



2024:DHC:7367-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on : 12.09.2024***Judgement Pronounced on : 24.09.2024***

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FAO(OS) (COMM) 204/2024 & CM APPL. 52664/2024**INTEX TECHNOLOGIES (INDIA) LIMITED**AppellantThrough: Mr Mudit Sharma, Ms Nandini
Sharma, Mr Parvez A Khan, Mr
Abhishek Rathi, Advocates.

versus

RINCOR ENERGY S.A.

.....Respondent

Through: Mr Debesh Panda, Advocate.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****AMIT BANSAL, J.**

1. The present appeal has been filed under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') read with Section 13(1)A of the Commercial Courts Act, 2015, against the judgment and order dated 10th July, 2024, passed by the learned Single Judge in O.M.P.(COMM) 45/2024. By way of the impugned judgment, the objections filed by the appellant under Section 34 of the Act against an Arbitral Award dated 28th February, 2023 were dismissed.

2. Issue Notice.

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3. Notice is accepted by the counsel appearing on behalf of the respondent.

4. With the consent of the counsel appearing on behalf of the parties, the present appeal has been taken up for hearing and final disposal at this stage itself.

5. **PREFATORY FACTS**

5.1 The appellant/Intex Technologies (India) Limited (hereinafter “Intex”) entered into a Purchase Agreement dated 1st November, 2017 (hereinafter the “Purchase Agreement”) with the respondent/Rincor Energy S.A. (hereinafter “Rincor”) for supply of 5000 smart phones by Intex to Rincor.

5.2 In terms of the Purchase Agreement, Rincor made an advance payment of USD 1,75,600 to Intex.

5.3 Intex defaulted in supply of the smart phones to Rincor and resultantly, Rincor demanded refund of the advance paid. However, Intex failed to refund the said amount.

5.4 There were negotiations between the parties which resulted in a Settlement Agreement dated 12th September, 2019 (hereinafter the “Settlement Agreement”) being entered into between the parties. In terms of the Settlement Agreement, Intex acknowledged that it owed a sum of USD 1,75,600 to Rincor and agreed to refund the said amount in seven instalments, payable from 1st October, 2019 to 6th March, 2020. The first six instalments were for a sum of USD 25,000, whereas the final instalment payable on 6th March, 2020 was for USD 25,600. The Settlement Agreement also provided for payment of interest in the event Intex failed to adhere to the aforesaid payment schedule.

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5.5 Intex defaulted in its payment obligations. In view thereof, Rincor *via* letter dated 3rd December, 2019, communicated to Intex that should Intex pay the entire amount of USD 1,75,600 ‘*immediately*’, Rincor would not charge any interest thereon.

5.6 However, since Intex did not pay the aforesaid amount, Rincor filed a petition under Section 9 of the Act [O.M.P.(COMM) 134/2021] before this Court seeking to secure the amount due to Rincor in terms of the Settlement Agreement, which came to be listed before a Single Judge of this Court on 12th April, 2021.

5.7 During the pendency of the aforesaid petition, the sum of USD 1,75,600 was remitted by Intex to Rincor on 5th August, 2021. However, since the question of grant of interest and other claims in terms of the Settlement Agreement were yet to be adjudicated, with the consent of the parties, the Court appointed a Sole Arbitrator (hereinafter the ‘Arbitral Tribunal’) to adjudicate the disputes between the parties *via* order dated 5th August, 2021.

PROCEEDINGS BEFORE THE ARBITRAL TRIBUNAL

6. The Arbitral Tribunal entered reference on 3rd September, 2021. Rincor filed its Statement of Claim on 31st October, 2021. In response thereto, Intex filed its Statement of Defence.

7. On the basis of the pleadings of the parties, the Arbitral Tribunal framed the following points for determination:

- “(1) *Whether the letter dated 3 December 2019 supersedes the earlier agreement dated 12 September, 2019; (OPR)*
- “(2) *Whether the Respondent (i.e. Intex) can be accused of intentional delay in transferring the principal amount to the Claimant after the letter issued by the Claimant dated December 03, 2019; (OPC)*

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- (3) *Whether the liability of the Respondent to pay interest on US D 1,75,600/- and costs as per the Settlement Agreement as claimed, stands nullified by the intervening events pertaining to Yes Bank; (OPR)*
- (4) *Whether the Claimant is entitled to interest pendente lite and if so, at what rate of interest (OPC).*
- (5) *Whether the Claimant is entitled to costs and if yes, the amount therefor (OPC)”*

8. The Arbitral Tribunal rendered the Award on 28th February, 2023, wherein the following findings were returned:

8.1 With regard to Point No.1, it was held that the letter dated 3rd December, 2019 did not novate or supersede the terms of the Settlement Agreement. Therefore, there was no waiver on the part of Rincor that absolved Intex of its obligation under the Settlement Agreement to pay interest.

