* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment Reserved on: 22nd December, 2025***
Judgment Pronounced on: 12th January, 2026

\+ **OMP (ENF.) (COMM.) 225/2018, EX.APPL.(OS) 553/2019, I.A. 6421/2019 & EX.APPL.(OS) 2944/2022**

SHENZHEN SHANDONG NUCLEAR POWER CONSTRUCTION COMPANY LIMITED .....Decree Holder

Through: Mr. Gourab Banerji, Senior Advocate with Mr. Anshuman Pande and Mr. Abhishek Bhushan Singh, Advocates.

versus

VEDANTA LIMITED .....Judgement Debtor

Through: Mr. Dhruv Mehta, Senior Advocate with Ms. Ranjana Roy Gawai, Ms. Vasudha Sen, Mr. Vineet Wadhwa, Mr. Keith Vargese and Mr. Shreyas Mittal, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGEMENT

AMIT BANSAL, J.

1. The present enforcement petition has been filed seeking enforcement of the Arbitral Award dated 9th November 2017 (hereinafter the "Arbitral Award").

2. Brief factual background of the case is set out below:

2.1 On 18th April 2012, notice was issued on behalf of the claimant/ decree holder invoking the arbitration clause. The statement of claim was filed on behalf of the decree holder (claimant in the arbitration) on 17th October 2012.

2.2 On 12th December 2012, the Division Bench of Bombay High Court passed an order in an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act'), arising out of a petition under Section 9 of the Act, directing the judgment debtor to furnish a security in the sum of Rs.187 crores to the decree holder. An SLP was filed against the said order, which was dismissed in July, 2013.

2.3 On 14th August 2013, a bank guarantee was furnished on behalf of the judgment debtor to the decree holder for a sum of Rs.187 crores, which continued during the pendency of the arbitration proceedings.

2.4 The Arbitral Award was passed by the Arbitral Tribunal on 9th November 2017.

2.5 On 12th February 2018, a Single Judge of this Court dismissed the petition under Section 34 of the Act filed on behalf of the judgment debtor.

2.6 The said decision was carried in appeal before the Division Bench by the judgment debtor under Section 37 of the Act. On 5th March 2018, the Division Bench directed the judgment debtor to deposit the entire amount as per the Arbitral Award, including interest calculated at 9% per annum, with the Registry of this Court. It was further directed that upon the deposit being made, the bank guarantee given by the judgment debtor to the decree holder would be returned.

2.7 On 23rd March 2018, at the request of the counsel appearing on behalf of the judgment debtor, the Division Bench permitted the judgment debtor to deposit a sum of Rs.152.22 crores in court during the course of the day, which was done by the judgment debtor.

2.8 The Division Bench dismissed the appeal filed by the judgment debtor on 30th August 2018.

2.9 On 14th September 2018, the present execution petition was filed by the decree holder seeking enforcement of the Arbitral Award.

2.10 On 24th September 2018, this Court directed the Registry to release Rs.60 crores to the decree holder with a caveat that decree holder will retain the said money in its Indian Bank Account till the SLP filed by the judgment debtor against the order of the Division Bench is listed.

2.11 On 11th October 2018, the Supreme Court disposed of the Special Leave Petition by modifying the interest rate on the Euro component of the Award from 9% per annum to London Interbank Offered Rate (LIBOR) plus 3%.

2.12 On 8th August 2019, the executing court directed the Registry to release a sum of Rs.34,69,20,245/- to the decree holder.

2.13 On 6th January 2020, the executing court passed an order that the amount deposited by the judgment debtor in this Court has to be adjusted towards the interest first and thereafter towards the principal amount. The Court also held that the Euro component of the Award would be converted into Indian Rupees as per the exchange rate prevalent on the date of filing of the claim petition i.e. 17th October 2012.

2.14 An appeal was filed by the decree holder against the judgment passed by the executing court on 6th January 2020, which was dismissed by the Division Bench on 27th April 2022.

2.15 On 18th May 2022, the judgment debtor filed an application under Section 151 of the Code of Civil Procedure, 1908 (hereinafter 'CPC') to place on record the judgment dated 27th April 2022 passed by the Division Bench and sought refund of the excess amount deposited as security by the judgment debtor along with interest.

2.16 On 2nd August 2022, the executing court recorded the statement of the decree holder that it does not intend to challenge the judgment of the Division Bench dated 27th April 2022 and the Award has to be enforced in terms of the judgment passed by the executing court on 6th January 2020 and the judgment of the Division Bench dated 27th April 2022.

2.17 On 12th September 2022, the decree holder filed its written submissions stating that the decree holder is entitled to Rs. 210,95,49,778/-, calculating interest up to 23rd November 2022.

2.18 On 17th October 2022, the judgment debtor filed its written submissions stating that the decree holder is entitled to an amount of Rs.1,84,13,99,008/- and the judgment debtor is entitled to a refund of excess security deposit of Rs.82,31,44,320/-.

2.19 On 23rd November 2022, the executing court passed an order that the judgment debtor will remit a sum of Rs.184.13 crores to the decree holder and decree holder will hand over the original bank guarantee to the judgment debtor. The Registry was also directed to return the excess amount to the judgment debtor after retaining a sum of Rs.26 crores being the difference in the amount claimed by the parties. The judgment debtor was also asked to give an undertaking that in the event decree holder is found to be entitled to a sum more than Rs.26 crores, the judgment debtor shall pay the said amount.

2.20 Pursuant to the said order, the judgment debtor filed an undertaking on 14th December 2022. On the same day i.e. 14th December 2022, the decree holder submitted before the Joint Registrar that it has received a sum of Rs.184.13 crores. The judgment debtor also acknowledged that it has received all the bank guarantees.

