

7.5.2018

Present: Mr.Anand Sharma, Advocate, for the petitioners.

Mr. R.L. Sood, Senior Advocate, with Mr. Sanjeev, Advocate, for the respondents.

OMP No. 42 of 2018

By way of present application filed under Section 151 of CPC, a prayer has been made for extension of time to deposit the balance amount on behalf of the applicant/petitioners. Aforesaid prayer, having been made by the applicant has been opposed by the non-applicant/respondent by way of detailed reply.

2. Applicant has averred in the application that it may be given some more time to deposit award amount save and except claim No. 6-A (interest amount) and claim No. (7) (litigation expenses), because an amount of Rs.4,54,690/- on account of refund of deposit withheld from the running bill of 3/2008, stands already paid to the non-applicant/respondent. Applicant has also claimed that earnest money in the shape of SFDR amounting to Rs. 5,21,340/- and security deposit amounting to Rs. 12,97,076/-, have been also released on 25.8.2012 and 29.8.2012, respectively. Applicant has further averred that C-CC-14 was billed and already paid for gross of Rs. 10,44,163/- (net amount Rs. 8,87,204/-) on 5.5.2008.

3. Before adverting to the correctness of the averments contained in the application, it may be noticed that vide order dated 16.3.2016, this Court while entertaining the objections having been filed by the present applicant under Section 34 (3) of the Arbitration and Conciliation Act, 1996, stayed the operation of impugned award dated 14.11.2015, passed by the learned Arbitrator in Arb. Case No. 38/14, subject to deposit of award amount alongwith up-to-date interest in the Registry of this Court within a

period of six weeks. Vide aforesaid order, this Court specifically clarified that in the event of failure on the part of the applicant/petitioner to do the needful within the stipulated period, interim order shall stand vacated automatically.

4. Perusal of various orders passed by this Court suggests that till 10.8.2016, no amount was deposited in terms of order dated 16.3.2016. However, this Court on the submissions having been made by the learned counsel representing the applicant that principal amount shall be deposited during the course of the day, granted further time with direction to the applicant to deposit amount of interest within a period of two months from the day, however, fact remains that order dated 10.8.2016, was not complied with. Subsequently, on 25.4.2017, this Court again under the impression that principal amount stands deposited in the Registry of this Court, granted six weeks' time to deposit the interest amount accrued upon the award amount. Again on 2.6.2017, this Court by way of indulgence granted further six weeks' time to deposit the interest accrued upon the awarded amount.

5. On 5.9.2017, an application bearing OMP No. 315 of 2017, came to be filed on behalf of the applicant/petitioner, praying therein for extension of time to deposit the demand draft of the award amount in terms of order dated 2.6.2017. On that day, permission was also sought to deposit Demand Draft amounting to Rs. 1,82,759/- towards interest accrued upon the award amount, but learned counsel representing the non-applicant/respondents contended that amount sought to be deposited towards interest is lesser than the actual amount and accordingly, this Court directed the applicant/petitioner to recalculate the interest and shortfall, if any, and deposit the same within a period of six weeks.

6. On 21.11.2017, learned counsel for the respondent while inviting attention of this court to the impugned award dated 14.10.2015, passed by the learned Arbitrator, strenuously argued that applicant-petitioner was under obligation to deposit an amount of Rs. 42,53,209/-, being principal amount in terms of order dated 16.3.2016, whereas applicant/petitioner only deposited a sum of Rs. 12,91,271/-. On that day, learned counsel for the petitioner informed this Court that apart from Rs. 12,91,271/-, an amount of Rs. 1,82,759/- has been also deposited by the petitioner in terms of order dated 2.6.2017. However, this Court having perused previous order dated 16.3.2016, vis-à-vis impugned award dated 14.10.2015, arrived at conclusion that interim protection granted to the applicant/petitioner vide order dated 16.3.2016 and 2.6.2017, deserves to be vacated, but in the interest of justice, granted four weeks' time as a last opportunity to the petitioner to deposit the entire award amount including interest, specifically observing therein that in the event of petitioner's failure to deposit the amount, interim order dated 16.3.2016, shall stand vacated automatically without reference to this Court.

7. Since applicant-petitioner failed to deposit amount in terms of aforesaid orders passed by this Court, present application i.e. OMP No. 42 of 2018, came to be filed before this Court, seeking therein extension of time to deposit awarded amount except the amount awarded qua claim No. 6-A and 7, as has been taken note herein above. Learned counsel for the applicant/petitioner while inviting attention of this Court to the averments contained in the application made serious attempt to persuade this Court to agree with his contention that since amount awarded qua claim No. 6-A stands already released in favour of the non-applicant/respondents

and as such, applicant-petitioner is not liable to deposit the same, whereas remaining amount in terms of award shall be deposited immediately.

