

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

The Hon'ble Justice Sabyasachi Bhattacharyya

E.C. No.391 of 2022

M/s. V.K. Patel and Co.

Vs.

Simplex Infrastructure Limited

For the award-holder : Mr. Swatarup Banerjee, Adv.
Ms. Sonal Agarwal, Adv.

For the award-debtor : Mr. Sarvapriya Mukherjee, Adv.
Mr. Abhishek Banerjee, Adv.

Hearing concluded on : 04.07.2024

Judgment on : 09.07.2024

Sabyasachi Bhattacharyya, J:-

1. The present application has been filed for enforcement of a money-award rendered in favour of the petitioner, which is a partnership firm, registered as an MSME unit under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as, "the MSME Act"). The compass of the present dispute is short. Whereas the award-holder/petitioner argues that the rate of interest directed to be paid in the award to the petitioner is to be calculated on the basis of the bank rate fixed by the Reserve Bank of India (RBI) as

on the 'appointed date', the award-debtor/respondent contends that the interest should be calculated on the basis of the fluctuating rates at different points of time as notified by the RBI from the appointed date till the date of payment.

- 2.** Learned counsel for the petitioner argues that the MSME Act is a beneficial or welfare statute and should be given a liberal and not a strict interpretation. If capable of constructions, the one which is more in consonance with the object of the Act is to be preferred. In support of such contention, the award-holder cites *Regional Provident Fund Commissioner vs. Hooghly Mills Company Limited and others*, reported at (2012) 2 SCC 489 as well as a Co-ordinate Bench judgment of this Court in *Bharat Heavy Electricals Limited Electric Division Vs. Optimal Power Synergy India Pvt. Ltd.*, reported at AIR 2021 Cal 274.
- 3.** Learned counsel argues that the Act defines "appointed day" and the notified interest should be calculated on the basis of the rates as on such date. The word "monthly" used in Section 16 of the Act refers to compound interest with "monthly rests" and not "monthly interest". In case the contention of the respondent is accepted, the calculation has to be made on the basis of several appointed days, taking into account notified rates at different points of time, which is completely contrary to the provisions of the MSME Act. Thus, it is argued that the calculations ought to be made at the rate which prevailed on the appointed day.
- 4.** On the other hand, learned counsel for the respondent/award-debtor argues that Section 16 contemplates fluctuating rates to be the basis

of calculation of interest. In support of such contention, learned counsel cites *Government of Maharashtra v. Shrivin Pharma Pvt. Ltd.*, reported at 2023 SCC OnLine Cal 3482 and *Usha Martin Ltd. v. Eastern Gases Ltd.*, reported at 2022 SCC OnLine Cal 3342, both co-ordinate Bench decisions of this Court.

5. Insofar as certain payments were made at the fixed rate as on the appointed day by the award-debtor pursuant to orders of court and undertakings given before the court, it is argued that the same cannot bind the petitioner to a fixed rate. It is argued that there cannot be any estoppel against the law, in support of which proposition learned counsel cites *Krishna Rai (dead) represented through LRs and Others v. Banaras Hindu University*, reported at (2022) 8 SCC 713.
6. Before delving into an adjudication of the questions involved, the language used by the Micro and Small Enterprises Facilitation Council (in short, “the Council”) in its award is required to be looked into. As per the same, the respondent/award-debtor is required to pay to the petitioner an amount of Rs. 31,66,173/- “with interest on each and every due amount payable as per Section 16 of MSMED Act, 2006 till realization of the amount to the Petitioner”.
7. The expression “each and every due amount” is relatable to the different bills on which the said dues arose.
8. Thus, the Council did not calculate in details the exact amount of interest payable but merely referred to Section 16 of the MSME Act.
9. Although it has been insinuated by the parties that the exact amount of interest ought to have been calculated in the award, to be fair, there

may be some justification in the Council not doing so, since the date of actual repayment being uncertain, the quantum of interest till such date could not have been prophesied by the Council while passing the award.

- 10.** For adjudicating the issue at hand, it is to be noted that Section 18 of the MSME Act, under which the arbitration took place before the Council, provides that the provisions of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as, “the 1996 Act”) shall apply to the disputes, if referred to arbitration, as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of that Act.
- 11.** Section 31(7) of the 1996 Act provides that in case of awards for payment of money, the Arbitral Tribunal may include in the sum for which the award is made, interest at such rate as it deems reasonable. Unless the award otherwise directs, the awarded sum has to carry interest at the rate of 2% higher than the current rate of interest prevalent on the date of the award, from the date of award to the date of payment.
- 12.** However, Section 16 of the MSME Act, which is a special statute in respect of MSME Units, clearly provides that such interest has to be mandatorily paid as compound interest with monthly rests at 3 times the bank rate notified by the RBI. In view of the *non-obstante clause* in Section 16, the same overrides Section 31(7) of the 1996 Act and it is the stipulation of Section 16, thus, which is to be reckoned with in the context.