SUBMISSIONS ON BEHALF OF DECREE HOLDER

3. Mr. Gourab Banerji, senior counsel appearing on behalf of the decree holder has made the following submissions:

3.1 Order XXI Rule 1 of the CPC recognizes a voluntary mode of payment which does not require the decree holder to chase after the judgment debtor. In terms of the Order XXI Rule 1 of the CPC as amended, the payment has to be made by depositing in the executing court or directly to the decree holder. Once payment has been made in the terms as mentioned above, the interest liability shall cease to run. Reliance has been placed on a three-Judge Bench decision of the Supreme Court in ***PSL Ramanathan Chettiar* v. *ORMPRM Ramanathan Chettiar***, (1968) 3 SCR 367, in support of its contention that since the deposit made by the judgment debtor was not unconditional, and the decree holder was not free to withdraw it, interest would continue to run on the deposited amount. Reliance has also been placed upon judgment of the Division Bench in ***DDA* v. *Bhai Sardar Singh***, 2009 SCC OnLine Del 519.

3.2 Since bank guarantee is only a security and would not amount to payment in Court, the interest would continue to run despite furnishing a bank guarantee.

3.3 The judgment debtor failed to deposit entire decretal amount in terms of the order passed by the Division Bench on 5th March 2018, and sought adjustment from the bank guarantee amount of Rs.187 crores. Hence, there was no payment of the decretal amount in terms of Order XXI Rule 1 of the CPC. Since the sum of Rs.152 crores deposited by the judgment debtor in proceedings under Section 37 of the Act could not be withdrawn by the decree holder, the interest would continue to accrue on the deposited amount.

3.4 Even in the present execution petition filed on behalf of the decree holder, a sum of Rs.60 crores was ordered to be released on 24th September 2018 and a further sum of Rs.34,69,20,245/- was directed to be released on 8th August 2019. Therefore, even after the appeal of the judgment debtor under Section 37 of the Act had been dismissed, the decree holder could not get the awarded amount in full.

3.5 In the calculation sheet filed by the judgment debtor along with its affidavit on 17th January 2020, there is a categorical admission by the judgment debtor that interest was due till 6th January 2020. However, subsequently, in the calculation chart furnished by the judgment debtor, the interest has been calculated only up to 23rd March 2018.

SUBMISSION ON BEHALF OF JUDGMENT DEBTOR

4. Mr. Dhruv Mehta, senior counsel appearing on behalf of the judgment debtor has made the following submissions:

4.1 The "interest clock" stopped running on 23rd March 2018, the date on which the entire awarded amount was deposited by the judgment debtor before this Court. The judgment debtor deposited Rs.152.22 crores with the Registry of this Court in compliance with the order passed by the Division Bench on 5th March 2018. The sum of Rs.187 crores was admittedly available with the decree holder for immediate encashment in the form of an unconditional and irrevocable bank guarantee. Therefore, the deposit by the judgment debtor on 23rd March 2018 amounts to payment as per Order XXI Rule 1(1) of CPC and the interest would cease to run in terms of Order XXI Rule 1(4) of CPC.

4.2 On 23rd March 2018, the decree holder was entitled, without any hindrance, to access the entire awarded amount. It is the decree holder who

chose not to take any steps to do so. At the highest, interest could have run only till 30th August 2018, when the Division Bench dismissed the appeal under Section 37 of the Act and directed that the amount deposited with the Registry be appropriated by the decree holder. It is the decree holder who chose not to withdraw the deposited amount or encash the bank guarantee because it wanted to receive the awarded amount partly in Euros and partly in INR. The contention of the decree holder that it was entitled to partly receive the amount in Euros was rejected by this Court *vide* judgment dated 6th January 2020 and the appeal therefrom was rejected by the Division Bench on 27th April 2022.

4.3 The judgment debtor has consistently called upon the decree holder to take the amounts deposited and encash the bank guarantee, which was lying with the decree holder, however, the decree holder failed to do so.

4.4 On behalf of the judgment debtor, reliance has been placed on ***Himachal Pradesh Housing and Urban Development Authority*** **v.** ***Ranjit Singh Rana***, (2012) 4 SCC 505, ***DDA*** **v.** ***Bhai Sardar Singh***, (2023) 17 SCC 671, ***Cobra Instalaciones Y Servicios, S.A & M/s Shyam Indus Power Solutions Pvt. Ltd. (JV)*** **v.** ***HVPNL***, 2023 SCC Online Delhi 5439, ***Ramacivil India Constructions Pvt. Ltd.*** **v.** ***Union of India***, 2024 SCC OnLine Del 4899, ***DLF Limited (Formely known as DLF Universal Limited)*** **v.** ***Koncar Generators and Motors Limited***, (2025) 1 SCC 343 and ***Bhadani Associates*** **v.** ***Kamlini Dharamraj Ashar & Ors.***, 2017 (3) Mh. L.J. 437.

4.5 The stand of the decree holder that it could not access the amounts deposited on account of a pre-condition contained in paragraph 133 of the Arbitral Award as per which entire drawings and all other documents related to the project were to be handed over by the decree holder to the judgment

debtor, is in the nature of an afterthought and inconsistent with the previous stand taken by the decree holder.

ANALYSIS AND FINDINGS

5. In the aforesaid factual background, the issue that requires adjudication is whether decree holder is entitled to recover a further amount of Rs. 26 crores towards the satisfaction of the Award or not. In other words, whether decree holder is entitled to interest on the awarded amount till 23rd November 2022, as claimed by the decree holder or 23rd March 2018 and 30th August 2018, as claimed by the judgment debtor.

