

M/S.Associated Construction Co vs Union Of India on 15 February, 2023

Author: Yashwant Varma

Bench: Yashwant Varma

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IN THE HIGH COURT OF DELHI AT NEW DELHI

OMP (ENF.) (COMM.) 122/2021

M/S.ASSOCIATED CONSTRUCTION CO Decree Holder

Through: Dr. Swaroop George and Mr.
Tanmay Cheema, Advs.

versus

UNION OF INDIA

Through:

..... Judgement

Mr. Ruchir Mishra, Mr. S
Kr. Saxena, Mr. Mukesh K
Tiwari, Ms. Poonam Shukl
and Ms. Reba Jena Mishra
Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

% 15.02.2023

1. The solitary issue which survives for consideration stands duly encapsulated in the order dated 30 January 2023. The said order, for the sake of convenience, is extracted hereinbelow:-

" Undisputedly the principal amounts which are payable under the Award dated 26 June 2015 have already been paid and liquidated by the judgment debtor. The sole issue which now survives is with respect to the payment of interest on the amounts awarded by the Arbitral Tribunal for the period commencing from the date when the award was pronounced and running upto the date when the amounts declared as payable thereunder was ultimately paid by the judgment debtor.

Learned counsel appearing for the execution petitioner would submit that in light of the provisions specifically enshrined in Section 31(7)(b) of the Arbitration and Conciliation Act, 1996, interest on the amounts as awarded is liable to be paid mandatorily unless the Arbitral Tribunal directs otherwise. In view of the aforesaid, it was his submission that the judgment debtor is liable to pay interest in terms thereof. Learned counsel had also placed reliance on the judgment rendered by a learned Judge of the Court in Manoj Cablecompany vs. Union of India [MANU/DE/3

699/2018] in this respect.

In order to enable learned counsel appearing for the again on 15.02.2023 as part heard in the category of "End of Board". "

2. As is evident from the aforesaid recordal of submissions, the principal question which now survives is whether the Execution Petitioner is entitled to interest in terms as envisaged under Section 31(7)(b) of the Arbitration and Conciliation Act, 1996. Undisputedly, Section 31(7)(b) mandates that the sum directed to be paid by an Arbitral Tribunal shall, unless the award otherwise directs, carry interest @ 2% higher than the current rate of interest prevalent on the date of the Award.

3. The claim itself was quantified over twelve items of which admittedly Claim No.11 related to the liability of the respondents to pay interest on all of the claims which stood raised. It is thus candidly admitted by the respondents that Claim No.11 was a compendious issue which stood framed and related to the liability to pay interest on all the amounts that the Tribunal may ultimately award under respective heads.

4. It is the submission of the respondent that since the Execution Petitioner had specifically claimed interest for the past, pendente lite and the future periods and the Tribunal chose not to frame directions for any future interest being payable, it must be understood as constituting a refusal to award interest for the future period. It was submitted that the Arbitral Tribunal has while deciding Claim No.11 specifically provided for the payment of interest even for the future period in respect of all claims except Claim Nos. 2 and 3. It was in the aforesaid light that learned counsel would contend that the refusal to pay future interest is palpably evident and manifest since paragraph 226 of the Award does not make provisions for the payment of future interest in respect of Claim Nos. 2 and 3.

5. This Court finds itself unable to countenance the aforenoted submissions for the following reasons.

6. Claim No.2 as laid by the Execution Petitioner was in the following terms:-

"Claim no. 2:

Release of Bank Guarantee of 700,000/- and payment of interest @ 18% P.A. withholding of Bank Guarantee beyond the contractual stipulated date of completion

Amount of Claim: Guarantee 7,00,000.00

Interest: 1,89,0

Revised Amount: 2,70,339.00

7. As is evident from a reading of the claim as raised, the Execution Petitioner had prayed for the release of a Bank Guarantee and payment of interest @ 18% per annum. The aforesaid claim was ultimately ruled upon by the Arbitral Tribunal and the following conclusions came to be recorded:-

"151. The delay in finalization of final accounts is attributable to UOI as there has been delay on their part in finalization of deviation orders. I find the there has not been abnormal delay in release of two BGBs for 10.00 Lakhs each but definitely there has been delay in release of BGB for 7.00 Lakhs consequent to delay in payment of final bill which was supposed to be paid within a period of 9 months from date of completion of work i.e. 11 Nov 2012. The final bill has actually been paid on 25 Jul 2013 and BGB for 7.00 Lakhs released on 21 June 2013. I consider 12% Simple Interest as a reasonable compensation for delayed period which works out to 50,630.00.

152. The Claim is thus partially sustained and I award a sum of 50,630.00 (Rupees Fifty Thousand Six Hundred Thirty only) in favour of Contractor against this Claim."

Significantly while recording its conclusions in respect of Claim No. 2, the Arbitral Tribunal rendered a finding that the Execution Petitioner would be entitled to simple interest @12%.

8. Insofar as Claim No. 3 is concerned, it reads as under:-

Claim no. 3:

Damages due to delay in payment of RAR's and Final Bill and restricting the amount of RAR @18% PA.

