(2018) 09 DEL CK 0338

In the Delhi High Court

Case No : Original Miscellaneous Petition No. (Enf.) (Comm.) 128 Of 2017 & Ia 12252 Of 2017

Larsen & Toubro Ltd APPELLANT

Vs

Indian Oil Corporation Ltd RESPONDENT

Date of Decision : 28-09-2018

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 31(7)(b), 34

Citation : (2018) 09 DEL CK 0338

Hon'ble Judges : Navin Chawla, J

Bench : Single Bench

Judgement

NAVIN CHAWLA, J

1. The present order seeks to adjudicate on a limited dispute that has been raised by the parties at this stage of the execution of the Arbitral

Award.Â Â

2. The Arbitral Tribunal by its Award dated 18.05.2017 had passed the following directions adjudicating the disputes between the parties:

411. In the premises following reliefs are granted:

1. It is declared that IOCL's claim for Price Discount is unjustified and contrary to the terms of the Contract.

2. IOCL is ordered to pay the withheld/ deducted amount of Rs. 115,11,28,129/- to L&T along with simple interest at the rate of 9% per annum on the

said amount commencing on expiry of 84 days from 18.05.2012 until the date of the final award.Â

3. IOCL is ordered to pay simple interest on Rs.115,11,28,129/- at the rate of 9% per annum from the date of final award until the date of payment.

4. IOCL is ordered to reimburse the costs in the sum of Rs.2,62,37,918/- to L&T as per the Statement of Costs submitted by it and quoted above

which includes the cost of the Tribunal, expenses of the venue and legal expenses.â??

3. The respondent challenged the Arbitral Award before this Court by way of a petition under Section 34 of the Arbitration and Conciliation Act, 1996

(hereinafter referred to as the â??Actâ??) being OMP(Comm.) No.366/2017 titledÂ Indian Oil Corporation Ltd. vs. Larsen & Toubro Ltd.Â On

12.10.2017, the following order was passed in the said petition.Â Â

Â â??Parties may file short synopsis not exceeding seven pages within four weeks from today.Â In the meantime, the petitioner may deposit the

principal Award amount i.e. Rs.115,11,28,129/- with the Registrar General of this Court.Â On deposit of the amount the respondent is free to

withdraw the same on furnishing of a bank guarantee to secure the payment in the eventuality of any subsequent order passed by this Court.â??

4. There is no dispute between the parties that in terms of the above order, the respondent deposited a sum of Rs.115,11,28,129/- with the Registrar

General of this Court on 15.11.2017.Â Subsequently, the petitioner withdrew the said amount.Â Â

5. The petition filed by the respondent under Section 34 of the Act was dismissed by this Court on 01.06.2018.Â Though the said order has been

challenged by the respondent before the Division Bench, it is not disputed that there is no order passed by the Division Bench in the said appeal

staying the enforcement of the Arbitral Award.

6. On 13.07.2018, the respondent in purported compliance with the order dated 01.06.2018 passed by this Court in the present petition directing the

respondent to pay the remaining amount in terms of the Arbitral Award to the decree holder, deposited a further sum of Rs.54,61,07,800/-.

7. The narrow dispute between the parties at this stage is as to whether with the deposit of Rs.115,11,28,129/-, the principal sum awarded by the

Arbitral Tribunal, the future liability of the respondent to pay interest thereon ceases.Â Â Â

8. Counsel for the respondent, placing reliance on the judgment of the Supreme Court in Union of India &Anr. vs. M.P.Trading and Investment RAC.