6. At the outset, a reference may be made to relevant provision of Order XXI Rule 1 of CPC:

> *"**1. Modes of paying money under decree.—**(1) All money, payable under a decree shall be paid as follows, namely:*
> ***(a) by deposit into the Court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or***
> *(b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or*
> *(c) otherwise, as the Court which made the decree, directs.*
>
> ***(2) Where any payment is made under clause (a) or clause (c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgment due.***
> *(3) ... ...*
> *...*
>
> ***(4) On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).***
>
> *(5) On any amount paid under clause (b) of sub-rule (1), interest, if any, shall cease to run from the date of such payment:*
> *Provided ... ..."*
>
> [Emphasis supplied]

7. The scope of Order XXI Rule 1 of CPC was considered by a three-Judge Bench judgment of the Supreme Court in ***Ramanathan Chettiar*** (supra). The relevant paragraphs of the said judgment are set out below:

> *"12.* ***On principle, it appears to us that the facts of a judgment-debtor's depositing a sum in court to purchase peace by way of stay of execution of the decree on terms that the decree-holder can draw it out on furnishing security, does not pass title to the money to the decree-holder****. He can if he likes take the money out in terms of the order; but so long as he does not do it, there is nothing to prevent the judgment debtor from taking it out by furnishing other security, say, of immovable property, if the court allows him to do so and on his losing the appeal putting the decretal amount in court in terms of Order 21 Rule 1 CPC in satisfaction of the decree.*
>
> *13. The real effect of deposit of money in court as was done in this case is to put the money beyond the reach of the parties pending the disposal of the appeal. The decree-holder could only take it out on furnishing security which means that the payment was not in satisfaction of the decree and the security could be proceeded against by the judgment-debtor in case of his success in the appeal. Pending The determination of the same, it was beyond the reach of the judgment-debtor.*
>
> ***
>
> *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.*** *"*
>
> [Emphasis supplied]

8. The Division Bench of this Court in ***DDA* v. *Bhai Sardar Singh*** (supra), held that for a payment to fall within the ambit of Order XXI Rule 1 of the CPC, there must be an unconditional payment by the judgment debtor

to the decree holder either directly or through the executing court. Mere deposit of the decretal amount in a court other than executing court can never amount to payment. Paragraphs 16 and 17 of the said judgment are set out below:

> *"16. Before adverting to the judgments relied upon by both the sides, it is necessary to analyze a few relevant facts. To ward off a possible execution of the decree that followed the dismissal of the objections to the Award by the learned Single Judge on 2nd August, 2001, the appellant judgment debtor deposited the decretal amount of Rs. 58,80,380/- in this Court in terms of order dated 15th March, 2002 in CM No. 219/2002 in FAO(OS) 93/2002. This FAO(OS) 93/2002 was allowed, as aforesaid, on 20th April, 2004 reviving the objections of the appellant. Therefore, there was no question of the amount deposited in the Court being available for appropriation to the respondent decree holder after the judgment dated 20th April, 2004.* ***Even when the fresh decree was passed on 15th July, 2005, the amount already lying deposited in the FAO(OS) 93/2002 did not become available to the decree holder for appropriation automatically. It is not the appellant's case that it communicated its consent to the respondent for the withdrawal of the amount lying in deposit in the disposed of FAO(OS) 93/2002 at any point of time within a period of six weeks from the date of the passing of the decree dated 15th July, 2005. In fact, the appellant appears to have taken no steps whatsoever to either tender the decretal amount with concessional rate of interest within six weeks, or even otherwise to facilitate the withdrawal of the amount deposited in the disposed of FAO(OS) 93/2002 by the decree holder to the extent of the decretal amount. It was only after the decree holder had preferred Execution Petition 168/2005 well after the expiry of the six weeks period from 15th July, 2005, the appellant judgment debtor for the first time gave its no objection to the decree holder withdrawing the amount deposited in the aforesaid FAO(OS) 93/2002 on 14th December, 2005.*** *Consequently, even if one were to assume that the giving of the no objection by the judgment debtor to the withdrawal of the decretal amount from the deposit lying in FAO(OS) 93/2002 amounted to making payment within the meaning of Order XXI Rule 1 CPC, the said no objection came well after the expiry of the period of six weeks from 15th July, 20.05.*

> *17.* ***In our view, the act of making payment to the decree holder under Rule 1 of Order XXI CPC would require a positive act on the part of the judgment debtor of either depositing "into the Court whose duty it is to execute the decree" or to make payment out of court to the decree holder through a postal money or through a bank or by any other mode "wherein payment is evidenced in writing", unless the Court which made the decree otherwise directs. The payment made under a decree, to fall within the ambit of Order XXI Rule 1 CPC has therefore, necessarily, to be an unconditional payment by the judgment debtor to the decree holder either directly, or indirectly through the medium of the Court whose duty is to execute the decree. Mere deposit of the decretal amount in a Court, other than an executing Court can never amount to "payment" and even where the decretal amount is deposited in the executing court, the judgment debtors liability to pay interest does not cease until notice contemplated by sub-rule(2) of Rule 1 of Order XXI is given. This is evident from sub-rule(4) above. Order XXI Rule 1 CPC does not contemplate the decree holder having to chase the judgment debtor to realize the decretal amount by seeking attachment of one or the other accounts of the judgment debtor or the properties of the judgment debtor.*** *If resort to the execution process of the Court is required to be made by the decree holder, and the decretal amount is recovered in pursuance of the order of attachment of the accounts of the judgment debtor, and/or sale of assets of the judgment debtor, such realization of the decretal amount would not amount to payment of the decretal amount under Rule 1 of Order XXI."*
>
> [Emphasis supplied]

