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

\+ OMP (ENF.) (COMM.) 173/2023 & EX.APPL.(OS) 1126/2023

STEEL AUTHORITY OF INDIA LIMITED ..... Decree Holder

Through: Mr. Siddharth Yadav, Sr. Adv., Mr. Samaksh Goyal, Adv.

versus

CEMENT CORPORATION OF INDIA LIMITED

..... Judgement Debtor

Through: Mr. Atul Shanker Mathur, Ms. Priya Singh, Mr. Sumbhankar and Mr. Umang Katariya, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

O R D E R

% **09.04.2024**

EX.APPL.(OS) 574/2024

1. This is an application filed by the judgment debtor under Order VI Rule 17 read with Section 151 of CPC seeking amendment of the statement of objections filed under section 47 of CPC.

2. The proposed objections are in para 3 of the application which reads as under:-

> *3. That by way of the present Application the Applicant / Judgment Debtor seeks to amend the Statement of Objections and add the following paragraphs after para 27 of the Statement of Objections:*
>
> > *28. That the Judgment Debtor was declared a "Sick Company" within the meaning of Section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA")*

vide order dated 09.08.1996. Accordingly, a scheme was sanctioned by BIFR on 21.03.2006 ("Sanctioned Scheme") which was circulated by an order dated 03.05.2006. Subsequently, the Sanctioned Scheme was modified by BIFR vide its order dated 31.07.2006 whereby all the unsecured creditors except two PSUs i.e. Goa Shipyard and ONGC were proposed to be settled at their principal outstanding dues. Accordingly, since the Decree Holder is admittedly an unsecured creditor, only an amount of Rs. 1,81,22,564/- was sanctioned to be paid by the Judgment Debtor to the Decree Holder being the principal outstanding amount. The relevant portion of the sanctioned scheme is being reproduced herein for the sake of brevity:

"7.1 Settlement of dues of secured and unsecured creditors

….

….

As the settlement amount has to mainly come from GoI and funds availability being limited, CCI proposed that payment of dues of PSU creditors viz Goa Shipyard Limited and ONGC might be considered in the 2nd phase i.e. out of the sale proceeds of seven non-operating units. CCI would take up with these PSUs through ministry. Majority of unsecured creditors (non PSUs) have agreed to accept outstanding principal in full and final settlement of their dues provided the same are paid within one year. Hence, all unsecured creditors except the 2 PSUs viz. Goa Shipyard and ONGC are proposed to be settled at their principal outstanding during the 1st phase and dues of Goa Shipyard and ONGC are proposed to be settled at their principal outstanding during the 2nd phase.

9.5 UNSECURED CREDITOR (Other than PSU- As per Annexure 10 enclosed):

(a) Payment of outstanding principal amounting to Rs. 21.16 crores in the 1st Phase in full and final settlement

of dues within 30 days of sanction of scheme.

(b) To waive balance dues"

29. It is submitted that the Sanctioned Scheme was approved keeping in mind the debt owed by the Judgment Debtor to its creditors. The main reasons for which the Judgment Debtor was declared as sick company on 08.08.1996 was as follows:

(i) Obsolete technology, non-modernisation of plants due to shortage of funds;

(ii) Shortage of working capital resulting into low capacity utilization;

(iii) Short term borrowings at higher rate of interest;

(iv) Failure to take benefits of various exemptions/ waivers/ incentives provided by the government on expansion/ commissioning of plants in backward/ remote areas eg. Excise duty, sales tax, capital subsidy etc.; and

(v) Recessionary conditions in the cement industry.

30. It is respectfully submitted that on the basis of the aforementioned reasons the main objective of the Sanctioned Scheme as formulated was to revive the Judgment Debtor by settling the claims of all the creditors by scaling down their dues for the Scheme to work out. All the unsecured creditors except two PSUs i.e. Goa Shipyard and ONGC were settled at their principal outstanding during the 1st phase and the dues of the aforesaid PSUs were settled at their principal outstanding during the 2nd phase.

