
(2014) 07 SHI CK 0099
In the High Court Of Himachal Pradesh
Case No : Ex. Pet. No. 3 of 2012

Jerath Electronics and Allied Industrial Pvt. Ltd.	APPELLANT
Vs	
Himachal Pradesh Mahila Vikas Nigam	RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 31, 31(7), 31(7)(a), 31(7)(b)

Citation : (2014) 07 SHI CK 0099

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : B.N. Misra, Advocate for the Appellant; G.D. Verma, Senior Advocate and B.C. Verma, Advocate for the Respondent

Judgement

Dharam Chand Chaudhary, J.—A short, but interesting question, qua liability of the judgment debtor to make payment of the amount under the award together with post award interest @18% per annum envisaged u/s 31 of the Arbitration and Conciliation Act, in those cases, where the award is silent qua payment of such interest, has been raised by the parties on both sides and needs adjudication in these proceedings.

2. Having arisen a dispute between the parties to this petition under clause 5(b) read with 2(j) of the byelaws namely "Byelaws of Financial Assistance" framed by the Board of Directors of the respondent-JD Nigam, in exercise of the powers conferred upon it u/s 73(15) of the Articles of Association, the same was referred to Financial Commissioner-cum-Secretary (Revenue and Appeals) Himachal Pradesh for resolution, in accordance with the provisions contained under the Act *ibid*. The Arbitrator entered into reference and vide award dated 17.3.2005 awarded a sum of Rs. 6,77,656/- to the petitioner-DH. The respondent-JD Nigam filed objections (Arbitration case No. 51 of 2005) against the award in this Court whereas the petitioner-DH cross-objections against the non-award of the pendente lite interest @20.5% per annum (Arbitration case No. 53 of 2005) before Nominee Judge of Hon'ble the Chief Justice. Learned Nominee Judge has,

however, upheld the award and dismissed the objections thereto raised by the respondent-JD vide judgment dated 1st May, 2007. As regards the objections with regard to the non-award of the interest @20.5% raised by the petitioner-DH, learned counsel has not pressed such claim hence such claim was not inclined vide the same judgment.

3. The judgment of learned Nominee Judge was further taken to a Division Bench of this Court in Arbitration Appeal No. 9 of 2007 by the respondent-JD. The same, however, also met the same fate being dismissed vide judgment dated 12.11.2010. This has led in filing the present petition for execution of the award by calling upon the respondent-JD to pay Rs. 6,77,656/-, the amount under award, together with post award interest @18% per annum till the payment is made.

4. Respondent-JD agitated the matter qua enforcement of the award on several grounds including that the petitioner-DH is not legally entitled to claim the payment of the awarded amount with interest @18% from the date of award till the date of payment. The amount under the award i.e. Rs. 6,77,656/-, however, was tendered in the Registry of this Court on 1.11.2013, through a Bank draft. The order passed in this petition on that day reads as follows:

Learned Senior counsel Mr. G.D. Verma, on instructions received from Mr. B.C. Verma, Advocate submits that a draft of Rs. 6,77,656/- stands deposited in the Registry of this Court on 4th October, 2013. It is directed that this amount be released to the petitioner/decreed holder and be remitted to its bank account, particulars whereof shall be furnished by learned counsel appearing for the Decree Holder.

List on 27th November, 2013.

5. Keeping in view that there remains only the issue qua liability of the respondent-JD to pay the post award interest @18% from the date of award till the payment is made, this Court passed the following orders in this petition on 28.3.2014:-

Admittedly, the amount under award stands deposited and even released also to the petitioner-Decree Holder. The dispute now remains only qua interest part on the awarded amount. Ms. Vandana Panta, learned counsel for the petitioner/Decree Holder has pressed in service the provisions contained u/s 31 of the Arbitration and Conciliation Act which provides for payment of interest @18% per annum on the awarded amount. Learned Senior Advocate representing the respondent/Judgment Debtor, however, submits that for want of instructions, he is not in a position to make any submission in this behalf. He seeks adjournment to have instructions. The prayer being not opposed is allowed.

Post on 25th April, 2014.

