the disadvantage of the JD. The deposit alongwith its due notice to the DH was sufficient discharge of the onus put on the JD in terms of Rule 1 Order XXI CPC.*”

30. The contention of Mr. Trivedi that, while the deposit in **Cobra** was unconditional, the deposit in the present case was conditional, as the petitioner was allowed to withdraw the amount deposited only on furnishing of a bank guarantee, cannot be accepted. The order dated 11 August 2021 of this Court, by which deposit was directed in OMP (Comm) 516/2016, was unconditional. It did not incorporate any condition to be fulfilled for the amount to be withdrawn by the petitioner. The reasoning, in **Cobra**, that the petitioner could not, therefore, seek to capitalize on the time that was spent between the date of deposit and the date on which the petitioner applied to withdraw the amount, would apply, therefore, *mutatis mutandis* to the

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present case. The condition of furnishing of a bank guarantee came into existence only because the petitioner, in IA 13756/2021, undertook to furnish a bank guarantee against being allowed to withdraw the amount deposited by the respondent. The condition of furnishing of a bank guarantee, therefore, did not form any part of the order of deposit.

31. It cannot, therefore, be said that the petitioner was prevented or even inhibited from moving an application for withdrawal of the deposited amount because the withdrawal was subject to any condition. The order of deposit dated 11 August 2021 did not place any condition for withdrawal of the deposited amount by the petitioner. There was, therefore, no difference between the order of deposit in *Cobra* and the order of deposit in the present case. Both were unconditional, insofar as the right of the petitioner decree holder to deposit the amount was concerned. As observed in *Cobra*, therefore, if the petitioner chose to wait till 6 May 2022 to move an application for withdrawal, the respondent cannot be mulcted with interest for the interregnum.

32. Of somewhat greater strength, facially viewed, is the contention of Mr. Trivedi that the respondent cannot, in the present case, be afforded the benefit of Order XXI Rule 1(4) of the CPC as the deposit made by the respondent was under Section 36(3) of the 1996 Act, as a condition for securing the stay of execution of the award, and not a deposit made into the executing court by way of satisfaction of the decree as envisaged by Order XXI Rule 1(1)(a).

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33. Whether the deposit is made as a condition for stay, on the direction of the Court, or is made in the court in the execution proceedings, in either case, the deposit is intended to secure the awarded amount. In both cases, the deposit is made in the court. In both cases, the deposit is made by the unsuccessful judgment debtor. In both cases, the deposit is intended to secure the decree holder. Can the legal consequence of the making of the deposit, insofar as the entitlement of the decree holder to interest thereon, for the period during which the money remains in the Court, change, merely because, in one case, the deposit is made under Order XXI Rule 1(1)(a) of the CPC and, in the other, under Section 36(3) of the 1996 Act?

34. In view of the dichotomy and distinction that Mr. Trivedi was seeking to draw between deposit made in the Section 34 proceedings, under Section 36(3), and the deposit made in the executing court under Order XXI Rule 1(1)(a), I queried of Mr. Trivedi as to whether the petitioner was willing to stake his present claim to interest by moving an application under Section 34 proceedings. He was not in a position to answer in the affirmative. In case the Court is to hold the petitioner entitled to interest on the amount deposited by the respondent merely because the deposit was made, not under Order XXI Rule 1(1)(a) of the CPC, but in the proceedings under Section 34/36 of the 1996 Act, the sequitur would be that the petitioner would also have to apply to seek interest on the said deposited amount from the Section 34 Court, and not in the present execution proceedings. In view of the fact that Mr. Trivedi is not willing to undertake that exercise, it cannot lie in his mouth to seek to divorce the Section 34

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proceedings from the present execution proceedings.