9. In ***DDA* v. *Bhai Sardar Singh*** (supra), what weighed with the Division Bench was the aspect whether the decree holder could have withdrawn the amount deposited by the judgment debtor in Court. In the facts of the said case, the Division Bench noted that even though the judgment debtor had deposited the Award amount in Court, the said amount was not available to the decree holder for appropriation. There was no consent by the judgment debtor to the decree holder for withdrawal of the amount lying deposited with the Court in appeal under Section 37 of the Act. The Division Bench further

observed that if the decree holder still had to resort to the execution process to recover the amount, the deposit would not amount to payment of the decretal amount under Order XXI Rule 1 of CPC.

10. The aforesaid judgment was carried in appeal to the Supreme Court by the judgment debtor therein. The Supreme Court[1] partly allowed the appeal and modified the interest rate awarded by the Division Bench from 18% p.a. to 12% p.a. The relevant observations of the Supreme Court as relied upon by the judgment debtor are set out below:

> *"19.* ***A reading of the aforesaid sub-rules clarifies that when money is paid under a decree, the interest, if any, shall cease to run either from the date of direct payment or from the date of service of notice to the decree-holder, wherever applicable. Sub-rules (4) and (5) do not stipulate that the interest would stop running only and only when the entire amount as per the decree shall stand paid. This Court, as will be seen below, has held that money even when paid in part towards the decree would cease to accrue interest to the extent of the amount paid.****"*
>
> [Emphasis supplied]

11. From a reading of the aforesaid paragraph, what emerges is that even if part payment towards the decree has been paid, then interest would cease to accrue to the extent of the amount paid. Significantly, the Supreme Court did not interfere with the aforesaid observations of the Division Bench as extracted above.

12. In ***Himachal Pradesh Housing*** (supra), the amount under the Arbitral Award was deposited by the judgment debtor in proceedings under Section 34 of the Act. It was in the context of Section 31 (7) (b) of the Arbitration and Conciliation Act that it was held the deposit of Award amount into the Court would amount to payment to the credit of the decree holder. The judgment in

[1] ***DDA*** **v.** ***Bhai Sardar Singh***, (2023) 17 SCC 671.

Himachal Pradesh Housing (supra) did not deal with the issue whether the deposit made in Court in the appeal under Section 34 of the Act could have been withdrawn by the decree holder or not without any hindrance from the Court in which the amount was deposited. Hence, the said judgment would not be applicable in the present case.

13. In the judgment of the Coordinate Bench in ***Cobra*** (supra), the judgment debtor deposited the entire amount in proceedings under Section 36 of the Act in order to avoid facing any coercive action. Ultimately, the objections filed by the judgment debtor under Section 34 were dismissed and the decree holder sought release of the deposited amount along with interest till the date of dismissal of the objections under Section 34 of the Act. It was held that the decree holder was never denied access to the Award amount and could have withdrawn the aforesaid deposit, subject to the condition of returning the same if the Award was set aside. The decree holder waited to withdraw the amount after the objections of the judgment debtor were dismissed. In these circumstances, it was held once the judgment debtor has intimated the decree holder with a notice of the deposit and the Award amount is available for withdrawal to the decree holder unconditionally, the liability of the judgment debtor would cease on the date of the deposit.

14. Similar view was taken by another Coordinate Bench in ***Ramacivil*** (supra).

15. In the latest judgment of the Supreme Court in ***Koncar Generators and Motors*** (supra), it has been observed as under:

> *"38. It is important to appreciate the consequence and effect of deposit during the pendency of proceedings to understand the need to convert this amount on that date.* ***Through a deposit, the award debtor parts with the money on that date and provides the benefit of that amount to the award-***

holder. Provided that the award-holder is permitted to withdraw this amount, it can convert, utilise, and benefit from the same at that point in time. Considering that the deposited amount inures to the benefit of the award-holder, it would be inequitable and unjust to hold that the amount does not stand converted on the date of its deposit.

***

43. Here, the Court in Nepa case [Nepa Ltd. v. Manoj Kumar Agrawal, (2023) 17 SCC 659 : 2022 SCC OnLine SC 1736] also differentiated P.S.L. Ramanathan Chettiar [P.S.L. Ramanathan Chettiar v. O.R.M.P.R.M. Ramanathan Chettiar, 1968 SCC OnLine SC 28 : (1968) 3 SCR 367 : AIR 1968 SC 1047] , which has also been relied on by the respondent in the present matter, and another decision by this Court in DDA v. Bhai Sardar Singh & Sons [DDA v. Bhai Sardar Singh & Sons, (2023) 17 SCC 671 : 2020 SCC OnLine SC 1450] . ***P.S.L. Ramanathan Chettiar [P.S.L. Ramanathan Chettiar v. O.R.M.P.R.M. Ramanathan Chettiar, 1968 SCC OnLine SC 28 : (1968) 3 SCR 367 : AIR 1968 SC 1047] holds that a deposit is only a way to obtain a stay on execution and does not pass title to the decree-holder, and hence, is not in satisfaction of a decree. The decree-holder in DDA [DDA v. Bhai Sardar Singh & Sons, (2023) 17 SCC 671 : 2020 SCC OnLine SC 1450] was not permitted to withdraw the deposited amount and hence, interest was calculated on the same. The Court in Nepa [Nepa Ltd. v. Manoj Kumar Agrawal, (2023) 17 SCC 659 : 2022 SCC OnLine SC 1736] however held that these cases do not apply in its facts as the respondent here was permitted to withdraw the deposited sum and did so. Hence, the Court instead relied on the ability of the respondent to use the deposited money as it deems fit.***