6. Consequently the parties on both sides have been heard at length on this issue. Sub sections 7(a) and (b) of Section 31 of the Act deals with the award of

pendente lite interest and post award interest, the same reads as follow:-

31(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.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment.

7. As regards the entitlement of the petitioner-DH to claim pendente lite interest, the same is not the matter in issue in these proceedings for the reason that objections thereto (Arb. Case No. 53 of 2005) preferred by the petitioner-DH were disposed of by learned Nominee Judge being not pressed.

8. True it is that the award is silent so far as the post award interest is concerned. Such silence, however, is hardly of any help to the respondent-JD for the reason that the post award interest being statutory one is liable to be paid even if the award so directs or is silent. The law on the issue is no more res integra because Hon"ble Apex Court in State of Haryana and Others Vs. S.L. Arora and Company, has held that in case the award is silent with regard to the interest from the date of award or does not specify the rate of interest from the date of award, in that event the party, in whose favour the award for money has been made, will be entitled to interest @ 18% per annum from the date of award. The law laid down in this judgment excludes those cases from the purview of sub section (3) of Section 31, where the award grants post award interest at specified rates or specify the rate of interest payable on the awarded amount from the date of award till the date of payment or if the award specifically refuses the payment of post award interest. The relevant portion of this judgment reads as follows:

24.6. Clause (b) of Section 31(7) is intended to ensure prompt payment by the award-debtor once the award is made. The said clause provides that the "sum directed to be paid by an arbitral award" shall carry interest at the rate of 18% per annum from the date of award to the date of payment if the award does not provide otherwise in regard to the interest from the date of the award. This makes it clear that if the award grants interest at a specified rate up to the date of payment, or specifies the rate of interest payable from the date of award till the date of payment, or if the award specifically refused interest, clause (b) of Section 31 will not come into play. But if the award is silent in regard to the interest from the date of award, or does not specify the rate of interest from the date of award, then the party in whose favour an award for money has been made, will be entitled to interest at 18% per annum from the date of award. He may claim the said amount in execution even though there is no reference to any

post-award interest in the award. Even if the pre-award interest is at much lower rate, if the award is silent in regard to post-award interest, the claimant will be entitled to post-award interest at the higher rate of 18% per annum. The higher rate of interest is provided in clause (b) with the deliberate intent of discouraging award-debtors from adopting dilatory tactics and to persuade them to comply with the award.

9. The apex Court in H.P. Housing and Urban Devt. Auth. and Another Vs. Ranjit Singh Rana, , a case with more or less similar facts, on interpretation of the scope of Section 31(7)(a) and (b) of the Act has arrived at a conclusion that where the Arbitrator has not exercised any discretion in the matter of awarding interest for the post award period, by virtue of Section 31(7)(b), the award would carry interest @18% per annum from the date of award till the date of payment. The relevant portion of this judgment is reproduced here as under:-

5. The question before the High Court was whether the respondent was entitled to interest @ 18% p.a. from the date of the award dated February 14, 2001 till the date of actual payment to the respondent.

6. The High Court considered the diverse provisions of the Act including Section 31(7)(a) and (b) of the Act and few decisions of this Court and ultimately held that the respondent was entitled to post-award interest @ 18% p.a. from the date of the award till the date of the actual payment. It is this order which is in appeal before us.

7. There is no dispute that the entire amount due under the Award dated February 14, 2001 was deposited by the appellants before the High Court on May 24, 2001. The question that arises for determination before us is, whether deposit of the entire award amount by the appellants on May 24, 2001 into the High Court amounts to payment to the respondent and the appellants liability to pay interest @ 18% p.a. from the date of the award ceased from that date.

8. Section 31(7)(a) and (b) of the Act reads as under:

31(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.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment.

9. The above provision has been recently considered by this Court in State of Haryana and Others Vs. S.L. Arora and Company, . This Court held as under:

..... In a nutshell, in regard to pre-award period, interest has to be awarded as

specified in the contract and in the absence of contract, as per discretion of ". the Arbitral Tribunal. On the other hand, in retard to the post-award period, interest is payable as per the discretion of the Arbitral Tribunal and in the absence of exercise of such discretion, at a: mandatory statutory rate of 18% per annum.

