



2026:DHC:1085



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

% **Judgment delivered on: 02.02.2026**

+ **O.M.P. (COMM) 349/2016**

NATIONAL HIGHWAYS AUTHORITY OF INDIA

.....Petitioner

Through: Mr. Makarand Adkar, Mr.
Shantanu Adkar, Ms.
Shambhavi Kanade and Mr.
Mohit Singh, Advocates.

versus

IRB GOA TOLLWAYPRIVATE LTD.Respondent

Through: Mr. Saurabh Kirpal, Senior
Advocate with Mr. Anirudh
Bakhru, Dr. Rajeshwar Singh,
Mr. Apoorva Agrawala, Mr.
Sarthak Sachdev, Mr.
Mohanish Patkar, Mr.
Anammaya Nanda and Mr.
Rajat Chaudhry, Advocates.

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+ **OMP (ENF.) (COMM.) 51/2022**

M/S IRB GOA TOLLWAY PRIVATE LTD.Decree Holder

Through: Mr. Saurabh Kirpal, Senior
Advocate with Mr. Anirudh
Bakhru, Dr. Rajeshwar Singh,
Mr. Apoorva Agrawala, Mr.
Sarthak Sachdev, Mr.
Mohanish Patkar, Mr.
Anammaya Nanda and Mr.
Rajat Chaudhry, Advocates.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA

.....Judgement Debtor

Through: Mr. Makarand Adkar, Mr.

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Shantanu Adkar, Ms.
Shambhavi Kanade and Mr.
Mohit Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

J U D G M E N T (O R A L)

HARISH VAIDYANATHAN SHANKAR J.

I.A. 3412/2022 (Seeking withdrawal of the awarded amount in O.M.P. (COMM) 349/2016)
OMP (ENF.) (COMM.) 51/2022, EX.APPL.(OS) 262/2022 (Stay) & EX.APPL.(OS) 1068/2024 (Delay of 69 days in filing affidavit of calculation)

1. **IRB Goa Tollway Private Ltd¹** has filed *I.A. No. 3412/2022* in O.M.P. (COMM.) 349/2016 under Section 151 of the **Code of Civil Procedure, 1908²**, seeking withdrawal of the awarded amount along with the interest accrued thereon, which was deposited with this Court by **National Highway Authority of India³** pursuant to the Order dated 30.01.2019.
2. IRB, being the Decree Holder pursuant to the Arbitral Award dated 26.02.2016, has also instituted an Enforcement Petition, bearing **OMP (ENF.) (COMM.) 51/2022**, under Section 36 of the **Arbitration & Conciliation Act, 1996⁴**, read with Order XXI of the CPC, seeking enforcement of the said Award.
3. A brief factual background, necessary for the adjudication of the present proceedings, is set out hereinbelow:

¹ IRB

² CPC

³ NHAI

⁴ Act



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- (a) The present controversy emanates from the Arbitral Award dated 26.02.2016, passed in favour of IRB/Claimant in the arbitral proceedings.
- (b) Aggrieved by the said Award, NHAI assailed the same by filing a petition under Section 34 of the A&C Act, being O.M.P. (COMM.) 349/2016, before this Court.
- (c) During the pendency of the said petition, this Court, *vide* order dated 30.01.2019, recorded that 75% of the awarded amount had already been released to IRB in terms of a NITI Aayog Circular. Taking note thereof, this Court directed NHAI to deposit the remaining 25% of the up-to-date awarded amount. The Registry was further directed to invest the deposited amount in an interest-bearing fixed deposit with a nationalised bank.
- (d) In compliance with the aforesaid order dated 30.01.2019, NHAI duly deposited the directed amount with the Registry of this Court.
- (e) The record further reveals that in O.M.P. (COMM) 349/2016, IRB filed an application, being *I.A. No. 11952/2020*, seeking permission to withdraw the awarded amount deposited with this Court pursuant to the Order dated 30.01.2019. Significantly, the said application was not pressed by the IRB of its own volition, as duly recorded in the order dated 06.01.2021 passed by this Court, which reads as under:

“I.A. 11952/2020

1. Learned counsel for the parties submit that, instead of deciding the present application, O.M.P. (COMM) 349/2016 itself could be listed for final disposal on any date, so that it could be heard and decided.



