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

% ***Date of Decision : 28.04.2025***

\+ **W.P.(C) 5459/2025**

HANDICRAFT AND HANDLOOMS EXPORTS CORPORATION OF INDIA LTD. .....Petitioner

Through: Mr. Akshay Dev, Adv. along with A.R. of Respondent Ms. Monica Madaan.

versus

PULIN COMTRADE LIMITED FORMERLY KNOWN AS SMC COMTRADE LTD .....Respondent

Through: Advocate (Appearance not given)

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. *(ORAL)*

1. The petitioner in the present petition seeks the following prayers:

> *"a) Issue a writ in the nature of mandamus or any other suitable writ directing the Ld. sole arbitrator to treat the claim amount of Rs.3,44,69,285 as Rs 33,25,315 only in arbitration proceedings of case reference no. 9591/11-24 pending before Ld. Sole Arbitrator, Advocate Anirudh Bakhru;*
> *b) Direct Delhi International Arbitration Centre to calculate arbitral fees on the claim amount of Rs. 33,25,315/- only and not on Rs.3,44,69,285/-"*

2. The parties to the present petition in Case Ref. No. DIAC/9591/11-24 are in their second round of arbitration before the learned Sole Arbitrator under aegis of the Delhi International Arbitration Centre (DIAC). The present petition has been filed in the context of an order dated 15.02.2025 passed by the learned Sole Arbitrator in the ongoing arbitration proceedings,

in terms of which, the learned Sole Arbitrator reserved the award and directed the parties to deposit arbitral fee as per the computation communicated by the DIAC. The aforesaid order reads as under:-

> *"1 Arguments have been heard on the claim as well as the application under Section 16 of the Arbitration and Conciliation Act, 1996. The Award is reserved.*
>
> *2. Parties are at liberty to file written submissions within a period of two weeks (2).*
>
> *3. The parties are also directed to comply with DIAC directions for deposit of arbitral fee."*

3. An arbitral tribunal was previously appointed to adjudicate the disputes between the parties and the same culminated in an award dated 20.09.2023. Although, the aforesaid award was passed in favour of the respondent/ claimant, the respondent/claimant preferred an application under Section 33 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as "*the A&C Act*") seeking clarification/modification of the said award to a limited extent *viz.* issue no. III. The operative portion of the said award *qua* issue no. III reads as under:

> *"ISSUE NO.III*
>
> *53. The Claimant has sought a sum of Rs.10,51,99,624/- towards interest which they claim @ 18% compounded annually. Learned counsel for the Claimant submitted that this sum was calculated on the admitted amount as in the year 2014- 15 of a sum of Rs.2,44,50,848.96/- i.e. letter dated 22.06.2015 (Annexure P-9). However, the Claimant has failed to justify the claim for interest @ 18% p.a. that too compounded annually under the head of pre-litigation interest. It is clear from the records that as per the two Agreements there is no interest specified for the amount deposited by the Claimant with the Respondent. However, it is beyond question that the Respondent was obligated to place all excess amounts they were holding in the account of the Claimant for adjustments in future transactions, placed in FDRs. Obviously, FDRs used to fetch interest which was ploughed back into the account of the Claimant, again in accordance with the terms of the Agreements.*

54. In these circumstances, the Claimant would certainly be entitled to pre-litigation interest on the amount due to them. While nothing exists to justify a compound rate of 18%, the working of the Agreements would justify the grant of that which was denied to the Claimant and that is the interest earned through FDRs, which at present is 6.8% p.a. on an FDR for one year.

55. It is evident that over time the sum of about Rs.2.44 crores, as confirmed standing in the account of the Claimant as on 31.03.2015, rose to a sum of Rs.2.47 crores (approx.) payable to them at the end of the financial year on 31.03.2017. There is nothing to show that any effort has been made by the Respondent to place this amount in FDRs and plough back the interest. Thus from 31.03.2017, the Claimant would be entitled to interest fixed at the rate of 6.80% p.a.

