



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

% Judgement delivered on: 05.05.2025

+ **EFA(OS)(COMM) 5/2024**

PCL STICCO (JV)

..... APPELLANT

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA

..... RESPONDENT

**Advocates who appeared in this case**

For the Appellant : Mr C Mohan Rao, Sr. Advocate with  
Mr Lokesh Kumar Sharma, Advocate

For the Respondent : Mr Manish K Bishnoi and Mr Khubaib  
Shakeel, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**HON'BLE MR. JUSTICE TEJAS KARIA**

**JUDGMENT**

**VIBHU BAKHRU, J.**

1. PCL STICCO (JV) [**the Award Holder**] has filed the present appeal under Section 13(1A) of the Commercial Courts Act, 2015, [**the CC Act**] impugning a judgment dated 19.12.2023 [**the impugned judgement**] passed by the learned Single Judge of this court in OMP (ENF) (COMM) No.116/2020 captioned *PCL STICCO (JV) v. National Highways Authority*



of India (NHAI). In terms of the impugned judgment, the learned Single Judge had disposed of the Award Holder's application under Section 36 of the Arbitration and Conciliation Act, 1996 [**the A&C Act**] seeking the enforcement of the arbitral award dated 15.12.2015 [**the Arbitral Award**].

2. The learned Single Judge accepted the Respondent's [**Judgement Debtor**] contention that the balance sum of ₹73,96,511/- was payable to the Award Holder and the same would be paid along with the interest within a period of three weeks from the said date. The learned Single Judge disposed of the Award Holder's petition for enforcement of the Arbitral Award with the clarification that if the amount as stated was not paid by the Respondent, the Award Holder would have the liberty to revive the said proceedings.

3. The Award Holder disputes that the balance amount as payable under the Arbitral Award would stand satisfied with the payment as mentioned by the Judgement Debtor, as it does not take into account the interest payable on the amounts deposited by the Judgement Debtor in the said proceedings with the Registry of this court. According to the Award Holder, it is entitled to interest as awarded including on the amount deposited by the Judgement Debtor with the Registry of this court till the date of its release. It claims that the interest as awarded in terms of the Arbitral Award would not stop running till the payments are made.

4. The Judgement Debtor contends to the contrary, it claims that the amount deposited by it with the Registry of this court is required to be considered as the amount tendered to the Award Holder; therefore, the interest on the remaining principal amount (after adjustment of interest due



on the date of the deposit) would stop running.

5. The limited controversy to be addressed is whether the liability to pay interest on the amount deposited by the Judgment Debtor with the Registry of this court would cease from the date of the said deposit.

#### **FACTUAL CONTEXT**

6. The Judgement Debtor had invited tenders for widening of 4/6 lanes and strengthening of the existing 2-Lane carriageway of NH-5 from KM 284.000 to KM 338.000 (Gangam to Sunakhala Project) in the State of Orrisa [Construction Package OR-VII] and the agreement dated 20.08.2001 was executed between the parties. Certain disputes arose between the parties in connection with the aforesaid agreement dated 20.08.2001 and the same was referred to arbitration. The arbitral proceedings culminated in an Arbitral Award dated 15.12.2015.

7. The dispossessive part of the Arbitral Award is set out below: -

“1. A sum of Rs.6,10,17,434/- towards its claim No. 1 for the value of work executed but not paid with 10% p.a. interest compounded monthly as per the terms in the contract from the date of expulsion, i.e., 03/04/2008 to the date of award.

2. A sum of Rs.5,28,53,000/- towards the cost of confiscated machinery against its claim No.3, with 10% p.a. simple interest from the date of expulsion, i.e. 03/04/2008 to the date of award.

3. A sum of Rs.27,00,30,461/- towards its claim No.4 relating to the forfeiture of the Bank Guarantees with 10% p.a. simple interest from the date of encashment of the Bank Guarantees, i.e., 03/04/2008 to the date of



award.

4. In case the payments as at S.No. 1 to 3 above are not made in a period of three months from today, the claimant shall also be entitled to be paid future interest @ 12% p.a. on the sums awarded inclusive of interest in S.No. 1 to 3 above (in the light of M/s Hyder Consulting (UK) Ltd. vs. State of Orissa, Civil Appeal No.3148 of 2012 decided by the Hon'ble Supreme Court on 25th November 2014), from the date of award till realisation.

