(2020) 01 DEL CK 0190

In the Delhi High Court

Case No : Original Miscellaneous Petition (ENF.) (COMM.) No. 225 Of 2018

Shenzhen Shandong Nuclear Power Construction Company Limited — APPELLANT

Vs

Vedanta Limited — RESPONDENT

Date of Decision : 06-01-2020

Acts Referred:
Code Of Civil Procedure, 1908 — Order 21 Rule 1
Arbitration And Conciliation Act, 1996 — Section 9

Citation : (2020) 01 DEL CK 0190

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Parag Tripathi, Ranjit Prakash, Kamal Nighawan, Mahima Sareen, Dhruv Mehta, Ranjana Roy Gawai, Vasudha Sen, Prachi Golechha

Judgement

J.R. Midha, J

1. Vide award dated 09th November, 2017, the Arbitral Tribunal awarded the following amounts to the judgment debtor:-

"134. Thus, in the light of the aforesaid, the following amounts are awarded in favour of the Claimant and the Respondent is liable to pay the same to the Claimant within a period of 120 days from the date of this award:

I. Under the First Claim:

(a) Rs.46,71,41,942/- and Euro 23,717,437; and

(b) Rs.12,19,69,047/-

II. Under the Second Claim:-

(a) Rs.25,47,325/-; and

(b) Rs.6,06,707/-

(c) Rs.1,31,10,990/-

135. The aforesaid amount shall be payable alongwith interest at the rate of 9% from the date of institution of the present arbitration proceedings provided the amount is paid/ deposited within 120 days of the award.

136. In case the respondent fails to pay the aforesaid amounts within 120 days from the date of the Award, the claimant shall be entitled to further interest at the rate of 15% till the date realization of the amount.

137. Considering the overall facts and circumstances of the case and the expenditure incurred in the arbitration proceedings, we consider it appropriate to award Rs.50,00,000.00/- (Rupees Fifty Lakh) towards costs and legal expenses to the claimant, which according to us would meet the ends of justice. The claim of payment of cost of the Respondent is rejected."

2. In Para 91 of the award, the Arbitral Tribunal held that the amount payable as EURO 23,717,437 would be of the value of exchange rate as on the date of the filing of the claim petition. The relevant portion of the award dated 09th November, 2017 is reproduced hereunder:-

"91. ....Be it mentioned that the amount payable as Euro 23,717,437 in terms of the award would be of the value of exchange rate as prevalent on the date of filing of the claim petition. Interest payable on the same would however protect the interest of the Claimant in that regard."

3. The judgment debtor filed objections against the award which were dismissed. The judgment debtor filed an appeal before the Division Bench which was also dismissed. The judgment debtor filed a Special Leave Petition before the Supreme Court. Vide judgement dated 11th October, 2018, the Supreme Court modified the interest awarded by the Arbitral Tribunal to a limited extent. The relevant portion of the judgment is reproduced hereunder:-

"22. The Award has granted a uniform rate of 9% S.I. on both the INR and the EUR component. However, when the parties do not operate in the same currency, it is necessary to take into account the complications caused by differential interest rates. Interest rates differ depending upon the currency. It is necessary for the arbitral tribunal to co-ordinate the choice of currency with the interest rate. A uniform rate of interest for INR and EUR would therefore not be justified. The rate of 9% interest on the INR component awarded by the arbitral tribunal will remain undisturbed. However, with respect to the EUR component, the award-debtor will be liable to pay interest at the LIBOR rate + 3 percentage points, prevailing on the date of the Award.

23. In light of the above-mentioned discussion, the interest awarded by the arbitral tribunal is modified only to the extent mentioned hereinbelow:-

(i) The interest rate of 15% post 120 days granted on the entire sum awarded stands deleted. A uniform rate of interest @ 9% will be applicable for the INR component in entirety till the date of realization.

(ii) The interest payable on the EUR component of the Award will be as per LIBOR + 3 percentage points on the date of Award, till the date of realization."

Submissions of decree holder

4. The Arbitral Tribunal awarded Rs.60,53,76,001/- and EURO 23,717,437 along with interest @ 9% per annum (and 15% towards delayed payments) and cost of Rs.50,00,000/- to the decree holder.

5. The judgment debtor filed objections to the award on various grounds inter-alia that the interest rate on the EURO component of the award amount should be linked to LIBOR and matter was taken further up to the Supreme Court.

