

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA**

**I.A. (IB) No. 1660/KB/2022
in
C.P. (IB) No. 295/KB/2021**

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016.

In the matter of:

Reserve Bank of India

... Appropriate Regulator

versus

SREI Infrastructure Finance Limited

... Financial Service Provider

And

In the matter of:

Candor Kolkata One Hi-Tech Structures Private Limited

... Applicant

versus

**Mr. Rajneesh Sharma, Administrator,
SREI Infrastructure Finance Limited**

... Respondent

Order pronounced on: 06 September 2023

Coram:

Shri Rohit Kapoor : **Member (Judicial)**

Shri Balraj Joshi : **Member (Technical)**

Appearances (through hybrid mode):

For the Applicant : 1. Mr. Ranjan Bachawat, Senior Advocate
2. Mr. Jishnu Chowdhury, Advocate
3. Mr. S. Mitra, Advocate
4. Mr. A. Bajaj, Advocate
5. Ms. S. Singh, Advocate
6. Mr. N. Chowdhury, Advocate

For the Respondent : 1. Mr. Jishnu Saha, Senior Advocate
2. Mr. D. Ghosh, Advocate
3. Mr. S. Mishra, Advocate

ORDER

Per Balraj Joshi, Member (Technical)

1. Preamble

1.1.This Court convened through hybrid mode.

1.2.The present I.A. has been filed by Candor Kolkata One Hi-Tech Structures Private Limited praying for the following directions:

i. Set aside and/or quash the rejection by the Administrator of the claims of the Applicant;

ii. Pass appropriate orders directing the Respondent Administrator to include the claim amount submitted by the Applicant in the lists of claims and creditors within a week's time;

iii. Pass appropriate orders directing the Respondent Administrator to publish the revised list of claims on the website of SREI.

2. Brief facts of the case

2.1.The Applicant [previously operating under the name and style of Unitech Developers and Projects Limited] and the SREI Infrastructure Finance Limited (SIFL) entered into three Inter Corporate Deposit Agreements dated 12 January 2012, 16 January 2012 and 27 January 2012, whereby Rs.150,00,00,000/- (Rupees One Hundred and Fifty Crore only) was disbursed to SIFL.

2.2.According to the agreements, SIFL was to repay the amount on the expiry of 364 days from the date of advance along with a simple interest at the rate of 10.9% per annum.

2.3.SIFL failed to repay the amount and the Applicant initiated arbitral proceedings against SIFL. On 11 December 2017, the Arbitral Tribunal directed SIFL to repay the principal amount along with interest calculated at 10.9% p.a. totaling the amount to Rs.224,05,72,875/-

(Rupees Two Hundred and Twenty-Four Crore Five Lakh Seventy-Two Thousand Eight Hundred and Seventy-Five only) and Rs.1,50,00,000/- (Rupees One Crore Fifty Lakh only) towards cost within thirty days from the date of publishing of the Arbitral Award. In case of failure SIFL was directed to pay interest of 16% p.a. till the date of payment.

2.4.SIFL filed application under section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the awards and the Hon'ble High Court at Calcutta dismissed the applications on 02 September 2019.

2.5.SIFL filed appeals before the Division Bench of the Hon'ble High Court at Calcutta which were dismissed on 03 December 2019. Thereafter, SIFL challenged the dismissals before the Hon'ble Supreme Court wherein the Special Leave Petition was dismissed on 17.12.2019.

3. *Submissions of Mr. Ranjan Bachawat, learned Senior Counsel appearing on behalf of the Applicant.*

3.1.The learned Senior Counsel submitted that the instant application is filed, *inter alia* seeking quashing of the rejection of the claim of the Applicant by the Administrator. Consequently, it is also prayed that a direction shall be passed on the Administrator for including the claim of the Applicant amounting to ₹50,43,58,533 in the list of creditors.

3.2.On 22 October 2021, the Applicant had submitted its claim with all the proofs and supporting documents to the Administrator.

3.3.The Administrator has merely declared the Applicant's claim as being NIL in the list of creditors dated 30 July 2022. The Administrator has never raised any clarification or sought any further documents in relation to the claim. Hence, it is evident that the claim has been proved.