5. Rest of the claims are dismissed.”

8. The Judgment Debtor being aggrieved by the Arbitral Award filed an application under Section 34 of the A&C Act [being OMP (COMM) 77/2016] in this court on 28.03.2016 to set aside the Arbitral Award.

9. On 02.11.2020, the Award Holder filed an enforcement petition [being OMP (ENF) (COMM) 116/2020] under Section 36 of the A&C Act seeking to enforce the Arbitral Award.

10. This court dismissed the Judgment Debtor's application under Section 34 of the A&C Act [being OMP (COMM) No.77/2016] to set aside the Arbitral Award by an order dated 23.03.2022.

11. On 06.04.2022, the learned Single Judge passed the order in OMP (ENF) (COMM) No.116/2020, directing the Judgement Debtor to deposit the awarded amount with the Registry of this court within a period of four weeks from the date of the said order, failing which, to file an affidavit disclosing its bank account details one week before the next date of hearing.

12. In the meanwhile, the Judgement Debtor filed an appeal [being FAO



(OS) (COMM) 115/2022] under Section 37 of the A&C Act before the Division Bench of this Court assailing the order dated 23.03.2022 passed by the learned Single Judge of this court in OMP (COMM) No.77/2016 whereby its application to set aside the Arbitral Award was dismissed. The Division Bench dismissed the said appeal by an order dated 10.05.2022.

13. Thereafter, on 13.05.2022, the Judgement Debtor deposited an amount of ₹123,67,58,284/- [Rupees One Hundred Twenty Three Crores Sixty Seven Lacs Fifty Eight thousand Two hundred and Eighty Four only] with the Registry of this court in proceedings relating to OMP (ENF) (COMM) No.116/2020 pursuant to the order dated 06.04.2022.

14. The Award Holder's petition for enforcement of the Arbitral Award [OMP (ENF) (COMM) No.116/2020] was next listed before the learned Single Judge on 22.07.2022. At the said hearing, the learned counsel appearing for the Judgement Debtor made a statement that the Judgment Debtor had deposited the sum of ₹123,67,58,284/- with the Registry of this court, which constitutes the entire awarded amount. The court was also informed that the Judgment Debtor had preferred a Special Leave Petition before the Supreme Court of India assailing the order of the Division Bench of this court dismissing the Judgement Debtor's appeal under Section 37 of the A&C Act.

15. We consider it apposite to set out the order dated 22.07.2022 passed by the learned Single Judge, the same reads as under: -

“1. It is submitted by Mr. Manish K. Bishnoi, learned counsel for the respondent-judgment debtor, that the respondent's petition under Section 34 of the



Arbitration and Conciliation Act, 1996, for setting aside of the award under enforcement was dismissed by a judgment dated 23.03.2022 in O.M.P.(COMM) 77/2016 [*M/S National Highways Authority of India vs. PCL-STICCO (JV)*] and the appeal has also failed. The judgment debtor has now approached the Supreme Court by way of a Special Leave Petition [“SLP”] filed under diary No. 22385/2022. Mr. Bishnoi states that the SLP is likely to be listed within the next two weeks.

2. It is stated that the judgment debtor has deposited an amount of ₹1,23,67,58,284/- with the Registry of this Court, which according to Mr. Bishnoi constitutes the entire awarded amount. Mr. Bishnoi will place the computation of the awarded amount on record within the next two weeks and the award holder is permitted to file a response thereto within two weeks thereafter, if necessary.

3. List on 27.10.2022.”

16. The Award Holder claims that the Judgement Debtor did not comply with the order passed by the learned Single Judge in as much as it did not furnish any computation of the awarded amount, as directed. However, the Award Holder did so. According to the Award Holder, an additional sum of ₹5,91,71,972/- was payable by the Judgement Debtor as on 17.02.2023.

17. In view of the above, the learned Single Judge directed the Judgement Debtor to reconcile the amount and pay the same to the Award Holder without prejudice to all rights and contentions.

18. Thereafter, the Judgement Debtor filed an application being Ex. APPL (OS) No.303/2023 under Order XXI Rule 1(4) of the Code of Civil Procedure, 1908 [**the CPC**] requiring the Award Holder to refund the excess



amount of ₹10,76,294/-, which according to the Judgement Debtor was paid in excess of the amount payable to the Award Holder.