8.2 On Points No.2 and 3, it was observed that Intex did not furnish the required documents to its banker, Yes Bank, being the Authorised Dealer, till 13th April, 2021, on account of which the payment could not be transferred to Rincor. In view thereof, it was held that Intex was responsible for the delay in making the payments to Rincor under the Settlement Agreement.

8.3 Finally, on Points No.4 and 5, the Arbitral Tribunal observed that in terms of the Settlement Agreement, Intex was liable to pay interest on the entire amount from 2nd December, 2018 till the date of payment of the principal amount, i.e., 5th August, 2021. Thus a total sum of USD 56,000 was due towards interest. However, taking into account the lockdown on account of Covid, the aforesaid amount was reduced to USD 52,150. In addition thereto, interest at the rate of 6% was awarded from 5th August, 2021 till the date of realisation.

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PROCEEDINGS UNDER SECTION 34 OF THE ACT

9. The aforesaid Award was challenged by Intex by filing a petition under Section 34 of the Act [O.M.P.(COMM)No.45/2024], which came to be dismissed *via* the impugned judgment passed by the learned Single Judge.

10. A perusal of the impugned judgment would show that Intex had restricted its challenge to the following two grounds:

(i) That Rincor *via* letter dated 3rd December 2019 had waived off the interest liability of Intex.

(ii) That the interest granted by the Arbitral Tribunal was contrary to the provisions of Foreign Exchange Management Act, 1999 (FEMA).

10.1 With regard to the first ground, the learned Single Judge observed that the Arbitral Tribunal has given cogent reasons while returning a finding in favour of Rincor and the court under Section 34 of the Act cannot re-appreciate and re-evaluate the evidence.

10.2 As regards the second objection, the learned Single Judge held that the said ground was not raised by Intex before the Arbitral Tribunal and therefore, cannot be raised for the first time in a petition filed under Section 34 of the Act. It was further observed that only bald averments have been made in the petition under Section 34 of the Act in relation to this ground. In arriving at the aforesaid conclusion, the learned Single Judge placed reliance on the judgment in *Union of India v. Susaka (P) Ltd.*¹

11. Aggrieved by the impugned judgment, the present appeal under

¹ (2018) 2 SCC 182



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Section 37 of the Act has been preferred by Intex.

12. Mr Mudit Sharma, Advocate appearing on behalf of Intex has raised the following grounds of challenge before us:

- I. Since the dispute between the parties was in relation to an International Commercial Arbitration, the High Court did not have the jurisdiction to appoint the Sole Arbitrator.
- II. The provisions with regard to the payment of interest in the Settlement Agreement are against Indian law and hence, cannot be enforced.
- III. The Arbitral Tribunal has erred in granting interest on interest, which is not permissible as per Indian law.
- IV. The Arbitral Tribunal has erred in quantifying the sum awarded.
- V. There was sufficient evidence on record to show that the delay in making payment to Rincor under the Settlement Agreement was not attributable to Intex.

ANALYSIS AND FINDINGS

13. At the outset, it may be noted that out of the aforesaid five grounds of challenge raised before us, Grounds I to IV were not raised before the Arbitral Tribunal. Further, a reading of the impugned judgment would reveal that Grounds I, III and IV were not raised by Intex in the proceedings under Section 34 of the Act and are being raised for the first time in the present appeal.

14. The Supreme Court in *Susaka* (supra) has categorically held that all grounds of challenge, whether based on fact or in law, have to be raised at an appropriate stage, in accordance with law. If the said challenge is not raised at the appropriate stage, the party would be precluded from raising such grounds at a later stage. The relevant observations from *Susaka* (supra)

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are set out below:

“27. If a plea is available, whether on facts or law, it has to be raised by the party at an appropriate stage in accordance with law. If not raised or/and given up with consent, the party would be precluded from raising such plea at a later stage of the proceedings on the principle of waiver. If permitted to raise, it causes prejudice to other party. In our opinion, this principle applies to this case.”