31. It is submitted that by awarding interest to the Decree Holder over and above the settled amount to be paid by the Judgment Debtor, the arbitrator failed to consider the objective of the Sanctioned Scheme and has acted contrary to the Scheme which is binding on all parties.

32. It is submitted that the Sanctioned Scheme cannot be altered/ modified and is binding upon all the creditors. It is submitted that once the rehabilitation scheme under Section 18 *of SICA prepared by the operating agency is sanctioned by the BIFR, which may include the scaling down the value of dues of the unsecured creditors, the same is binding on them, otherwise the rehabilitation scheme shall not be workable at all and the object and purpose of enactment of the SICA, will be frustrated. The said question was also examined by the Hon'ble Supreme Court in the matter of Modi Rubber vs Continental Carbon India Ltd., 2023 SCC Online SC 296 ("Modi Rubber Case"), wherein the Hon'ble Supreme Court has held the scheme to be binding on the parties. Further, the Hon'ble Supreme Court has opined that if some persons/unsecured creditors and/or even the labourers are permitted to get out of the purview of the scheme and thereafter permitting such or some of the unsecured creditors to wait till the scheme for rehabilitation of the sick company has worked itself out, in that case, the scheme shall not be workable at all. To make the company viable, the concerned persons including the unsecured creditors have to sacrifice to some extent otherwise the revival efforts shall fail.*

33. In view of the aforesaid, the arbitral award sought to be executed is unenforceable since the same was passed in complete disregard of the object of SICA and the Sanctioned Scheme which cannot be modified/ altered at all.

34. It is submitted that this Hon'ble Court also had the occasion to deal with the issue of grant of interest on the amount sanctioned under the rehabilitation scheme. However, this Hon'ble Court in its judgment dated 6.12.2010 in OCL India Limited vs Andrew Yule & Co., W.P.(C) No 8154 of 2010 rejected the claim of a decree holder to recover the amount in whole, including interest, under the BIFR scheme. The said judgment has been affirmed by the Hon'ble Supreme Court in the Modi Rubber Case. The relevant portion of the judgment in Modi Rubber Case is reproduced as under:

"14. Now, so far as the submission on behalf of the unsecured creditors that to compel the unsecured creditors to accept the scaled down value of its dues would tantamount to and would be violative of Article 300A of the Constitution of India is concerned, the same has also no substance. Scaling down the value of the dues is under the rehabilitation scheme prepared under Section 18 of the SICA, which has a binding effect on all the creditors. Therefore, the same cannot be said to be violative of Article 300A of the Constitution of India. The law permits framing of the scheme taking into consideration and to provide the measures contemplated under Section 18, therefore, the rehabilitation scheme which provides for scaling down the value of dues of the creditors /unsecured creditors and even that of the labourers cannot be said to be violative of Article 300A of the Constitution of India as submitted on behalf of the unsecured creditors.

15. In view of the above and for the reasons stated above, the view taken by the High Court of Delhi in Continental Carbon India Ltd. (supra) that on approval of a scheme by the BIFR under the Sick Industrial Companies (Special Provisions) Act, 1985, the unsecured creditors has an option not to accept the scaling down value of its dues and to wait till the rehabilitation scheme of the sick company has worked itself out with an option to recover the debt with interest post such rehabilitation is erroneous and contrary to the scheme of SICA, 1985 and the same deserves to be quashed and set aside and is accordingly quashed and set aside.