19. In the meanwhile, on 31.10.2022, the Hon'ble Supreme Court dismissed the Special Leave Petition (C) No.18797/2022, which was preferred by the Judgement Debtor.

20. Thereafter, on 17.01.2023, the amount deposited by the Judgment Debtor with the Registry of this court was released to the Award Holder pursuant to its application [being Ex. APPL (OS) No.44/2023] for release of the said amount.

#### **REASONS AND CONCLUSION**

21. It is the Award Holder's case that even though the Judgement Debtor had deposited an amount of ₹123,67,58,284/- with the Registry of this court on 13.05.2022, the same was not available to the Award Holder as the Judgement Debtor had resisted the release of the said amount. The amount was finally released to the Award Holder after the Judgement Debtor had exhausted its remedies against the Arbitral Award right upto the Supreme Court, that is, till its Special Leave Petition was dismissed on 31.10.2022.

22. Additionally, it was submitted on behalf of the Award Holder that the Judgement Debtor had not furnished any notice of depositing the amount of ₹123,67,58,284/- with the Registry of this court and therefore, the interest as awarded in terms of the Arbitral Award would not stop running just because the Judgement Debtor had deposited the said amount with the Registry of this court.



23. It is relevant to bear in mind that although the Judgment Debtor had assailed the Arbitral Award, there was no order passed by any Court staying the Arbitral Award or interdicting the enforcement proceedings under Section 36 of the A&C Act. The Award Holder was not precluded from enforcing the Arbitral Award at any stage. It had filed a petition under Section 36 of the A&C Act being OMP(ENF) (COMM) No.116/2020, on 02.11.2020. And, as noted above, the learned Single Judge had directed the Judgment Debtor to deposit the awarded amount with the Registry of this court in those proceedings.

24. The Judgment Debtor did not deposit the amount within the period of four weeks as directed by the order dated 06.04.2022. However, it did so belatedly on 13.05.2022. Although no notice of such deposit was formerly issued to the Award Holder; the statement made on behalf of the Judgment Debtor that the amount as aforesaid was deposited was recorded by this Court in order dated 22.07.2022.

25. The Award Holder had also made an application for release of the said amount [Ex. APPL (OS) No.44/2023] *albeit* on 17.01.2023 after the Judgment Debtor's SLP had been dismissed by the Hon'ble Supreme Court.

***Partial discharge of Arbitral Award on part deposit***

26. It is well settled that it was not necessary for the Judgment Debtor to deposit or pay the entire decretal amount for the interest as awarded to stop running. Even if a part of the decretal amount is deposited in the court or tendered to the decree holder, the same would discharge the decree to the extent of the amount deposited or tendered.



27. The Supreme Court examined the rule of appropriation in *Prem Nath Kapur v. National Fertilizers Corporation of India Ltd.: (1996) 2 SCC 71*, in the context of payments made for compulsory acquisition of land. Subsequently in *Gurpreet Singh v. Union of India: (2006) 8 SCC 457*, the Constitution Bench examined the rule of Appropriation of the amounts deposited/tendered by the Judgment Debtor and held as under:

“15. Order 21 Rule 1 provides the modes of paying money under a decree. It stipulates that all monies payable under a decree shall be paid: (a) by deposit into the court whose duty it is to execute the decree, or (b) out of court, to the decree-holder in the manner provided, or (c) otherwise, as the court which made the decree directs. Sub-rule (2) provides that where a payment is made by deposit into the court or as directed in the decree, the judgment-debtor shall give notice thereof to the decree-holder either through the court or directly to him by registered post acknowledgment due. On any amount paid by way of deposit into the court or as directed under the decree, interest, if any, shall cease to run from the date of the service of the notice referred to in sub-rule (2). Thus, Order 21 Rule 1 after its amendment in the year 1976 also contemplates the deposit of the decree amount into court and the giving of notice thereof to the decree-holder and provides further for cessation of interest from the date of notice to the decree-holder of such deposit.”

28. In *BHEL v. R.S. Avtar Singh and Ors.: (2013) 1 SCC 243*, the Supreme Court referred to the earlier decisions including the aforesaid decisions and summarized the principle of appropriation in the following words:

“31. From what has been stated in the said decision, the following principles emerge:

31.1. The general rule of appropriation towards a decretal amount was that such an amount was to be adjusted strictly in accordance with the directions contained in the decree and



in the absence of such directions adjustments be made firstly towards payment of interest and costs and thereafter towards payment of the principal amount subject, of course, to any agreement between the parties.