3.4. Admittedly, the Administrator has not taken a reasoned decision let alone communicate any decision regarding rejection of Applicant's claim. Therefore, the said rejection is clearly bad in law.

3.5. However, the Administrator has taken a position that he has done the verification on 05 February 2022 and the present rejection is also based on the same reasons. It has also taken a stand that it reiterates the decision taken on 05 February 2022. The Administrator continues to take this stand in direct contravention of the orders dated 30 June 2022 and 5 December 2022, whereby, this Adjudicating Authority had directed the Administrator to take a fresh decision as the verification on 05 February 2022 was nothing but adjudication.

3.6. In view of the aforesaid, the Administrator was bound to take a fresh decision. However, this has not been done by the Administrator. There is also no order or decision disclosed to show that the Administrator took any decision to reiterate the decision of 05 February 2022, though by an email dated 07 July 2022 sent by the Administrator, he stated that he was in the process of verifying the claim.

3.7. The fact of the matter is that the verification dated 05 February 2022 has already been held to be an adjudicatory act by the order dated 30 June 2022. Hence, the same is unsustainable in law.

3.8. The rejection by the Administrator is based on three premises:

- (I) start date of post award interest;
- (II) end date of post award interest; and
- (III) the interest of INR 33.33 crores paid during the terms of the Agreements.

3.9. This has led to the following questions of law:

- a. Whether the liability to pay post award interest begins from the date of the original Awards i.e., from 12 January 2018 or the date of NIL additional award i.e. from 4 April 2018.
 - b. Whether the liability to pay post award interest ceases on account of deposit of amount in Court under section 34 of the Arbitration and Conciliation Act, 1996 ('Act') for taking benefit of stay of execution proceeding.
 - c. Whether the Administrator can renege from the categorical admissions made by the company before the Hon'ble High Court?
 - d. Whether by a process of verification / determination, the Administrator can create or extinguish the right of a party which are incidence of adjudication.
- 3.10. The learned Senior Counsel dealt with the first issue i.e. the Start date for post award interest. He submitted that as per the Awards dated 11 December 2017, payment was to be made within 30 days from the date of the Award i.e., by 12 January 2018. The start date taken by the Administrator is 4 April 2018 i.e., 30 days from the date of the NIL additional Awards. The Administrator's stand is directly contrary to the Awards and the judgment dated 17 May 2018 of the Hon'ble High Court in relation to these very Awards¹.
- 3.11. The Awards in a clear and unambiguous manner provide that the liability to pay post award interest will arise from 30 days from the date of publishing of the Awards i.e., 11 December 2017.
- 3.12. The Hon'ble High Court in its judgment dated 17 May 2018 in AP No. 242 of 2018, 243 of 2018 and 245 of 2018 reported at 2018 SCC

¹ Candor Gurgaon Two Developers and Projects Pvt. Ltd. V. SREI Infrastructure Finance Limited, 2018 SCC Online Cal 2430

Online Cal 2430 @ paras. 12 and 16 has interpreted the Awards and held that the final paragraph of the Awards can be construed to mean that the date therein has been fructified into a decree on 12 January 2018. Hence, any submission to the contrary is barred by the principles of res judicata.

3.13. The Administrator has relied on sections 31(7), 33 and 34(3) of the Act and the decisions of *Prakash Atlanta JV v. National Highways Authority of India, 2016 SCC Online Del 743* and *Ved Prakash Mithal and Sons v. Union of India, 2018 SCC Online SC 3181*. The said provisions and judgments are not applicable to the present case and are of no assistance to the Administrator for the following reasons:

- A. The judgments are not on the issue of and do not at all deal with the issue of liability to pay post award interest. The judgments are only in relation to the question of limitation period for setting aside an award which has no bearing on the present case.
- B. In fact, the judgments clearly reflect that the legislative intent was behind the said provisions was only to give benefit of limitation and nothing else.