Corporation Limited (2016) 16 SCC 699; Himachal Pradesh Housing and Urban

Development Authority &Anr. vs. Ranjit Singh Rana (2012) 4 SCC

505 and Union of India vs. Concrete Products and Construction Company &Ors. (2014) 4 SCC 416, contends that as the respondent had deposited

the principal sum awarded under the Arbitral Award, no future interest in terms of the Arbitral Award was payable.Â Â

9. On the other hand, counsel for the petitioner submits that as admittedly, on the date of deposit, that is, on 15.11.2017, apart from the principal sum of

Rs.115,11,28,129/- mentioned hereinabove, another amount of Rs.54,61,07,800/- was due and payable as interest, the amount deposited has to be first

appropriated towards interest and costs awarded by the Arbitral TribunalÂ and only thereafter towards the principal sum.Â In fact, the petitioner

claims interest on the sum of Rs.54,61,07,800/-Â from the respondent @ 2% higher than the current rate of interest in terms of the amended

provision of Section 31 (7) (b) of the Act.Â Â

10. I have considered the submissions made by the counsels for the parties.Â By a separate detailed order passed by me today in Royal Construction

Company Pvt. Ltd. vs. National Projects Construction Corporation Ltd. (NPCC),Ex.P. No.131/2015, I have held that where the respondent deposits a

sum of money at the interim stage of a proceeding and such proceeding eventually is decided against the respondent, the deposit has to be

appropriated in terms of the final judgment and in the absence of any such direction in the final judgment, by the general rules of appropriation, that is,

first towards interest, then towards cost and finally towards the principal amount due under the decree.Â In the said judgment, I have also considered

the judgments of the Supreme Court in M.P.Trading and Investment RAC Corporation Ltd. (supra) and Himachal Pradesh Housing and Urban

Development Authority &Anr.

(supra).

11. As far as the judgment of the Supreme Court in Concrete Products and Construction Company &Ors. (supra) is concerned, the same shall have

no application to the facts of the present case.Â Â In the said case, it was held that the Award of interest by the Arbitrator was in ignorance of the

specific terms of the contract which not only allowed the Railway Authorities or the Government to withhold or retain amounts payable to the contractor by way of lien but also provided that on such withheld amount, no claim for interest or damages shall be maintainable.Â Â It was in light of

those specific clauses in the Agreement that the Supreme Court held that the Arbitrator could not have awarded any interest in favour of the

contractor.Â Â The present is not one of such cases.Â

12. At the same time, the contention of the petitioner that it would be entitled to charge interest on the amount of Rs.54,61,07,800/- at the rate of 2%

higher than the current rate of interest prevalent on the date of the Award is also incorrect.Â Section 31 (7)(b) of the Act reads as under:-

â??31(7)(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent higher

than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

13. A reading of the above provision would clearly show that it is only where the Arbitral Award is silent on the interest to be paid on the sum directed

to be paid by the Arbitral Award, that such sum shall carry interest @ 2% higher than the current rate of interest prevalent on the date of the Award,

from the date of the Award to the date of payment.Â Â

14. In the present case, the Arbitral Award has directed that the principal sum of Rs.115,11,28,129/- shall carry interest @ 9% per annum from the

date of the Final Award until the date of payment.Â Therefore, the default provision of Section 31(7)(b) shall have no application to the facts of the

present case.Â

15. In view of the above discussion, it is held that the amount of Rs.115,11,28,129/- deposited by the respondent on 15.11.2017 shall first be

appropriated towards the interest due in terms of the Arbitral Award till that day, that is, 15.11.2017 thereafter, towards the cost of Rs.2,62,37,918/-

awarded in the Arbitral Award and the balance towards the principal sum awarded, that is, Rs.115,11,28,129/-.

16. On such appropriation, the principal amount that remains unpaid as on 15.11.2017 shall carry further interest @ 9% per annum from 15.11.2017 till

13.07.2018.

17. Similar exercise with respect to the deposit of Rs.54,61,07,800/- shall be conducted as on 13.07.2018, with the said amount being first appropriated

towards interest and thereafter towards the principal sum payable as on that date.

18. On such calculation, the balance principal amount payable in terms of the Arbitral Award along with interest @ 9% per annum calculated from

13.07.2018 till the date of payment thereof shall be paid by the respondent to the petitioner within a period of four weeks from the date of this order.

Â List on 1st November, 2018.Â

