



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 16th November, 2023
Pronounced on: 12th January, 2024

+ **O.M.P. (COMM) 348/2022**
SIMENTECH INDIA PRIVATE LIMITED Petitioner
Through: Ms. Sanchita Ain, Mr. Habib
Muzaffar and Ms. Swati Khanna,
Advocates.

versus

BHARAT HEAVY ELECTRICALS LIMITED Respondent
Through: Mr. Aditya Narayan Mahajan and Mr.
Karan Aggarwal, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA
J U D G M E N T

SANJEEV NARULA, J.

I.A. No. 15500/2022 (u/Order VII Rule 10 r/w Section 151 of the Code of Civil Procedure, 1908, for return of the petition)

1. Respondent (Claimant in the arbitration proceedings) invokes Order VII Rule 10 of the Code of Civil Procedure, 1908 (“CPC”) and seeks return of the petition on ground of lack of pecuniary jurisdiction of this Court entertain this Petition. On 13th February, 2023, this Court had referred the matter to the Joint Registrar (“JR”) for computation of Specified Value. Accordingly, *vide* order dated 19th July, 2023 (“JR Order”), the JR has ascertained the Specified Value to be INR 1,79,08,623.63. The Petitioner contests this valuation, asserting that the determination is erroneous as it



fails to consider several crucial components, which, if accounted for, could significantly impact the calculated Specified Value. In light of these conflicting positions, this Order will address and decide upon the issue of the Specified Value and the Court's pecuniary jurisdiction.

Background

2. Section 5(2) of the Delhi High Court Act, 1966 (“**DHC Act**”) defines the ordinary original civil jurisdiction of this Court. According to this provision, the jurisdiction of this Court is applicable in every suit where the value of the subject matter exceeds INR 2 crores. Since the present proceedings arise from an Arbitral Award, we have to refer to Section 12(2) of the Commercial Courts Act, 2015 (“**CCA**”) which outlines the method for determining the Specified Value in an arbitration of a commercial dispute. This provision stipulates that the aggregate value of both the claims and counter-claims as detailed in their respective statements shall be the basis of determination of the Specified Value. In order to entertain the present petition, the Specified Value derived from the combined value of the claim and counterclaim as stated in the respective statements, must be more than INR 2 Crores.

3. The Petitioner, in Paragraph 35 of the Petition, declared the Specified Value as INR 2,22,83,947.3. This figure comprises a claim of INR 1,62,42,833 and a counter-claim of INR 60,41,114.31. However, in response to the present Interlocutory Application, the Petitioner revised this value to INR 2,00,75,422.8, breaking down to a claim of INR 1,21,06,908.8 and a counter-claim of INR 79,68,514.03.

4. On the other hand, the Respondent controverts the above calculations



and submits that the interest amounts have been wrongly calculated by the Petitioner from the date of notice invoking arbitration. The argument put forth is that interest on the cost of litigation should be calculated from the date of each respective invoice raised by Respondent's legal counsel. Similarly, for interest on counterclaims, it is contended that the accrual of interest should commence from the date when the counterclaim was filed. Further, the Respondent claims that the Goods and Services Tax ("GST") was not claimed by the Respondent in its Statement of Claim, and consequently, the GST amount as well as interest on the same could not have been computed into the Specified Value. Respondent asserts that the actual Specified Value is only INR 1,79,08,623.63, which encompasses claim amount of INR 1,18,34,263 and counter-claim of INR 60,74,360.23. According to the Respondent's calculation, the aggregate Specified Value falls below the INR 2 crores threshold, thereby placing the matter outside the jurisdiction of this Court.

Petitioner's Calculations:

5. The following tabulation is Petitioner's determination of the Specified Value:

TABLE 1
"AGGREGATE VALUE OF THE STATEMENT OF CLAIM FILED ON 23.06.2021"

	<i>Duration</i>	<i>Calculation</i>	<i>Amount (INR)</i>
<i>Risk and Cost Amount (X)</i>	N.A.	58,07,799.82	58,07,799.82
<i>18% interest on the Risk and Cost Amount from the due date till the date of realization (Y)</i>	3 years + 7 months + 4 days	3 x (18% of 58,07,799.82) + (7/12) x (18% of 58,07,799.82)	31,36,211.91 + 6,09,818.983 + 11,456.4818