31.2. The legislative intent in enacting sub-rules (4) and (5) is a clear pointer that interest should cease to run on the deposit made by the judgment-debtor and notice given or on the amount being tendered outside the court in the manner provided in Order 21 Rule 1(1)(b).

31.3. If the payment made by the judgment-debtor falls short of the decreed amount, the decree-holder will be entitled to apply the general rule of appropriation by appropriating the amount deposited towards the interest, then towards costs and finally towards the principal amount due under the decree.

31.4. Thereafter, no further interest would run on the sum appropriated towards the principal. In other words if a part of the principal amount has been paid along with interest due thereon as on the date of issuance of notice of deposit interest on that part of the principal sum will cease to run thereafter.

31.5. In cases where there is a shortfall in deposit of the principal amount, the decree-holder would be entitled to adjust interest and costs first and the balance towards the principal and beyond that the decree-holder cannot seek to reopen the entire transaction and proceed to recalculate the interest on the whole of the principal amount and seek for reappropriation.”

29. Thus, in view of the above, there is no cavil that the deposit of a part of the awarded amount by the Judgment Debtor with the Registry of this



Court would partly discharge the Arbitral Award. There are no specific directions in the Arbitral Award as to the manner in which the awarded amounts are to be appropriated. Thus, the rule of appropriation as summarized by the Supreme Court in the *BHEL v. R.S. Avtar Singh and Ors.* (*supra*) is required to be followed. The amount of ₹1,23,67,58,284/- as deposited is required to be appropriated towards the interest outstanding in terms of the Arbitral Award and the balance is required to be appropriated towards the remaining amount. The interest would continue to run on the balance principal amount that remains outstanding after appropriation of the amounts in the aforesaid manner.

### ***Modes of discharge of the Arbitral Award***

30. It is the Award Holder's case that since the payments had not been released to the Award Holder, the interest as awarded would not stop running. However, we find little merit in the said contention.

31. Order XXI Rule 1 of the CPC sets out the modes of paying money under a decree. It would be apposite to refer to the said provision. Rule 1 of Order XXI of the CPC is set out below:

**“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) Where money is paid by postal money order or through a bank under clause (a) or clause (b) of sub-rule (1), the money order or payment through bank, as the case may be, shall accurately state the following particulars, namely—

(a) the number of the original suit;

(b) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants;

(c) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;

(d) the number of the execution case of the Court, where such case is pending; and

(e) the name and address of the payer.

(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 that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in



the ordinary course of business of the postal authorities or the bank, as the case may be.

32. It is apparent from the plain reading of Sub-rule (1) to Rule 1 of Order XXI of the CPC, that there are three modes of making payment against a decree. The Judgment Debtor may make the payment under a decree by (a) depositing the money in the court, which has the jurisdiction to execute the decree by either postal money order or through banking channel; (b) by paying the amount to the decree holder by postal money order or through bank or through any other mode where the payment is evidenced in writing or ; (c) otherwise, as the court passes a decree, directs.

33. Thus, the deposit of ₹1,23,67,58,284/- by the Judgment Debtor with the Registry of this Court on 13.05.2022 did partially discharge the amount as awarded in terms of the Arbitral Award.

34. The Award Holder's contention that deposit of the amount of ₹1,23,67,58,284/- with the Registry of this Court cannot be construed as part discharge of the amounts as awarded, as the said amount was not released to the Award Holder- militates against the plain language of Order XXI Rule 1 of the CPC.

35. It is material to note that there was no order interdicting release of the said payments to the Award Holder. By depositing the amount with the Registry of this court in execution proceedings, the Judgment Debtor had placed the amount beyond its control. It is necessary to bear in mind the distinction where a party deposits funds in proceedings, other than, the enforcement proceedings and has the option to withdraw the same. In cases, where the amount is deposited in the executing court in proceedings for



enforcement of a decree, the Judgment Debtor has no power to withdraw the said amount. But decree holder has. In the present case, as noted earlier, the Judgment Debtor had not secured any order interdicting the release of the said amount to the Award Holder. It is also material to note that the Judgment Debtor had not deposited the amount with the Registry of this Court voluntarily but in compliance with the order dated 06.04.2022 of this Court.