35. In any event, it cannot be forgotten that both the proceedings are vis-à-vis the same arbitral award. The Section 34 proceedings challenged the very same arbitral award of which enforcement is being sought in the present proceedings. Significantly, on 21 July 2023, the petitioner itself effectively effaced the gap – if any existed – between the two proceedings, by handing over, in the present execution proceedings, a calculation sheet showing the amount which remained to be paid to the petitioner (by way of the disputed interest), following the release of the deposited amount by the Section 34 court. The order dated 21 July 2023 merits reproduction:

- “1. Learned counsel for the decree holder has handed over a calculation sheet showing the balance amount payable under the award.
2. Learned counsel for the judgment debtor prays for and is granted time to obtain instructions.
3. At request, list on 31.08.2023.”

36. Thus, the position that emerges, in the present case, is this. Deposit of the awarded amount, by the respondent-judgement debtor, was directed in the Section 34 proceedings. The application for withdrawing the amount, against bank guarantee, was moved by the petitioner-decree holder in the Section 34 proceedings. Release was allowed by the Section 34 Court, and the amount was released to the petitioner. Thereafter, the application for interest on the released amount was made in the present enforcement proceeding.



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37. The petitioner cannot be allowed to run with the hare and hunt with the hounds. Having itself involved the executing Court in the exercise of determining the balance amount payable to the petitioner under the award, it cannot lie in the mouth of the petitioner today to seek to dichotomize the proceedings in execution and the Section 34 proceedings. Incidentally, I may note, both the proceedings were being heard together and, if they are not being taken together now, it is only because the Section 34 proceedings have come to an end with the dismissal of OMP (Comm) 516/2016.

38. The order dated 21 July 2023 was succeeded by the following orders passed by a coordinate Bench on 31 August 2023 and 11 December 2023:

“Order dated 31 August 2023

1. Learned counsel for both sides pray for and are granted further two weeks’ time to reconcile the accounts and thereafter file their respective affidavits within four weeks from today.
2. List on 11.12.2023.

Order dated 11 December 2023

1. The objection petition [O.M.P.(COMM.) 516/2016] under Section 34 of the Arbitration and Conciliation Act, 1996, has been dismissed. Mr. Mukesh Kr Tiwari, counsel for Judgement Debtor-Union of India, has furnished a calculation sheet with regards to the balance amount payable, along with interest, by the Judgment Debtors which controverts the calculation sheet submitted by the Decree Holder. According to the Judgement Debtor's calculation, an excess amount has been deposited by Judgement Debtor. Let the copy of the said calculation sheet be supplied to the counsel for the Decree Holder.
2. List for consideration on 19th February, 2024.”



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39. In the face of these orders, I am unable to accept Mr. Trivedi's submission that, while examining the entitlement of the petitioner to interest between the date of deposit, by the respondent, of ₹ 4,82,09,323/- in this Court and the date when the release of the said amount to the petitioner was directed by this Court on 6 May 2022, the Court has to proceed unmindful of Order XXI Rule 1(4).

40. It is also significant to note that the words "towards satisfaction of the decree" do not find place in Order XXI Rule 1(1). Order XXI Rule 1(1)(a) envisages payment of "all money payable under a decree ... by deposit into the Court whose duty is to execute the decree...". There can be no dispute about the fact that the respondent had in fact deposited the amount of ₹ 4,82,09,323/- with this Court, albeit in OMP (Comm) 516/2016, rather than in the present execution proceedings. The question that arises whether this distinction is sufficient to render Order XXI Rule 1(4) of the CPC inapplicable while examining the entitlement of the petitioner to interest on the amount deposited by the respondent between the date of deposit and the date when release of the amount to the petitioner was allowed by this Court.