		+ (4/365) x (18% of 58,07,799.82)	= 37,57,487.37
Cost of Litigation (Z)	N.A.	4,65,594.00	4,65,594.00
18% interest on cost of litigation from the date of notice invoking arbitration till the date of realization (W')	2 years + 10 months + 18 days	2 x (18% of 4,65,594.00) + (10/12) x (18% of 4,65,594.00) + (18/365) x (18% of 4,65,594.00)	1,67,613.84 + 69,839.1 + 4,132.944 = 2,41,585.884
TOTAL AMOUNT		(X + Y' + Z + W')	1,02,72,467.1
Applicable GST of 18% on the Total Amount (G'')		18% of 1,02,72,467.1	18,49,044.08
AGGREGATE VALUE OF THE CLAIM (A'')		(X+ Y'+ Z+ W'+ G'')	1,21,21,511.2

TABLE 2

AGGREGATE VALUE OF THE COUNTER CLAIM FILED ON 07.10.2021			
	Duration	Calculation	Amount (INR)
Counter Claim amount (XX)		52,53,142.88/-	52,53,142.88/-
18% Interest pendente lite and future interest (from date of Notice invoking Arbitration till the date of realization) (YY')	2 years + 10 months + 18 days	2 x (18% of 52,53,142.88/-) + 10/12 x (18% of 52,53,142.88/-) + 18/365 x (18% of 52,53,142.88/-)	18,91,131.44 + 7,87,971.433 + 46,630.6382 = 27,25,733.51
TOTAL AMOUNT		(XX + YY')	79,78,876.39 /-
AGGREGATE VALUE OF THE COUNTERCLAIM (B')		(XX + YY')	79,78,876.39 /-

**TABLE 3**

SPECIFIED VALUE		
		Amount (INR)
AGGREGATE VALUE OF THE CLAIM (A'')	(X+ Y'+ Z+ W'+ G'')	1,21,21,511.2
AGGREGATE VALUE OF THE COUNTER CLAIM (B')	(XX + YY')	79,78,876.39/-
SPECIFIED VALUE	(A'' + B')	2,01,00,387.6/-

- a) **Dates referred for the purposes of calculation of Specified Value:**
- **“Due date” being the date of Demand Notice for Risk and Cost, i.e., 19.01.2019**
 - **“Date of Notice invoking Arbitration” being 04.10.2019**
 - **“Date of realization” being 21.08.2022 as the actual date of filing as per the record is 21.08.2022.**
- b) **Amount referred for the purposes of calculation of Specified Value:**
- **Risk and Cost Amount = INR 58,07,799.82 /-**
 - **Cost of Litigation claimed by the Respondent (Claimant) = INR 4,65,594/-**
 - **Counter Claim filed by the Petitioner (Respondent in the underlying Arbitration) = INR 52,53,222 /-**

Legal Issues and Contentions

6. The JR has rejected the calculations done by the Petitioner on the following grounds and reasons:

(a) Interest on litigation costs ought to be calculated from the date of each invoice issued by the legal counsel, rather than from the date the arbitration was invoked. The reason advanced in support is that both the revised statement of claim and the prayer clause related to costs did not claim interest from the date of the arbitration notice. The relevant sections of these documents are reproduced below to provide a detailed reference:

“C. Award of cost of litigation necessitated due to arbitrary action of Respondent and Arbitration costs along with interest at the rate of 18% per annum in favour of



the Claimant;”

...

“Therefore, it is most humbly prayed that this Hon'ble Tribunal may be pleased to pass an Order allowing the Claimant's claim towards Legal Costs amounting to Rs.4,65,594/- (Rupees Four Lakhs Sixty Five Thousand Five Hundred Ninety Four Only) along with interest @ 18% per annum.”

(b) GST will not be applied to the ‘Cost of Litigation’, but it will be applicable only to the ‘Risk and Cost Amount’. This is because the Respondent, in their statement of claim, did not request the inclusion of GST on the cost of litigation.

(c) Interest on the counter-claim should accrue from the date the counter-claim was filed, not from the date on which arbitration was invoked. This is in line with the specific request made by the Petitioner in their counter-claim, where they have expressly sought interest starting from the 'date of counter-claim.

7. The Petitioner challenges the JR Order on the following grounds:

(a) JR did not have the jurisdiction under Order VII Rule 10 of CPC or the Delhi High Court Rules, 2018 to decide the application, and particularly, the legal issues raised.

(b) Respondent has claimed legal costs for ‘engaging legal counsel’ for arbitral proceedings as well as ‘connected proceedings’, specifically claiming interest on the ‘pre-reference period’ as well. Thus, the interest component should start from the date of notice invoking arbitration, and not from date of each invoice.