13. Section 16 is set out hereinbelow:

“16. Date from which and rate at which interest is payable.—
where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.”

14. Interest, as per Section 16, thus has the following features:

- (i) The award of interest is mandatory, in view of the expression “shall” preceding the *non-obstante clause*;
- (ii) The mode of calculation of interest is compound interest with monthly rests;
- (iii) The date of commencement is the “appointed day” or, as the case may be, from the date immediately following the date agreed upon;
- (iv) The rate of interest shall be three times the bank rate notified by the RBI.

15. The expression “appointed day” has been defined in Section 2(b) of the MSME Act as the day following immediately after the expiry of the period of 15 days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier. The explanation thereto provides further details of the day of acceptance to mean the day of the actual delivery of goods or the

rendering of services or, where any objection is made in writing by the buyer regarding acceptance of goods or services within 15 days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier. The expression “the day of deemed acceptance” has been defined, where no objection is made in writing by the buyer regarding acceptance of goods or services within 15 days from the day of delivery of goods or rendering services, as the day of the actual delivery of goods or the rendering of services.

- 16.** In the present case, no dispute has been raised by either party as to the appointed day.
- 17.** Two of the aspects of interest in Section 16 are fixed; first, that it is to be calculated from the appointed day and secondly that it will be compound interest with monthly rests.
- 18.** The arguable facet is whether the bank rate would be variable or fixed.
- 19.** Section 16, apart from leaving subtle clues, does not clearly specify whether the rates will be variable or fixed.
- 20.** To ascertain such issue, the very concept of compound interest versus simple interest is to be explored, since compound interest is the chosen mode in Section 16. Importantly, it has also been stipulated in Section 16 of the MSME Act that the compound interest shall be with “monthly rests”. Thus, the interest is to be compounded at the end of each month after the appointed day.
- 21.** The very concept of compound interest is variable progression, as opposed to simple interest which, by its very definition, always has to be at a fixed rate as on the date of commencement of calculation. In

case of simple interest, the interest is calculated at the fixed rate which prevailed at the juncture of commencement of calculations till the date of payment, on the principal.

- 22.** As opposed thereto, the premise of compound interest is staggered progression in the sense that the interest has to be calculated at defined intervals, in the present case, at monthly intervals, which are known as “rests”. Hence, for example, if the principal is Rs. 100/- and the initial rate of interest on the appointed day is 10%, after the end of the first month, the total amount would be Rs. 100 + 10% thereof that is Rs. 110/-, which equals Rs. 110/-.
- 23.** The said sum of Rs. 110/-, which is the initial principal plus interest for the first month, forms the basis of calculation or principal for the second month. Thus, calculated, the principal for the second month would be Rs. 110/-, which would be the base amount on which further interest would be calculated.
- 24.** Hence, although the commencement of calculation is tied to the appointed day, the point of incidence of the bank rates for calculation of interest becomes the end point of each month, which are also known as monthly “rests” as stipulated in Section 16 itself. Hence, by its very nature, compound interest has to be imposed at staggered intervals.
- 25.** Since the point of incidence of the rate of interest is the rate prevailing at the end of each month, which is the monthly rest, the rate prevailing on such date must be the premise of calculation. For instance, if the initial rate of interest prevailing on the appointed day

was “x%”, the calculation for the first month would be equal to Principal (P) + “x% of principal”. Again, at the beginning of the second month the rate of interest becomes “y”, the second month’s calculation would be equal to $(P + x\% \text{ of } P) + y\% \text{ of } (P + x\% \text{ of } P)$, which would again form the base amount for calculation of the third month. The only difference between a normal calculation of compound interest and that under Section 16 is that the rate will be three times the bank rate as notified by the RBI in case of the latter.

- 26.** Section 16 mentions the appointed day merely as the starting point of calculation but does not provide that the rate of interest should also be inextricably linked to the said date; rather, the language used is “three times the bank rate *notified by the Reserve Bank*”.
- 27.** The argument of the petitioner, that if the rates are variable, the appointed day has to be calculated at the end of each month, is not acceptable, since there is no such possibility if the variable rates are taken into consideration. The appointed day merely provides the starting point of calculation. Thereafter, the calculation will progress at compound rate with monthly rests, meaning thereby that the rate prevailing at each monthly rest should be taken into account for incidence of interest for the said month. In Section 16, the term “rests” has been interchangeably used with “intervals”.
- 28.** The very character of compound interest makes it fluid and variable. If the rate of calculation of interest is fixed at the date of inception of calculation, the same would be a counter-intuitive, artificial and arbitrary superimposition on the normal mode of calculation as given

in the statute, since Section 16 provides that the compound interest will be calculated with 'monthly rests', at which points the prevailing bank rate of interest is to be taken into account.

