

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

CIVIL REVISION PETITION No.60 of 2024

ORDER: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. Atul Chitale, learned Senior Counsel representing Mr. Vimal Varma Vasi Reddy, learned counsel for the petitioner.

Mr. Srinivas Velagapudi, learned counsel for the respondent.

2. With consent of learned counsel for the parties, the civil revision petition is heard finally.

3. In this petition under Article 227 of the Constitution of India, the petitioner has assailed the validity of the order dated 02.11.2023 passed by the Principal Special Court in the Cadre of District Judge for Trial and Disposal of Commercial Disputes at Hyderabad (hereinafter referred to as 'the executing Court') in C.E.P.No.05 of 2021, by which the

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petition filed by the petitioner under Order XXI Rule 54 and Rule 64 of the Code of Civil Procedure, 1908, for enforcement of the arbitral award dated 08.09.2019 has been dismissed on the ground that the petitioner is not entitled to compound interest and the amount paid by the judgment debtor to the decree holder i.e., Rs.44,42,05,254.00 Ps. is in full satisfaction of the award.

4. Facts giving rise to filing of this petition briefly stated are that the parties had entered into a Memorandum of Understanding on 09.04.2014. Under the aforesaid Memorandum of Understanding, the petitioner paid a sum of Rs.15.5 crores by way of an advance to the respondent. On 09.10.2014, the aforesaid Memorandum of Understanding was terminated. The dispute between the parties was referred to arbitral Tribunal. The arbitral Tribunal passed an award dated 08.09.2019. The operative portion of the award reads as under:

“Therefore, the entitlements of the parties are as follows:

The Claimant is entitled to Rs.15.5 crores with interest at 21% p.a. from the date it was given to the date it is repaid. The

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Respondent has kept the documents of title in escrow for security purposes. The Respondent has admitted liability for Rs.10 crores and disputed only the sum of Rs.5.5 crores. Hence we direct that the Respondent pay immediately the sum of Rs. 10 crores with interest. The escrow arrangement will be limited to the disputed amount of Rs.5.5 crores only. The Claimant shall give the consent letter for release of the balance of Rs.5.5 crores simultaneously with the tender of the amount by way of DD or certified Cheque, NEFT/RTGS to a designated account by the Respondent within 3 months from the date of the award. The amount will carry interest at 21% p.a. from the date it was received till the date of exchange of the DD, certified Cheque, NEFT/RTGS with the consent letter. The Respondent's Counterclaim stands rejected. In the peculiar facts of the case, it is directed that the parties shall bear their respective costs."

5. Thus, from perusal of the aforesaid award, it is evident that the arbitral Tribunal directed the respondent to pay a sum of Rs.15.5 crores along with interest at the rate of 21% per annum. The respondent filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), namely COP.No.118 of 2019, which was dismissed on 19.03.2021 and admittedly, the award passed against the respondent has attained finality.

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6. The petitioner thereafter filed an application under Order XXI Rule 54 and Rule 64 of the Code of Civil Procedure, 1908, seeking the following relief:

“1. The Decree Holder herein filed the present CEP for enforcement of the arbitral award dated 08.09.2019 and sought for attachment and sale of the immovable property under Order 21 Rule 54 & R. 64 CPC in respect of the land admeasuring Ac. 3-28 guntas bearing Municipal No.8-2-120/120/120/A, 8-2-120/A/1 to 18 in Plot No. 19 of Jubilee Defunct Municipality, in Sy. No. 403 corresponding to new Sy. No. 129, TS No.1/1/2 situated at Road No. 10, Banjara Hills, Hyderabad for realization of Rs.56,79,87,946/-.”

7. The executing Court, after hearing the parties, by an order dated 02.11.2023, in paragraph 13 *inter alia* held as under:

“13. Hence the contention that the Decree Holder is entitled for compound interest on the awarded amount is not sustainable and this court while exercising the jurisdiction under the execution, cannot go beyond the award passed by the learned arbitral tribunal. Having considering the submissions of both the parties this court is of the view that the Decree Holder is not entitled for the compound interest as claimed and the amounts paid by the Judgment Debtor to the Decree Holder i.e., Rs.44,42,05,254/- is in full satisfaction of the award and accordingly the point is answered.”

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8. Learned Senior Counsel for the petitioner submitted that the findings recorded by the executing Court that the expression “sum” in Section 31(7) of the Act does not include “interest” is erroneous and is contrary to law laid down by Supreme Court in **Hyder Consulting (UK) Limited v. Governor, State of Orissa**¹. It is further submitted that the amount due to the petitioner under the award which has attained finality has not been properly computed.

9. On the other hand, learned counsel for the respondent submitted that the petitioner had made an application seeking execution of the award regarding payment of the principal amount plus interest at the rate of 21% per annum. It is further submitted that an amount of Rs.44,42,05,254.00 Ps. has been paid in full satisfaction of the award and therefore, the executing Court has rightly dismissed the execution petition. Learned counsel for the respondent further pointed out that the decision rendered in **Hyder Consulting (UK) Limited** (supra) was subsequently clarified by a Two-Judge Bench of Supreme Court in **Morgan**

¹ (2015) 2 SCC 189

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Securities and Credits Private Limited v. Videocon Industries Limited².