3.14. The learned Senior Counsel led us through the issue on the end date for post award interest. It is submitted that the end date for post award interest is the date on which the money was released in favour of the Applicant i.e. 07 February 2020. This is in accordance with the Awards under which the post award interest was to run until SREI Infrastructure Finance Limited (“SIFL”) pays the awarded amounts to the Applicant and hence, discharges its liability.

3.15. As per the Administrator, the end date is 14 December 2018 i.e., the date on which a deposit was made by SIFL with the Registrar of the Hon'ble High Court under section 34 read with section 36(3) of the Act.

- 3.16. This is directly contrary to the admission made by SIFL in the three applications in the execution proceedings before the Hon'ble High Court. The Administrator continues to press the said applications. In the said applications, SIFL admitted that the post award interest is payable till 23 December 2019 i.e., the date on which the Hon'ble High Court directed release of the moneys in favour of the Applicant. Hence, the stand now sought to be taken by the Administrator is wholly incorrect and without any basis in law and in facts.
- 3.17. The position of law in this regard is well settled I.e., a deposit made for the purpose of obtaining an award or decree or for obtaining stay of the execution proceedings is not regarded as realisation / payment of the decretal amount and hence, the post award interest will not stop running from the date of such deposit. Additionally, the post award interest does not stop as such deposit cannot be withdrawn unconditionally and without the intervention of the process of Court. Reliance in this regard is placed upon the *PSL Ramanathan Chettiar & Ors v. ORMPRM Chettiar, AIR 1968 SC 1047* @ Paras. 11, 12, 13, 15 and *South Delhi Municipal Corporation v. M/s. Radhey Shyam through its Sole Proprietor Sh. Radhey Shyam, 2014 SCC Online Del 4345* @ Paras. 9, 9(1), 9(ii), 10.
- 3.18. The Administrator's case now is that the liability to pay post award interest ceases from the date on which the deposit is made under section 34 of the Act and he relies on the judgments in *H.P. Housing & Urban Development Authority v. Ranjit Singh Rana, (2012) 4 SCC 505* and *Union of India v. M.P. Trading & Investment Rac. Corpn. Ltd., (2016) 16 SCC 699*. Both the said judgments are of no assistance to the Administrator as *H. P. Housing's case (supra)* does not deal with the issue in the present case. Moreover, in the said judgment, the award therein did not describe the period for grant of post award interest. This has been clearly distinguished in the case of *South Delhi Municipal*

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Corporation (supra). In both the cases, the money was withdrawn by the award holder. Both the said cases are by a two-judge bench of the Hon'ble Supreme Court. Whereas the judgment of *Ramanathan Chettiar (supra)* is by a three-judge bench and the ratio therein will be binding. Hence, the post award interest is payable till 7 February 2020.

3.19. To give more clarity, the learned Senior Counsel referred to the table as given hereinbelow:

Sl. No.	Date	Particulars
1.	11.12.2017	Date of passing three awards
2.	12.01.2018	Amount under the awards became due and payable (start date as per the Applicant)
3.	06.02.2018	Date of passing of corrective awards for typographical and clerical error.
4.	05.03.2018	Date of passing of the NIL Additional award
5.	04.04.2018	Start date as per the Administrator
6.	June 2018	Section 34 application filed by SIFL challenging the awards
7.	19.07.2018	The Hon'ble High Court directed 100% cash deposit of the principal amount by SIFL as a condition for stay of the awards. The Applicant was not permitted to withdraw the money. The manner of deposit was modified by the Hon'ble Supreme Court at the request of SIFL, to a 60% cash deposit and a deposit of the remaining 40% by way of a bank guarantee.
8.	14.12.2018	Principal amount of Rs.224,05,72,875 deposited by SIFL with the Registrar of the Hon'ble High Court.

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		End date as per the Administrator.
9.	17.12.2019	The challenge to the awards finally dismissed by the Hon'ble Supreme Court.
10.	23.12.2019	Order passed by the Hon'ble High Court in the execution proceedings for release of the deposit made by SIFL. Admittedly, interest was payable till such date as per SIFL. End date as per Administrator in its application filed before the Hon'ble High Court.
11.	07.02.2020	Money released by the Registrar of the Hon'ble High Court in favour of the Applicant in terms of the order dated 23.12.2019. End date as per the Applicant.

