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ORDER SHEET
IA NO. GA-COM/2/2025
In EC/231/2023
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

ASHOK KUMAR BAJORIA
Vs
OIL INDIA LIMITED

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 29th August, 2025.

Appearance:
Mr. Saurabh Bagaria, Adv.
Ms. Nilanjana Adhya, Adv.
Mr. Anurag Baaria, Adv.
…for the petitioner

Mr. Aritra Basu, Adv.
Mr. Uttam Kr. Mandal, Adv.
Ms. Udita Mandal, Adv.
Mr. Vivek Singh, Adv.
. . .for the respondent.

The Court:

1. EC 231 of 2023 is an application for execution of the award dated November 30, 2019.

2. The award holder had filed a claim against the award debtor demanding payment on various heads, arising out of a contract dated April 7, 2009. The scope of the work was with regard to laying of pipe lines below the river Teesta in a Horizontal Directional Drilling Method. The work was to be completed within 12 weeks from the award of the job that is of April 23, 2009. The award holder claimed to have completed the work

on November 20, 2010 after a delay of 1 year 7 months. The delay according to the award holder was for unforeseen reasons.

3. According to the claimant/ award holder, the scope of the work changed, and the work involved additional man power, equipment, tools, machinery etc. Hence the claim. The learned Arbitrator arrived at a finding that the claimant was entitled to receive Rs.8,85,23,967/- minus the amount already paid, that is, Rs.3,28,05,000/-. Therefore, a sum of Rs.5,57,18,967/- was held to be payable by the award debtor along with interest at the rate of 10% per annum from January 6, 2017, when the statement of claim was filed, till the date of the award. The payment was directed to be made within six weeks from date of publication of the award. If the payment was not made as per the award, the respondent was directed to pay further interest at the rate of 12% per annum on the awarded sum (principal plus interest), from the date of passing of the award till the date of actual payment of the aforementioned amount in full. The award is quoted below:

"**A W A R D**

The Award is therefore, passed in favour of the claimant for a sum of ***Rs.5,57,18,967/-(Rupees Five crores fifty-seven lakhs eighteen thousand nine hundred sixty-seven)*** *and the said sum is payable by the respondent with interest @ 10% per annum from 6th January, 2017 when the* ***Statement of Claim*** *was filed on behalf of the claimant till the date of the Award. Such payment should be made within six weeks from the date of publication of the Award. If it is not so paid, then the respondent will have to pay interest @ 12% per* *annum on the awarded sum (Principal plus interest as awarded) from the date of passing of the Award till the date of actual payment of the aforesaid amount in full.*

Having regard to the nature of the disputes, the functional relationship between the parties and other relevant facts and circumstances, I direct the parties herein to bear their own respective costs.

Signed copy of the Award be delivered to each of the parties.

I sign this Award on this 30th day of November, 2019 at P-29/3, Jyotish Roy Road, Kolkata-700 053."

4. After the award was published, the same was not put into execution. A settlement agreement was arrived at between the parties and the parties agreed that in terms of the arbitral award dated November 30, 2019, the award debtor would pay an amount of Rs.7,18,87,644/- (Rs.5,57,18,967/- towards principal and Rs.1,61,68,677/- towards awarded interest), to the award holder in full and final settlement of all its claims and disputes whatsoever, under the above referred contract. It further provided that if the amount as mentioned in paragraph 1 was paid, all claims and disputes raised by the parties against each other under the said contract would stand fully and finally settled. No dispute and/or claim of any nature would survive in this regard.
5. Both the parties agreed that they shall not raise any claim, demand or dispute nor they shall initiate any proceeding, legal or otherwise against each other on any issue under the contract no.6103037, subsequent to

the execution of the agreement. The award holder claims to have paid Rs.7,00,59,993/- allegedly in full and final settlement of the award as per the agreement which has been discussed hereinabove.

6. GA-COM 2 of 2025 has been filed for dismissal of the execution case on the ground that the above amount had been paid. No further claim of the award holder was unpaid. Upon execution of the settlement agreement, the award was not est.

7. According to Mr. Basu, the exact amount which was mentioned in the said settlement agreement had not reached the award holder because GST deductions were made and the law, as also the contract, permitted such deduction.

8. Mr. Bagaria learned advocate for the petitioner submits that the award had not been given a go by. The parties had decided the mode and manner in which the award would be discharged. When the payment as envisaged under the settlement agreement had not been made, the award revived and the execution case should now proceed on the basis of the award. , Mr. Bagaria however submits that credit should be given to the amount deposited. It is further contended that the award debtor did not have any right to deduct the GST amount as that did not form part of the agreement.