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2. Accordingly, list on 21st January, 2021 for final disposal at the end of the Board, subject to part-heard matters, if any.”

- (f) Subsequently, this Court, *vide* judgment dated 21.02.2022, passed in O.M.P.(COMM.) 349/2016, upheld the Arbitral Award in respect of Claim No. 1 and set aside the Award insofar as Claim No. 2 is concerned, thereby disposing of the Section 34 petition.
- (g) After the disposal of the petition under Section 34 of the A&C Act, IRB filed I.A. No. 3412/2022 on the very next day and, two days thereafter, instituted the Enforcement Petition, seeking withdrawal of the remaining 25% of the awarded amount along with the interest accrued thereon. It is pertinent to note that the interest accrued thereon essentially comprised additional interest on the said amount, i.e., the difference between the interest awarded by the learned Arbitral Tribunal and the interest that accrued during the period the said amount remained deposited with the Registry of this Court, notwithstanding the prior deposit of the remaining 25% of the awarded amount with this Court.
- (h) During the pendency of the aforesaid application and the Enforcement Petition, pursuant to directions issued by this Court, the remaining 25% of the awarded amount along with the interest accrued thereon was released by the Registry in favour of IRB.
- (i) In the *interregnum*, the judgment dated 21.02.2022 was challenged by way of appeal under Section 37 of the A&C Act, and thereafter by filing a Special Leave Petition before the



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Hon'ble Supreme Court. Both challenges were ultimately dismissed.

4. In the aforesaid application filed in O.M.P. (COMM.) 349/2016, as well as in the Enforcement Petition, the short issue canvassed by IRB is that the amount deposited by NHAI with this Court was not freely available for withdrawal, as NHAI had objected to the release of the said amount in favour of IRB.

5. Learned Senior Counsel appearing on behalf of IRB would accordingly submit that, since the said amount was not made available to them, the interest awarded under the Arbitral Award would continue to accrue.

6. He would thus submit that the interest from the date of deposit of the said amount, i.e 30.1.2019 till 05.04.2023, on which date the money came to be withdrawn, would be payable.

7. This Court has heard the learned counsel appearing for the parties at length and is of the considered view that once the awarded amount had been deposited with this Court, such deposit having been made as far back as the year 2019, it was always open to IRB to avail the remedies available in law and seek release of the said amount in its favour.

8. It is further noted that during the pendency of the said petition, as early as in the year 2020, IRB had filed an application, being ***I.A. No. 11952/2020***, seeking permission to withdraw the awarded amount deposited with this Court pursuant to the Order dated 30.01.2019. However, significantly, IRB chose not to press the said application of its own volition. The fact that IRB consciously elected a course whereby it agreed not to withdraw the deposited amount until



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adjudication of the petition under Section 34 of the A&C Act, cannot, in the opinion of this Court, operate to its advantage. Having voluntarily chosen not to seek withdrawal of the amount, IRB cannot now contend that it is entitled to any benefit arising from such self-imposed restraint.

9. The submission advanced by the learned Senior Counsel for IRB that the rate of interest earned on the amount deposited in fixed deposit receipts maintained with a nationalised bank pursuant to the order dated 30.01.2019 of this Court was substantially lower than the rate of interest awarded by the learned Arbitral Tribunal, or lower than what IRB could otherwise have earned, is wholly unsubstantiated. The record reflects that IRB consciously chose not to pursue any remedy available to it for withdrawal or alternative utilisation of the deposited amount during the pendency of the Section 34 Petition before this Court, and therefore, cannot now be heard to complain of any alleged loss of interest or loss in general suffered on account of the alleged non-utilisation of the said amount.