[Emphasis is Ours]

15. In *MMTC Ltd v. Vedanta Ltd.*², the Supreme Court held that while exercising jurisdiction under Section 37 of the Act, the court cannot undertake an independent assessment of the merits of the award. It further observed that the role of the court under Section 37 of the Act is only to ascertain that the powers under Section 34 of the Act have been exercised properly. This view has been reiterated by the Supreme Court in *UHL Power Co. Ltd. v. State of H.P.*³

16. The legal position that flows from the above is that if a plea, whether based on law or on facts, was available to a party to be raised either before the Arbitral Tribunal or before the court under Section 34 of the Act, is not raised, the same cannot be raised at the stage of appeal under Section 37 of the Act.

17. With the aforesaid backdrop, we proceed to examine the grounds raised by Intex before us.

GROUND I: THE HIGH COURT DID NOT HAVE THE JURISDICTION TO APPOINT THE SOLE ARBITRATOR.

18. It is submitted on behalf of Intex that since the arbitration in the

² (2019) 4 SCC 163

³ (2022) 4 SCC 116



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present case was in the nature of an ‘International Commercial Arbitration’, the jurisdiction to appoint an Arbitrator vested with the Supreme Court under Section 11(6) of the Act. Therefore, this Court did not have the jurisdiction to appoint the Sole Arbitrator. It is submitted that where the Court lacks inherent jurisdiction, the same cannot be conferred by way of consent of the parties. In this regard, reliance has been placed on the judgment of a learned Single Judge of this Court in **HRD Corporation. v. GAIL (India) Ltd.**⁴

19. It is further submitted that a challenge with regard to jurisdiction can be raised at any stage. In this regard, reliance has been placed on **Lion Engineering Consultants v. State of Madhya Pradesh**⁵, and **Hindustan Zinc Limited v. Ajmer Vidyut Vitran Nigam Limited**.⁶

20. *Per contra*, counsel appearing for Rincor has submitted that the Sole Arbitrator was appointed in proceedings under Section 9 of the Act, with the consent of the parties and not under the provisions of Section 11 of the Act. Therefore, it cannot be stated that the appointment of the arbitrator was without jurisdiction.

21. It has further been submitted that neither any objection in this regard was ever raised by Intex during the course of the arbitral proceedings nor was any objection raised in the proceedings under Section 34 of the Act. Therefore, Intex has waived the said ground and is precluded from raising the same at this stage. Reliance in this regard has been placed on **Susaka** (supra).

⁴ 2011 SCC OnLine Del 4620

⁵ (2018) 16 SCC 758

⁶ (2019) 17 SCC 82



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22. Even though it is an admitted position that the aforesaid objection was never raised before the Arbitral Tribunal or in the challenge under Section 34 of the Act and is being raised for the first time in the present proceedings, since it is an issue relating to jurisdiction of the Arbitral Tribunal, despite the objection raised by Rincor, we proceed to examine the same.

23. To begin with, reference may be made to the arbitration clause in the Settlement Agreement, being Clause 5.2, which is set out below:

“GOVERNING LAW AND JURISDICTION

5.1 This agreement is construed with and governed by Indian law.

5.2 In the event of any disagreement or disputes between the parties arising out of or in connection with this Agreement, the same shall be referred to the sole Arbitrator who shall be appointed in accordance with the Arbitration Rules of the International Chamber of Commerce in force on the date of the request for arbitration. The place of arbitration shall be Delhi, India. The language of the arbitration proceedings shall be English. Any order, direction, award of the aforesaid Arbitrator shall be final and binding on both the parties.”

[Emphasis is Ours]

24. A perusal of the above clause shows that in the event of any disagreement or dispute between the parties relating to the Settlement Agreement, the same would be referred to a Sole Arbitrator in accordance with the procedure prescribed therein.

25. In the present case, neither of the parties had taken any steps towards the appointment of a Sole Arbitrator in terms of the aforesaid clause. This is borne out from the correspondence exchanged between the parties. The stage for approaching the Supreme Court under Section 11(6) of the Act for appointment of an arbitrator would arise only upon the failure of the parties to act in accordance with the arbitration clause. Therefore, in our view, the stage for approaching the Supreme Court for appointment of a Sole Arbitrator had not arisen in the present case.