It is observed and held that the rehabilitation scheme under Section 18 of the SICA, 1985 shall bind all the creditors including the unsecured creditors and the unsecured creditors have to accept the scaled down value of its dues *provided under the rehabilitation scheme."*

In view of the above, the arbitral award is inexecutable for the reason that the arbitral award was passed in complete disregard of the existing legal position at that time. It is submitted that the award has been passed in complete ignorance of the judgment of this Hon'ble Court passed in the matter of OCL India Limited vs Andrew Yule & Co., W.P.(C) No 8154 of 2010 wherein this Hon'ble Court while rejecting the contention of the petitioner therein that the petitioner attained the status of a secured creditor since he had a decree in its favour held that the petitioner would have to wait in queue like other unsecured creditors and that the unsecured creditors cannot claim that it is liable to receive more amount including interest and will have to abide by the Sanction Scheme which is sacrosanct in nature. The said judgment has been affirmed in the Modi Rubber Case. However, the arbitrator failed to take into consideration the said judgment while passing the award. In this regard it is submitted that since the award has been passed in ignorance of settled position of law, the same is rendered as null and avoid and therefore, the award is unenforceable.

35. Moreover, it is pertinent to note that it is trite law that subsequent legal position or change in law or subsequent events that create a bar in enforcement of a decree will operate as bar to the execution of the decree. In this regard it is submitted that by way of the judgment of the Hon'ble Supreme Court in the Modi Rubber Case the Hon'ble Supreme Court while dealing with the contention of unsecured creditors that the unsecured creditors should have an option not to accept the scaled down value of its dues and to wait till the scheme for rehabilitation of the sick company has worked itself out, with an option to recover the debt post such rehabilitation, rejected the said contention and *held that because of the scaling down of the value of the dues of the creditors, the company survives. The company survived in view of the rehabilitation scheme because of the sacrifice/scaling down the value of the dues of the creditors including the financial institutions. The said benefit cannot be permitted to be given to the unsecured creditors, who do not accept the scaled down value of its dues. Such an unsecured creditor cannot be permitted to take the benefit of the revival scheme, which is at the cost of other creditors including the financial institutions and even the labourers. Further, the sick company, which has been able to revive because of the scaling down the value of the dues, may again become sick, if the entire dues of the unsecured creditors are to be paid thereafter. It may again lead to becoming such a revived company again as a sick company. If such a thing is permitted, in that case, it will again frustrate the object and purpose of enactment of the SICA.*

36. It is submitted that the award so passed in the instant matter is unenforceable in view of the law promulgated by the Hon'ble Supreme Court in the Modi Rubber Case.

37. In view of the above, the award sought to be enforced by the Decree Holder is in the teeth of the judgment passed by the Hon'ble Supreme Court in the Modi Rubber Case which cannot be allowed.

38. Without prejudice to the above, it is respectfully submitted that Section 26 of SICA also makes it clear that no order passed or proposal made under SICA shall be appealable except as provided therein and no Civil Court shall have jurisdiction in respect of any matter which the AAIFR or BIFR is empowered by, or under SICA to determine. Therefore, this Hon'ble Court does not have jurisdiction to grant any other amount as has been sanctioned under the Sanctioned Scheme.

39. In this regard, Section 26 of SICA is reproduced hereunder for ready reference:

"Bar of Jurisdiction – No order passed or proposal made under this Act shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the appellate authority or the Board is empowered by, or under, this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

40. It is further submitted that in view of Section 26 of SICA there is an express bar on the jurisdiction of this Hon'ble Court as regards the adoption of methodology for the Judgment Debtor's revival and the same is solely in the exclusive domain of BIFR through the Sanction Scheme."

3. It is stated by Mr. Mathur, learned counsel appearing for the judgment debtor that the judgement debtor wishes to urge that the award is unexecutable. He states that as per the sanction scheme, no interest was to be paid to the PSU. By awarding the interest to the decree holder over and above the settled amount to be paid by the judgment debtor, the decree holder has been paid amount more than the sanctioned scheme. To buttress his argument, Mr. Mathur placed reliance on "***Modi Rubber Limited vs. Continental Carbon India Ltd", 2023 SCC OnLine SC 296***. The operative portion of which reads as under:-

"62. Now, so far as the submission on behalf of the unsecured creditors that the unsecured creditors should have an option not to accept the scaled down value of its dues and to wait till the scheme for rehabilitation of the sick company has worked itself out, with an option to recover the debt post such rehabilitation is concerned, the same has no substance and cannot be accepted. It is required to be noted that in a given case, because of the scaling down of the value of the dues of the creditors, the

company survives. The company has survived in view of the rehabilitation scheme because of the sacrifice/scaling down the value of the dues of the creditors including the financial institutions. How such a benefit can be permitted to be given to the unsecured creditors, who does not accept the scaled down value of its dues. Such an unsecured creditor cannot be permitted to take the benefit of the revival scheme, which is at the cost of other creditors including the financial institutions and even the labourers.