44. ***These cases demonstrate that once there is a deposit by the award debtor and the award-holder is permitted to withdraw the same, even if such withdrawal is conditional and subject to the final decision in the matter, the court must consider that the award-holder could access and benefit from such deposit. It is then the burden of the award-holder to furnish security, as required by the court's orders, to utilise the amount or to make an application for modification of the condition if it is unable to fulfil the same****.*

45. In furtherance of the above, we therefore reiterate that the deposit of Rs 7.5 crores must be converted as on the date of such deposit i.e. 22-10-

2010, when the rate of exchange as submitted by the appellants was 1 euro = Rs 59.17.

46. The second deposit of Rs 50 lakhs pursuant to the High Court order dated 3-6-2011 stands on a different footing from the first deposit. This order did not permit the respondent to withdraw this amount till the completion of the proceedings. Hence, the amount cannot be converted as on the date of deposit as the respondent could not have benefitted from the same. This amount could be withdrawn only in 2016, pursuant to the executing court's order dated 24-8-2016. The respondent withdrew the entire deposit of Rs 8 crores, along with the interest that accrued on this amount, on 10-10-2016."

[Emphasis supplied]

16. The legal position that emerges from a reading of the aforesaid judgments is that if the amount deposited by the decree holder in Court is available for withdrawal to the decree holder, the liability of the judgment debtor would cease on the date of the deposit and no interest would run on the amount deposited. However, if there is an embargo on the decree holder to withdraw the deposited amount, the interest would continue to run on the Award amount. If the deposit is made only to secure a stay in the execution proceedings, then such deposit is not in satisfaction of the decree. Therefore, it has to be seen whether the decree holder can benefit from the deposited amount even if the withdrawal of such amount is conditional.

17. Now I proceed to apply the aforesaid legal principles to the facts and circumstances of the present case.

18. At the outset, reference may be made to the operative part of the Arbitral Award dated 9th November 2017, which is set out below:

"134. Thus, in light of the aforesaid the following amount are awarded in favour of the Claimant and the Respondent is liable to pay the same to the Claimant within a period of 120 days from the date of this award:
I. Under the First Claim:

a) Rs. 46,71,41,942/- and Euro 23,717,437; and
b) Rs.12,19,69,047/-: and
II. Under the Second claim:
a) Rs. 25,47,325/-; and
b) Rs.6,06,707/-
c) Rs. 1,31,10,990/-

135. The aforesaid amount shall be payable along with interest at the rate of 9% from the date of institution of the present arbitration proceedings provided the amount is paid/ deposited within 120 days of the award.

136. In case the respondent fails to pay the aforesaid amounts within 120 days from the date of the Award, the claimant shall be entitled to further interest at the rate of 15% till the date of realization of the amount.

137. Considering the overall facts and circumstances of the case and the expenditure incurred in the arbitration proceedings, we consider it appropriate to award Rs.50,00,000.00/- (Rupees Fifty Lakh) towards costs and legal expenses to the claimant, which according to us would meet the ends of justice. The claim of payment of cost of the Respondent is rejected."

19. The challenge to the aforesaid Award under Section 34 of the Act by the judgment debtor was dismissed on 12th February 2018. In the appeal filed by the judgment debtor under Section 37 of the Act, the Division Bench *vide* order dated 5th March 2018 directed the judgment debtor to deposit the entire awarded amount along with the interest calculated @ 9% per annum with the Registry of this Court. Upon the said deposit being made, the bank guarantee given by the decree holder was directed to be returned. The relevant paragraphs of the said order dated 5th March 2018 are set out below:

"Issue notice.
Having heard learned counsel for the appellant and counsel for the respondent, ***it is directed that the appellant would deposit the entire amount as per the award dated 9th November, 2017, including interest calculated @ 9% per annum with the Registrar General of this Court. The said amount, it is stated, would be deposited within three weeks. The***

said deposit once made will be converted into an FDR to earn interest and will abide by further orders of this Court.
On the deposit being made, the bank guarantee given by the appellant to the respondent, would be returned*."*

[Emphasis supplied]

20. On 23rd March 2018, the judgment debtor moved an application before the Division Bench seeking modification of the order dated 5th March 2018. The order passed by the Court on 23rd March 2018 is set out below:

> *"It is stated by learned senior counsel appearing for the appellant that the sum of Rs.152.22 crores would be deposited during the course of the day.*
> *Issue notice.*
> *Mr. Ranjit Prakash, learned counsel for the respondent accepts notice.*
> *List on 03.05.2018, the date already fixed."*

21. Since the full amount was not deposited by the judgment debtor in terms of the order passed on 5th March 2018, the bank guarantee could not be returned.

22. After the order was passed by the Division Bench on 23rd March 2018, judgment was reserved in the appeal under Section 37 of the Act on the very next date, i.e., 3rd May 2018. The judgment was pronounced on 30th August 2018 dismissing the appeal.

23. The judgment debtor claims that since the aforesaid sum was deposited by it with the Registry of this Court on 23rd March 2018, the "interest clock" would stop running from the said date. It is further submitted that since the balance amount of Rs.187 crores was already available with the decree holder for immediate encashment in the form of an unconditional bank guarantee, the interest would cease to run in terms of Order XXI Rule 1(4) of the CPC.