10. The further contention of the learned Senior Counsel for IRB that the Petitioner had objected to withdrawal of the deposited amount, firstly until disposal of the appeal under Section 37 of the A&C Act, and thereafter until disposal of the Special Leave Petition preferred by NHAI, does not, in the considered opinion of this Court, entitle IRB to derive any benefit therefrom. It was IRB's choice to not have withdrawn the amounts that were deposited in 2019 itself. Any opposition to the same in the subsequent proceedings would not permit IRB to gloss over its own decision and foist the liability for



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payment of interest or canvass an alleged loss due to the non-utilisation of the amounts.

11. In such circumstances, this Court is of the considered opinion that NHAI cannot be fastened with any additional liability to pay interest over and above the amount already accrued and earned on the deposited sum, merely on account of the voluntary and informed choices made by IRB.

12. Further, IRB filed the present *I.A. No. 3412/2022* dated 22.02.2022 in O.M.P. (COMM) 349/2016 seeking withdrawal of the deposited amount, which application was instituted only after disposal of the Section 34 petition. Subsequent thereto, IRB also instituted the Enforcement Petition, OMP(ENF.)(COMM.) 51/2022, while asserting a claim for further interest for the period even after the amount had already been deposited by NHAI with the Registry of this Court.

13. Though the said application as well as the Enforcement Petition are stated to be pending adjudication, this Court is of the considered view that the application and the Enforcement Petition already stood satisfied in view of the facts noted and direction given in the order dated 28.02.2023, whereby withdrawal of the deposited amounts was expressly recorded. The relevant portion of the said order reads as follows:

“...

5. It is stated by Mr. Saurabh Kirpal, learned senior counsel for decree holder that pursuant to the order dated 05.12.2022, an amount of Rs. 96.78 crores has been withdrawn by the decree holder on 03.02.2023 in the aftermath of the dismissal of the aforesaid SLP by the Supreme Court.

6. It is noted that an amount of Rs.103.35 crores came to be deposited by the judgment debtor on 12.03.2019 pursuant to the orders passed by this court.

7. Since the amount of Rs.96.78 crores [forming part of the aforesaid amount of Rs.103.35 crores and to which the decree

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holder is entitled in terms of the arbitral award, as per reply filed on behalf of the NHAI in OMP (ENF.) (COMM.) 51/2022] remained deposited in this court in the form of an FDR during the period from 12.03.2019 till the date of its withdrawal, let the interest accrued on the aforesaid amount of Rs. 96.78 crores be also released to the decree holder within a period of four weeks from today.

....”

14. Consequently, having withdrawn the monies as recorded in the said Order, without raising any objection or caveat thereto, the continued objection raised by IRB with regard to the completeness or correctness of the calculations submitted by NHAI, on the basis of which the deposit was made with this Court and pursuant to which the subsequent withdrawal was effected by IRB itself, is, in the considered opinion of this Court, misconceived, devoid of legal merit, and wholly unsustainable.

15. This Court also draws sustenance from the judgment of the Hon’ble Supreme Court in *DLF Limited v. Koncar Generators and Motors Ltd.*⁵, wherein it has been categorically held that once the award debtor deposits the amount and the award-holder is permitted to withdraw the same, interest ceases to run from the date of deposit, as the award-holder is deemed to have had access to and the benefit of the money from that point onwards. The Apex Court has also reiterated, with reference to Order XXI Rule 1 and Order XXIV of the CPC, that interest does not continue to accrue on amounts deposited before the Court once such amounts are tendered and made available to the decree-holder. The relevant paragraphs of the said judgment read as follows:

⁵ (2025) 1 SCC 343



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“38. It is important to appreciate the consequence and effect of deposit during the pendency of proceedings to understand the need to convert this amount on that date. Through a deposit, the award debtor parts with the money on that date and provides the benefit of that amount to the award-holder. Provided that the award-holder is permitted to withdraw this amount, it can convert, utilise, and benefit from the same at that point in time. Considering that the deposited amount inures to the benefit of the award-holder, it would be inequitable and unjust to hold that the amount does not stand converted on the date of its deposit.

