

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
Ordinary Original Civil Jurisdiction

EC/132/2012
M/S. B. B. M. ENTERPRISES
VS
STATE OF WEST BENGAL

Before:
The Hon'ble Justice RAVI KRISHAN KAPUR
Date: 21st April, 2025

Appearance:
Mr. Jayanta Kumar Mitra, Sr. Adv.
Ms. Nilanjana Adhya, Adv.
...for petitioner.

Mr. Anirban Ray, Adv.
Mr. Noelle Banerjee, Adv.
Mr. Ritoban Sarkar, Adv.
Mr. Arindam Mandal, Adv.
Mr. Paritosh Sinha, Adv.
...for respondent.

1. This is an application seeking enforcement of an arbitral award dated 16 September 2009 for a sum of Rs.1,25,94,512/- alongwith interest on Rs.90,60,549/- at the rate of 15% from 1 September 2003 to 2 May 2006 (interim award) and interest @ 15% on Rs.83,22,262/- from 3 May 2006 to the date of the award with further interest @ 18% till the date of payment of

the award if the awarded amount was not paid within four months from the date of the award.

2. Since the awarded sum was not paid by the State and there was no challenge to the award, the award holder filed an application being E.C. No.26 of 2010 seeking a sum of Rs.3,12,43,916.00/- as on 5 February 2010. By an order dated 17 February 2010, the Court had attached the above amount, lying to the credit of the State with the Reserve Bank of India and further directed release of the same to the award holder. Subsequently, in an appeal against the above order of attachment by the award debtor State, the Court had directed the award debtor to deposit 50% of the awarded amount i.e. (Rs. 1,56,21,958) with the Registrar Original Side. Pursuant to the above, the award debtor deposited Rs.1,56,21,958/- with the Registrar, Original Side, High Court, Calcutta.
3. Subsequently, during the pendency of the above proceedings, the award debtor had filed an application under Section 34 of the Arbitration and Conciliation Act 1996, before the Additional District Judge at Barasat which was dismissed on the ground of limitation. Being aggrieved by the order of dismissal, the award debtor filed an appeal where the Appellate Court remanded the application under section 34 to be heard on merits.

Subsequently, the application under section 34 was again dismissed by the Learned District Judge at Barasat. In an appeal against the said order, the Division Bench remanded the matter for hearing afresh. Being aggrieved by the order of remand, the award holder filed a Special Leave Petition where the Hon'ble Supreme Court *inter alia* reduced the rate of interest granted in the award from 18% to 15% and the awarded amount was directed to be paid within 3 months.

4. In view of the failure of the State to make payment in terms of the above order, the award holder was compelled to initiate proceedings for contempt.

By an order dated 30 July 2021, the Supreme Court directed as follows:

'The amount, as admitted in the counter affidavit, is Rs.4,74,03,104/-. The aforesaid amount is to be paid within a maximum period of six weeks from today. I.A. stands allowed.'

5. Pursuant to the above direction, the judgment-debtor on 7 September 2021 paid the entire amount of Rs. 4,74,03,104/.
6. Despite payment of the above amount, the award-holder has now filed a supplementary affidavit and sought to raise an additional claim of Rs.1,58,69,811/- *inter alia* on account of interest on delayed payment and interest on bank guarantee charges. Significantly, the amount deposited on 4 June 2013, being 50% of the awarded amount i.e. Rs.1,56,21,958/- lying

with the Registrar Original Side, Calcutta was withdrawn by the award holder upon furnishing of requisite bank guarantees on 21 June 2013.

7. It was alleged on behalf of the award-holder that an amount of Rs.1,29,40,137/- still remains due and payable under the award details of which are set out below:

1.	Awarded Principal as on 16.09.2009		Rs.1,25,94,512.00
2.	Pendente lite Interest		
	(a)	Interest @ 15% p.a. on Rs.90.60,549.00 from 01.09.2003 (date of service of notice for interest) to 02.05.2006 (date of interim award) i.e. for 975 days.	Rs.36,30,900.00
	(b)	Interest @ 15% p.a. on Rs.83,22,262.00 from 03.05.2006 to 16.09.2009 (date of final award) i.e. for 1233 days.	Rs.42,16,993.00
3.	"Sum" as on 16.09.2009 (date of final award)		Rs.2,04,42,405.00
4.	<u>Post Award Interest (A)</u>		
	@ 15% p.a. on Rs.2,04,42,405.00 from 17.09.2009 to 21.10.2020 i.e. for 4053 days (date of release of Bank Guarantee)		Rs.3,40,45,200.00
5.	"Sum" as on 21.10.2020		Rs.5,44,87,605.00
6.	LESS:-Release of Bank Guarantee(-) on 21.10.2020.		Rs.1,21,13,712.00
7.	Adjusted Sum as on 21.10.2020		Rs.4,23,73,893.00
8.	<u>Post Award Interest (B)</u>		
	@ 15% p.a. on Rs.4,23,73,893.00 from 22.10.2020 to 09.09.2021 (date of payment through ECS) for 323 days.		Rs.56,24,722.00
9.	"Sum" as on 09.09.2021 (date of payment through ECS)		Rs.4,79,98,615.00

10.	LESS :- Payment received through ECS (-)	Rs.4,13,60,553.00
11.	Balance Sum as on 09.09.2021	Rs.66,38,062.00
12.	<u>Post Award Interest (C)</u>	
	@ 15% p.a. on Rs.66,38,062.00 from 10.09.2021 to 31.01.2025 i.e. 1240 days @ Rs.2727/- per dav.	Rs. 33,81,480.00
13.	"Sum" as on 31.01.2025	Rs. 1,00,19,542.00
14.	Bank's Commission and charges	Rs.. 10,50,917.00
15.	Interest @ 15% on Bank Charges of Rs.10,50,917.00 from 18.03.2013 to 31.01.2025 i.e. 4338 days @ Rs.431/- per day.	Rs. 18,69,678.00
16.	Final Amount receivable from Award Debtor (as on 31.01.2025)	Rs. 1,29,40,137.00
(Rupees One Crore Twenty Nine Lakhs forty thousand one hundred and thirty seven only)		

8. It was contended by the award debtor that since the money deposited by the award debtor was withdrawn only upon furnishing a bank guarantee, there is no question of stoppage of interest on the same.

