A.No.2545 of 2025
in
E.P.No. 14 of 2024

MASTER
06.01.2026

ORDER

1. This application is filed by the applicants/Judgment debtors to raise the order of prohibition/attachment dated 28.02.2025 in the above EP.

2. It is case of the applicants that the 1st respondent/decree holder has filed the above EP for recovery of a sum of Rs.1,24,52,998/- along with future interest arising out of an Arbitral award dated 23.02.2020. This Hon'ble Court passed an order dated 18.02.2024 in the above EP directing the judgment debtors to pay the balance sum of Rs.1,06,82,120/- as per the calculation memo filed by the judgment debtors and consented by the decree holders. The applicants/judgment debtors further stated that due to administrative complexities and various approval formalities, there was a delay in disbursing the award amount, meanwhile this Hon'ble Court has passed a prohibitory/attachment order on 28.02.2025 as they have failed to satisfied the award dated 23.03.2020. Further this Hon'ble Court issued a prohibitory/attachment order, prohibiting the Garnishee from making any payment to the above judgment debtors or any other persons and to deposit the amount to the extent of the decreetal amount to the credit of the present EP. The applicants state that they have paid the balance arbitral award amount including the interest totaling a sum of Rs.1,07,05,111/- to the decree holder after deduction of TDS at 10% as per sections 56 and 194 A of the Income Tax Act, which duly received and acknowledged by the 1st Respondent/Decree holder. The applicants/judgment debtors further state that they are Southern Railways handling various transaction with the 2nd respondent/Garnishee, the prohibitory/ attachment order dated 28.02.2025 will cause severe impediment in the operation of Southern Railways and so this application to raise the order of attachment.

3. On the other hand, the 1st respondent/decree holder file his counter stating that the Arbitral Tribunal by its award dated 23.03.2020 has held that the decree holder is entitled to a sum of Rs .64,21,600/- together with interest at 9% during the pendante lite period commencing from 01.10.2004 till 23.03.2020 and if the amount if not settled within period of 2 months, the interest would be at 12% per annum. It is further stated that during pendency of the EP, the judgment debtors agreed to settle the claim at Rs.1,06,82,120/- and this court directed the judgment debtors to pay this amount along with additional interest component totaling a sum of Rs.1,07,05,111/-. The judgment debtors failed to comply with the said order and so an order of prohibition/attachment was issued by this court and it is admitted by the judgment debtors that the garnishee, in furtherance to the prohibitory order dated 28.02.2025 issued the demand draft dated 21.03.2025 for a sum of Rs.1,24,52,998/- and despite the same, the judgment detectors deducted a sum of Rs.10,70,511/- towards TDS and issued a cheque amount of Rs.96,34,600/-. It is further stated that the amount paid by the judgment debtors is in furtherance to an award passed by Arbitral Tribunal and it cannot be termed as an income or salary payable to the decree holder warranting deduction of TDS. The said amount payable is a compensation and so entire amount is due and payable by the judgment debtors. Having not paid the entire amount as per decree the present application filed by the applicants to raise the order of attachment is unsustainable and liable to be dismissed.

4. Heard the both side counsels. The learned counsel for the judgment debtors submitted that while making payment towards the decree amount, 10% TDS has been deducted as the transaction between the parties is subject to statutory deduction of tax at sources and such payment amounts to full satisfaction of the decree and so the order of attachment is to be raised. Per contra, the learned counsel for the decree holder submitted that unilateral deduction of TDS amounts to non compliance of the decree and hence the present application is liable to dismissed.

5. It is not in dispute that the decree passed by this Court directs payment of specific sum of Rs.64,21,600/- together with interest at 9% from 01.10.2004 till 23.03.2020 and if the amount is not paid within 2 months the interest should be at 12% per annum which comes to Rs.1,24,52,998/- at the time of filing EP. It is also not in dispute that the decree does not contain any direction permitting deduction TDS from the decreetal amount.

