

SUPREME COURT OF INDIA

State Trading Corporation of India Ltd.

Vs.

Global Steel Holding Limited

C.A.No.11907 of 2018

(Abhay Manohar Sapre and Indu Malhotra,JJ.,)

06.12.2018

JUDGMENT

Abhav Manohar Sapre,J.,

In S.L.P.(C) No.14585/2015

1. Leave granted.
2. This appeal is filed against the final judgment and order dated 09.03.2015 passed by the Delhi High Court in Execution Petition No.337 of 2014 with EA Nos.697-98 of 2014 and EA Nos.199-200 of 2015 whereby the High Court has dismissed the Execution Petition and the accompanying applications filed by appellant - STC herein on the ground of lack of jurisdiction.
3. In order to appreciate the controversy involved in this appeal, it is necessary to set out the relevant facts hereinbelow.
4. On 04.04.2005, a tripartite agreement was entered into between the appellant i.e. State Trading Corporation a Government-owned Corporation (hereinafter referred to as "STC"), respondent No.1 - M/s Global Steel Holding Ltd. (hereinafter referred to as "GSHL"), incorporated in the Isle of Man Channel Islands, and respondent No. 2 - M/s Global Steel Philippines Inc., incorporated in the Philippines (hereinafter referred to as "GSPI"). Respondent No. 3 is Mr. Pramod Mittal, the Chairman of the respondent nos. 1 and 2 companies, i.e. GSHL and GSPI. The agreement was for purchase and sale of commodities known as - HR Coils and CR Coils.
5. Mr. Dushyant Dave, learned senior counsel appeared for the appellant - STC, while the respondents were represented by Mr. Kapil Sibal, Senior Advocate along with Mr. Gautam Mitra.

6. In performance of the agreement, disputes arose between the parties, particularly with respect to the non-payment of outstanding dues to the appellant - STC. The parties, therefore, decided to settle their disputes by means of conciliation proceedings with the assistance of two Conciliators.

7. The parties (STC, GSHL and GSPI) entered into a Settlement Agreement under Section 73 of the Arbitration and Conciliation Act, 1996 (for short "the Act") on 15.11.2012. In terms of the Settlement Agreement, the GSHL and GSPI agreed to pay a total amount of US\$ 355,818,019.29 with interest @ 13.25% p.a. by 11.05.2012 as per para (D) of the Settlement Agreement to the appellant - STC, and in the manner set out in detail in clauses A to K of the Settlement Agreement.

8. The GSHL and GSPI paid some amounts pursuant to the Settlement Agreement to STC. However, they failed to ensure full compliance with the terms of the Settlement Agreement dated 15.11.2011 and committed default in paying full payment to appellant - STC.

9. The parties therefore entered into a Further Settlement Agreement dated 17.05.2012 through the intervention of the Conciliators.

10. As per the Further Settlement Agreement dated 17.05.2012, GSHL and GSPI agreed to pay a total amount of US \$ 347,737,209.68 inclusive of interest at the rate of 13.50 % p.a. (Rs.1605 crores in Indian currency) by 10.11.2010 in the manner set out in detail in clauses (i) and (vi) of the agreement to the appellant - STC. Both the Settlement Agreement and the Further Settlement Agreement were executed by respondent No. 3 - Mr. Pramod Mittal as Chairman of GSHL and GSPI, respectively.

11. As per Clause 12 (iv) of the Further Settlement Agreement (supra), respondent No. 3 - Mr. Pramod Mittal furnished a Personal Guarantee dated 17.05.2012 wherein he personally guaranteed payment of the outstanding amount payable by GSHL and GSPI to the appellant - STC in terms of the Settlement Agreement dated 15.11.2011 together with interest @ 13.25% p.a. and Further Settlement Agreement dated 17.05.2012. The said respondent undertook to pay the outstanding amount, and stated that the guarantee shall remain valid till the entire outstanding dues of GSHL and GSPI were fully discharged.

12. Since GSHL and GSPI failed to fulfill their complete obligations under the Further Settlement Agreement dated 17.05.2012, the appellant - STC herein filed an Execution Petition bearing No.337/2014 in the High Court of Delhi on 30.08.2014 against GSHL (R-1), GSPI (R-2) and Mr. Pramod Mittal, Chairman, GSHL(R-3) seeking to execute the Settlement Agreements dated 15.11.2011 and 17.05.2012 against all the respondents for recovery of the balance outstanding amounts due and payable.

13. The appellant - STC, the decree holder, filed Execution Applications Nos. 697/2014 and 199-200/2015. Insofar as application No.697/2014 was concerned, it was filed under Order 21 Rule 11 (2) of CPC for attachment and sale of all shares and other assets of the respondent

No.1, with a further prayer for issuance of warrants of arrest against the Directors and Principal Officers of respondent Nos.1 and 2 till realization of entire dues.

14. The Delhi High Court vide order dated 09.03.2015, dismissed the Execution Petition along with the accompanying applications on the ground that admittedly none of the judgment-debtors is located within the jurisdiction of the Court. The Registered Offices of respondent Nos. 1 and 2 were outside India. The Execution Petition could be entertained by a Court within whose jurisdiction the judgment-debtors, or their properties were situated. That since none of them is ordinarily resident within the jurisdiction of the Court, the Execution Petition could not be entertained, and was dismissed with liberty to the decree-holder to approach the appropriate court for enforcement of the Settlement Award in accordance with law.