(c) Contrary to the observations passed by the JR, the Respondent has indeed claimed GST in the statement of claim. Specifically, they have sought interest on ‘unpaid amounts along with applicable GST’:

“42. That the Claimant has been deprived of these significant additional



amounts by the Respondent and is entitled to the interest on the unpaid amounts along with applicable GST from the date they were due till the date of receipt of payments of the amounts determined by the Hon'ble Arbitral Tribunal. The Claimant is entitled to the commercial rate of borrowing at 18% per annum”

The Petitioner relies upon GST Notification No. 13/2017 issued by the Ministry of Finance. This notification clarifies that legal services provided by a firm of advocates are subject to GST.

(d) The counter-claim explicitly seeks interest @ 18% per annum from the ‘date of counter-claim’, and the submissions of the Petitioner mention that the cause of action for counter-claim arose when the contract was illegally terminated. Therefore, the interest is applicable from the date of cause of action.

Analysis and directions

8. The submissions advanced by both parties, as well as the analysis done by the JR contains inaccuracies, particularly on the aspect of component of interest which is part of the Specified Value. The Petitioner’s calculation sheet, as presented above, posits the date of the filing of the instant petition, i.e., 21st August 2022, as the ‘date of realisation’ / endpoint for computing interest. This assumption, which has not been challenged by the Respondents, is flawed. Section 12(2) of the CCA stipulates that the pecuniary jurisdiction should be determined based on the aggregate values delineated in the statements of claim and counterclaim. This provision implies that the assessment should focus on the core claim and counter-claim values, as on the date of presentation, rather than the additional interest calculated till the date of filing of the present petition.

9. Section 12(2) of the CCA stipulates that the ‘aggregate value’ of the



claim and any counter-claim in a commercial dispute arbitration forms the basis for determining the pecuniary jurisdiction of the Court. In cases where the Statement of Claim includes a component of interest, such as in the present case, it is necessary to consider the portion of interest accrued up to the date of invocation of arbitration as part of the ‘aggregate value’, in accordance with Section 12(2) of CCA. However, this provision cannot be interpreted as requiring the computation of interest up to the commencement of proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 (“**Act**”). The intent is to consider interest only until the arbitration is invoked, thereby establishing a definitive cut-off for calculating the ‘aggregate value’ for jurisdictional purposes.

10. The calculation presented by the Petitioner conflicts with the proper interpretation of Section 12 of the CCA. It is not permissible to apply interest to the original value of both the claim and counter-claim up until the filing date of petition under Section 34 of the Act. Accepting such a method would imply that in any arbitration case, the Specified Value would continually get revised. Consequently, if the Specified Value is initially below the pecuniary jurisdiction of this Court, it would eventually fall within the jurisdiction of a High Court simply due to the accrual of interest over time. This outcome would contravene the legislative intent behind establishing a specific threshold for the pecuniary jurisdiction of the Courts.

11. Our analysis is aided by reliance upon a Division Bench judgment of this Court in *National Seeds Corporation v. Ram Avtar Gupta*,¹ wherein the Court took into consideration only the portion of interest claimed till the

¹ 2021:DHC:4174-DB



date of invocation of arbitration for the purposes of calculating the pecuniary jurisdiction of this Court under Section 12(2) of the CCA. Section 21 of the Act stipulates that the arbitral proceedings commence when the notice invoking arbitration is received by the Respondent, and therefore, the interest is calculated up to such date.

12. In view of above, the interest component in the calculation supplied by the Petitioner would reduce substantially, for the following reasons:

(a) Interest on risk and cost amount is to be calculated from due date (19th January, 2019) to the date of notice invoking arbitration (04th October, 2019): 18% interest p.a. on INR 58,07,799.82 for a period of 258 days = INR 7,38,891.5.

(b) Moreover, the inclusion of *pendente lite* (interest accruing during litigation) and future interest on the counter-claim, as well as litigation costs, is impermissible to be included in the calculation of the Specified Value, as they commence accrual after date of notice invoking arbitration

13. Thus, if the interest components mentioned above are revised/excluded from the Petitioner's computation, it becomes evident that the Specified Value would fall below INR 2 crores.

14. In light of the above, the application is allowed and disposed of.

O.M.P. (COMM) 348/2022

15. As the Specified Value of the present petition filed is less than the pecuniary jurisdiction stipulated under Section 5(2) of the DHC Act read along with Section 12(2) of CCA, it is ordered to be returned. The Petitioner shall be at liberty to present the same before the Court of competent jurisdiction as per the Revised Specified Value.



JANUARY, 12 2024/as

SANJEEV NARULA, J