3.20. Due to the different start date and end date, the difference in amount of post award interest as per the Applicant and the Administrator is Rs.49,40,30,973/-. Approximately Rs.8.1. Crore is attributable to difference in start date and Rs.41.3Crore to difference in the end date.

3.21. The learned Senior Counsel submitted that the stand taken by the Administrator that Rs.33Crore paid by SIFL to the Award Holder has been ignored by the Arbitrator is ex-facie perverse as it is clearly going behind an award which has attained finality after challenge upto the Hon'ble Supreme Court. Further it is contrary to the admission made by SIFL in the three applications filed by SIFL in the execution proceeding before Hon'ble High Court being G. A. Nos. 277 of 2020, 278 of 2020 and 279 of 2020, where SIFL categorically admitted to the partial amount due and payable i.e., Rs. 55,84,91,242.65. Pursuant thereto,

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SIFL made a payment to the Applicant for Rs.22Crores. Therefore, admittedly an amount of Rs.33,84,91,242.65 is due and payable to the Applicant.

3.22. The learned Senior Counsel has submitted that considering the start date as 12 January 2018 till 07 February 2020, the total amount to be received from SIFL is Rs.299,93,74,756/- and has presented a tabulation given hereunder:

Details	Award 1	Award 2	Award 3	Total Amount
Principal Amount	60,09,356	89,94,06,57	74,02,47,94	224,05,72,87
		5	4	5
Post Award interest (from 12.01.2018 till 07.02.2020)	19,94,06,11	29,84,55,13	24,56,40,63	74,35,01,881
	3	5	3	
Cost awarded	50,00,000	50,00,000	50,00,000 + 3,00,000	1,53,00,000
Amount due and payable	-	-	-	299,93,74,75
				6
Amount received from SREI	-	-	-	249,50,16,22
				3
Balance amount due	-	-	-	50,43,58,534

3.23. The Administrator is continuing to pursue the said applications and has not preferred any amendment to the same. Therefore, the

Administrator cannot resile from the said admissions and the same is barred by principles of estoppel.

3.24. The learned Senior Counsel submitted that as held by this Adjudicating Authority in its order dated 05 December 2022, it is a settled position of law that the Administrator cannot carry out adjudication. In view of the above, the present stand taken by him that he reiterates the earlier decision is perverse, particularly as no reasons have been given by him for ignoring the said order dated 05 December 2022. It may be noted in this connection that the Administrator had filed an application for clarification where the relief prayed for by him i.e., that he need not take any further decision after his decision dated 05 February 2022 was not granted by this Adjudicating Authority by the order dated 05 December 2022.

3.25. The extent of submissions made by both parties on the legal issue only leads to the conclusion that the act of the Administrator is nothing but adjudication. An adjudicatory decision decides upon the rights of the parties which includes either conferring any right or extinguishment of a right. In the present case, the Administrator has extinguished the right of the applicant by unlawfully rejecting its rightful claim. Furthermore, the Administrator in its letter dated 05 February 2022 sought to create a new right in relation to Rs.33.33Crore by claiming the said amount was allegedly paid to the Applicant during the term of the contract. A categorical statement is made by the Administrator in the letter dated 05 February 2022 that an application for clarification in this regard is pending before the Hon'ble Supreme Court.

3.26. The statement made by the Administrator in relation to the alleged payment of INR 33.33Crore and the same being sub judice before the Hon'ble Supreme Court, is ex facie wrong and is an attempt to mislead this Adjudicating Authority. The said application for clarification filed by SIFL before the Hon'ble Supreme Court was dismissed by order 5

June 2020. Moreover, this issue was also raised by SIFL in the review petition before the Hon'ble Supreme Court, which was also dismissed by the order dated 28 April 2020. Hence, the act of Administrator under the garb of verification in its letter dated 05 February 2022, is act of adjudication and ought to be set aside.