41. The flow of legal thought in this regard as it emanates from the judgments of the Supreme Court in *Gurpreet Singh, Himachal Pradesh Housing and Urban Development Authority* and *MP Trading* as well as the Division Bench of this Court in *Bhai Sardar Singh* is all one way. These decisions clearly hold that on payment of the decretal amount by the judgment debtor into the Court, the entitlement of the decree holder to interest in terms of the decree

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would cease to run. The Court has also held that such payment constitutes payment within the meaning of Order XXI Rule 1(1)(a). In **Gurpreet Singh**, the Supreme Court has held that on deposit of decretal amount being made in Court “interest should cease” subject to notice of deposit being made by the judgment debtor to the decree holder. The requirement of such notice can obviously not apply in a case where the deposit is made as per the order of the Court in the presence of both the parties, as has also been held by the coordinate Bench in **Cobra**. In **Himachal Pradesh Housing and Urban Development Authority**, too, the Supreme Court has clearly held that payment of the decretal amount by the judgment debtor in Court “is nothing but a payment to the credit of the decree holder”. Once the awarded amount was thus deposited, holds the Supreme Court, “the liability of post award interest ... ceased”. In **MP Trading**, the judgment debtor pointed out to the Court that it had made full deposit of the entire amount awarded to the decree holder. The Supreme Court held that, in these circumstances, the decree (award) holder was entitled to interest as per the award from the date of the award till the date of deposit of the awarded amount by the judgment debtor in Court, but that, *from the date of such deposit the decree holder would be entitled only to such interest as had been earned on the deposit by reason of the deposit having been made in a fixed deposit account and not to interest in terms of the award.*

42. In **Bhai Sardar Singh**, the Division Bench of this Court clarified that this principle would apply even where the deposit was made in part satisfaction of the decree/award.

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43. None of these decisions, plainly read, seek to carve out an exception in a case where the deposit is made for obtaining a stay of the award under challenge.

44. I am not, therefore, inclined to accept the subtle point of distinction that Mr. Trivedi has sought to draw as making any difference to the position in law, insofar as the right of the petitioner-decree holder to interest, from the date of deposit of the awarded amount in the Court by the respondent-judgement debtor to the date when the Court allowed release of the amount to the petitioner, is concerned.

45. In view of the clear trend of legal thought on the issue, as manifested by the judgments of the Supreme Court, which stand distilled by the coordinate Bench in its judgment in *Cobra*, in my opinion, the petitioner is not entitled to interest on the amount of ₹ 4,82,09,323/- deposited by the respondent before this Court in terms of the order dated 11 August 2021, except to the extent of the fixed deposit interest that the amount has earned between the date of such deposit and the date when it was released to the petitioner. No additional interest on the said amount, as per the award under enforcement, can be granted to the petitioner.

46. As the remainder of the amount awarded to the decree holder stands paid, this enforcement petition does not survive for further consideration.

47. The enforcement petition is accordingly disposed of.

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48. The question for consideration in this petition is the same as that which arose in OMP (Enf) (Comm) 126/2021 and stands decided in favour of the respondent judgment debtor by the above judgment.

49. For the sake of the record, the facts may briefly be noted.

50. The arbitral proceedings in this case culminated in an award of ₹ 1,30,02,314.13 in favour of the petitioner and against the respondent, subject to TDS and GST reimbursement, if any, with interest on the awarded amount @ 12 % per annum till the date of award and, in the event of the amount not being paid within three months of the receipt of the award by the respondent, further post award interest @ 12 % per annum till payment of the awarded amount.

51. OMP (Comm) 119/2021 was preferred by the respondent, challenging the award.

52. On 16 March 2021, the following order was passed in OMP (Comm) 119/2021:

“O.M.P. (COMM) 119/2021 with I.A. No. 3981/2021 (for stay)”

6. A stay application [I.A. No. 3981/2021] has been filed along with the present petition. The learned counsel for the Respondent states that an execution petition [O.M.P. (ENF) (COMM) 9/2021] has been preferred before this Court and the same is now listed on 24th March, 2021.

7. He further submits that the total amount due, along with up

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to date interest under the Arbitral Award is INR 2,63,94,697.68/-.

8. The impugned Arbitral Award in the present petition is for payment of money. Thus, having regard to the provisions of the grant of stay of money decree under the Code of Civil Procedure, 1908, it is directed that, subject to the Petitioner depositing an amount of INR 2 Crores with the Registrar General of this Court within a period of four weeks from today, the execution of the impugned Arbitral Award, shall remain stayed.