9. On behalf of the award debtor it is contended that, the claimed amount on account of the interest is wrongly based on the premise that the interest continued to run despite the amount deposited in Court being withdrawn by the award holder. Insofar as the claim of bank guarantee charges are concerned, any amount on account of the same is beyond the scope of the

award and is not liable to be entertained. As such, the award holder is not entitled to any amount on account of bank guarantee charges. The judgment-debtor has made payment of the entire amount directed in terms of the order dated 30 July 2021 passed by the Hon'ble Supreme Court. The attempt to seek any further payments in respect of the default period tantamounts to revisiting the order dated 30 July 2021 and is impermissible.

10. There is no substance in the claim on account of bank guarantee charges.

Any such claim is beyond the scope of the award and would amount to varying or modification of the award which is impermissible. The award holder having consciously chosen to withdraw the money deposited in Court cannot now claim interest thereon. The deposit into the Court is nothing but a payment to the credit of the award holder. Once withdrawn, the liability of the award debtor towards any interest under the award must cease. To award interest on the amount withdrawn would tantamount to unjust enrichment for the award-holder. It is true that the said amount was conditionally withdrawn only after furnishing of the bank guarantee but this was a deliberate commercial decision which disentitles the award holder to claim interest in terms of the award on the amount withdrawn and utilized.

11. During the hearing, Mr. Mitra, Senior Advocate appearing on behalf of the award-holder in his usual fairness submitted that even though the award-holder is entitled to interest upto date i.e. 31st March, 2025, the award holder is ready and willing to accept an amount of Rs.52,86,219/- as full and final settlement and forego the balance amount on account of interest provided that the said amount is paid by 31st May, 2025. In this connection, the award holder relied on a fresh calculation particulars of which are set out below:

1.	Total Amount as on 31.10.2020 (as per calculation of Judgement Debtor)	Rs. 4,13,60,553.00
2.	Add Interest @ 15% p.a. on Rs.4,13,60,553.00 from 01.11.2020 to 07.09.2021 i.e. for 311 days.	Rs. 52,86,219.00
3.	Sum as on 08.09.2021	Rs. 4,66,46,772.00
4.	Less:- Payment received from: Judgement Debtor through ECS.	(-) Rs. 4,13,60,553.00
5.	Balance Amount as on 08.09.2021	Rs. 52,86,219.00
6.	Add:- Interest @ 15% p.a. on Rs. 52,86,219.00 from 10.09.2021 to 31.03.2025 for 1299 days.	Rs. 28,21,428.00
7.	Final Amount Receivable as on: 31.03.2025	Rs. 81,07,647.00

12. On behalf of the State respondent, it is submitted that no amount is due and payable on the awarded amount save and except a sum of Rs.2,08,776/-. In support of such contention, it is submitted on behalf of

the State that by letters commencing from 18th December, 2020, the State had repeatedly sought for information i.e. the bank details of the award-holder but the same were not furnished.

13. In the light of above facts, there is no dispute that the State has, intentionally and despite the order of the Hon'ble Supreme Court refused to make timely payment to the award-holder. Admittedly, there had been delay in making payment of Rs.4,13,60,553/-. In such circumstances, the award holder is justified in seeking interest on account of delayed payment as stipulated in the award. The excuse of the State of not knowing where and how to make payment is absurd and rejected. In case of not furnishing any details as alleged, the State ought to have brought this fact to the attention of the Court where the proceedings were pending and taken prudent steps. There is no legal justification in not making payment within the prescribed time period and the State is not entitled to any concession of this account.

14. In view of the above, the State is directed to make payment of the amount of Rs.52,86,219/- being the balance interest component by 30th May, 2025. This is in full and final settlement of the dues of the award holder. In default, the State would pay the interest component @ 15% per annum on Rs.52,86,219/- from 8th September, 2021 till the date of actual payment in

terms of the award and the above concession granted to the State would stand withdrawn. Liberty is granted to the award-holder to file an appropriate application in accordance with law in case of default of the above directions.

15. In conclusion, it is a matter of grave concern, as to how public funds are squandered by the State. An award for a sum of approximately Rs.1.25 crores in 2009 is still being satisfied notwithstanding payment of more than Rs.6 crores (inclusive of interest). Time has its own role to play in every litigation. In commercial transactions of this nature, interest is as valuable as the principal. It constitutes the lifeline of doing business. The rate of interest which some of these awards carry i.e. 24%, 18% or even 15% are astronomical by prevalent standards. Nevertheless, the State obviously and merrily continues to delay and procrastinate payment, sometimes, despite orders of the Hon'ble Supreme Court. The commercial imprudence and miscalculation of the State leaves more than a lurking doubt as to whether or not the State or at least some of their officers are deliberately and intentionally in connivance with such contractors/award holders.

16. With the above directions, EC/132/2012 stands disposed of.

(Ravi Krishan Kapur, J.)