39. A similar logic underscores the statutory provisions in Order 21 Rule 1 and Order 24 of the Code of Civil Procedure, 1908 (hereinafter “CPC”) to determine whether interest will continue to operate on an amount deposited before a court. It would be relevant for us to briefly discuss the law on this point:

40. A Constitution Bench of this Court in ***Gurpreet Singh v. Union of India, (2006) 8 SCC 457*** extensively discussed the rules governing interest calculation when the defendant/judgment-debtor deposits some part of the amount. Order 24 governs deposits at the pre-decretal stage and Order 21 Rule 1 at the post-decretal stage. [*Id*, para 14] The essence of these provisions is that on any amount deposited into the court, interest shall cease to run *from the date when the depositor serves a notice to the plaintiff/decreed-holder*. Similarly, when payment is tendered to the decree-holder outside the court, interest ceases on such amount even if the payment is refused. [***Gurpreet Singh case, (2006) 8 SCC 457***, paras 15, 25-26]

41. Order 21 Rule 1 embodies a rule of prudence that once the amount is tendered to the decree-holder by the judgment-debtor, *whether in the form of a court deposit or other forms of payment such as demand draft or cheque, the judgment-debtor cannot be made liable to then pay interest on such amount.* [***K.L. Suneja v. Manjeet Kaur Monga, (2023) 6 SCC 722, para 36***]

42. The rationale for this rule has been explained in ***Nepa Ltd. v. Manoj Kumar Agrawal, (2023) 17 SCC 659***, through a similar logic of the decree-holder being able to benefit from the deposited amount. In this case, the award-debtor deposited 50% of the awarded amount before the executing court to obtain a stay on the execution proceedings of the arbitral award during the pendency of appeal under Section 37 of the 1996 Act. This amount was withdrawn by the award-holder, and the issue before this Court was whether interest is payable on the deposited amount even after the date of deposit. The Court held as follows: (SCC paras 22 & 25)

“22. In the present case, the appellate court, on the appeal preferred under Section 37 of the Act did

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grant stay, subject to the condition that the appellant would deposit 50% of the amount. Rs 7,78,280 was deposited by the appellant on 5-11-2001. The stay, therefore, only operated for the balance amount. On the balance amount, certainly, the appellant would be liable to pay interest @ 18% p.a. till the date of actual payment. However, on Rs 7,78,280 paid, after adjusting/appropriating payment due on the interest accrued, on the balance principal amount paid to the respondent, interest would not be payable.

25. The respondent submits that the payment of Rs 7,78,280 being conditional, the respondent would have been under an obligation to refund the said amount in case the appellant had succeeded in the appeal under Section 37 of the 1996 Act. This argument does not impress, as in the event the appellant had succeeded in their appeal, the entire amount paid would have been refundable. The undertaking was not onerous, and was to operate only if the amount of Rs 7,78,280 was not refunded by the respondent. *The respondent had obviously used and utilised the money. The appellant did not have any right on the money paid to the respondent, who could use it in a manner and way he wanted. There was no charge. Money is fungible and would have gotten mixed up with the other amounts available with the respondent. Right to restitution would not make the payment conditional.* Interest has been jurisprudentially defined as the price paid for money borrowed, or retained, or not paid to the person to whom it is due, generally expressed as a percentage of amount in one year. It is in the nature of the compensation allowed by law or fixed by parties, for use or forbearance or damage for its detention. In the context of the present case, interest would be the compensation payable by the appellant to the respondent, for the retention or deprivation of use of money. Therefore, once the money was paid to the respondent, interest as compensation for deprivation of use of money will not arise. [*Per Sanjiv Khanna, J. in **Nepa Ltd. v. Manoj Kumar Agrawal**, (2023) 17 SCC 659* We have not examined and decided the issue either way — whether interest would be payable on the amount withdrawn in case withdrawal is on conditions like furnishing bank guarantee, etc.]]”