4. *Submissions of Mr. Jishnu Saha, learned Senior Counsel appearing on behalf of the Administrator*

4.1. It is submitted that the Applicant filed its claim under Form C as a financial creditor claiming an amount of Rs.50,43,58,533/- (Rupees Fifty Crore Forty Three Lakh Fifty Eight Thousand Five Hundred and Thirty-Three only). The claims arises from three arbitral awards dated 11 December 2017.

4.2. The Administrator submits that in course of the Special Leave Application filed before the Hon'ble Supreme Court and in compliance with the order of the Hon'ble Supreme Court dated 14 September 2018 read with the order dated 03 December 2018 and 04 December 2018, SIFL deposited cash security of Rs.134,43,43,725/- (Rupees One Hundred and Thirty Four Crore Forty Three Lakh Forty Three Thousand Seven Hundred and Twenty Five only) was deposited by way of Demand Draft dated 14 December 2019 and Bank Guarantee dated 13 November 2019 for the balance sum of Rs.89,62,29,150/- (Rupees Eighty Nine Crore Sixty Two Lakh Twenty Nine Thousand One Hundred and Fifty only) on 04 December 2018. Further, the Applicant encashed the cash security on 24 January 2020 for a sum of Rs.140,26,54,572.62 (including interest accrued on security) and also invoked the Bank Guarantee by letter dated 16 January 2020.

4.3. The learned Counsel submits that the Awards accrues from the date of publishing of the Additional Award to the date on which securities were furnished by SIFL in Court i.e, from 04 April 2018 to 14 December

2018, hence the interest due and payable was Rs.24,94,70,908.60 (Rupees Twenty Four Crore Ninety Four Lakh Seventy Thousand Nine Hundred and Eight and Sixty paise). Thus, the Applicant received an excess of Rs.1,38,39,939.02 (Rupees One Crore Thirty Eight Lakh Thirty Nine Thousand Nine Hundred Thirty Nine and Two Paise). On these grounds the Administrator did not admit the claim of the Applicant.

4.4.The Applicant had filed I.A. (IB) No. 86/KB/2022 before this Adjudicating Authority seeking directions upon the Administrator to collate and include the claims submitted by the Applicant. This Adjudicating Authority directed the Administrator to collate the claims of the Applicant *vide* order dated 30 June 2022.

4.5.The learned Senior Counsel submits that in pursuance of the order dated 30 June 2022, the Administrator revised the list of claims wherein the claim of the Applicant was marked under the head “amounts under verification”.

4.6.Thereafter the Applicant sent an email dated 04 July 2022 to the Administrator asking him to comply with the directions as set out in the order dated 30 June 2022 and to collate the claims set out by the Applicant. The Administrator replied to the Applicant *via* email dated 07 July 2022, stating that the claim had been collated in accordance with the order dated 30 June 2022.

4.7.The Applicant sent another email dated 17 July 2022, *inter alia* alleging that the Administrator had failed to comply with the order. The Administrator on 25 July 2022 filed I.A. (IB) No. 734/KB/2022 seeking clarification of the order dated 30 June 2022. This Adjudicating Authority *vide* order dated 05 December 2022 held that “An IRP or RP while **collating** claim/s is not expected to admit a claim which requires proof to substantiate or evidence to support it and in terms of

regulations 10 & 11. And as per regulation 14, it will be a merely determination of a claim by IRP or RP who is qualified to perform such tasks. And therefore, it may be termed as "Expert determination" which has not attained finality as it is subject to approval by CoC. Whereas, in adjudication, there is an element of finality. Thus, a claim which is unsubstantiated or not supported by requisite details or documents is required to be dealt accordingly. IRP or RP cannot admit a claim just on the askance of it by a creditor."

4.8. The learned Senior Counsel submits that the present I.A. is not maintainable as this I.A. has been filed on the basis of the same facts and reliefs sought in I.A. (IB) No. 86/KB/2022. The issues in this I.A. are directly and substantially the issues in I.A. (IB) No. 86/KB/2022.