6. The Supreme Court reduced the rate of interest on the EURO component from 9% and 15% to LIBOR plus 3 percentage points which effectively comes to 2.5%. The Supreme Court reduced the interest rate considering that the part of the award amount was payable in EURO.

7. The judgment debtor is liable to pay the EURO component of the award in EUROS. However, the judgment debtor is wrongly seeking to make the payment of the EURO component in INR.

8. Without prejudice, it is submitted that if the EURO component of the award amount is to be converted and paid in INR, then the interest rate payable on the INR portion of the award has to be provided on the said amount. In the alternative, it is submitted that the date of conversion of EURO to INR be taken as on the date of payment.

9. The decree holder made no admission to the conversion of the EURO component award into INR in its written submissions before the Supreme Court as alleged by the judgment debtor.

10. The INR component deposited by the judgment debtor should be first appropriated towards satisfaction of interest and cost and thereafter, towards principal. Reliance is placed on Constitution Bench in Gurpreet Singh v. Union of India, (2006) 8 SCC 457. By that calculation, the decree holder is entitled to a further sum of Rs.2,73,52,561/- on account of interest calculated up to 06th January, 2020.

11. The amounts to be paid are not subject to return of drawings and other documents by the decree holder to the judgment debtor.

Submissions of judgment debtor

12. In para-91 of the award, the learned Tribunal has clearly and unanimously directed that the EURO component of the award i.e. EURO 23,717,437 was payable at the value of exchange rate as prevalent at the time of filing of the claim petition i.e. 17th October, 2012. It is well settled that Arbitral Tribunal can fix the exchange rate at which the sum awarded in the foreign currency should

be converted. Reliance is placed on Farsol v. ONGC, 1984 Supp. SCC 263.

13. Vide judgment dated 11th October, 2018, the Supreme Court modified the award to the limited extent of reducing the rate of interest on the EURO component from 9% per annum and 15% per annum post 120 days to LIBOR plus 3 percentage points.

14. The Supreme Court, while modifying the rate of interest awarded by the Arbitral Tribunal, did not interfere with the direction in para-91 of the award to convert the EURO in INR on the date of the filing of the claim petition.

15. The decree holder opposed the reduction of rate of interest on the ground that the rate of interest of 9% was granted to protect the interest of the decree holder as the value of the EURO component was at the date of the filing of the claim petition. The decree holder pleaded that it will suffer losses due to fluctuation of value of EURO and 9% interest rate was granted to protect their interest.

16. The decree holder filed Review Petition before the Supreme Court to oppose the reduction of rate of interest which was dismissed on 24th July, 2019.

17. The decree holder admitted before the Supreme Court that the decree holder was entitled to payment of EURO component after conversion into INR by applying exchange rate on the date of filing of the claim petition.

Reference is made to the decree holder's submissions before the Supreme Court.

18. Vide order dated 05th March, 2018 in FAO(OS)(COMM.) 35/2018, this Court directed the judgment debtor to deposit the entire award amount along with interest @ 9% per annum with this Court.

19. The judgment debtor secured the entire award amount of Rs.339.22 crore by depositing demand draft of Rs.152.22 crore with this Court and by continuing the bank guarantees of Rs.187 crore in pursuance to an order passed by Bombay High Court in proceedings under Section 9 of the Arbitration and Conciliation Act.

20. The principal amount towards INR component as on 24th September, 2018 was Rs.60 crore and this Court vide order dated 24th September, 2018 directed the release of Rs.60 crore. The amount of Rs.60 crore released by this Court to the decree holder was towards the principal and the decree holder is not entitled to the further interest on Rs.60 crore.

21. Even if Rs. 60 crore is first appropriated towards interest and then towards principal, the judgment debtor is entitled to refund of approx. Rs.59.40 crore since the security amount deposited by the judgment debtor is much higher than the purported claim of the decree holder.

22. The decree holder is not entitled to interest on the legal cost of Rs.50,00,000/- awarded by the Arbitral Tribunal.

23. With respect to the direction contained in para-133 of the award, the entire

drawings and other documents were to be handed over by the decree holder to the judgment debtor within 90 days from the date of the award i.e. 9th November, 2017. However, the decree holder has not complied with the said direction.

24. The judgment debtor never challenged the direction of the Arbitral Tribunal in para-133 of the award whereby the decree holder was directed to hand over the entire drawings and all other documents related and connected with the project within 90 days.