9. The arguments are heard at the stage of admission itself. Order reserved. The parties are directed to file a brief note of submission not exceeding two pages, within a period of two weeks from today along with relevant case laws.”

53. The judgment in OMP (Comm) 119/2021, which was reserved on 16 March 2021, came to be rendered on 5 July 2021.

54. In the meanwhile, the petitioner had filed the present OMP (Enf) (Comm) 9/2021 for execution of the arbitral award.

55. Consequent on the dismissal of OMP (Comm) 119/2021 on 5 July 2021, the respondent filed an application Ex. Appl. (OS) 667/2021 for release, to the petitioner, of the amount of ₹ 2 crores deposited by the respondent with the Registry of this Court, and also an additional amount of ₹ 69,29,697/- which had been awarded to the petitioner by the learned Arbitral Tribunal.

56. The following order came to be passed in Ex. APPL. (OS) 667/2021 on 18 August 2021:

“EX.APPL.(OS) 667/2021 (for release of amount deposited with the Registrar General of this Hon’ble Court in favor of the Decree Holder)

1. Mr. V.V. Gautam, learned counsel for Judgment Debtor states that they have taken a decision not to assail the Order dated

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5th July, 2021 whereby the objection petition being O.M.P. (COMM) 119/2021 was dismissed.

2. In view of the above, the decree is now to be executed. *Vide* Order dated 16th March, 2021 passed in O.M.P. (COMM) 119/2021, the Judgment Debtor has deposited the awarded amount before this Court. It is therefore directed that the awarded amount deposited in the Court along with interest be released to Decree Holder forthwith.

3. In addition to the afore-said amount, Mr. Gautam submits that only an amount of Rs. 69,29,697/- is due and payable to the Decree Holder. He further submits that the said amount shall be paid to the Decree Holder within a period of four weeks from today.

4. Mr. Shekhar Nanavaty, learned counsel for Decree Holder refutes the afore-noted contention and states further that an additional amount is due, for which he has filed a calculation sheet before this Court. Mr. Gautam states that the calculations are not correct.

5. The Registry is directed to furnish a report on interest payable in terms of the award.

6. List the matter before the Court on 22nd September, 2021.”

57. Mr. Nanavaty, learned Counsel for the petitioner, submits that the petitioner is entitled to interest, in terms of the arbitral award, on the amount of ₹ 2 crores, deposited by the respondent, from the date of deposit till the date when the amount was withdrawn consequent on the order dated 18 August 2021.

58. Mr. Nanavaty seeks to distinguish this case from OMP (Enf) (Comm) 126/2021 which stands decided by the foregoing judgment. He submits that, unlike the situation which obtained in OMP (Enf) (Comm) 126/2021, the petitioner in the present case was not in a position to apply for withdrawal of the amount of ₹ 2 crores deposited

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by the respondent till the final judgment disposing of OMP (Comm) 119/2021 came to be rendered on 5 July 2021, as this Court reserved OMP (Comm) 119/2021 simultaneously with the direction to the respondent to deposit ₹ 2 crore, on 16 March 2021. There was, therefore, no opportunity for the petitioner to move any application for withdrawal of the deposited amount till OMP (Comm) 119/2021 came to be decided on 5 July 2021 and it was with all due expedition that the petitioner, immediately consequent on the judgment being rendered, applied for permission to be paid the amount of ₹ 2 crores along with interest on 7 July 2021.