36. The deposit of the amount in court must, therefore, be construed as partial payment of the amounts awarded in favour of the Award Holder.

***Interest to stop on receipt of notice of deposit***

37. It is also contended on behalf of the Award Holder that the interest would not stop running in terms of the Arbitral Award because the notice of the deposit of the amount with the Registry of this court was not served on the Award Holder.

38. Sub-rule (2) of Rule 1 of Order XXI of the CPC requires a judgment debtor to give notice of any payments made under clause (a) or clause (c) or sub-rule (1) of Order XXI Rule 1 of CPC. The said notice is required to be served through the court or directly to the decree holder by registered post or acknowledgement due. Further, Sub-rule (4) of Rule 1 of Order XXI of the CPC also expressly provides that the interest, if any, shall cease to run from the date of service of notice referred to in sub-rule (2).

39. In ***Mathunni Mathai v. Hindustan Organic Chemicals Ltd.: (1995) 4 SCC 26***, the Supreme Court had explained the necessity of intimating the



decree holder regarding deposit of the amount for cessation of the liability to pay interest after the date of deposit. After referring to the amendments to Order XXI Rule 1 of the CPC, the Court had observed as under:

“4. ....The amended sub-rule (2) removes the doubt if there was any that the judgment-debtor is not absolved of the obligation of informing the decree- holder by written notice even in respect of deposit in court either directly or by registered post. The purpose of addition of the expression “either through court directly or by registered post acknowledgment due” is that the judgment-debtor should not only give notice of payment but he must ensure that the decree-holder has been served with the notice. The ratio laid down in Meghraj case applies now with greater rigour. The reason for the rule both in the unamended and amended provision appears to be that if the judgment- debtor intends that the running of interest should cease then he must intimate in writing and ensure that it is served on the decree-holder. Sub- rules (4) and (5) added in 1976 to protect the judgment-debtor provide for cessation of interest from the date of deposit or payment. But the cessation of interest under sub-rule (4) takes place not by payment alone but from the date of service of the notice referred to in sub-rule (2). It is not necessary for purposes of this case to decide whether the creditor was bound to appropriate the amount towards principal once it was deposited in court and intimation of the deposit was served on the decree-holder as it does not appear that the respondent ever served any notice on the appellant about the deposit. It is true that the amount was deposited in January 1988. But in the absence of any intimation as required by sub-rule (2) and indication of manner of appropriation, the payment could not be deemed to have been appropriated towards principal unless the decree-holder admits it to be so...”

40. In a later decision in *Prem Nath Kapur v. National Fertilizers Corporation of India Ltd.* (*supra*), the Supreme Court held that the decision in *Mathunni Mathai v. Hindustan Organic Chemicals Ltd.* (*supra*) did not lay down the correct law, insofar as it was inconsistent to the provisions of



Section 34 and 28 of the Land Acquisition Act, 1894. However, the Court clarified that the ratio of the said decision would be applicable only to a debtor and creditor in an ordinary civil suit governed by the CPC. In view of the above, the observations made by the Supreme Court in *Mathunni Mathai v. Hindustan Organic Chemicals Ltd.* (*supra*) authoritatively set out the law in case of enforcement of a decree under the provisions of the CPC.

41. Having stated the above, it is also material to note that the purpose of issuance of a notice under sub-rule (2) of Rule 1 of Order XXI of the CPC is to intimate the decree holder of the deposit and discharge of the decree. This is to enable the decree holder to seek release of the amount from the court.

42. The Supreme Court in *NEPA Ltd. v. Manoj Kumar Agrawal* (2023) 17 SCC 659 emphasised that purpose of the notice under sub-rule (2) of Rule 1 of Order XXI of the CPC is to enable the decree-holder to be able to benefit from the deposited amount. In that case, the judgement debtor had deposited 50% of the amount awarded in terms an arbitral award, in proceedings under Section 37 of the A&C Act. The amount was deposited by the judgement debtor in order to obtain a stay of the enforcement of the arbitral award during the pendency of the appeal. In the aforesaid context, the court considered the aspect of accrual of interest on the deposited amount where no notice under Order XX1 Rule 1 sub-rule (2) of the CPC was issued but the deposited amount was withdrawn. In that regard the Supreme Court observed as under:

“14. In our opinion, the judgment of the High Court is unsustainable and contrary to the law. In the present case, it is accepted and admitted position that the respondent had withdrawn the amount of



Rs 7,78,280, which had been deposited by the appellant, on 8-11-2001. In this background, the question of notice in terms of sub-rule (4) to Rule 1 Order 21CPC becomes irrelevant.