4.9. It is further submitted that the Administrator has verified and determined the claim of the Applicant in terms of the Code and CIRP Regulations. The Administrator has only looked into the awards to determine whether, after giving credit to all payments made to the applicant, any further sum can be due, particularly in view of the law settled by the Hon'ble Supreme Court and Hon'ble High Courts and the same does not amount to adjudication as alleged by the Applicant.

4.10. The Administrator is required to determine as to whether the claims have been correctly computed and/or have been satisfied, and for the purpose determination, the Administrator is entitled to call for evidence to substantiate any claim and is empowered to estimate the amount of the claim and revise the same. This process of verification and determination of claims is not adjudicatory but merely a mechanical process.

4.11. With respect to the claim received by the Applicant, the Administrator has verified the same and made a best estimate of the amount on the basis of the information available by him.

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4.12. In the meanwhile, the Applicant filed a Contempt Petition before this Adjudicating Authority and this Adjudicating Authority *vide* order dated 11 November 2022 rejected the same.

4.13. It is submitted that the award passed under the Arbitration and Conciliation Act attains finality on the date of disposal of the application under section 33 of the Arbitration and Conciliation Act. the learned Senior Counsel placed reliance on *Ved Prakash Mithal & Sons v. Union of India [2018 SCC OnLine SC 3181]* and *Prakash Atlanta JV v. National Highways Authority of India [2016 SCC OnLine Del 743]*.

4.14. The learned Senior Counsel further submitted that the interest payable on amount due and payable must be calculated till the date of deposit of amounts in court and placed reliance on the judgment of the Hon'ble Supreme Court in *H.P. Housing and Urban Development Authority & Anr. v. Ranjit Singh Rana, (2012) 4 SCC 505* and *Union of India & Anr. V. M.P. Trading and Investment RAC Corporation (2016) 16 SCC 699*.

4.15. The learned Senior Counsel further submitted that the amount of interest payable on the sum awarded accrues only from the date of publishing the Additional Awards to the date on which securities were furnished by SIFL in Court i.e., 04 April 2018 to 14 December 2018.

4.16. According to the Administrator, SIFL has discharged all sums due and payable to the Applicant as given hereinbelow:

Sl. No.	Particulars	Amount (INR)
1.	Amount payable under the awards	224,05,72,875/-

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2.	Add: Interest (from April 4, 2018, to December 14,2018)	24,94,70,908.60
3.	Add: Costs	1,50,00,000/-
4.	Total recoverable	250,50,43,783.60
5.	Less: Cash security	134,43,43,725/-
6.	Less: Interest on Cash security	5,83,10,847.62
7.	Less: Bank Guarantee	89,62,29,150/-
8.	Less: Amount paid by SIFL to Candor in court on 13 February 2020	22,00,00,000/-
9.	Total paid to Candor	251,88,83,722.62
10.	Excess paid to Candor	1,38,39,939.02

4.17. Hence, the Administrator has discharged all functions and duties under the provisions of the Code and CIRP Regulations thereunder and has appropriately not admitted the claim submitted by the Applicant.

Analysis and Findings

5. The fact that the awards to the Arbitral Tribunal refers to the award first passed on 11 December 2017 which were corrected and three corrective awards were passed on 06 February 2018 and three Additional Awards dated 05 March 2018 is not in dispute.
6. There are two main issues that emanate from this I.A.
 - a. Which date is to be considered to calculate interest and till which date should it be considered?
 - b. Whether the Administrator has determined and collated the claim or has adjudicated upon the claim?
7. To get a clearer understanding of the entire proceeding, it is important to note the timeline of events:

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Sl. No.	Date	Particulars	Remarks
1.	11.12.2017	Date of passing three awards	Order is annexed and marked as Annexure B at Pp. 52-111 of the I.A.
2.	12.01.2018	Amount under the awards became due and payable	Calculating thirty days from the date of order.
3.	06.02.2018	Date of corrigendum order	
4.	05.03.2018	Date of passing of the NIL Additional award	Pages 904-918 of the I.A.
5.	04.04.2018	Start date as per the Administrator	Calculating 30 days from the date of order of Additional Award
6.	June 2018	Section 34 application filed by SIFL challenging the awards	
7.	19.07.2018	The Hon'ble High Court directed 100% cash deposit of the principal amount by SIFL as a condition for stay of the awards. The Applicant was not permitted to withdraw the money. The manner of deposit was modified by the	Pages 919-922 of the I.A.