59. This distinction, though it undoubtedly exists, cannot, in my view, make any substantial difference to the position in law. The basic reason for holding the decree (award) holder, not to be entitled to interest for the period between the date on which deposit was made by the judgment debtor and the date on which payment of the said amount to the decree holder was directed by the Court, is not merely that the decree holder procrastinated in applying for withdrawal of the amount. The fundamental principle, which emerges from the various judgments of the Supreme Court which stand noted *supra*, is that the deposit of the decretal amount in the Court, by the judgment debtor, constitutes a deposit within the meaning of Order XXI Rule 1(1)(a) of the CPC and, with the insertion, in Order XXI, of Rule 1(4) in 1976, the decree holder stands disentitled to any interest from the date of such deposit till the date of release of the deposited amount.

60. In the present case, in fact, the orders passed by this Court operate to disentitle the petitioner to its claim for interest still further.

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One of the main contentions advanced by learned Counsel for the petitioner in OMP (Enf) (Comm) 126/2021 was that the deposit of the decretal amount by the respondent judgment debtor could not be treated as a deposit in the execution proceedings, as it was a deposit made for the purpose of securing a stay of operation of the amount awarded.

61. Mr. Trivedi had, therefore, in that case, sought to draw a distinction between the deposit made by the respondent relatable to the Section 34 proceedings initiated by the respondent before this Court, and the deposit made in execution proceedings. His contention was that Order XXI Rule 1(4) would apply only to amount deposited in the execution proceedings, before executing Court, and not to the amounts deposited before the Section 34 Court to obtain a stay of the award under challenge.

62. I have clearly expressed my inability to agree with this line of reasoning. It may not be possible even to draw this subtle distinction which Mr. Trivedi sought to draw, because of the orders that have come to be passed from time to time.

63. On 24 March 2021, this Court, *in the present enforcement proceedings*, noted the respondent's contention that the amount of ₹ 2 crores would be deposited by it within four weeks. This Court, therefore, observed that the present execution proceedings would stand stayed subject to deposit of the amount of ₹ 2 crores by the respondent in terms of the order dated 16 March 2021 passed in OMP (Comm) 119/2021. The matter was directed to be listed before this

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Court i.e. the executing Court, for reporting compliance.

64. Thereafter, on 27 May 2021, this Court, in the present execution proceedings, noted the submissions of learned Counsel for the respondent that the amount of ₹ 2 crores stood deposited and the conformation of this fact by learned Counsel for the petitioner.

65. Thereafter, the application for release of the amount to the petitioner was also filed by the petitioner, not in the Section 34 proceedings, – which, by then, had culminated in the dismissal of the OMP (Comm) 119/2021 on 5 July 2021 – but by way of EX. APPL. (OS) 667/2021, *filed in the present execution proceedings.*

66. The said application was also decided by the present executing Court on 18 August 2021, by directing release of the deposited amount along with interest accrued thereon, to the petitioner decree holder, forthwith.

67. As such, though the amount of ₹ 2 crores was deposited in terms of the order passed in the Section 34 proceedings on 16 March 2021, the further orders passed with respect to the said deposited amount have all been passed by the present executing Court in the present execution proceedings. The said amount cannot, therefore, remain insulated from Order XXI Rule 1 of the CPC.

68. The sequitur would, therefore, be that Order XXI Rule 1(4) of the CPC would, in the present case, apply with even great force than in OMP (Enf) (Comm) 126/2021.

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69. On all other aspects, I have already expressed my views in detail hereinabove. Applying the said reasoning to the present petition, I am of the opinion that the petitioner cannot seek to lay any legitimate claim to payment of interest on the amount of ₹ 2 crores deposited by the respondent for the period between 12 April 2021 and the date when the release of the amount was directed by this Court on 18 August 2021, or on 2 September 2021, when the amount was actually released to the petitioner.

70. Mr. Nanavaty's submission that his client would be entitled to interest in terms of the arbitral award on the amount of ₹ 2 crores deposited by the respondent for the aforesaid period cannot, therefore, be accepted. The remaining amount already stands released to the petitioner in terms of the arbitral award.

71. The arbitral award, therefore, stands executed in its entirety.

72. The present OMP (Enf) (Comm) 9/2021 is also disposed of.

C.HARI SHANKAR, J

JULY 16, 2024

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