Amount of Claim: 92,289.60

Revised Amount: 7, 09,009.92"

9. The Arbitral Tribunal upon due consideration of the submissions addressed by respective sides decided the aforesaid claim in the following terms:-

"158. I have heard, examined and considered the submissions and arguments of both the parties. It is an admitted fact that finance plays a very important role in any business. Timely running payments are definitely considered by Contractors while submitting their tenders. It is a fact that the periodicity of RARs is 15 days and no period has been stipulated in the conditions of contract for payment of RAR after its submission by Contractor. I consider 5 days as a reasonable period for payment of RAR after submission of contract and any delay beyond this period will attract necessary compensation to Contractor by way of interest for the delay period. I also consider 12% Simple interest per annum for the delayed period as a reasonable compensation. Similarly Contractor is required to be compensated for delay in payment of final bill beyond 09 months of completion.

159 In view of above, claim is partially sustained and I award a sum of 2, 19,359.00 (Rupees Two Lakhs Nineteen Thousand Three Hundred Fifty Nine only) in favour of Contractor against this Claim."

10. The issue of interest was considered by the Arbitral Tribunal under the heading of Claim No.11. While dealing with the said question, the Arbitral Tribunal came to record the following conclusions:-

"218. Contractor stated that the amounts sought under Claims 1 to 6 are the legitimate entitlements of the Claimant that have been illegally blocked by the Respondent. Therefore, the Respondent is also liable to pay interest @ 18% per annum on the aforesaid amounts for the pre-reference as well pendente lite & future period. The principle regarding the power of the Arbitrator to award interest has been long settled by the Hon'ble Supreme Court in catena of judgments. Further, the principle has also been granted statutory recognition in the form of a specific provision in the Arbitration and Conciliation Act 1996 whereby the Arbitrator have been granted power to award past, pendente lite and future interest.

The Claimant therefore most respectfully prays for an award of interest 18% interest per annum on the amounts claimed under Claim nos. 1 to 12 for the pre-reference as well pendente lite & future period.

219. UOI stated that none of the claims preferred by the Claimants is legitimate as contended by them. The Respondents pleadings in defence here in before indisputably establish that all the claims made by the Claimant are frivolous, afterthought, non contractual, farfetched and not maintainable in the eyes of law. It is brought out that the amount of the most of the claims have been inflated/exaggerated, which also proves that there had been no actual loss suffered by the Claimant and the claims are just after thought and fabricated to draw more benefits in his favour. UOI further added that no amount is admissible as per terms of the contract and the Respondent has not unduly/ willfully withheld any amount thereof and has not desired any interest/ benefit on this amount It is also highlighted that this amount pertains to this work contract and not to debit agreement. The payment of any interest is also not covered as per the terms of the contract agreement. Therefore, the question of any interest as claimed by the Claimants does not arise.

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224. I have heard, examined and considered the submissions and arguments of both the parties. There is no provision in the contract which debars the Claimant to claim past, pedente lite and future interest. Condition 51 of IAFW-2249 (GCC) stipulates that contract shall be governed by Indian Laws for time being in force. Claim and award of interest in arbitral references is justified where legitimately due payments of

one party are unauthorized held back or denied or delayed by the second party thereby inflicting financial injury. Hon'ble Supreme Court of India in case of Secretary Irrigation Department Government of Orissa versus GC Roy & Ragunath Mohapatra (AIR 1992 SC 732) after critical analysis had held that in situations where agreement does not provide for grant of interest nor does it prohibit such grant, the interest may be awarded on the following principle:-

(a) A person deprived of the use of money to which he is legitimately entitled has a right to compensation for deprivations call it by any name it may be called interest, compensation or damages. The interest is an implied term of the agreement between the parties and therefore when the parties refer all their disputes or refer the disputes as to the interest as such to the arbitrator, he shall have power to award the same.

(b) An arbitrator is an alternative forum of resolution of disputes arising between the parties and hence arbitrator has powers to award the interest to avoid the multiplicity of proceedings.

India An arbitrator is the creature of an agreement and hence open to the parties to confer upon him such powers.

exercised by the Arbitrator

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226. I have examined the circumstances leading to dispute in the light of above analysis. Keeping in view the above aspect I make the following award: -

(a) Past & Pendent elite interest is awarded on the amount of arbitral award against claim nos. 1(A), 1(B), 1(C), 1(D) & 1(E), 1(a), 1(b), 1(c), 1(e), 1(f), 1(g), 1(h), 1(j), 1(1), 1(m), 1(p) and 5 at the rate of 12% (TWELVE PERCENT) Simple Interest per annum w.e.f. 21 Nov 2012 a day after due date of payment of final bill to date of award.

(b) Since the net award is in favour of Contractor, a period of three months is allowed to Union of India for making payment in terms of this award. If the payment is not made by this date, then the awarded amount under (a) above in favour of Contractor shall carry future interest @12% (TWELVE PERCENT) per annum from a day after date of publication of award to the date of actual payment."