63. Now, so far as the view taken by the High Court that the unsecured creditor had an option not to accept the scaled down value of its dues and can wait till the scheme for rehabilitation of the company has worked itself out with an option to recover the debt with interest post such rehabilitation is accepted, in a given case, the sick company, which has been able to revive because of the scaling down the value of the dues, may again become sick, if the entire dues of the unsecured creditors are to be paid thereafter. It may again lead to becoming such a revived company again as a sick company. If such a thing is permitted, in that case, it will again frustrate the object and purpose of enactment of the SICA, 1985.

64. Now, so far as the submission on behalf of the unsecured creditors that to compel the unsecured creditors to accept the scaled down value of its dues would tantamount to and would be violative of Article 300A of the Constitution of India is concerned, the same has also no substance. Scaling down the value of the dues is under the rehabilitation scheme prepared under Section 18 of the SICA, which has a binding effect on all the creditors. Therefore, the same cannot be said to be violative of Article 300A of the Constitution of India. The law permits framing of the scheme taking into consideration and to provide the measures contemplated under Section 18, therefore, the rehabilitation scheme which provides for scaling down the value *of dues of the creditors/unsecured creditors and even that of the labourers cannot be said to be violative of Article 300A of the Constitution of India as submitted on behalf of the unsecured creditors.*

65. In view of the above and for the reasons stated above, the view taken by the High Court of Delhi in Continental Carbon India Ltd. (supra) that on approval of a scheme by the BIFR under the Sick Industrial Companies (Special Provisions) Act, 1985, the unsecured creditors has an option not to accept the scaling down value of its dues and to wait till the rehabilitation scheme of the sick company has worked itself out with an option to recover the debt with interest post such rehabilitation is erroneous and contrary to the scheme of SICA, 1985 and the same deserves to be quashed and set aside and is accordingly quashed and set aside.

66. It is observed and held that the rehabilitation scheme under Section 18 of the SICA, 1985 shall bind all the creditors including the unsecured creditors and the unsecured creditors have to accept the scaled down value of its dues provided under the rehabilitation scheme.

Conclusion:—

(i) Civil Appeal No. 375 of 2017 is accordingly allowed. No costs.

(ii) The transfer petition being Transfer Petition (C) No. 543 of 2016 is allowed and is ordered to be transferred to this Court.

(iii) Civil Appeal No. 1755 of 2023 (arising out of SLP (C) No. 4282 of 2020) is allowed and the impugned judgment and order passed by the Madhya Pradesh High Court relying upon the decision of the Delhi High Court in the case of Continental Carbon India Ltd. (supra), which has been set aside by the present order also deserves to be allowed and the impugned judgment and order passed by the High Court of Madhya Pradesh in Civil Revision No. 96 of 2018 is hereby quashed and

set aside.

(iv) On being set aside the judgment and order passed by the High Court of Delhi in the case of Continental Carbon India Ltd. (supra), Civil Appeal No. 377 of 2017 stands dismissed.

(v) In view of the above and for the reasons stated above and quashing and setting aside the judgment and order passed by the High Court of Delhi in the case of Continental Carbon India Ltd. (supra), Civil Appeal No. 379 of 2017 and Transfer Petition (C) No. 543 of 2016 stands disposed of and consequently the writ petition before the High Court being Writ Petition (C) No. 832 of 2016 stands dismissed."