24. I cannot agree with the contention of the judgment debtor that the "interest clock" would stop running on 23rd March 2018, when the deposit of

Rs.152.22 crores was made in Court as the amount deposited could not be withdrawn by the decree holder on the said date.

25. The deposit of Rs.152.22 crores was made by the judgment debtor in terms of the order passed by the Division Bench on 5th March 2018. The said deposit would amount to "*depositing a sum in Court to purchase peace by way of stay of execution of the decree*", in terms of the judgment of the Supreme Court in ***Ramanathan Chettiar*** (supra).

26. Therefore, in my considered view, the decree holder did not have access to the awarded amount on 23rd March 2018. The decree holder could also not have withdrawn the part deposit made by the judgment debtor on 23rd March 2018 as the same was subject to further orders of the Court. This is not a case where there was a self-imposed embargo by the decree holder on itself. Therefore, there was no occasion or opportunity for the decree holder to seek withdrawal of the money so deposited.

27. The judgment debtor failed to comply with the order passed on 5th March 2018 by not making the complete deposit of the Arbitral Award including interest @ 9% p.a. The judgment made a partial deposit of Rs.152.22 crores in Court and sought to adjust the bank guarantee amount of Rs.187 crores. Admittedly, the bank guarantee of Rs.187 crores was furnished by the judgment debtor to the decree holder in the proceedings arising out of Section 9 of the Act. The said bank guarantee continued up to 31st December 2022, even after the challenge to the Arbitral Award attained finality.

28. In my considered view, bank guarantee cannot be taken to be a deposit in terms of Order XXI Rule 1 of the CPC. The bank guarantee only serves as a form of security to secure the amounts that may be due to a party. The decree holder cannot enjoy the benefit of the money which is secured by the bank

guarantee. The decree holder could not have invoked the bank guarantee on 23rd March 2018. The bank guarantee, as per its terms, was payable upon enforcement of the Arbitral Award in favour of the decree holder, which stage had not yet arisen as the matter was still pending adjudication. It is also not the case of the judgment debtor that it conveyed its consent for the invocation of the bank guarantee on 23rd March 2018.

29. In the judgment in ***Bhadani Associates*** (supra) relied upon by the judgment debtor, a Single Bench of the Bombay High Court took the view that giving a bank guarantee would amount to payment of money in the Court. It was held that a bank guarantee would not amount to a security as it could be invoked. In the said case, the bank guarantee could not be encashed as the decree holder had challenged the Award which was pending. The said judgment was based on its own peculiar facts and would not be applicable to the facts of the present case. Even otherwise, I am unable to subscribe to the view taken by the Bombay High Court that amount secured by way of a bank guarantee can be taken to be a deposit in Court in terms of Order XXI Rule 1 of the CPC.

30. Next, it is contended on behalf of the judgment debtor that the decree holder would be entitled to withdraw the amount so deposited at the very least on 30th August 2018, when the Division Bench dismissed the appeal filed by the judgment debtor. While dismissing the appeal, the order of the Division Bench stated that all interim orders stand vacated and the amount deposited would be appropriated by the decree holder. The operative part of the aforesaid judgment passed by the Division Bench is set out below:

> *"30. The award and the impugned judgment do not disclose any patent illegality, for the above reason; they also do not reveal that the tribunal adopted a procedure, that shocks the conscience of this court, or arrived*

at findings that no reasonable person, placed in the situation of an arbitral tribunal, given the material that was before it, would have rendered. The appeal consequently has to fail; it is dismissed without order on costs. All interim orders stand vacated; the amount deposited shall be appropriated by the succeeding party i.e. the respondent."

31. In the facts of the present case, I cannot agree with the aforesaid submission. Immediately after the appeal under Section 37 of the Act was dismissed by the Division Bench on 30th August 2018, the decree holder filed the present execution petition on 14th September 2018 and the same came up for hearing on 24th September 2018. On the said date, counsel appeared on behalf of the judgment debtor and submitted that the judgment debtor has approached the Supreme Court by filing an SLP against the judgment of the Division Bench dated 30th August 2018. Taking note of the aforesaid submission, the executing court permitted release of sum of Rs.60 crores to the decree holder. To be noted, decree holder is not claiming any interest on the aforesaid amount of Rs.60 crores.

32. On the said date, there was no consent given by the judgment debtor with regard to the release of the amount deposited in Court or for the invocation of bank guarantee. On the other hand, the judgment debtor resisted the release by stating that it is in the process of filing an SLP. Therefore, the aforesaid date of 30th August 2018 would also not be relevant for the purposes of stopping the 'interest clock'.

33. The appeal filed by the judgment debtor against the judgment of the Division Bench dated 30th August 2018 was disposed of by the Supreme Court on 11th October 2018, modifying the interest awarded by the Arbitral Tribunal. Paragraph 23 of the judgment of the Supreme Court is set out below:

"23. In light of the above-mentioned discussion, the Interest awarded by the arbitral tribunal is modified only to the extent mentioned hereinbelow:-

(i) The Interest rate of 15% post 120 days granted on the entire sum awarded stands deleted. A uniform rate of Interest @9% will be applicable for the INR component in entirety till the date of realization.

(ii) The Interest payable on the EUR component of the Award will be as per LIBOR + 3 percentage points on the date of Award, till the date of realization."