15. In *Gurpreet Singh v. Union of India* [*Gurpreet Singh v. Union of India*, (2006) 8 SCC 457] , a five-Judge Bench of this Court had examined Rule 1 Order 21 CPC, post the substitution by Act 4 of 1976, and observed that the effect of the substitution is that upon deposit of the decretal amount in the court and giving notice thereof to the decree-holder, there would be cessation of interest from the date of notice to the decree-holder of such deposit. Rule 1 Order 21 CPC also postulates payment by the judgment-debtor to the decree-holder by other specified modes, namely, by postal money order, bank or by payment evidenced in writing, in which case the interest ceases to run from the date money is tendered. The legislative intent clearly, is that the interest would cease on the principal amount paid by the judgment-debtor to the decree-holder. Issue of notice is to enable the decree-holder to withdraw the amount deposited. Therefore, when the deposited amount is withdrawn and gets credited in the account of the decree-holder, he is not entitled to interest on the deposited amount, even when there is failure on the part of the judgment-debtor to issue notice of deposit. In the absence of notice, the interest would cease to run from the date when the amount is transferred/credited in the account of the decree-holder. If notice is issued, interest ceases to run from the date of service of notice.”

43. In a recent decision in *DLF Ltd. v. Koncar Generators & Motors Ltd.:* (2025) 1 SCC 343, the Supreme Court referred to the decision in *NEPA Ltd. v. Manoj Kumar Agrawal* (*supra*) and observed as under:

"42. The rationale for this rule has been explained in *Nepa Ltd. v. Manoj Kumar Agrawal* [*Nepa Ltd. v. Manoj Kumar Agrawal*, (2023) 17 SCC 659 : 2022 SCC OnLine SC 1736] through a similar logic of the decree-holder being able to benefit from the deposited amount. In this case, the award-debtor deposited 50% of the awarded amount before the executing court to obtain a stay on the execution proceedings of the arbitral award during the pendency of appeal under Section 37 of the 1996 Act. This amount was withdrawn by the award-holder, and the issue before this Court was whether



interest is payable on the deposited amount even after the date of deposit. The Court held as follows : (SCC paras 22 & 25)

“22. In the present case, the appellate court, on the appeal preferred under Section 37 of the Act did grant stay, subject to the condition that the appellant would deposit 50% of the amount. Rs. 7,78,280 was deposited by the appellant on 5-11-2001. The stay, therefore, only operated for the balance amount. On the balance amount, certainly, the appellant would be liable to pay interest @ 18% p.a. till the date of actual payment. However, on Rs 7,78,280 paid, after adjusting/appropriating payment due on the interest accrued, on the balance principal amount paid to the respondent, interest would not be payable.

\* \* \*

25. The respondent submits that the payment of Rs 7,78,280 being conditional, the respondent would have been under an obligation to refund the said amount in case the appellant had succeeded in the appeal under Section 37 of the 1996 Act. This argument does not impress, as in the event the appellant had succeeded in their appeal, the entire amount paid would have been refundable. The undertaking was not onerous, and was to operate only if the amount of Rs 7,78,280 was not refunded by the respondent. *The respondent had obviously used and utilised the money. The appellant did not have any right on the money paid to the respondent, who could use it in a manner and way he wanted. There was no charge. Money is fungible and would have gotten mixed up with the other amounts available with the respondent. Right to restitution would not make the payment conditional.* Interest has been jurisprudentially defined as the price paid for money borrowed, or retained, or not paid to the person to whom it is due, generally expressed as a percentage of amount in one year. It is in the nature of the compensation allowed by law or fixed by parties, for use or forbearance or damage for its detention. In the context of the present case, interest would be the compensation payable by the appellant to the respondent, for the retention or deprivation of use of money. Therefore, once the money was paid to the respondent,



interest as compensation for deprivation of use of money will not arise. [Per Sanjiv Khanna, J. in *Nepa Ltd. v. Manoj Kumar Agrawal*, (2023) 17 SCC 659 : 2022 SCC OnLine SC 1736 : We have not examined and decided the issue either way — whether interest would be payable on the amount withdrawn in case withdrawal is on conditions like furnishing bank guarantee, etc.] ”

(emphasis supplied)

Therefore, the ability of the decree-holder to access and use the money in a manner he deems fit was considered by this Court in *Nepa case* [*Nepa Ltd. v. Manoj Kumar Agrawal*, (2023) 17 SCC 659 : 2022 SCC OnLine SC 1736] while deciding the issue.