4. Mr. Yadav, learned senior counsel for the decree holder states that interest was part of the sanctioned scheme. He further states that all these objections were taken by the judgment debtor before the learned Single Judge in Section 34 petition which was dismissed *vide* order dated 16.10.2018, thereafter before the Division Bench in Section 37 appeal which was also dismissed *vide* order dated 04.07.2022 and lastly, before the Hon'ble Supreme Court wherein the SLP was dismissed *vide* order dated 14.12.2022. Hence the Award has attained finality. The present application has been filed which deserves to be dismissed as objections have already been decided.

5. My attention has been drawn to the order dated 04.07.2022 passed by learned Division Bench and the relevant portion reads as under:-

"16. The Arbitral Tribunal had interpreted the Sanctioned Scheme and found that it did not limit the amount payable to SAIL to the principal amount outstanding. The impugned order also indicates that the learned Single Judge had examined the question whether the Sanctioned Scheme proscribed grant of interest. The learned Single Judge found that the dues payable

to creditors of CCIL were to be discharged in two phases. The first phase was funded by the Government of India. Certain creditors were proposed to be settled in the first phase, by payment of the principal amount outstanding. SAIL was not included in the unsecured creditors, whose dues were to be so discharged by the payment of principal in the first phase. SAIL was included as a part of the pressing creditors, whose dues were to be discharged in the second phase. Funds for discharging the dues were not to be provided by the Government of India but were to be raised by the sale of non-operating units. It is material to note that the second phase was to be implemented in the years 2006-07 and 2007-08.The learned Single Judge found that the Sanctioned Scheme did not specifically proscribe grant of interest on the dues as owed by CCIL to SAIL.

17. The Arbitral Tribunal had accepted that the Sanctioned Scheme was binding; however, it is apparent that it had not accepted that the Sanctioned Scheme proscribed grant of any interest. The learned Single Judge has also examined the Sanctioned Scheme and found that the payments in the second phase were not free from uncertainties as the funds for the same were to be realized from sale of non-operating units. And, it did not foreclose the right of pressing creditors to claim interest. As noted above, CCIL's challenge rests on the assumption that the impugned award is, ex facie, contrary to the Sanctioned Scheme. This contention has not been accepted by either the Arbitral Tribunal or the learned Single Judge.

20. In view of the above, the impugned order passed by the learned Single Judge, declining to interfere with the impugned award, cannot be faulted."

6. On perusal, learned Division Bench recorded that the decree holder was not included in the unsecured creditors whose dues were to be

discharged by payment principle in the first phase. The decree holder was included as part of pressing creditors whose dues to be discharged in the second phase and there was no prohibition in the sanctioned scheme from claiming interest on the amount due and payable to the decree holder.

7. The factum whether interest is payable to the decree holder has already been adjudicated by the learned Division Bench and the learned Division Bench has come to the finding that the decree holder is entitled to interest. Hence, the proposed amendment seeking to raise the same issues which have been adjudicated upon by the Division Bench seems to be an attempt to delay the proceedings of execution of the arbitral award dated 17.05.2018. The observations of the Division Bench were also challenged by the judgment debtor by way of filing SLP (C) Diary No. 36380/2022 before the Hon’ble Supreme Court and the said challenge was dismissed on 14.12.2022.

8. For the said reasons, there is no merit in the present application seeking amendment and the same is dismissed.

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9. In view of the order passed in the amendment application, Mr. Mathur, learned counsel for the judgment debtor states that the objections filed against the present execution petition were also on similar lines and the challenge has already been adjudicated upon by the learned Division Bench.

10. For the said reasons, the petition is allowed.

11. The judgment debtor has deposited a sum of Rs. 5 crores in terms of order dated 05.09.2023. The said amount along with accrued interest be released to the decree holder and/or its nominee within 10 days from today.

12. The judgment debtor shall pay the balance amount of Rs.

4,76,03,304.60/- to the decree holder within four weeks from today.

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

14. In case the amount is not paid, the decree holder shall be entitled to revive the petition.

JASMEET SINGH, J

APRIL 9, 2024/NG

Click here to check corrigendum, if any