8. Learned counsel was unable to dispute that amount alleged to have been released in favour of the non-applicant, was released prior to the announcement of the impugned award dated 14.11.2015. Similarly, learned counsel was also unable to point out material, if any, available on record, suggestive of the fact that factum with regard to release of aforesaid amount was ever brought to the notice of learned Arbitrator, who admittedly vide impugned award dated 14.11.2015, held non-applicant/respondent entitled to an amount of Rs. 42,53,209/- alongwith interest @ 9% w.e.f. 1.1.2008, till the realization of payment within a period of two months, failing which, claimant was held entitled to interest @ 18 % p.a. It is not in dispute that impugned award referred herein above, is under challenge before this Court and this Court vide order dated 16.3.2016, stayed the operation of the impugned award subject to deposit of entire award amount alongwith up-to-date interest.

9. In the present application, this Court is not required to see whether amount, if any, was paid to the non-applicant/respondent before passing of the impugned award or not, rather in the present proceedings, this Court is only required to see whether entire amount in terms of order dated 16.3.2016, has been deposited or not? Repeatedly, on the request of learned counsel for the applicant/petitioner, time was granted to deposit the amount, but despite that same has not been done, rather an attempt has been made to hoodwink this Court by mis-stating the facts. Though, there was a stop order passed on 16.3.2016, wherein it was categorically ordered that in the event of petitioners' failure to

deposit the amount within a period of six weeks, interim order shall stand vacated, but even then, this Court, as a matter of indulgence, repeatedly, granted time and lastly on 24.11.2017, called upon the applicant/petitioner to deposit the entire award amount including interest in terms of order dated 16.3.2016, clarifying that in the event of non-compliance, interim protection granted, shall stand vacated automatically without making reference to this Court.

10. Consequently, in view of the facts and circumstances narrated herein above, present application is dismissed being wholly mis-conceived. Though, this Court would have awarded heavy costs for misleading and wasting precious time of this court, but taking note of the fact that application has been filed on behalf of Union of India, restrains itself from imposing costs. However, in the peculiar facts and circumstances of the case, as has been discussed herein above, deems it fit to issue notice to Mr. R.K. Kalra, Deputy Chief Engineer (Commercial), C-1, who has repeatedly filed his affidavits, giving therein an impression that entire amount stands deposited in terms of award passed by the learned Arbitrator. Mr. R.K. Kalra, who is present in Court, to remain present in Court on **11.6.2018**, to explain as to why contempt proceedings be not initiated against him.

OMP No. 87 of 2018

1. By way of instant application, prayer has been made for release of amount lying deposited in the Registry of this Court in terms of various orders passed by this Court. Aforesaid prayer having been made by the applicant/respondent has been opposed by the non-applicant/petitioner by way of reply. Learned counsel for the applicant/respondent while inviting attention of this Court to the orders dated 16.3.2016, 2.6.2011, 21.11.2017 and instant order passed in OMP No. 42 of 2018, stated that the amount lying deposited in the

Registry of this Court, deserves to be released in favour of the applicant/respondent. At this stage, learned counsel for the non-applicant/petitioner states that great prejudice would be caused to the non-applicant/petitioner, in case amount lying deposited with the Registry of this Court, is released, because it would be difficult to recover the aforesaid amount, in case objections filed under Section 34 (3) are allowed by this Court.

2. Having heard learned counsel for the parties and perused record, this Court is in agreement with the learned counsel for the applicant/respondent that since interim protection granted vide orders dated 16.3.2016 and 21.11.2017, stands already vacated, amount lying deposited with the Registry, deserves to be released along with interest in favour of the applicant/respondent.

3. Consequently, in view of the averments contained in the application as well as submissions having been made by the learned counsel for the parties, application is allowed and amount lying deposited in the Registry of this Court is ordered to be released in favour of the applicant/respondent, by remitting the same directly into the bank account of the applicant/petitioner, detail whereof shall be furnished by the learned counsel for the applicant within a period of two days, subject to verification by the Accounts Branch. Application stands disposed of.

Arb.Case No. 5 of 2016

Admit.

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7th May, 2018
manjit

(Sandeep Sharma),
Judge