**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.”

44. We also consider it apposite to refer to the decision in the case of ***Delhi Development Authority v. Bhai Sardar Singh and Sons: (2023) 17 SCC 671***. In the said case, the judgment debtor had challenged the arbitral award by filing objections under Section 30/33 of the Arbitration Act, 1940, which was dismissed by the learned Single Judge of this Court. The learned Single Judge held that the A&C Act was applicable and its objections under Arbitration Act, 1940 were not maintainable. The appellant had successfully appealed the said decision before the Division Bench of this court, which remanded the matter to the learned Single Judge to decide the objections under Section 30/33 of the Arbitration Act, 1940. However, during the pendency of the appeal, the Division Bench had also directed the appellant to deposit the entire awarded amount along with interest as payable in terms of the arbitral award. The appellant complied with the order and had deposited a sum of ₹58,80,380/- with the Registry of this court. Subsequently, the learned Single Judge examined the objections raised against the award in question and dismissed the same. However, the Court found that the interest at the rate of 18% per annum awarded by the Arbitrator was unreasonable and had, accordingly, reduced the rate of interest to 9% per annum. Additionally, the Court observed that if the amount awarded along with interest as modified was not paid within a period of six weeks, the rate of interest as applicable would revert back to 18% per annum as awarded by the Arbitrator. The Award was made Rule of the Court, subject to the modification as directed and a decree was drawn up. Thereafter, the Decree



Holder filed an execution petition for executing a decree in question including recovery of interest at the rate of 18% per annum.

45. It is also material to note that in the said case, the judgment debtor had already deposited the awarded amount along with interest in proceedings relating to appeal from the decision of the learned Single Judge rejecting its objections under Section 30/33 of the Arbitration Act, 1940. In the aforesaid facts, the Supreme Court held as under:

“27. In the context of the present case, it is obvious that the respondent was aware of the deposit of Rs 58,80,380 made by the appellant as the respondent had filed an application for withdrawal of the amount during the pendency of FAO (OS) No. 93 of 2002. The respondent cannot plead that it is neither aware of the deposit nor served with any notice of the deposit of the amount. The learned Single Judge in the judgment dated 15-7-2005 had obviously lost notice of the fact that Rs 58,80,380 has already been deposited in the Court. The respondent, it is obvious, did not bring the deposit to the notice of the Court in order to gain advantage and benefit of higher rate of interest by pleading that the appellant was not entitled to lower rate of interest.

28. The amount deposited by the appellant in terms of the interim order passed in FAO (OS) No. 93 of 2002 was obviously made with the intent that the amount would be released and paid to the respondent, on they being held as entitled to payment under the award. The direction to make payment was only with this intent in mind, that is, to secure payment to the respondent in case and if the appellant was held liable to make payment. The direction in the impugned order would, to this extent, be contrary to the object and scheme of Rule 1 Order 21 as expounded and held by this Court in *Gurpreet Singh* [*Gurpreet Singh v. Union of India*, (2006) 8 SCC 457] and *BHEL* [*BHEL v. R.S. Avtar Singh & Co.*, (2013) 1 SCC 243 : (2013) 1 SCC (Civ) 230]. At the same time, as noticed above, the appellant did not take



immediate steps within six weeks by writing a communication informing the respondent to withdraw the amount.”

46. Although, the Supreme Court clarified that its decision [*DDA v. Bhai Sardar Singh (supra)*] was rendered in the peculiar facts, the principle that a formal notice of deposit of the amount is not necessary if the decree holder is aware of deposit made by the judgement debtor in the court for its benefit is, plainly, discernable.

