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

\+ OMP (ENF.) (COMM.) 117/2024& EX.APPL.(OS) 854/2024

DIGITAL WORLD .....Decree Holder

Through: Mr. Naman Singh Bagga, Adv.

versus

M/S NATIONAL INSURANCE COMPANY LIMITED & ANR. .....Judgement Debtor

Through: Mr. Amandeep Singh, Mr. Pradeep Desodya, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

O R D E R

% **28.08.2024**

1. This is a petition filed under Section 36 of the Arbitration and Conciliation Act, 1996 seeking execution of the Arbitral Award dated 14.08.2020.

2. In the present case, the award was passed in favor of the decree-holder for a sum of Rs. 3,11,94,796/- along with interest at the rate of 12 % per annum from 15.08.2020.

3. The awarded amount in terms of the Arbitral Award in favor of the decree holder was the principal amount of Rs. 1,93,47,430/- along with pre award interest amounting to Rs. 1,31,02,645/- totaling up to 3,11,94,796/- along with cost of Rs. 24,77,325/- totaling up to Rs. 3,44,33,478/-.

4. The judgment-debtor challenged the Arbitral Award by filing a petition under section 34 of the Arbitration and Conciliation Act, 1996 being

OMP (COMM.) 547/2020.

5. This court *vide* order dated 19.11.2020 in an application filed by the judgement debtor being I.A. No. 10708/2020 in OMP (COMM.) 547/2020 granted stay on the Award subject to the petitioner depositing the awarded amount. The operative portion of the order dated 19.11.2020 reads as under:

> ***"IA No.10708/2020 (for stay)***
> *9. Subject to the petitioner depositing the awarded amount with upto date interest with the Registrar General of this Court within a period of six weeks, the operation of the impugned award shall remain stayed till the next date."*

6. Pursuant to the said direction, the judgment-debtor deposited the entire amount along with accrued interest till that date with the Registrar General, Delhi High Court.

7. The petition filed by the judgement debtor being O.M.P. (COMM.) 547/2020 came to be dismissed on 08.04.2022 and against the judgment dated 08.04.2022, the judgement debtor preferred an appeal under section 37 of the Arbitration and Conciliation Act, 1996, being FAO (OS) 202/2022.

8. Thereupon, the decree-holder moved an application being I.A. 7708/2022 in O.M.P (COMM.) 547/2020 seeking withdrawal of the amount deposited by the judgement debtor with the Registrar general, Delhi High Court and on 17.05.2022 this court passed the following order:

> *"1. By way of the present application, Respondent seeks release of the awarded amount deposited before this Court in view of the judgment dated 8th April, 2022, whereby the petition filed by National Insurance Company Limited stood dismissed.*
> *2. Counsel for the Petitioner states that they are in the process of filing an appeal against the said judgment.*
> *3. As on date, there is no stay on the judgment, and therefore, the*

Court finds no reason to deny the relief sought in the instant application. However, considering the fact, that the Petitioner is in the process of filing an appeal orders in the application are deferred for a period of two weeks from today."

9. Subsequently, the petition filed under section 37 of the Arbitration and Conciliation Act, 1996 being FAO (OS) 202/2022 filed by the judgement debtor came to be dismissed vide judgement dated 08.08.2022.

10. Thereafter in I.A. 7708/2022 in O.M.P (COMM.) 547/2020 this court *vide* order dated 15.12.2022 directed the registry to release the amount held with the Registry, Delhi High court. The operative portion of the order dated 15.12.2022 reads as under:

"9. In view of the above facts and circumstances, submissions and no objection from learned counsel for the petitioner for releasing the decretal amount, this Court is inclined to allow the instant application for releasing the decretal amount of Rs 3,44,33,478/- (Three Crore Fourty Four Lakhs Thirty three Thousand Four Hundred and Seventy Eight Only) deposited by the petitioner with the Registry of this Hon'ble Court.

10. The Registry is directed to release the decretal amount Rs. 3,44,33,478/- (Three Crore Fourty Four Lakhs Thirty three Thousand Four Hundred and Seventy Eight Only) deposited vide DD No. 869396 dated 23rd December, 2020 on 4th January, 2021 by the petitioner in compliance of the order dated 19th November, 2020."

11. It is only pursuant to the order dated 15.12.2022 that the amount was released in favor of the decree-holder. Hence the only issue for

determination for this Court is the interest payable to the decree-holder on the amount lying deposited with this court.

12. Mr. Bagga, learned counsel for the decree-holder relies upon the judgment of ***"Oswal Agro Mills Ltd. vs. Oswal Woollen Mills Ltd."*** 2019 SCC OnLine Del 9197 and ***"National Agro Seed Corporation India vs. MS National Seeds Corporation Limited"*** OMP (ENF.) (COMM.) 26/2022.

13. In ***National Agro Seed Corporation India vs. M/S National Seeds Corporation Limited"*** OMP (ENF.) (COMM.) 26/2022 this court *inter alia* held as under:

> *"18. In the present case it is an admitted position that the awarded amount in terms of the Arbitral Award dated 13.06.2019 was deposited in two tranches with the Registrar General, however the amount was not available to the decree-holder for its use and enjoyment.*
>
> *19. The judgment-debtor in addition, opposed release of the amounts to the decree-holder on the ground that they are availing rights to challenge the orders passed by this court from time to time.*
>
> *20. In this view, the provision of Order 21 Rule 1 and 4 of CPC are clear that conditional deposits are never to be construed as payment by the judgment-debtor for satisfaction of the decretal amount.*
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> *21. In Himachal Pradesh Housing and Urban Development Authority (Supra), the Hon'ble Supreme Court held that once the amount was deposited in the court for execution of the Arbitral Award, the interest on the said amount would cease to exist. In the present case, admittedly the amounts deposited in the court towards the execution of the Award have been paid during the pendency of the Appeal and hence, the facts in the present case are clearly distinguishable.*
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> *22. It is a clear position of law that the decree-holder should be*

entitled to receive the entire amount specified in the decree, along with any interest or costs that may have been awarded without any compromise or diminution or condition. Partial payments or conditional deposits made by the judgmentdebtor do not discharge the judgment-debtor's obligations under the decree as the satisfaction of a decree requires the full and unconditional payment of the decretal amount as stipulated by the orders/ decrees passed by the court."