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		Hon'ble Supreme Court at the request of SIFL, to a 60% cash deposit and a deposit of the remaining 40% by way of a bank guarantee.	
8.	14.12.2018	Principal amount of Rs.224,05,72,875 deposited by SIFL with the Registrar of the Hon'ble High Court.	End date to pay interest by SIFL as per the Administrator.
9.	07.02.2020	Money released by the Registrar of the Hon'ble High Court in favour of the Applicant in terms of the order dated 23.12.2019.	End date to pay interest by SIFL as per the Applicant.
10.	08.10.2021	SIFL was admitted into CIRP	
11.	22.10.2021	Applicant filed its claim before the Administrator	
12.	02.11.2021, 19.11.2021	List of Creditors published	
13.	05.02.2022	Administrator rejected the claim	
14.	30.06.2022	Order passed in I.A. (IB) No. 86/KB/2022	Paragraphs 6.3 and 6.4

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15.	04.07.2022	Applicant resent its claim to the Administrator	
16.	07.07.2023	Email from Administrator to Applicant	Stating that “we have collated the claim and are in the process of verifying the same based on the information and records available with the Company.”
17.	30.07.2022	Updated list of creditors published	Wherein the claim of the Applicant appears to be “-“ at sl. No. 44
18.	11.11.2022	Order passed in Contempt Petition No. 13 of 2022	Paragraph 17
19.	05.12.2022	Order passed in I.A. (IB) No. 734/KB/2022	Paragraphs 6-10

8. The Applicant considers the start date for payment and calculation of interest as 12 January 2018 and the Administrator has considered the date for payment and calculation of interest as 04 April 2018.

9. The contention of the Administrator is that the date on which the orders have been corrected have to be considered and he has placed reliance on *Ved Mittal supra*. In the matter of Ved Mittal supra. The application under section 33 of the Arbitration and Conciliation Act was dismissed and it was held that the limitation period would begin from the date the application was dismissed, hence the Administrator is correct to the extent to state that the harmonious construction of the Section 33 and section 34 of the Arbitration and Conciliation Act, 1996 leaves no room for doubt that an award attains finality for the purpose of challenge only after the disposal of applications made under Section 33 of the Arbitration Act. But the same cannot be said to be true with regard to calculation of the award amount which would be due and payable.
10. In the case of *Prakash Atlanta supra*. the amount in the award amount was modified which is not the case in the present I.A. the prayer for additional interest was refused and the application under section 33 of the Arbitration and Conciliation Act was disposed of.
11. Thus, we are of the view that the date for calculating the payment of principal and interest would be 30 days after the initial order as specified in the order itself.
12. Secondly, which date would be considered to be the end date i.e. the date from which SIFL does not have to pay interest.
13. Paragraphs 6.3 and 6.4 of the order dated 30 June 2023 reads as follows:
- 6.3. The Administrator has passed its decision on the claim of the Applicant by presiding over issues that have to be dealt with in a judicious manner. The function of the Administrator are similar to that of the Resolution Professional and it is a well settled proposition that the duty of the Resolution Professional*

is to collect, collate and admit the claims of the creditors². The Administrator does not have the power to adjudicate upon the claims.

6.4.Hence, we direct the Administrator to collate the claims of the Applicant within one week from the date of this order.

14. Similarly order dated 05 December 2022 is also clear the Administrator has the right to collect, collate, determine a claim but not adjudicate upon it.

“... It is reiterated that the Administrator does not have the power to adjudicate upon the claims.