34. It is contended on behalf of the judgment debtor that after the dismissal of the SLP by the Supreme Court, the decree holder was free to withdraw the deposited amount and encash the bank guarantee. However, this was not done as the decree holder insisted that the Euro component of the Arbitral Award should be paid in Euros. In the alternative, it was contended on behalf of the decree holder that in the event the Euro component was to be converted into INR, the date of conversion should be the date of actual payment and not the date of filing of the claim petition. In support of this contention, the judgment debtor has placed reliance on the following:

i. Paragraph 13 and Prayer clause 19 a. of the present Petition.

ii. Paragraphs 4 and 5 of the Order dated 24.09.2018.

iii. Paragraphs 2 and 3 of the Order dated 08.08.2019.

iv. Paragraphs 3 to 8 and 11.1 to 11.7, 15 and Prayer clause of the Rejoinder filed by the Decree Holder.

v. Paragraphs 7 and 8 of the Order dated 06.01.2020.

The aforesaid contention of the decree holder was rejected by the order passed by the executing court on 6th January 2020 and upheld by the Division Bench on 27th April 2022.

35. It was only on 2nd August 2022, the decree holder made a statement before the executing court that it is accepting the judgment of the executing

court of 6th January 2020 as upheld by the Division Bench on 27th April 2022. Therefore, the decree holder acknowledged the position that Euro component would be converted into INR and the applicable conversion date would be the date of filing of the claim i.e. 17th October 2012.

36. As per the decree holder, the issue with regard to the Euro component of the Arbitral Award became relevant and was pressed by the decree holder after the judgment was passed by the Supreme Court on 11th October 2018, reducing the interest rate on the Euro component.

37. It was further contended on behalf of the decree holder that if it was the case of the judgment debtor that the date of conversion/ claim was 17th October 2012, then the judgment debtor should have deposited the entire amount in INR as per the said conversion rate.

38. In this context, it may be relevant to make a reference to the order passed by the executing court on 8th August 2019. The relevant extracts of the said order are set out below:

> *"1 Mr. Dhruv Mehta, learned senior counsel, on instructions, says that the judgment debtor has already paid a sum of Rs.60 crores to the decree holder. Besides this, Mr. Mehta says that a bank guarantee in the sum of Rs.187 crores is available with the decree holder.*
>
> ***1.1 It is also Mr. Mehta's submission that a sum of Rs.92 crores along with accrued interest is available with the Registry of this Court.***
>
> ***1.2 It is, therefore, Mr. Mehta's stand that a further sum of Rs.40 crores can be remitted to the decree holder out of the amount lying with the Registry of this Court.***
>
> ***1.3 This apart, Mr. Mehta says that the decree holder can encash the bank guarantee in the sum of Rs.187 crores towards the satisfaction of the decretal debt.***
>
> *2 On the other hand, Ms. Arora says that the subject award directs payments to be made to the decree holder in INR as well as in foreign currency. Insofar as the INR component is concerned, which remains to*

be satisfied, the judgment debtor owes a further sum amounting to Rs.38,96,77,793/- .

2.1 Ms. Arora says that insofar INR component is concerned, it is the stand of the judgment debtor, though erroneous, that it owes a sum of Rs.34,69,20,245/- .

2.2 Ms. Arora, thus says, that for the moment, without prejudice to rights and contentions of the decree holder, the INR component amount as quantified by the judgment debtor be released to the decree holder.

3. It is also the submission of Ms. Arora that the balance amount payable towards satisfaction of the subject award is required to be paid by the judgment debtor in Euros.

3.1 Mr. Mehta contends to the contrary. According to Mr. Mehta, the judgment debtor is not required to remit any sum awarded in favour in favour of the decree holder in Euros. For this purpose, Mr. Mehta has drawn my attention to paragraph 91 of the award dated 09.11.2017 ("award").

4. ***Prima facie, I am of the view that Mr. Mehta is correct. The reason why I say so is that paragraph 91 of the award adverts to the date when foreign currency component of the award is to be converted to INR. Since Ms. Arora contends to the contrary, I am open to hearing further arguments for her and being persuaded to the contrary.***

5. Given these circumstances, the Registry will release, for the time being, a sum of Rs.34,69,20,245/- to the decree holder.

6. There is another aspect of the matter, which is, as to whether the amounts to be paid by the judgment debtor under the award are subject to the pre-condition contained in paragraph 133 of the award. Ms. Arora says that release of payments to the decree holder cannot be made subject to fulfilment of purported conditions alluded to in paragraph 133 of the award.

6.1 Ms. Arora buttresses her argument by contending that if the judgment debtor insists that observations made in paragraph 133 are a condition precedent for release of payments, then, the judgment debtor would have to prefer its own enforcement petition."

[Emphasis supplied]

39. The said order records the submission of senior counsel for the judgment debtor to the following effect:

i. Bank guarantee of Rs.187 crores is available with the decree holder.

ii. Sum of Rs.92 crores along with accrued interest is available with the Registry of this Court.

iii. The decree holder can encash the bank guarantee of Rs.187 crores towards satisfaction of the decretal debt and a further sum of Rs.40 crores can be remitted to the decree holder out of the amount lying with the Registry of the Court.

40. Submission on behalf of the senior counsel for the decree holder were also noted in the said order to the following effect:

i. Insofar as the INR component of the award is concerned, judgment debtor owes a further sum of Rs.38,96,77,793/-.

ii. The balance amount payable towards the satisfaction of the Award is required to be paid by the judgment debtor in Euros.

41. A reading of the aforesaid order manifests that since the decree holder insisted on receiving the awarded amount other than Rs.38,96,77,793/- in Euros, the Court directed the Registry to release the sum of Rs.34,69,20,345/- being the INR component of the award, which was admitted by the judgment debtor.