6. In execution proceedings the Court is bound to execute the decree as it stands and cannot go behind the decree. Any plea relating to deduction of TDS not raised and adjudicated at the stage of passing decree can not be introduced for the first time in the execution stage. It is well settled that the executing Court cannot go behind the decree. Where the decree does not permit deduction of TDS, the judgment debtors cannot unilateral deduction of the same and claiming satisfaction of the decree is not acceptable.

7. The learned counsel for the decree holder relied of the following judgments in support of his contention that TDS cannot be deducted from the Arbitral award amount by the Judgment debtors without an order of the Court.

(i) **Managing Director, Tamil Nadu State Transport Corporation (Salem) Ltd., Vs. Chinnadurai (2016) 70 Taxmann.com 53 (Madras)** wherein it is held that "*the petitioner corporation cannot deduct any amount towards TDS and the same shall also be deposited to credit of MCOP No.870 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Dharmpauri, within a period of 4 weeks from the date of receipt of a copy of this order and respondent is entitled to take appropriate steps in a manner known to law*".

(ii) **Joginder Singh Nijar and another Vs. Omaxe Limited 2024 SCC OnLine Del 5158** wherein the Hon'ble High Court of Delhi relying upon the decision is **Voith Hydro Ltd and Glencore International** and following the decision of the Hon'ble Supreme Court in All India Reporter held "*that respondent cannot be permitted to deduct TDS from the amount awarded to the petitioner by the Arbitral award under execution and directed to pay in accordance with the order dated 11.03.2024 without deducting any TDS*".

(iii) **V.K.Dewan & Co., Vs. DDA 2010 SCC OnLine Del 694** wherein the Hon'ble High Court of Delhi relying upon decision in **Indian Hume Pipe Co. Ltd., Vs. State of Rajasthan (2009) 10 SCC 187** held "*that a person deprived of monies is entitled to be compensated by whatsoever name called, be it interest, compensation or damages. Thus, it cannot be said that payment of interest under the decree is akin to payment of interest to which section 194 A applies. The reasoning given in **Unique Enterprises case** that such payment is as part of the decree and the payment merges in the decree holds good qua section **194 A** also*".

(iv) **Islamic Investment Co., Vs. Union of India and another 2002 SCC OnLine Bom 305** wherein the Hon'ble High Court of Bombay held that '*the judgment debtor is not entitled to deduct TDS from the decree amount with out there being decree to that effect*".

(v) **Voith Hydro Ltd., and others Vs. NTPC Ltd., 2021 SCC OnLine Del 1325** wherein Hon'ble High Court of Delhi held that "*this court is not required to examine whether the decree holder Nos.2 and 3 are liable to pay tax in India. However, it is clear that Tax was not required to be deducted at source since the payments made by NTPC were in discharge of the award or as ad hoc payments under a mechanism evolved under the Niti Aayog Circular.*

Further it is observed that the nature of the amount payable to the petitioner, once it stands awarded in an arbitral award, acquires the character of a "Judgment Debt" and lose their original contractual character. Therefore, TDS under section 194 C (1) of the Income Tax Act, 1961 cannot be deducted from such payments, as no statutory provision permits TDS on Judgment Debts".

8. The above Judgments relied on by the decree holder aptly applies to the facts and circumstances of this case because in the present case also no such determination with regard to deduction of TDS amount on the award amount has been made by the Court. The Judgment Debtor has unilaterally deducted 10% towards TDS without obtaining any clarification or order from the Hon'ble Court. Such unilateral deduction cannot be treated as due compliance with the decree. Consequently, the contention of Judgment debtor that payment after deduction of TDS amounts to full satisfaction of the decree cannot be accepted. Unless the entire decreetal amount is paid or deposited in Court in accordance with the decree, the decree cannot be recorded as satisfied.

9. In view of the above, the attachment already ordered cannot be raised merely on the ground that payment after deducting TDS has been made.

In the result, this application is dismissed. No costs.

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