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26. It was in the course of adjudication of the petition filed by Rincor under Section 9 of the Act that it came to the notice of the Court that even after the payment of the principal amount, Rincor had other claims, including claim of interest on account of delayed payment and the same would have to be adjudicated in arbitration proceedings. It was in this context that the Court, upon a request made by the parties, proceeded to appoint a Sole Arbitrator, after taking the consent of the parties. In this regard, reference may be made to the order dated 5th August, 2021 passed by the learned Single Judge in the proceedings under Section 9 of the Act:

*“4. Although the Agreement stipulates an international commercial arbitration and parties had agreed for a “sole Arbitrator to be appointed in accordance with the Arbitration Rules of the International Chamber of Commerce”, **they by consent request the Court to appoint an Arbitrator.***

5. Accordingly, the present petition is allowed. Ms. Mohini Bhat, Advocate [Contact No.: +91 9910155009] is appointed as the Sole Arbitrator to adjudicate the disputes between the parties in respect of Settlement Agreement dated 12 September, 2019.”

[Emphasis is Ours]

27. Therefore, in our view, it cannot be stated that there was an inherent lack of jurisdiction in the Sole Arbitrator appointed by the Court. Clearly, such an objection is being taken by Intex at this belated stage only to avoid the payment of the awarded amount to Rincor and shows a complete lack of *bona fides* on the part of Intex.

28. The judgment in ***HRD Corporation*** (supra) would not be of any assistance to Intex as the Court therein was seized of a petition under Section 11(6) of the Act. The Court accepted the objection of the respondent therein that since the matter involved an International Commercial Arbitration, the High Court lacked jurisdiction to appoint an arbitral

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tribunal.

29. Therefore, we are unable to accept the submission of Intex that appointment of the Sole Arbitrator in the present case was without jurisdiction.

GROUND II: THE PROVISIONS WITH REGARD TO PAYMENT OF INTEREST IN THE SETTLEMENT AGREEMENT ARE AGAINST INDIAN LAW.

30. It has been submitted on behalf of Intex that Clause 2.5 of the Settlement Agreement is not in accordance with Indian law, as it provides for payment of interest at the rate of 10% per annum. In this regard, attention of the Court has been drawn to Regulation 16 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000, which provides that the maximum rate of interest payable in respect of advance payment received against exports is 'London Inter-Bank Offered Rate' (LIBOR) + 100 basis points. Reliance in this regard has been placed on the judgment of *Akshay Patel v. Reserve Bank of India*.⁷

31. On the other hand, counsel appearing on behalf of Rincor has submitted that this ground was not raised by Intex before the Arbitral Tribunal. Further, this ground does not fall within the ambit of grounds of challenge under Section 34 of the Act. In this regard, reliance is placed on *Cruz City Mauritius Holdings v. Unitech Limited*⁸, *Banyan Tree Growth Capital Services LLC v. Axiom Cordages Limited*⁹ and *EIG (Mauritius) Limited v. McNally Bharat Engineering Company Limited*.¹⁰

32. This ground was also raised by Intex before the learned Single Judge

⁷ (2022) 3 SCC 694

⁸ 2017 SCC Online Del 7810

⁹ 2020 SCC Online Bom 781



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but the learned Single Judge rejected this ground by observing that this objection was never taken before the Arbitral Tribunal by placing reliance on *Susaka* (supra).

33. Even on merits, this ground is completely unsustainable in light of the judgment of the Supreme Court in *Vijay Karia v. Prysmian Cavi E Sistemi SRL*.¹¹ The Supreme Court in *Vijay Karia* (supra), while approving the judgment of a Single Judge of this Court in *Cruz City Mauritius Holdings* (supra), has categorically held that since all breaches under FEMA are rectifiable, they can never be violative of the fundamental policy of Indian Law, as envisaged in Section 34 of the Act. Reiterating the principles laid down in *Renusagar Power Co. Ltd. v. General Electric Co.*¹², it was held that fundamental policy of Indian Law has to be construed as being a breach of legal principle or law, which is so basic to Indian Law that it cannot be compromised.

34. Reliance placed by the appellant on judgment of the Supreme Court in *Akshay Patel* (supra) is completely misplaced, as the aforesaid judgment was in the context of a challenge made to guidelines issued by the Reserve Bank of India (RBI) in exercise of powers under FEMA. It was in this backdrop that the Supreme Court held that the regulations issued by RBI are in the nature of statutory regulations. This judgment does not, in any manner, dilute the dicta of *Vijay Karia* (supra) that FEMA Regulations are not a fundamental policy of Indian law.