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(emphasis supplied)

Therefore, the ability of the decree-holder to access and use the money in a manner he deems fit was considered by this Court in *Nepa Ltd. v. Manoj Kumar Agrawal*, (2023) 17 SCC 659 while deciding the issue.

43. Here, the Court in *Nepa Ltd. v. Manoj Kumar Agrawal*, (2023) 17 SCC 659 also differentiated *P.S.L. Ramanathan Chettiar v. O.R.M.P.R.M. Ramanathan Chettiar*, 1968 SCC OnLine SC 28, which has also been relied on by the respondent in the present matter, and another decision by this Court in *DDA v. Bhai Sardar Singh & Sons*, (2023) 17 SCC 671. *P.S.L. Ramanathan Chettiar v. O.R.M.P.R.M. Ramanathan Chettiar*, 1968 SCC OnLine SC 28 holds that a deposit is only a way to obtain a stay on execution and does not pass title to the decree-holder, and hence, is not in satisfaction of a decree. The decree-holder in *DDA v. Bhai Sardar Singh & Sons*, (2023) 17 SCC 671 was not permitted to withdraw the deposited amount and hence, interest was calculated on the same. The Court in *Nepa Ltd. v. Manoj Kumar Agrawal*, (2023) 17 SCC 659 however held that these cases do not apply in its facts as the respondent here was permitted to withdraw the deposited sum and did so. Hence, the Court instead relied on the ability of the respondent to use the deposited money as it deems fit.

44. These cases demonstrate that once there is a deposit by the award debtor and the award-holder is permitted to withdraw the same, even if such withdrawal is conditional and subject to the final decision in the matter, the court must consider that the award-holder could access and benefit from such deposit. It is then the burden of the award-holder to furnish security, as required by the court's orders, to utilise the amount or to make an application for modification of the condition if it is unable to fulfil the same."

(emphasis supplied)

16. This position is further fortified by the judgment of the learned Co-ordinate Bench of this Court in *M/s Rama Civil India Constructions Pvt. Ltd. v. Union of India*⁶, wherein it was held that a decree-holder is not entitled to interest on the amount deposited before the Court beyond the interest actually earned on the fixed deposit during the period the amount remained deposited, and no additional

⁶ OMP (ENF.) (COMM.) 126/2021



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interest as per the arbitral award can be claimed. The relevant portion of the said judgment reads as follows:

“45. In view of the clear trend of legal thought on the issue, as manifested by the judgments of the Supreme Court, which stand distilled by the coordinate Bench in its judgment in Cobra, in my opinion, the petitioner is not entitled to interest on the amount of ₹ 4,82,09,323/- deposited by the respondent before this Court in terms of the order dated 11 August 2021, except to the extent of the fixed deposit interest that the amount has earned between the date of such deposit and the date when it was released to the petitioner. No additional interest on the said amount, as per the award under enforcement, can be granted to the petitioner.”

17. In view of the aforesaid discussion, this Court is of the firm opinion that the objections raised by IRB, seeking interest from NHAI for the period subsequent to the deposit of the amount despite having consciously chosen not to seek its withdrawal prior to disposal of the Petition under Section 34, and having also withdrawn the same pursuant to the Order dated 28.02.2023 are wholly misconceived. The liability to pay any further or additional interest for such period cannot be fastened upon NHAI, and the said claims now asserted by IRB are accordingly rejected.

18. In view of the foregoing, *I.A. No. 3412/2022* in O.M.P. (COMM) 349/2016 and the Enforcement Petition, *O.M.P. (ENF.) (COMM.) 51/2022*, along with pending applications, if any, stand disposed of in the above terms.

HARISH VAIDYANATHAN SHANKAR, J.
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