14. Learned counsel for the decree holder also relied on ***Oswal Agro Mills Ltd. vs. Oswal Woollen Mills Ltd*** 2019 SCC OnLine Del 9197 and the operative portion of the said judgment reads as under: -

> *"64. It is, to my mind, well established principle of law that the general rule of appropriation qua payments made by the judgment debtor towards satisfaction of a decree is that such amounts are to be adjusted firstly, in accordance with the directions contained in the decree, and secondly, in the absence of any agreement between the parties, in the first instance towards interest and cost and thereafter towards the principal sum.*
>
> *….*
>
> *68. A deposit made with the Court which is conditional can never be construed in law as payment by the judgment debtor towards satisfaction of the decretal debt as the decretal holder can seek its release only upon fulfilment of the condition. The judgment of the Supreme Court in the case of Gurpreet Singh does not in any way dilute the general rule of appropriation of payment made towards satisfaction of the decretal debt, as articulated hereinabove by me. This aspect has been noticed by the Supreme Court in another judgment rendered in Bharat Heavy Electrical Limited. The Supreme Court in this judgment, after noticing the ratio of the Constitution Bench in Gurpreet Singh case in paragraph 26 to 30, culls out the following principles that are*

required to be followed for appropriation of the amounts paid towards satisfaction of the decretal debt:

> *31.1. The general rule of appropriation towards a decretal amount was that such an amount was to be adjusted strictly in accordance with the directions contained in the decree and in the absence of such directions adjustments be made firstly towards payment of interest and costs and thereafter towards payment of the principal amount subject, of course, to any agreement between the parties.*
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> *31.2. The legislative intent in enacting sub-rules (4) and (5) is a clear pointer that interest should cease to run on the deposit made by the judgment-debtor and notice given or on the amount being tendered outside the court in the manner provided in Order 21 Rule 1(1)(b).*
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> *31.3. If the payment made by the judgment-debtor falls short of the decreed amount, the decree-holder will be entitled to apply the general rule of appropriation by appropriating the amount deposited towards the interest, then towards costs and finally towards the principal amount due under the decree.*
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> *31.4. Thereafter, no further interest would run on the sum appropriated towards the principal. In other words if a part of the principal amount has been paid along with interest due thereon as on the date of issuance of notice of deposit interest on that part of the principal sum will cease to run thereafter.*
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> *31.5. In cases where there is a shortfall in deposit of the principal amount, the decree-holder would be entitled to adjust interest and costs first and the balance towards the principal and beyond that the decree-holder cannot seek to reopen the entire transaction and proceed to recalculate the interest on the whole of the principal amount and seek for reappropriation."*

15. *Per Contra*, Mr. Singh, learned counsel for the judgment-debtor has relied upon the judgment of ***"M/s RamaCivil India Construction Pvt. Ltd. vs. Union of India"*** 2024:DHC:5343. The operative portion of the said judgment reads as under: -

> *"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.*
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> ……
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> *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.*
>
> *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.

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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).

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*41…… 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 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."*

16. I have heard learned counsel for the parties

17. In the present case the order dated 19.11.2020, whereby this court directed the judgement debtor to deposit the awarded amount did not put any fetters on decree-holder to move an application seeking withdrawal of the money and it was the decree holder who waited till 17.05.2022 when the decree holder filed an application seeking release of the awarded amount held with the registry, Delhi High Court.

18. As in ***"M/S RamaCivil India Construction Pvt. Ltd. vs. Union of India",*** the order passed to deposit the amount in the present case is also unconditional and did not incorporate any condition to be fulfilled for the amount to be withdrawn by the decree-holder.

19. Therefore, there was no contention/opposition on behalf of the judgment-debtor not to release the amount in favor of the decree-holder and thus, the decree-holder cannot be given benefit of the period from the date of the deposit till the date of listing of the application seeking withdrawal.

20. However, a perusal of the subsequent orders passed in I.A. No. 7708/2022 show that the application seeking withdrawal of the amount was opposed by the judgment-debtor.

21. In this regard, the finding of ***"Oswal Agro Mills Ltd. vs. Oswal Woollen Mills Ltd."*** 2019 SCC OnLine Del 9197 and ***"National Agro Seed Corporation India vs. MS National Seeds Corporation Limited"*** squarely covers. The aspect whereby the court categorically held that the decree-holder should be entitled to receive the entire amount under the decree without any compromise or diminution or condition and encumbrance free.

22. Since the judgment-debtor was opposing release of the amounts in I.A. No. 7708/2022, it cannot be held that the decree-holder was unconditionally in a position to enjoy the amount deposited in Court and therefore, this court is of the view, that the amount deposited with the registry, Delhi High Court was of no benefit to the decree-holder.

23. For the said reasons, it is directed that the judgment-debtor shall pay interest at the rate of 12 % per annum on Rs. 3,44,33,478/- from 17.05.2022 till 15.12.2022.

24. With these directions, the execution petition is disposed of.

JASMEET SINGH, J

AUGUST 28, 2024/NG/PP