35. Therefore, we do not find any merit in the aforesaid ground.

¹⁰ 2020 SCC Online Cal 2915

¹¹ (2020) 11 SCC 1

¹² 1994 Supp (1) SCC 644



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GROUND III: THE ARBITRAL TRIBUNAL HAS ERRED IN GRANTING INTEREST ON INTEREST, WHICH IS NOT PERMISSIBLE IN INDIAN LAW.

36. It is submitted on behalf of Intex that the award of interest by the Arbitral Tribunal in the present case amounts to grant of interest on interest, as the principal sum awarded under the Award itself was towards interest in terms of the Settlement Agreement from 2nd December, 2018 till 5th August, 2021. The award of further interest on this amount would amount to grant of interest on interest, which is not permissible under the Indian law. In this regard, reliance has been placed on the judgment of the Supreme Court in *Punjab and Sind Bank v. Allied Beverage Company*.¹³

37. On behalf of Rincor, it has been submitted that the award of interest in the present case by the Arbitral Tribunal would not amount to grant of interest on interest. Reliance in this regard has been placed on the judgment of the Supreme Court in *Hyder Consulting (UK) Ltd. v. State of Orissa*.¹⁴

38. The judgment of the Supreme Court in *Hyder Consulting* (supra) was rendered by a Three-Judge Bench with S.A. Bobde and A.M. Sapre, JJ., writing separate concurring judgments, whereas H.L. Dattu, CJI, writing a dissenting judgment. In his concurring judgment, Sapre, J. observed that the expression “sum” occurring in Section 31(7)(a) of the Act¹⁵ would include interest if pre-award interest has been awarded by the Arbitral Tribunal.

¹³ (2010) 10 SCC 640

¹⁴ (2015) 2 SCC 189

¹⁵ “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.”



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Hence, the interest that has been awarded by the Arbitral Tribunal loses its character of interest and becomes included in “sum”. Section 31(7)(b) of the Act¹⁶, which deals with post-award interest, gives the power to award interest on the “sum” directed to be paid under the arbitral award. Since the aforesaid “sum” would include interest where the Arbitrator has awarded pre-reference interest, the grant of interest by the Arbitral Tribunal would not amount to grant of interest on interest. The relevant observations from the judgment of Sapre, J. are set out below:

*“27. Section 31(7)(a) employs the words “... the Arbitral Tribunal may include in the sum for which the award is made interest...”. The words “include in the sum” are of utmost importance. This would mean that pre-award interest is not independent of the “sum” awarded. **If in case, the Arbitral Tribunal decides to award interest at the time of making the award, the interest component will not be awarded separately but it shall become part and parcel of the award. An award is thus made in respect of a “sum” which includes within the “sum” component of interest, if awarded.***

28. Therefore, for the purposes of an award, there is no distinction between a “sum” with interest, and a “sum” without interest. Once the interest is “included in the sum” for which the award is made, the original sum and the interest component cannot be segregated and be seen independent of each other. The interest component then loses its character of an “interest” and takes the colour of “sum” for which the award is made.

*29. **There may arise a situation where, the Arbitral Tribunal may not award any amount towards principal claim but award only “interest”. This award of interest would itself then become the “sum” for which an award is made under Section 31(7)(a) of the Act.** Thus, in a pre-award stage, the legislation seeks to make no distinction between the sum awarded and the interest component in it.*

30. Therefore, I am inclined to hold that the amount award under Section 31(7)(a) of the Act, whether with interest or without interest, constitutes a “sum” for which the award is made.”

¹⁶ “(7)(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.”



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39. The aforesaid observations of the Supreme Court are fully applicable in the present case. The Arbitral Tribunal has awarded a sum of USD 52,150 in favour of Rincor, which would be the “sum” awarded in terms of Section 31(7)(a) of the Act. Therefore, the Arbitral Tribunal was acting in terms of the powers conferred on it under Section 31(7)(b) of the Act when it granted interest at the rate of 6 percent per annum on the awarded amount from 5th August, 2021 till the date of realisation and this would not amount to grant of interest on interest.

40. The judgment of the Supreme Court in *Punjab and Sind Bank* (supra) does not further the case of Intex as the same is in the context of Section 34 of the Code of Civil Procedure, 1908 (CPC) and the same did not deal with the Arbitration Act. In the concurring opinion of Bobde, J. in *Hyder Consulting* (supra) it has been observed that the ambit of Section 34 of the CPC is entirely different from the scope of Section 31 of the Act. The relevant observations have been set out below:

“10. In this view of the matter, it is clear that the interest, the sum directed to be paid by the arbitral award under clause (b) of sub-section (7) of Section 31 of the Act is inclusive of interest pendente lite.