9. It is further contended by Mr. Bagaria that, more than one crore had been deducted as GST and as such the payment made was contrary to what was agreed upon. Thus, the settlement failed and this Court should now execute the original award.

10. Going by the terms of the settlement agreement dated January 7, 2020, which are quoted below, this Court finds that the quantum mentioned in paragraph 1 was agreed to be the amount payable under the arbitral award and in full and final settlement of all claims and disputes under the contract. Thus, the parties agreed that irrespective of the award or what was provided therein, payment of Rs.7,18,87,644/- would amount to settlement of all claims and disputes under the contract being contract No.6103037. This is a separate agreement. The award did not survive.

> "And whereas the Hon'ble Arbitrator had given his award dated 30-11-2019 adjudicating the subject matter.
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> Now, by these presents, the parties hereby agree as under:
> 1. That in terms of the Arbitral award dated 30-11-2019; OIL would pay an amount of Rs. 7,18,87,644 (Rs. 5,57,18,967 towards principal awarded amount and Rs. 1,61,68,677 towards awarded interest thereon) to HARISON in full and final settlement of all its claims and disputes whatsoever under the above referred contract.
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> 2. That with the payment of the sum mentioned in Para 1 above, all claims and disputes raised by the parties against each other under the said contract shall stand fully and finally settled. No dispute and/or claim of any nature shall survive in this regard. Both OIL and HARISON agree that they shall neither raise any claim, demand or dispute nor they shall initiate any proceeding, legal or otherwise, against each other on any issue under the aforesaid Contract No. 6103037 subsequently to execution of this agreement.
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> Signed for and on behalf of OIL — Signed for and on behalf of HARISON"

11. Mr. Bagaria's first contention that the award revived is not accepted by the Court. The second paragraph provides that all claims and disputes raised by the parties against each other in respect of the contract would be finally settled if the payment was made in terms of paragraph 1 of the said settlement agreement. Mr. Basu submits that under the settlement agreement also, the GST component could be

deducted. In my opinion, such fact does not figure anywhere in the settlement agreement. The settlement agreement simply provides that all claims of the award-holder under the contract would be settled finally, in the event of payment of Rs.7,18,87,644/-, by the award-debtor.

12. Under such circumstances, this Court holds that the entire sum of Rs.7,18,87,644/- should have been paid to the award-holder in terms of the settlement agreement. This Court does not have the jurisdiction to revisit the award in view of the settlement arrived at. If this Court has to return a finding on the application GA-COM/2/2025, by which the award-debtor has sought dismissal of the execution case on the ground that the claims arising out of the award had been fully and finally settled, payment of Rs.7,18,87,644/- has to be made. The records reveal that additional amount of Rs.18,27,651/- is payable by the respondent/award-debtor to the petitioner under the settlement agreement. The said amount shall be transmitted by RTGS to the bank account of the award-holder.

13. The settlement agreement is a fresh contract. The petitioner is always at liberty to pursue his remedies in accordance with law, for enforcement of such agreement. The contention of Mr. Bagaria that interest had also accrued on the amount unpaid must be raised in an appropriate proceeding before the appropriate forum. The execution case cannot be entertained as the award holder seeks execution of the award which was given a go-bye. The decision in Munshi Ram Vs. Banwari Lal reported in A1962 SC 903, does not help the award holder

in the facts of this case as the award was substituted by the settlement.

The relevant portions of the decision are quoted below:-

> "If the parties are dissatisfied with the award and want to substitute it by a compromise involving maters alien to submission, and leave the parties to work out their agreement in accordance with the law outside the Aritration Act. In such circumstances, the new compromise itself may furnish a very good ground for superseding the reference and thus revoking the award.
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> If the whole of the subject-matter of the compromise is within the reference, the court may include in the operative part of the decree the award as modified. But if it is not so, the court may confine the operative part of the decree to the award as far as accepted, and the other terms of settlement which form a part thereof, if severable and within the original reference, in a schedule to the decree. The portion included in the operative part would be executable, but the agreement included in the schedule would be enforceable as a contract, of which the evidence would be the decree but not enforceable as a decree."

14. Needless to mention, the amount shall be transmitted to the account of the award-holder within two weeks.

15. IA No.GA-COM/2/2025 and EC/231/2023 are, accordingly, disposed of.

(SHAMPA SARKAR, J.)

SP/b.pal