11. As would be evident from the conclusions recorded under Claim Nos. 2 and 3, the Arbitral Tribunal had categorically found that the Execution Petitioner would be entitled to interest @ 12%. While recording those findings, the Arbitral Tribunal does not specify whether the said interest is

liable to be paid for the past, pendente lite or the period falling between the date of the award and when the amounts may ultimately be paid by the respondent. However, those conclusions would have to necessarily be considered and understood in light of the original claim which had been laid before it by the Execution Petitioner and in terms of which interest had been sought for the past as well as pendente lite and future periods.

12. While framing its ultimate conclusions in respect of Claim No.11, in paragraph 226 the Arbitral Tribunal while dealing with the question of past and pendente lite interest, has clearly referred to Claim No. 1(a), 1(b), 1(c), 1(d), 1(e), 1(f), 1(g), 1(h), 1(i), 1(j), 1(k), 1(l), 1(m), 1(n), 1(o), 1(p) and 5. It, however, fails to make any reference to Claim Nos. 2 and 3. Insofar as the issue of payment of interest for the period beyond the pronouncement of award and the date of actual payment is concerned, it has in paragraph 226, provided that the respondent would have a period of three months to make payments in terms of the Award and that in case it fails to do so, the Claimant / Execution Petitioner would be entitled to interest @ 12% per annum from the date of publication of the Award to the date of actual payment.

13. From the aforesaid recordal of facts it is manifest that the Tribunal does not appear to have principally ruled out the payment of interest post the award having been rendered. The directions framed in paragraph 226 of the award would also have to be read in conjunction with the findings that the Tribunal chose to return while dealing with the claims individually. Undisputedly, while recording its conclusions with respect to Claim Nos. 2 and 3 the Tribunal had awarded interest @ 12% p.a. While the Tribunal does use the phrase "delayed period"

while recording its conclusions in respect of those claims, it fails to, at least categorically, proceed to refuse interest for the period post the pronouncement of award.

14. More significantly, while framing its ultimate directions in paragraph 226, it significantly omits to refer to Claim Nos. 2 and 3. The question which therefore arises is whether this is liable to be read as the Tribunal having otherwise directed that interest for the future periods would not be payable insofar as those claims are concerned.

15. The Court, at the outset, notes that if the submissions addressed on behalf of the respondents were to be accepted, it would unmistakably lead to an inherent incongruity springing into existence between the individual findings returned in respect of Claim Nos. 2 and 3 and the ultimate conclusion on the subject of interest as set forth in paragraph 226 of the award. The Court is of the considered opinion that it would be wholly incorrect to interpret or construe the award in the manner as suggested by the respondent.

recording its conclusion in respect of Claim Nos. 2 and 3, the award of interest @ 12 % was neither specified nor confined to the past and pendente lite period only.

16. The submission that the Arbitral Tribunal having refused to specifically award interest in respect of Claim Nos. 2 and 3 and thus the Execution Petitioner being disentitled for the same, in any case,

clearly flies in the face of Section 31(7)(b). As was noticed hereinabove, clause (b) of Section 31(7) mandates that any sum which is directed to be paid by and in terms of an arbitral award would carry interest unless the award otherwise directs. The expression "otherwise directs" would, therefore, clearly be liable to be construed as referring to a specific refusal to award interest for the future period. A mere or perceived silence on the part of the Arbitral Tribunal to deal with the issue of future interest cannot be understood as being a refusal of that relief to the claimant. In fact, it is such a situation which is ultimately taken care of by Section 31(7)(b). In fact, the said provision mandatorily commands the payment of interest for the period between the date of the award and when the amounts may be ultimately paid unless there be a direction of the Tribunal to the contrary. The interest under Section 31(7)(b) is thus a component which becomes payable by operation of law except where the Tribunal may have specifically recorded that interest for the future would not be liable to be paid. The Court thus comes to the firm conclusion that unless there be a specific recordal of reasons for refusal of future interest in the Arbitral Award, the issue would clearly and unmistakably be governed by Section 31(7)(b) and consequently the claimant before the Arbitral Tribunal would be entitled to claim interest for the future period.

17. The objections as raised on behalf of the respondents, for reasons aforementioned stand negated. The respondents are consequently held liable to pay simple interest @ 12% p.a. on amounts awarded under Claim Nos. 2 and 3.

18. The Court notes that while framing its ultimate directions, the Tribunal had provided that the moneys payable in terms of claims other than 2 and 3 would carry interest only if the Union failed to pay the same within a period of three months. However, as was noticed hereinabove, the award is silent when it comes to the payment of future interest in respect of Claim Nos. 2 and 3. The payment of interest insofar as those claims are concerned, would therefore have to be strictly in accordance with Section 31(7)(b) of the Act. The respondent shall consequently pay interest on the sums quantified in respect of Claim Nos. 2 and 3 from the date of the award till the date of actual payment.

19. Let the instant Execution Petition consequently be called for reviewing progress on 21.03.2023.

YASHWANT VARMA, J.

FEBRUARY 15, 2023 bh