
(2009) 05 DEL CK 0301
In the Delhi High Court
Case No : FAO (OS) 210 of 2002

State Trading Corpn. of India Ltd

APPELLANT

Vs

Universal Paper Export Co. Ltd.

RESPONDENT

Date of Decision : 13-05-2009

Acts Referred:

Citation : (2009) 05 DEL CK 0301

Hon'ble Judges : Valmiki J Mehta, J; Mukul Mudgal, J

Bench : Division Bench

Advocate : Rakesh Tiku and Manjusha Wadhwa, for the Appellant; V. Lakshmi Kumaram, A.R. Madhav Rao and Tarun Jain, for the Respondent

Final Decision : Allowed

Judgement

Mukul Mudgal, J.—This appeal challenges the judgment of the learned Single Judge dated 14th May, 2002 affirming the Award dated 8th May, 1997 given by the arbitral tribunal. The order dated 20th November, 2002 passed in this appeal reads as follows:

In this appeal, the appellant's case is that the amount of interest should be 6% per annum on the awarded amount which works out to US \$ 17,56,598.30 Paisa as on 31st March, 2002. Counsel for the respondent says that at least this much amount should be released alongwith the principal amount in favour of the respondent. We order accordingly. The interest as admitted and the principal amount be released in favour of the respondent within four weeks from today.

To come up for arguments on the question of interest and cross-objections on 12th May, 2003.

2. This order was followed by an order dated 19th February, 2003 which reads as follows:

CM No. 190/2003 & FAO (OS) No. 210/2002

Appeal admit.

By this application, the appellant is trying to bring totally new ground which was neither taken before the Arbitrator nor before the learned Single Judge nor in the appeal. It appears that this application has been filed in order to flout the order of this Court. So much so, in the presence of the counsel for the appellant, the order of 20th November, 2002 was passed when the appellant had admitted that interest at the rate of 6% per annum on the awarded amount which worked out to US \$ 17,56,598.30 upto 31st March, 2002 would be paid alongwith the principal amount. Thereafter, the counsel appeared on 3rd February, 2003 and sought two weeks time to comply with the order of this Court. But instead of complying the order, the present application has been filed. It is nothing but a malafide intention on the part of the appellant not to comply the order of this Court and not to make payment to the respondent. It is in this background that we are dismissing this application with cost of Rs. 10,000/-. Since the order has not been complied with, therefore the stay granted vide order dated 17th July, 2002 is vacated.

Application dismissed.

Dasti.

3. On 19th May, 2003 the following order was passed by this Court:

CM No. 495/2003 in FAO (OS) 210/2002

The cost of Rs. 10,000/- imposed by the order dated 19th February, 2003 has not been deposited by the appellant. Mr. Tikku says that as per his information the costs has been deposited in the Delhi Legal Services Authority. He further says he will check up, and if costs has not been deposited, it will be deposited within two days in the Delhi Legal Services Authority.

The interim order dated 17th July, 2003 is restored subject to appellant's deposit of costs.

Counsel for the applicant further says that the principal amount alongwith 6% interest amounting to Rs. US 16,26,501.94 has been paid on 31st March, 2002. In this view of the matter further execution stayed.

The appeal be listed for arguments on 22nd September, 2003.

4. In the order dated 19th May, 2003 it was recorded that the sum of USD 16,26,501.94 has been paid on 31st March, 2002. We have now been informed that the amount directed to be paid to the present respondent under the Award has already been paid to the respondent by the appellant on or about 24th December, 2002 and which amount is the awarded amount along with interest at the rate of 6% per annum.

5. In view of the law laid down in FAO (OS) 124/2006 titled M.M.T.C. v. Al Bamar Company Ltd., and in particular paragraph 10 which reads as follows:

10. That leaves us with the issue with regard to the interest and in fact was the

only issue seriously urged before us by the counsel for the appellant. As per the award, the respondent has been granted its claim of US Dollars 52,913.97 along with interest at International Lending Rate (LIBOR) of 7%. We are inclined to interfere with this part of the award and the judgment of the learned Single Judge whereby interest has been granted at 7%. We find that in international transactions interest at 7% is indeed on the higher side more so, when the appellant is already prejudiced by the increase in the value of the dollar as compared to the Indian rupee. Also, internationally, and of which we take judicial notice, that the LIBOR rate has fluctuated in the intervening period and is presently around 3%. From January, 2002, till 2009, the LIBOR rate has fluctuated from around 3% in 2002 to 6/7% during 2006-2007 and thereafter came down again to about 3% and even less. Therefore, considering the facts and circumstances of the case, and more particularly the trend in the reasoning in the recent judgments of the Hon''ble Supreme Court in reducing the interest granted in the award on account of passage of time from the date of passing of the award till the time the matter comes up in the court, we reduce the rate of interest as granted under the award from 7% to 3 1/2% . The relevant judgments of the Supreme Court on this issue are the judgments of *Rajendra Construction Co. v. Maharashtra Housing and Area Development Authority and Ors.* 2005 (6) 678, *McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others*, , *Rajasthan State Road Transport Corpn. Vs. Indag Rubber Ltd.*, and *Krishna Bhagya Jala Nigam Ltd. Vs. G. Harischandra Reddy and Another*, .

6. no further orders are required to be passed in this appeal and the appeal stands disposed of in terms of said FAO (OS) 124/2006 by granting interest @ 6% per annum and payment at which rate has already been made to the respondent along with the principal amount. We make it clear that interest would be payable to the respondent for the period from 20th December, 2002 and till the amount has been credited in the bank of the respondent by the bank of the appellant.

7. The appeal is accordingly disposed off.