

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

**I.A. (IB) No. 86/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,**

... Respondents

Order reserved on: 12 May 2022

Order pronounced on: 30 June 2022

Coram:

Shri Rajasekhar V.K. : Member (Judicial)

Shri Balraj Joshi : Member (Technical)

Appearances (through video conferencing):

For the Applicant : Mr. Ranjan Bachawat, Senior Advocate

Mr. Jishnu Chowdhury, Advocate

Ms. Shreya Singh, Advocate

For the Respondent. :Mr. Jishnu Saha, Senior Advocate

Mr. Soumyajit Mishra, Advocate

ORDER

Rajasekhar V.K., Member (Judicial)

1. This Court convened through hybrid mode.
2. The present I.A. has been filed by Candor Kolkata One Hi-Tech Structures Private Limited praying for inclusion of claims submitted by the Applicant.
3. *Submissions of Mr. Ranjan Bachawat, learned Senior Counsel appearing on behalf of the Applicant.*
 - 3.1. 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.
 - 3.2. According to the agreements, SIFL was to repay the amount within 364 days from the date of advance along with a simple interest at the rate of 10.9% per annum.
 - 3.3. 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 award. In case of failure SIFL was directed to pay interest of 16% p.a. till the date of payment.

**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. 86/KB/2022 in C.P. (IB) No. 295/KB/2021**

3.4.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.

3.5.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.

3.6.The Applicant filed execution petitions before the Hon'ble High Court at Calcutta seeking execution of the awards. The Hon'ble High Court at Calcutta *vide* order dated 23 December 2019 ordered attachment of the assets as SIFL. Hence, Mr. Bachawat emphasized that the assets and bank accounts of SIFL are beyond the purview of the insolvency proceedings, he placed reliance on:

- a. **Bank of India v. Vijay Transport & Anr.¹: at para 37**
- b. **Pnd Infrastructure Pvt. Limited & Ors. Vs. Fab Leathers Ltd and Ors.² (paragraph 26)**
- c. Order of the Hon'ble Supreme Court in **Pnd Infrastructure Pvt. Limited & Ors. Vs. Fab Leathers Ltd and Ors³.**

3.7.As on 07 February 2020, the amount due including interest was Rs.299,93,74,756/- (Rupees Two Hundred and Ninety Nine Crore Ninety Three Lakh Seventy-Four Thousand Seven Hundred and Fifty-Six only) and SIFL made a part payment of Rs.249,50,16,223/- (Rupees Two Hundred and Forty-Nine Crore Fifty Lakh Sixteen Thousand Two Hundred and Twenty Three only), hence Rs.50,43,58,533/- (Rupees Fifty Crore Forty-Three

¹ (2000) 8 SCC 512 decided on 12 October 2000

² 2020 SCC Online Cal 2274 decided on 22 December 2020

³ SLP (C) No. 1044 of 2021 decided on 27 January 2021

Lakh Fifty Eight Thousand Five Hundred and Thirty-Three only) is due and payable by SIFL to the Applicant.

- 3.8.SIFL has filed three applications in the execution proceedings wherein SIFL has admitted that the amount is due and payable and has sought for waiver of the payment of interest on the sole purported ground that interest was allegedly paid during the contractual period of agreements. Mr. Bachawat argued that the Arbitral Awards were finally passed on the premise that no contractual interest was ever paid by SIFL to the Applicant.
- 3.9.By an order dated 08 October 2021, this Adjudicating Authority admitted SIFL into Corporate Insolvency Resolution Process and appointed the Respondent No. 1 as the Administrator of SIFL.
- 3.10. The Administrator called for submission of claims and the last date for submission of claims was 22 October 2021. The Applicant filed its claim before the Administrator under a letter dated 22 October 2021 *vide* email and hand delivery on 22 October 2021.
- 3.11. The Administrator published the list of creditors dated 02 November 2021 on 28 November 2021 and updated list dated 19 November 2021 on the website of SIFL.
- 3.12. The claim submitted by the Applicant was not included in the list of creditors of SIFL. The Applicant sent a letter dated 01 December 2021 to the Administrator *via* email and hand delivery but the Respondent did not pay any heed to the same. The Administrator has failed to include the claim of the Applicant.
- 3.13. Mr. Ranjan Bachawat, learned Senior Counsel submitted that when this I.A. was taken up for and the Administrator was directed to file its reply to the application, the Administrator issued an amended list of creditors indicating that the Applicant's claim was under consideration. The Administrator by its email dated 05

February 2022, rejected the Applicant's claim by adjudicating upon issues pending before the Hon'ble High Court in the execution proceedings.