42. The contention of the decree holder regarding the date of conversion of the Euro component was rejected by an order passed by the executing court on 6th January 2020. The relevant observations made in the said order are set out below:

> *"31. The decree holder is claiming the exchange rate of EURO 23,717,737 on the date of the payment whereas according to the judgment debtor, the exchange rate has to be on the date of the filing of claim petition in terms of Para 91 of the award.*
>
> *32. The Arbitral Tribunal has given a clear finding that the amount of EURO 23,717,437 would be of the value of exchange rate as prevalent on the date of filing of the claim petition. This finding was not interfered by the Supreme Court and has attained finality. This Court cannot go behind the award.*
>
> *33. There is merit in the contentions urged by the learned senior counsel for the judgment debtor. There is a clear unequivocal finding of the Arbitral Tribunal that the amount of EURO 23,717,437 would be of the value of exchange rate as prevalent on the date of filing of the claim petition."*

43. The judgment debtor challenged the aforesaid order by way of an appeal, which was dismissed by the Division Bench *vide* judgment dated 27th April 2022.

44. Post the dismissal of EFA(OS)(COMM) 5/2020 on 27th April 2022, the issue with regard to the Euro component of the decretal amount was settled, i.e., the Euro component of the decretal amount would be converted to INR on the exchange rate prevailing on filing of the claim petition.

45. It was only thereafter that a statement was made on behalf of the decree holder on 2nd August 2022 that the Award had to be enforced in terms of the judgment dated 6th January 2020 and the judgment dated 27th April 2022.

46. Pursuant to the order passed on 2nd August 2022, both sides filed their written submissions along with a calculation sheet showing the amounts due. In terms of the written submissions filed on behalf of the decree holder, a sum of Rs.210,95,49,778/- (including interest till 23rd November 2022) is due whereas, in terms of the written submissions filed on behalf of the judgment

debtor, the decree holder is entitled to a sum of Rs.1,84,13,99,008/- (including interest till 23rd March 2018) and the judgment debtor is entitled to refund of excess security deposit amounting to Rs. 82,31,44,320/-.

47. When the matter came up before the executing court on 23rd November 2022, following directions were passed:

> *"A. The judgment debtor will remit the aforesaid sum of* ***₹184.13 crores*** *by a cheque in favour of the decree holder. The cheque will be handed over by learned counsel on record for the judgment debtor to learned counsel on record for the decree holder.*
> *B. At the same time, learned counsel for the decree holder will hand over the* ***original bank guarantee furnished by the judgment debtor*** *pursuant to the order of the Bombay High Court to learned counsel for the judgment debtor, as the security will no longer be required.*
> *C. Learned counsel for the parties will coordinate amongst themselves to ensure that directions (A) and (B) above are complied with as expeditiously as possible, and no later than two weeks from today.*
> *D.* ***The difference between the amount claimed by the decree holder and the amount computed by the judgment debtor is approximately ₹26 crores.*** *After learned counsel for both parties certify compliance with directions (A) & (B) above, the Registry is directed to return the excess amount deposited by the judgment debtor in FAO(OS)(COMM) 35/2018 to the judgment debtor. It is made clear that an amount of ₹26 crores will be retained, and the balance will be released to the judgment debtor.* ***The aforesaid amount of ₹26 crores will be kept in an interest bearing fixed deposit.*** *The return of the excess amount by the Registry is also subject to an undertaking by the judgment debtor that, in the event the decree holder is ultimately found to be entitled to more than the aforesaid sum of ₹26 crores, the same will be paid by the judgment debtor forthwith."*
>
> [Emphasis supplied]

48. In these circumstances, I cannot persuade myself to accept the submission of the decree holder that the 'interest clock' would continue to run till 7th December 2022 when the final amount was received by the decree holder. On 8th August 2019, for the first time the judgment debtor consented to the fact that the decree holder can encash the bank guarantee of Rs. 187

crores towards satisfaction of the decretal amount in addition to a further sum of Rs. 40 crores from the amount deposited. However, the decree holder insisted on receiving the Euro component of the Award in Euros, which contention was eventually rejected. In my view, if the decree holder had accepted the submission of the judgment debtor on the said date, the entire decretal amount would have been received and the decree would have been satisfied. In fact, in the said order, the Court has expressed its *prima facie* view that the contention of the judgment debtor with regard to the Euro component of the award is correct. Nevertheless, the decree holder chose to contest this issue and the issue was ultimately resolved on 2nd August 2022, when the decree holder made a statement that it does not propose to challenge the judgment dated 27th April 2022.

49. An oral submission was made on behalf of the decree holder before me that the amounts could not be released to the decree holder also on account of the objections taken by the judgment debtor with regard to non-fulfilment of conditions in paragraph 133 of the Arbitral Award.

50. I am unable to accept the aforesaid submission of the decree holder that it could not access the amounts deposited on account of aforesaid objection of the judgment debtor. There is no pleading in the petition to this effect and this submission clearly appears to be in the nature of an afterthought.

51. In my considered view, the amounts under the Award could not be released to the decree holder from 8th August 2019 till 7th December 2022 on account of factors attributable to the decree holder. Therefore, in my considered view, the 'interest clock' would stop running from 8th August 2019.

52. Based on the above, the judgment debtor shall file its revised calculation of the amounts due to the decree holder within four (4) weeks from today. Further, the amounts due to the decree holder in terms of the revised calculation shall be paid out of the sums deposited with the Registry of this Court within six (6) weeks from today. The balance amount shall be returned to the judgment debtor along with accrued interest.

53. The present enforcement petition is disposed of with the aforesaid direction.

54. All pending applications stand disposed of.

55. List before the Registrar on 9th March, 2026 for compliance.

AMIT BANSAL
(JUDGE)

JANUARY 12, 2026
at