10. We have considered the rival submissions made on both sides and have perused the record.

11. Before proceeding further, it is apposite to take note of Section 31(7) (a) and (b) of the Act, which is extracted below for the facility of reference:

“31. Form and contents of arbitral award.—

(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 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.”

12. In **Hyder Consulting (UK) Limited** (supra), the Supreme Court dealt with the meaning and scope of “sum” in

² (2023) 1 SCC 602

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the context whether computation of post-award interest “sum directed to be paid by award” used under Section 31(7)(b) of the Act. The majority by an opinion has recorded in paragraphs 12 and 13 of the judgment held as under:

“**12.** It is settled law that where different language is used by Parliament, it is intended to have a different effect. In the Arbitration Act, the word “sum” has deliberately not been qualified by using the word “principal” before it. If it had been so used, there would have been no scope for the contention that the word “sum” may include “interest.” In Section 31(7) of the Act, Parliament has deliberately used the word “sum” to refer to the aggregate of the amounts that may be directed to be paid by the Arbitral Tribunal and not merely the “principal” sum without interest.

13. Thus, it is apparent that vide clause (a) of sub-section (7) of Section 31 of the Act, Parliament intended that an award for payment of money may be inclusive of interest, and the “sum” of the principal amount plus interest may be directed to be paid by the Arbitral Tribunal for the pre-award period. Thereupon, the Arbitral Tribunal may direct interest to be paid on such “sum” for the post-award period vide clause (b) of sub-section (7) of Section 31 of the Act, at which stage the amount would be the sum arrived at after the merging of interest with the principal; the two components having lost their separate identities.”

13. Judgment in **Hyder Consulting (UK) Limited** (supra) was subsequently considered by a Bench of

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two Judges in **Morgan Securities and Credits Private Limited** (supra) and it was concluded in paragraphs 23 and 24 as follows:

“**23.** The decision in *Hyder Consulting* (supra) was on the limited issue of whether post-award interest could be granted on the aggregate of the principal and the pre-award interest. As noted above, the opinion authored by Bobde, J. was limited to this aspect of post-award interest. It was in the concurring opinion of Sapre, J. that it was held that the arbitrator only has the discretion to determine the rate of post-award interest. Therefore, the issue of whether the arbitrator could award post-award interest on a *part* of the aggregate sum was not conclusively decided in the opinions forming a part of the majority in *Hyder Consulting* (supra).

24. The issue before us is whether the phrase “unless the award otherwise directs” in Section 31(7)(b) of the Act only provides the arbitrator the discretion to determine the rate of interest or both the rate of interest and the “sum” it must be paid against. At this juncture, it is crucial to note that both clauses (a) and (b) are qualified. While, clause (a) is qualified by the arbitration agreement, clause (b) is qualified by the arbitration award. However, the placement of the phrases is crucial to their interpretation. The words, “unless otherwise agreed by the parties” occur at the beginning of clause (a) qualifying the entire provision. However, in clause (b), the words, “unless the award otherwise directs” occur after the words “a-sum directed to be paid by an arbitral award shall” and before the words “carry interest at the rate of eighteen per

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cent”. Thereby, those words only qualify the rate of post-award interest.”

14. The issue involved in **Morgan Securities and Credits Private Limited** (supra) does not arise for consideration in the facts of the present case.

15. The aforesaid decision has therefore no bearing on the controversy involved in this petition.

16. During the course of submissions before us, a chart showing the computation of the amount due has been produced by learned Senior Counsel for the petitioner as well as on behalf of the respondent. However, we find that the finding recorded in paragraph 13 of the order by the executing Court has been recorded in a cryptic and cavalier manner. The relevant extract of the order is extracted below for the facility of reference:

“13. Hence the contention that the Decree Holder is entitled for compound interest on the awarded amount is not sustainable and this court while exercising the jurisdiction under the execution, cannot go beyond the award passed by the learned arbitral tribunal. Having considering the submissions of both the parties this court is of the view that

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the Decree Holder is not entitled for the compound interest as claimed and the amounts paid by the Judgment Debtor to the Decree Holder i.e., Rs.44,42,05,254/- is in full satisfaction of the award and accordingly the point is answered.”

17. Thus, it is evident that the dispute essentially is between the parties with regard computation of the amount due and payable under the award. The aforesaid issue at the first instance has to be concluded by the executing Court by well reasoned and a speaking order. Paragraph 13 of the order discloses that the aforesaid conclusion has been arrived at in a cryptic and cavalier manner and only a conclusion has been recorded.

18. Therefore, we set aside the order dated 02.11.2023 passed by the executing Court. The matter is remitted. The Executing Court is directed to re-consider the issue of the sum due under the award dated 08.09.2019 to the petitioner.

19. Needless to state that it will be open for the parties to raise all such contentions before the executing Court which are permissible to be raised in law.

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20. It is also clarified that this Court has not expressed any opinion on the merits of the claim of the parties.

21. Accordingly, the Civil Revision Petition is disposed of. There shall be no order as to costs.

As a sequel, miscellaneous petitions, pending if any, stand closed.

ALOK ARADHE, CJ

ANIL KUMAR JUKANTI, J

Date: 22.04.2024
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