15. Aggrieved by the Order dated 09.03.2015 passed by the Delhi High Court, the appellant - STC (Decree Holder) filed the present Special Leave Petition before this Court.

16. During the pendency of the Special Leave Petition, various Orders were passed from time-to- time directing the respondents to make payments to STC. The details and break up of payments offered and then made by the respondents to the appellant - STC on different dates are mentioned in the Orders dated 19.08.2015, 21.09.2015, 14.12.2015, 05.2.2016, 06.02.2017, 10.04.2017, 31.07.2017, 22.03.2018, 15.05.2018, 13.08.2018, and 06.09.2018.

17. The Senior Counsel for the respondents, Mr. Kapil Sibal submitted that an amount of Rs. 810 crores approximately was paid towards the outstanding liability under the two Settlement Agreements dated 15.11.2010 and 17.05.2012 to the appellant - STC.

18. When the matter was taken up for final hearing, the Senior Counsel Mr. Kapil Sibal appearing for the respondents offered to deposit Rs. 800 crores, without prejudice to their right to prosecute the case, within 4 weeks to show their bonafides to the Court.

19. Accordingly, on 31.10.2018, the following Order was passed:

“Mr. Kapil Sibal, learned senior counsel appearing for respondent No. 2 in SLP (Civil) No. 14585/2015, during the course of hearing, states that without prejudice to the right to prosecute the case, they are prepared to deposit the sum of Rs. 800,00,00,000/- (Rupees Eight Hundred Crores) within the period of 4 weeks from today. Let them so deposit.

It is made clear that non-payment of the amount will be viewed seriously. ”

20. That on 29.11.2018, the Senior Counsel for the respondents brought Demand Drafts for Rs.810 crores in favour of the Decree Holder - STC. The matter was posted for hearing on 04.12.2018.

21. When the matter was taken up for hearing on 04.12.2018, the Demand Drafts for Rs. 800 crores were directed to be handed over to the Court Master in a sealed envelope.

22. With the payment of Rs. 800 crores on 04.12.2018, the respondents have till date deposited an amount of Rs.1610 crores approximately in INR in discharge of their liability.

23. As a consequence, the entire liability of the respondents till 10.11.2012 would stand discharged.

24. The issue which now only remains for resolution is the interest payable from 10.11.2012 onwards. The interest payable on the outstanding amounts was left to be determined by the Court, by the senior counsel appearing for both the parties.

25. At this juncture, we consider it appropriate to place on record our appreciation of the valuable assistance provided by both the senior counsel, Mr. DA Dave and Mr. Kapil Sibal in enabling the parties to resolve the disputes. The senior counsel addressed the myriad legal issues which arose in the case with clarity, persuasiveness, lucidity and industry.

26. Learned senior counsel for the respondents submitted that even though the question with respect to payment of interest pendente lite, and the rate of interest, was not the subject-matter of the original proceeding, it was prayed that this Court may give a quietus to the long pendency of this litigation by passing appropriate orders.

27. Both the senior counsel prayed that this Court, in exercise of its jurisdiction under Articles 136 and 142 of the Constitution, exercise its extraordinary jurisdiction to determine the amount payable towards interest, and the period within which it should be paid.

28. Having heard the learned senior counsel for the parties, and on perusal of the record, we are of the considered opinion that it is not necessary to decide the various legal issues arising in the case which were ably presented by both the learned senior counsel in support of their case on the question of jurisdiction of the Delhi High Court in entertaining and deciding the Execution Petition filed by the appellant.

29. Since the parties have requested for termination of these proceedings finally in this appeal itself, and secondly, the outstanding dues have already been cleared by the respondents during the pendency of this appeal though late leaving only a limited controversy alive regarding payment of interest, we are of the considered opinion that there is no legal impediment in deciding the issue of payment of interest and its rate in this appeal finally to give quietus to this litigation.

30. Having given our anxious consideration to all the aforementioned factors, we are of the view that the respondents are liable to pay Interest on the principal sum of Rs.1610 crores to the appellant at rate of 8% per annum payable from 10.11.2012, i.e. when the entire payment became due.

31. We direct that:

(i) The Demand Drafts for Rs. 800 crores (Rupees Eight Hundred Crores) furnished by the respondents, be handed over to STC - Decree Holder;

(ii) A lump-sum amount of Rs.600 crores (Rupees Six Hundred Crores) worked out on the basis of 8% S.I. per annum (rounded off) be paid by the respondents to the appellant towards full and final satisfaction of the amounts due under the Settlement Agreement dated 15.11.2010, and Further Settlement Agreement dated 17.05.2012.

(iii) The amount of Rs.600 crores be paid by the respondents to STC towards interest in 12 weeks from the date of this Order.

(iv) Upon payment of the said amount by 28.02.2019, all claims arising out of the two Settlement Agreements (supra), would stand finally settled, and put a complete closure to all pending proceedings of any nature whatsoever, between the parties, wherever filed and/or pending against each other.

(v) If, however, the amount of Rs. 600 crores awarded towards interest is not paid on or before 28.02.2019, it would amount to contempt of the Order passed by this Court, and it would be open to the appellant to take appropriate action against the respondents in accordance with law for non-compliance.

32. In light of the foregoing discussion and the directions, the appeal, along with all pending applications, stand disposed of. The contempt petitions are also disposed of accordingly.