25. The decree holder never provided all the final drawings and documents as alleged by them.

26. The decree holder opposed the handing over of drawings and other documents on various frivolous and untenable grounds which cannot be gone into and raised in execution proceedings as the Executing Court cannot go behind the decree/award.

27. The judgment debtor seeks refund of Rs.62.6 crore subject to the re-conciliation of the account towards the excess security deposit and the decree holder be directed to handover all the documents, designs and drawings relating to the project in terms of the directions of the Arbitral Tribunal in para-133 of the award.

Findings

28. The decree holder is entitled to the principal amount of Rs.60.53 crore along with interest therein from the judgment debtor. Vide order dated 24th September, 2018, this Court directed Rs.60 crore to be released to the decree holder. According to the decree holder, the amount of Rs.60 crore received by the decree holder has to be first appropriated towards interest and thereafter towards the principal under Order XXI Rule 1 of Code of Civil Procedure whereas according to the judgment debtor, the amount of Rs.60 crore released to the decree holder was towards principal amount.

29. Law in this regard is well settled that the general rule of appropriation of the decretal amount is that the amount deposited by the judgment debtor has to be first adjusted towards interest and cost and thereafter, towards the principal amount. Reference be made to Gurpreet Singh v. Union of India, (2006) 8 SCC 457, Bharat Heavy Electricals Ltd. v. R.S. Avtar Singh, (2013) 1 SCC 243 V. Kala Bharathi v. Oriental Insurance Company Ltd., Branch Chitoor, (2014) 5 SCC 577. Reference be also made to United India Insurance Co. v. Kanwar Lal, Review Pet.391/2013 in MAC.APP.385/2007 decided on 30th May, 2014 and Brijesh Kumar Verma v. Aurangjeb, FAO 345/2016 decided on 24th May, 2017 in which this Court considered the aforesaid three judgments and summarized the principles laid down therein.

30. Following the principles laid down in the aforesaid judgments, the decree holder's contention is accepted that Rs.60 crore released to the decree holder

shall be appropriated first towards the interest and thereafter, towards the principal.

31. The decree holder is claiming the exchange rate of EURO 23,717,737 on the date of the payment whereas according to the judgment debtor, the exchange rate has to be on the date of the filing of claim petition in terms of Para 91 of the award.

32. The Arbitral Tribunal has given a clear finding that the amount of EURO 23,717,437 would be of the value of exchange rate as prevalent on the date of filing of the claim petition. This finding was not interfered by the Supreme Court and has attained finality. This Court cannot go behind the award.

33. There is merit in the contentions urged by the learned senior counsel for the judgment debtor. There is a clear unequivocal finding of the Arbitral Tribunal that the amount of EURO 23,717,437 would be of the value of exchange rate as prevalent on the date of filing of the claim petition.

34. There is no merit in the claim of the decree holder that the date of the conversion should be taken as the date of payment since the rate of interest awarded by the Arbitral Tribunal has been reduced by the Supreme Court and the EURO amount was payable to the decree holder in EURO. All contentions of the decree holder in this regard are rejected.

35. The decree holder is claiming interest on the legal cost of Rs.50,00,000/- which has not been awarded by the Arbitral Tribunal. The decree holder is, therefore, not entitled to the interest on legal cost of Rs.50,00,000/-.

36. The decree holder is directed to file the proof of handing over of the drawings and other documents to the judgment debtor along with the affidavit in support within two weeks. The response thereto be filed within two weeks thereafter.

Conclusion

37. The Accounts Officer of this Court shall compute the balance amount payable to the decree holder in terms of this order. Both the parties shall furnish fresh computation of the amount on affidavit within one week which shall be considered by the Accounts Officer. The authorized representatives of both the parties are permitted to assist the Accounts Officer in computing the amount.

38. List before Joint Registrar on 17th January, 2020. The Joint Registrar shall examine the computation of the Accounts Officer, determine the balance amount to which the decree holder is entitled and pass an order for release of the balance amount to the decree holder. The excess amount, if any, to be refunded back to the judgment debtor.

39. Both the parties are permitted to give the particulars of their bank accounts to the Joint Registrar whereupon the Joint Registrar shall direct the Registry to release the respective amounts to both the parties by transferring the same to their respective bank accounts within two weeks of the order of release.

40. List before this Court on 19th February, 2020 for consideration of the contentions of the parties relating to the return of drawings.

41. Copy of this judgment be given dasti to learned counsel for the parties under signature of Court Master.