3.14. The Administrator rejected the claim and inter alia observed as follows:

- a. No debt is due against SREI in favour of the Applicant as SREI had already paid interest during the contractual period.
- b. SREI's liability to pay interest commenced only on 4 April 2018 (i.e., 30 days from date of publishing of the Additional Award).
- c. SREI, deposited the following as security:
 - i. Cash security of INR 134,43,43,725/- was deposited by way of Demand Draft dated 14 December 2018, which was subsequently deposited with the Registrar of the Hon'ble High Court on 15 December 2018.
 - ii. Bank Guarantee dated 13 November 2018, for the balance sum of INR 89,62,29,150/- furnished on 4 December 2018, which was renewed from time to time.
- d. Therefore, the amount of interest payable on the Awards accrues from the date of publishing of the Additional Award to the date on which securities were furnished by SREI in court (i.e., from 4 April 2018 to 14 December 2018).

3.15. Mr. Bachawat asseverated that the Administrator adjudicated the claim in a manner which was beyond the power of the Administrator. Mr. Bachawat addressed three issues:

- a. Whether an the Administrator adjudicate upon the admitted claims submitted before it?

- b. Without prejudice to the above, if it can do so, from when will the computation of post award interest commence?
- c. what is the date / stage at which the computation of such post award interest ends?

3.16. Mr. Ranjan Bachawat submitted that the Administrator had noted that a claim of Rs.50,00,00,000/- (Rupees Fifty Crore only) was outstanding but the Administrator adjudicated upon the question of law and has determined on the point of time from when interest calculation starts and the time till which such calculation continues. The Arbitral Awards were awarded on the premise that SIFL had not paid any interest to the Applicant.

3.17. It is a well settled legal position that the Administrator acting as resolution professional, carries out administrative functions and it cannot carry out adjudicatory functions⁴. Thus, the present adjudication is clearly outside the Administrator's jurisdiction.

3.18. The Administrator has adjudicated the claim in the garb of carrying out computation.

3.19. Mr. Bachawat then led us through the Arbitral Awards dated 11 December 2017 wherein the payment was to be made within a month, hence the calculation of the period of interest in case of failure to pay the awards starts from 12 January 2018.

3.20. The directions in the Arbitral Awards are unambiguous and clear i.e., that the amounts therein would be payable within 30 days from the date of publication of the said awards i.e., by 12 January 2018. Thereafter, on such failure, the liability for post award interest begins.

3.21. The interest was to be paid till the date SIFL made complete payment of the Arbitral Award, the principal amount was realised

⁴ Swiss Ribbon Private Limited Vs. Union of India (2019) 4 SCC 17 decided on 25 January 2019, (paragraph 91).

by the Applicant only on 7 February 2020. Therefore, the post award interest must be computed till such date.

3.22. In the execution proceedings SIFL has taken the stand that the interest after the Arbitral Awards was payable till 23 December 2019 and herein, the Administrator has taken the stand that award interest is to be computed only till 14 December 2018 i.e., the date on which the security deposit was made by SIFL in the proceedings under section 34 of the Arbitration and Conciliation Act, 1996 before the Hon'ble High Court at Calcutta.

4. Submissions of Mr. Jishnu Saha, Learned Senior Advocate appearing on behalf of the Administrator

4.1. Mr. Jishnu Saha submitted that the three corrective awards were passed, all dated 06 February 2022 and the interest must be calculated from 04 April 2018, whereas the Applicant claims interest from 12 January 2018. There is a dispute whether the interest should be calculated from the original award or from the additional award.

4.2. The Hon'ble Supreme Court directed furnishing of security and to deposit 60% of the amount of the decree, with the remaining 40% of the amount to be secured by bank guarantee.

4.3. The Applicant encashed the Cash security on 24 January 2020. The only question that arises for consideration is the date from which interest starts to run and the date on which the interest stops.

4.4. Mr. Saha led us through the provisions of sections 33 and 34 of the Arbitration and Conciliation Act. Section 33 of the Arbitration and Conciliation Act permits the parties to approach the arbitral tribunal for correction or interpretation of the award. In the present case, it is not in dispute that there were three original awards passed. The obligation to pay interest commences 30 days from

this award. If an application is filed in the interregnum to correct the award, then the question is which is the date from which the 30-day period will be computed.

4.5. Section 34(3) of the Arbitration and Conciliation Act provides that an application for setting aside the award may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award, or, if a request has been made under section 33 of the Arbitration and Conciliation Act, from the date on which that request had been disposed of by the arbitral Tribunal.

4.6. The obligation of the Corporate Debtor to pay interest arises only on the expiration of the disposal of the applications.