This Court further observed in para 24.6 as under:

..... but if the award is silent in regard to the interest from the date of award, or does not specify the rate of interest from the date of award, then the party in whose favour an award for money has been made, will be entitled to 4 interest at 18% per annum from the date of award. He may claim the said amount in execution even though there is no reference to any post-award interest in the award. Even if the pre-award interest is at much lower rate, if the award is silent in regard to post-award interest the claimant will be entitled to post-award interest at the higher rate of 18% per annum.

10. Learned counsel for the parties are ad idem that the Arbitrator has not exercised any discretion in the matter pertaining to the interest for the post-award period. Obviously, in absence thereof, by virtue of Section 31(7)(b) of the Act, the award would carry interest @ 18% p.a. from the date of the award till the date of payment.

10. In view of the law so laid down by the apex Court in the judgments supra, there hardly remains any dispute so far as the liability of the respondent-JD to pay the interest on the awarded amount @18% per annum from the date of award till the date of payment, is concerned. The contentions that the petitioner-DH has waived off the interest during the course of proceedings in Arb. Case No. 53 of 2005 before the Nominee Judge, hence estopped from claiming the post award interest, have been raised merely for rejection for the reason that Arb. Case No. 53 of 2005 (objections raised to the award by the petitioner-DH) reveals that the petitioner-DH aggrieved from non-award of pendente lite interest @20.5% had objected the award only to that extent as is apparent from the prayer clause, which reads as follows:-

It is, therefore, respectfully prayed that application may kindly be allowed and the impugned award may kindly be set aside to the extent whereby the arbitrator has rejected the claim of the application for interest at the rate of 20.5% p.a. and has not awarded any interest what so ever and appropriate order/direction may kindly be issued awarding interest at such rate as deemed reasonable by this Hon"ble Court on the entire award amount with effect from 31.3.1992 till the date of award, in the interest of law and justice.

11. It is thus crystal clear that the objection raised on behalf of the petitioner-DH was with regard to the non-award of pendente lite interest @ 20.5% and it is the said claim, which ultimately was not pressed and learned Nominee Judge has been pleased to dismiss the same. Learned Senior Advocate, no doubt, has tried to persuade and satisfy this Court that it is the claim with respect to the post

award interest, which was not pressed by the petitioner-DH before learned Nominee Judge, however, unsuccessfully because the objections raised on behalf of the petitioner-DH were against the non-award of pendente lite interest alone because there was no occasion to it to claim, post award interest being statutory one. The principle of waiver and for that matter estoppel pressed into service on behalf of the respondent-JD, therefore is not at all attracted in the case in hand. The arguments qua this aspect of the matter addressed by learned Senior Advocate are, therefore, not only, without any substance, but far fetched also as well as baseless. With due regard to the law laid down by the apex Court in A.P. SRTC versus S. Jayaram, (2004) 13 SCC 791, explaining therein as to what constitutes waiver and again that in Provash Chandra Dalui and Another Vs. Biswanath Banerjee and Another, , relied upon by learned Senior Advocate, the same has no application in the case in hand for the reasons recorded hereinabove.

12. Similarly, the law laid down again by the Hon"ble apex Court in Union of India and Others Vs. along Ship Breakers Pvt. Ltd., Bhavnagar and Others, and in M/s. Sikkim Subba Associates Vs. State of Sikkim, , not attracted even remotely also in the given facts and circumstances of this case being distinguishable with that in the cases supra before the Hon"ble apex Court.

13. In the case in hand the award has been passed on 17.3.2005. The amount under the award was tendered in the Registry of this Court through a Bank draft on 1.11.2013. The petitioner-DH, therefore, is entitled to the post award interest @18% per annum on the awarded amount from 17.3.2005 till 31.10.2013. The issue under consideration is, therefore, answered accordingly. Let the petitioner-DH to calculate the due and admissible amount towards post award interest in the light of this order and place the calculation so made on record, within a week. A copy thereof be supplied in advance to the respondent-JD through learned counsel appearing on its behalf.

Post on 21st July, 2014.