*11. At this juncture, it may be useful to refer to Section 34 CPC, also enacted by Parliament and conferring the same power upon a court to award interest on an award i.e. post-award interest. **While enacting Section 34 CPC Parliament conferred power on a court to order interest “on the principal sum adjudged” and not on merely the “sum” as provided in the Arbitration Act. The departure from the language of Section 34 CPC in Section 31(7) of the 1996 Act is significant and shows the intention of Parliament.**”*

41. Hence, we do not find any merit in the aforesaid objection.

GROUND IV – THE ARBITRAL TRIBUNAL HAS ERRED IN QUANTIFYING THE SUM AWARDED.

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42. It has been submitted on behalf of Intex that the Arbitral Tribunal has arbitrarily awarded a sum of USD 52,150 towards interest in terms of Clause 2.5 of the Settlement Agreement. In this regard, attention of the Court has been drawn to paragraph 74 of the Award, wherein the Arbitral Tribunal has arrived at a figure of USD 56,000. In view of the lockdown on account of Covid, remission of USD 3,850 has been granted on the aforesaid amount and accordingly, a sum of USD 52,150 has been determined as the amount payable. It is contended on behalf of Intex that there is no discussion as to how the aforesaid amount was arrived at or what was the basis for providing the remission for the lockdown period.

43. Counsel appearing for Rincor has drawn the attention of the Court to the calculation chart filed by Rincor in paragraph 97 of its Statement of Claim. He submits that the aforesaid chart has not been controverted in any manner by Intex. Further, Intex has failed to raise any objection with regard to the aforesaid computation in its challenge under Section 34 of the Act and therefore, it is precluded from doing so at this stage.

44. The record bears out that Intex did not controvert the calculation chart furnished by Rincor in its Statement of Claim. In terms of the aforesaid calculation chart, a sum of USD 54,828.581 was payable by Intex to Rincor. The Arbitral Tribunal arrived at a figure of USD 56,000 and then proceeded to give a remission of USD 3,850 in view of the Covid lockdown. It is pertinent to note that the Arbitral Tribunal provided the aforesaid remission in favour of Intex even though there was no provision in the Settlement Agreement in this regard. Accordingly, the Arbitral Tribunal arrived at the final amount of USD 52,150.

45. Admittedly, the aforesaid computation of the aforesaid amount was

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not challenged by Intex in the proceedings under Section 34 of the Act. Therefore, in light of *Susaka* (supra) and *MMTC* (supra), Intex cannot be permitted to raise this ground for the first time in the present proceedings.

GROUND V: THE DELAY IN MAKING PAYMENT TO RINCOR UNDER THE SETTLEMENT AGREEMENT WAS NOT ATTRIBUTABLE TO INTEX.

46. Counsel appearing for Intex has sought to argue that the various correspondence exchanged between the parties would show that the delay, if any, in making the remittance to Rincor was not on account of Intex and was instead attributable to Yes Bank and/or RBI.

47. Both the Arbitral Tribunal as well as the learned Single Judge in exercise of his jurisdiction under Section 34 of the Act, have dealt with this ground.

48. After analysing the evidence on record, the Arbitral Tribunal observed that Intex failed to provide the requisite documents to its banker, Yes Bank (authorised dealer), that were necessary to obtain the RBI approval for remitting funds to Rincor. In view thereof, the Arbitral Tribunal came to the conclusion that the delay in remitting the payment to Rincor under the Settlement Agreement was solely attributable to Intex.

49. The learned Single Judge has observed that the aforesaid findings of the Arbitral Tribunal were arrived at after duly appreciating the evidence on record. Therefore, the learned Single Judge has rightly come to the conclusion that the said findings cannot be interfered with in exercise of jurisdiction under Section 34 of Act, as it would amount to re-appreciation of evidence.

50. We fully concur with the aforesaid view taken by the learned Single

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Judge. Hence, no grounds for interference have been made out.

51. In view of the discussion above, we find no merit in any of the grounds taken by Intex. Resultantly, the present appeal is dismissed.

52. All pending applications stand disposed of.

**AMIT BANSAL
(JUDGE)**

**RAJIV SHAKDHER
(JUDGE)**

SEPTEMBER 24, 2024

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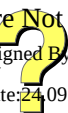
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