4.7. Mr. Saha relied on **M/s. Prakash Atlanta JV v. National Highways Authority of India**⁵ and **Ved Prakash Mithal and Sons v. Union of India**⁶ in support of his contention.

4.8. Thereafter, Mr. Saha addressed us on the second question that is when does the calculation of interest stop. Interest stops upon payment. The day when money is deposited in the Court and it is beyond the power to receive the money, that date should be the date on which interest should stop running. Mr Saha placed reliance on **Union of India v. M.P. Trading & Investment Rac. Corpn. Ltd.**⁷ and **H.P. Housing & Urban Development Authority v. Ranjit Singh Rana**⁸

5. Rejoinder of Mr. Ranjan Bachawat, to the reply of Mr. Jishnu Saha.

⁵ 2016 SCC Online Del 743 decided on 08 February 2016

⁶ 2018 SCC Online SC 3181 decided on 08 August 2018

⁷ (2016) 16 SCC 699 decided on 28 September 2015

⁸ (2012) 4 SCC 505 decided on 12 March 2012

5.1. The Administrator has however carried out the adjudication on the unlawful premise that the computation of post award interest will start from 4 April 2018, i.e., from the date of the Additional Awards. In this regard, reliance was incorrectly placed on the following judgments:

- i. **Prakash Atlanta JV (supra); and**
- ii. **Ved Prakash Mithal (supra).**

5.2. The aforesaid judgments have no applicability to the present case. The cases in no manner deal with the issue at hand i.e., start date for computation of post award interest. The said decisions merely deal with the aspect of limitation period for challenging an award.

5.3. The Administrator took the pleas that interest could be calculated only till the date the deposit was made by SREI in Court, because once the money went out of the hands of SREI, it would be deemed to be deposited towards satisfaction of the Award and interest could only be calculated till such date of deposit and not thereafter. The Administrator placed on the following decisions:

- i. **M.P. Trading & Investment (supra)**
- ii. **H.P. Housing & Urban Development Authority (supra)**

5.4. Mr. Bachawat submitted that reliance on the said decisions is wholly misplaced for the following reasons:

- a. The facts of the said cases are wholly different from the instant case. The language of the Awards is explicit and clearly provides that SREI's liability will only be disturbed once the awarded amount is paid to the applicant.
- b. In this case, SREI has categorically admitted that post award interest is to be paid till 23 December 2019 and not only till 14 December 2018 [as now being contended].

c. The judgments are per incuriam because they do not consider the decision of a larger Bench in **PSL Ramanathan Chettiar & ors Vs. ORMPRM Chettiar**⁹ (paragraphs 11, 12, 13, 15). Further, in the decision of **M P Trading** (supra), it was the choice of the concerned party to not withdraw the amount and instead keep it in a fixed deposit. Accordingly, the question of continuing interest calculation does not arise. In fact, in case of **PSL Ramanathan Chettiar** (supra), the Hon'ble Supreme Court held that depositing money in Court to obtain a stay of the proceedings did not amount to passing title to the decree holder and thus could not be treated to be in satisfaction of a decree. Similarly, in the facts of this case, the cash deposit and the bank guarantee as mentioned above, were made to obtain a stay of the execution proceedings and such money was not towards satisfaction of the awarded sums. In any event assuming that the cash amount could be withdrawn, the amount deposited as a Bank Guarantee could not be withdrawn and cannot therefore be treated as a deposit.

6. Analysis and Findings

6.1. We have heard the learned Senior Counsel and have perused the records.

6.2. It is not in dispute that the Applicant was awarded with three arbitral awards against the Financial Service Provider. Now the matter to be adjudicated is whether the Applicant is a creditor of the SIFL or not. The Applicant has filed petition for execution of the Arbitral Awards in full which is still pending. Once, moratorium kicks in, all the pending proceedings come to a stand

⁹ AIR 1968 SC 1047 decided on 04 March 1968

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still and so have the execution proceedings. On perusal of the awards, it is clear that the Applicant may be creditor of SIFL.

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 creditors¹⁰. 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.

7. In view of the above observations and directions, **we dispose I.A. (IB) No. 86/KB/2022 in C.P. (IB) No. 295/KB/2021.**

8. 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.

9. Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**BALRAJ
JOSHI**
Balraj Joshi
Member (Technical)

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BALRAJ JOSHI
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**Rajasekhar
V K**
Rajasekhar V.K.
Member (Judicial)

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Order pronounced on the 30th day of June 2022.

GGRB [LRA]

¹⁰ Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors., (2020) 8 SCC 531, decided on 15 November 2019.