47. Clearly, once the decree holder is made aware that the deposit has been made, the decree holder, cannot take advantage of the fact that a formal notice was not served. In a case, where the judgment debtor makes deposits in compliance with the orders of the Court enforcing the decree issued at the instance of the decree holder, and the decree holder is aware of the deposits, the interest would not continue running for want of a formal notice under Sub-rule (2) of Rule 1 of Order XXI of the CPC. If a decree holder chooses not to take benefit of withdrawal of the deposited amount, or the court procedure takes some time for the release of the amount deposited, the same cannot be at the detriment of the judgement debtor.

48. The decisions rendered by the Supreme Court in *Himachal Pradesh Housing and Urban Development Authority and Anr. v. Ranjit Singh Rana: (2012) 4 SCC 505*, and *Union of India and Anr. v. M.P. Trading and Investment Rac. Corporation Ltd.: 2015 SCC OnLine SC 868* are also instructive. In *Himachal Pradesh Housing and Urban Development Authority and Anr. v. Ranjit Singh Rana (supra)*, the Supreme Court set aside the decision of the High Court holding that the decree holder was entitled to post-award interest from the date of an award till actual payment



notwithstanding that the amount had been deposited by the judgment debtor with the court. The Supreme Court had reasoned as under:

“15. The word “payment” may have different meaning in different context but in the context of Section 37(1)(b); it means extinguishment of the liability arising under the award. It signifies satisfaction of the award. The deposit of the award amount into the Court is nothing but a payment to the credit of the decree- holder. In this view, once the award amount was deposited by the appellants before the High Court on 24-5-2001, the liability of post-award interest from 24-5-2001 ceased. The High Court, thus, was not right in directing the appellants to pay the interest @ 18% p.a. beyond 24-5-2001.”

49. A similar view was taken by the Supreme Court in *Union of India and Anr. v. M.P. Trading and Investment Rac. Corporation Ltd.: 2015 SCC OnLine SC 868*. In that case, the entire awarded amount had not been deposited with the Court. The Court also noted that the respondent had not made any request to the High Court for withdrawal of the amount that was deposited. In the aforesaid facts, the Court held as under:

“5. In the above facts and circumstances of the case, we are of the view that the appellants shall be entitled to interest as per award from the date of award till the principal amount was deposited in the High Court on 3-3-2003. From the said date of 3-3-2003 till it was withdrawn, the respondent shall be entitled only to the interest accrued on the principal amount in terms of the fixed deposit made as per the direction by the High Court. However, the respondent shall be entitled to the interest in terms of the award on the balance of the award amount which the appellants failed to deposit in Court, as per the award.”

50. In the present case, the Judgment Debtor had not issued any notice under Sub-rule (2) of Rule 1 of Order XXI of the CPC that it had deposited the sum of ₹1,23,67,58,284/- with the Registry of this court on 13.05.2022.



The said deposit was also not made within the period of four weeks as directed by the court by the order dated 06.04.2022. However, on 22.07.2022, the learned counsel appearing for the Judgment Debtor had informed the Court regarding the said deposit and his statement to the aforesaid effect was recorded in the order dated 22.07.2022. Thus, on 22.07.2022, the Award Holder had due notice of the deposit made by the Judgement Debtor. Significantly, the Judgement Debtor had not secured any order interdicting or preventing the Award Holder from withdrawing the said amount. In the aforesaid view, the interest on the amount deposited would stop running with effect from 22.07.2022.

51. We may also clarify that any interest accrued on the amount deposit till 22.07.2022 (that is from 13.05.2022 to 22.07.2022) would be to the credit of the Judgement Debtor. But any interest accrued on the said amount thereafter would, obviously, be to the credit of the Award Holder. The amount deposited (₹1,23,67,58,284/-) plus the interest accrued till 22.07.2022 shall be appropriated first towards the interest in terms of Arbitral Award and the remaining towards the balance amount due. The Judgement Debtor shall pay the remaining amount due to the Award Holder within a period of three weeks along with interest computed till the date of payment. The Judgement Debtor shall also forward the statement of computation to the Award Holder. In the event there is any dispute in this regard, the Award Holder has the liberty to revive its petition for enforcement of the Arbitral Award being OMP(ENF)(COMM) No.116/2020.

52. The Appeal is disposed of in the aforesaid terms.



53. The parties are left to bear their own costs.

**VIBHU BAKHRU, J**

**TEJAS KARIA, J**

**MAY 05, 2025**  
**RK**