56. Thus, this issue is answered accordingly, that the Claimant is found entitled to simple interest @ 6.80% p.a. on the sum of Rs.2,47,80,709/- from 01.04.2017 till the filing of the Claim on 27.12.2022 (read as 31.12.2022).”

4. Thus, the erstwhile arbitral tribunal had awarded a simple interest @6.80% p.a. on the sum of Rs. 2,47,80,709/- for period starting from 01.04.2017 till the filing of the claim i.e., 27.12.2022 (read as 31.12.2022). However, the respondent/claimant was aggrieved by the decision of the erstwhile arbitral tribunal in not granting pre-arbitration interest for the period between 31.03.2015 to 31.03.2017.

5. The aforesaid application preferred before the erstwhile arbitral tribunal under Section 33 of the A&C Act *vide* order dated 06.11.2023 was dismissed. The relevant portion of the said order reads as under:

“12. The issue (iii) related to the claim of Rs. 10,51,99,624/- made by the Claimant towards prelitigation interest @ 18% p.a.. This sum was calculated from the year 2014-2015. This Tribunal found the claim of 18% interest per annum as being unjustified. With regard to the periods, it was noted that between 31.03.2015 and 31.03.2017, the amount lying with the Respondent, payable to the Claimant rose from about Rs.2.44 crores to about Rs.2.47 crores. Therefore, the pre-litigation interest was found payable from 01.04.2017 onwards @6.80% p.a. and on the sum of Rs. 2,47,80,709/-.

13. It is crystal clear that there is no cause for any confusion calling, for clarifications. Nor can the year of 2017 be considered as a clerical or typographical error. Nor is there any case for changing this year in the Award as prayed for.

14. The prayer (b) in the application reads as below:

"b. Grant interest for the period of 01.04.2015 to 31.03.2017"

What is sought is clearly in the manner of a relief on merits and would depend on a hearing and the making of an additional Award. This is not covered by the provisions of section 33 of the Act. In fact it would also tantamount to seeking a Review of the Award, which is again beyond the scope of section 33 of the Act."

6. Subsequently, the award passed by the erstwhile arbitral tribunal came to be a subject matter of petition under Section 34 of the A&C Act, whereby, a coordinate Bench of this Court *vide* order dated 19.02.2024 held as under:

"2. It is submitted on behalf of the Respondent that the entire awarded sum has been paid to the Petitioner.

3. <u>One of the issues raised in this petition is that interest has not been awarded on the sum of more than Rs.2.44 crores which stood to the credit of the Petitioner for the period 1st April, 2015 to 31st March, 2017. Notice in the present petition is accordingly restricted to this issue alone.</u>

4. Let reply be filed within four weeks. Rejoinder, thereafter, be filed within four weeks.

5. Insofar as rate of interest i.e., 6.8% which has been awarded by the Arbitral Tribunal is concerned, this Court is of the opinion that no interference is called for."

7. Thereafter, coordinate Bench of this Court *vide* order/judgment dated 24.07.2024 allowed the aforesaid petition granted a liberty to the respondent/claimant to adjudicate the dispute *qua* issue no. III i.e., issue of interest component for the period between 01.04.2015 to 31.03.2017. The

relevant portion of the said judgment reads as under:

> *"25. The learned Sole Arbitrator in the impugned Award dated 20.09.2023 and in the order dated 06.11.2023 while dealing with the application under Section 33 of 1996 Act, has failed to deal with or consider the said clause 8.4 of the agreement.*
>
> *26. The finding of the learned Arbitrator in the order dated 06.11.2023 to say that since the amount lying with the Respondent payable to the Claimant rose from about Rs. 2.44 crores to about Rs. 2.47 crores from the periods between 31.03.2015 and 31.03.2017, therefore the pre litigation interest is payable from 01.04.2017 onwards does not have any basis. The direction of calculation of interest from 01.04.2017 and exclusion of period from 31.03.2015 to 31.03.2017 is contrary to the express terms in the agreement between the parties.*
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> *27. The Hon'ble Supreme Court in Indian Oil Corporation Ltd vs Shree Ganesh Petroleum, (2022) 4 SCC 463, observed that the learned Sole Arbitrator has to operate within the terms of the Agreement executed between the parties and not ignore specific terms of the Agreement. The operative portion reads as under:*
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>> *"44. An Arbitral Tribunal being a creature of Contract, is bound to act in terms of the Contract under which it is constituted. An Award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the Contract or has ignored the specific terms of a Contract."*
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> *28. In the instant case, the learned Arbitrator has failed to appreciate contractual terms subsisting between the parties while rejecting interest under Issue No. III, therefore the said finding is perverse, as no reasons have been given by the learned Arbitrator as to why Clause 8.4 is not applicable or not to be adhered to. In this view, the objection of the petitioner to the Award qua issue No. III is upheld.*
>
> *29. For the said reasons, the petition is allowed and the finding in the Arbitral Award dated 20.09.2023 qua Issue No. III is set aside. The petitioner is at liberty to take further appropriate steps in accordance with law. 30. In case a fresh petition under section 11 of 1996 Act is filed, the petitioner and the respondent are at liberty to raise all appropriate pleas qua issue No.III."*

8. Consequent to the liberty granted, an application was filed by the respondent/claimant before this Court under Section of 11 of the A&C Act,

pursuant to which the present arbitration proceedings are taking place.

9. The primary contention of the petitioner in the present petition is that the fee of the learned Sole Arbitrator ought to be computed by taking into account the claim amount as Rs.33,25,315/- instead of Rs.3,44,69,284/-.

10. It is the case of the petitioner that the fee has been wrongfully calculated by the DIAC based on exaggerated and frivolous claim of Rs. 3,44,69.284/- made by the respondent/claimant. The petitioner is aggrieved by the aforesaid computation on the basis that the scope of arbitration is limited to adjudication of dispute pertaining to an interest component for the period between 01.04.2015 to 31.03.2017 i.e., Rs,33,25,315/- and that the petitioner has already paid the entire awarded amount along with interest on 05.12.2023 and 04.01.2024 to the respondent/claimant.

11. The computation of the fees that is required to be deposited by the parties in the ongoing arbitral proceedings, is based on the applicable Rules of the DIAC. There is no scope for interference with the same in proceedings under Article 226 of the Constitution of India. It has been settled in catena of cases, that the scope of jurisdiction of this Court in respect of orders passed by the Arbitral Tribunal, is extremely limited[1].

12. In appears that the petitioner has a grievance as regards the alleged inflated nature of the claim/s and/or as regards the claim/s being beyond the submission to arbitration. It is open to the petitioner to agitate these aspects in the arbitral proceedings. These aspects cannot be the subject matter of proceedings under Article 226 of the Constitution of India.

[1] ***Bhaven Constructions vs Executive Engineer, Sardar Sarovar Narmada Nigam Limited and Anr***., (2022) 1 SCC 75; ***Sadbhav Engineering Ltd. vs Micro and Small Enterprises Facilitation Council and Ors***., 2025 SCC OnLine Del 319; ***Surender Kumar Singhal and Ors. vs Arun Kumar Bhalotia and Ors***., 2021 SCC OnLine Del 3708

13. Likewise, if the petitioner has a grievance as regards apportionment of costs, it is at liberty to advance submissions in this regard before the learned sole Arbitrator, which shall necessarily be taken into account at the time of the passing of the final award. The same cannot afford any ground for seeking any pre-emptory orders in these proceedings.

14. During the course hearing, learned counsel for the petitioner also raises a grievance with the view taken by the learned Arbitrator that the application under Section 16 of the A&C Act shall be decided along with the final award. *Prima facie*, the learned sole Arbitrator is well within its right to do so. In any event, any grievance on this count is to be agitated only within the framework of the A&C Act and again, does not afford a valid cause of action for invoking the jurisdiction of this Court in these proceedings.

15. In the circumstances, this Court finds no merit in the present petition; the same is consequently dismissed.

SACHIN DATTA, J

APRIL 28, 2025/*uk, r, sl*