*An IRP or RP while **collating** claim/s is not expected to admit a claim which requires proof to substantiate or evidence to support it and in terms of regulations 10 & 11. And as per regulation 14, it will be a merely determination of a claim by IRP or RP who is qualified to perform such tasks. And therefore, it may be termed as ‘Expert determination’ which has not attained finality as it is subject to approval by CoC. Whereas, in adjudication, there is an element of finality. As per Oxford dictionary, adjudication means the process of making an official decision about who is right when two groups or organizations disagree; the decision that is made. In process of determination by IRP or RP there are no two contesting parties as in case of Adjudication.*

Thus, a claim which is unsubstantiated or not supported by requisite details or documents is required to be dealt accordingly. IRP or RP cannot admit a claim just on the askance of it by a creditor.”

² Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors., (2020) 8 SCC 531, decided on 15 November 2019.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I**

**Candor Kolkata One Hi-Tech Structures Pvt. Ltd. v. Mr. Rajneesh Sharma
I.A. (IB) No. 1660/KB/2022 in C.P. (IB) No. 295/KB/2021**

15. Hence, we have been clear all along that the Administrator has no right to adjudicate the matter, then if there is a dispute with respect to the date from which the payment of interest should be made and which date it should end, the Administrator should not have taken upon himself to define these dates, particularly when there is a catena of judgements dealing with the matters involving various similar issues and choosing which judgment is suitable for the facts of the case in hand is nothing but adjudication.

16. In view of the foregoing it is seen that amount of the award is not in dispute which collectively stands at Rs. 224,05.72,875/-, however the issue involved is only about the start and end date for which the awarded interest should be calculated. It is an admitted position that the respondent also agrees that the interest awarded by arbitrator is payable and there is no quarrel on the issue save and except the period for which it is to be paid. This is the root cause of differing perceptions between the parties. The factual scenario, which evolves based on the submissions made and the pleadings is as follows:

As per the Applicant		As per Administrator			
		Version -I		Version -II	
Start date	End date	Start date	End date	Start date	End date
12.01.2018	7.2.2020	4.4.2018	23.12.19	4.4.2018	14.12.2018

17. Thus the start dates are 12.01.2018 and 4.4.2018 claimed by the competing parties and the issue is whether the date of start has to be the date of the original award or the date of the modified or the corrected award. In this regard we refer to the provisions of Section 33 of the Arbitration and Conciliation act 1996 which provides as under:

33. Correction and interpretation of award; additional award.—

(1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.

18. The relevant part of Section 31 is reproduced for clarity, it provides :

*“ 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.***

19. A conjoint reading of the provisions lead us to say that contention of the respondent regarding the start date cannot be taken to be correct as there was a ‘nil’ award passed on 4.4.2018 and therefore the relevant date as per 31(7)(b), on which the current rate of interest prevalent on the date of award remains the date of the original award as no correction to the rate of interest has been made in the additional award as well. Thus the start date remains 12.01.2018.

20. For the end date we rely on the decision of the Hon’ble Supreme Court of India in *P.S.L. Ramanathan Chettiar v. O.R.M.P.R.M. Ramanathan Chettiar, (1968) 3 SCR 367 : AIR 1968 SC 1047*, where in Para 15 it has been held that :

15. The last contention raised on behalf of the respondent was that at any rate the decree-holder cannot claim any amount by way of interest after the deposit of the money in court. There is no substance

in this point because the deposit in this case was not unconditional and the decree-holder was not free to withdraw it whenever he liked even before the disposal of the appeal. In case he wanted to do so, he had to give security in terms of the order. The deposit was not in terms of Order 21 Rule 1 CPC and as such, there is no question of the stoppage of interest after the deposit.

21. In view of the *ratio decindi* of the above judgement, the interest does not stop running from the date of other party making a deposit in the court, as it has done so only to buy some respite from immediate execution of the award. Thus the date on which the applicant became legally entitled to draw the money without having to deposit a security would be the date upto which the interest would accrue. The said date as per the applicant is 7.2.2020. However we leave the matter of verification of this date to the Administrator and consider the claim of the applicant accordingly and if considered, the payment to the creditor shall be made in accordance with the Resolution Plan.
22. In view of the above observations and directions, **we dispose I.A. (IB) No. 1660/KB/2022.**
23. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their learned Counsel and Authorised Representative for information and for taking necessary steps.
24. Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Order pronounced on the 06th day of September 2023.
GGRB [LRA]