- 29.** Just as in the case of the simple interest if suddenly varied rates are imposed it would be arbitrary since the mode of calculation is continuous, similarly, in case of compound interest, which is to be calculated on a staggered basis, fixation of the rate prevailing at the inception would also be arbitrary.
- 30.** The very premise of compound interest with monthly rests is that the calculation of further interest is made at the end of every month at the rates prevailing then. In a Section 16 scenario, the rate at which interest is to be imposed at each monthly rest is three times the bank rate notified by the RBI prevalent at that juncture.
- 31.** Hence, by its very definition, compound interest at monthly rest is variable and cannot be static, frozen at the appointed day.
- 32.** Even a plain reading of Section 16 clearly indicates that the compound interest envisaged therein has to be with monthly rests, taking the then prevailing bank rates notified by the RBI at each monthly interval.
- 33.** The argument of the petitioner regarding liberal interpretation in beneficial legislation is a double-edged sword and can work either way. It entirely depends on whether the RBI bank rates increase or decrease at a given point of time. A beneficial interpretation cannot be in thin air, on a prospective basis, in anticipation of the fluctuation of rates. In any event, Section 16 stipulates three times the RBI rates which

itself is the beneficial component of the legislation insofar as interest is concerned. No further benefit can be read into it which would be contrary to Section 16.

34. However, the judgments cited with regard to rates of interest by the award-debtor are not germane. In the case of *Government of Maharashtra (supra)*, the learned Single Judge was considering two issues, as to whether adjudication of the Facilitation Council is on the entire awarded amount and, would the petitioner's obligation under Section 19 be impacted if the answer is in the negative. There, the court was deciding an application for modification of an order passed in connection with a challenge under Section 34 of the 1996 Act and as such, the court had the leeway of entering into the veracity and legality of the award itself. While doing so, the court observed that the Council ought to have adjudicated on the specific rate of interest on the multiple planks of Section 16 instead of shifting the responsibility of adjudication to a Chartered Accountant. Unfortunately, such liberty is not vested in this Court while deciding an application under Section 36, which is merely for enforcement of the award. In such an application, the executing court cannot go behind the award and/or enter into the question as to whether the award was legal or otherwise valid in law.

35. Again, in the case of *Usha Martin Ltd. (supra)*, the Court was also deciding on an application under Section 34 of the 1996 Act where the court criticized the award by observing that the Council should have calculated the interest without delegating the same.

- 36.** As observed earlier, such liberty is not vested in the executing court.
- 37.** As to the judgment of *Krishna Rai (supra)*, the ratio of the same is applicable to the present case. Although the award-debtor had paid interest at a fixed rate for some time in terms of orders of the court and as per its submission before the court, the same cannot bind the award-debtor if it is opposed to the statute. It is well-settled that there cannot be any estoppel against the law.
- 38.** Thus, the law as interpreted above, as comprised in Section 16 of the MSME Act, could not have been waived by the award-debtor merely by making certain payments of interest. In any event, mere payment at a certain rate, without anything else, cannot amount to a concession on the variability or otherwise of rates of interest, since the question never came up or was considered by court at any stage before.
- 39.** As such, upon a comprehensive assessment of the provisions of Section 16, the inevitable conclusion is that the interest envisaged therein is to be paid at the rate of three times the RBI notified rates, the incidence of which would be at each monthly rest, meaning thereby that the rates would be fluctuating along with the RBI-notified rates at variable points of time, to be taken at each monthly interval which is the point of incidence of such rates.
- 40.** Accordingly, the version of the award-debtor is accepted. The rate of interest has to be calculated from the appointed date till the date of repayment, calculated on the basis of compound interest with monthly rests, the rate of interest being taken at each point of incidence at each monthly rest, in terms of the RBI rates prevalent at that point of

time, multiplied by three. Hence, the award-debtor is to pay interest to the award-holder at the variable rates of interest as notified by the RBI from time to time, multiplied by three, throughout the period, calculated at each monthly interval at the then prevailing rates.

- 41.** Since the executing court cannot go behind the award itself, the award is to be interpreted for the purpose of enforcement, to make it workable, in the light of the above principles.
- 42.** The mode of calculation having thus been determined, the award-debtor is directed to make the full payment of interest as per the calculations in the light of the observations above to the award-holder within four (04) weeks from date. For such purpose, along with such payment of the entire interest component over and above the principal awarded amount, deducting the amounts already paid/deposited in terms of court orders, the award-debtor shall also file in court a copy of the detailed calculations for arriving at the amount paid to the award-holder.
- 43.** The award holder will be at liberty to withdraw (if deposited), alternatively utilize (if paid directly) the amount already deposited/paid by the award debtor.
- 44.** The matter shall next be listed under the heading "For Orders" on August 6, 2024 when the award-debtors shall file an affidavit of compliance, showing payment of such entire amount of interest along with the principal to the award-holder, annexing to the said affidavit a break-up of the detailed calculations of interest till the date of payment.

45. Advance copy of the said affidavit of compliance shall be served on the learned advocate for the award holder.

(Sabyasachi Bhattacharyya, J.)