

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
Original Side
(Commercial Division)

Present :-

The Hon'ble Justice Moushumi Bhattacharya

EC 272 of 2022

M/s. Neo Built Corporation

Vs.

Union of India

For the petitioner : Mr. Mainak Bose, Adv.
Mr. Sabyasachi Sen, Adv.

For the respondent UOI : Ms. Aparna Banerjee, Adv.
Ms. Saswati Ghosh Sinha, Adv.

Last Heard on : 23.06.2023

Delivered on : 10.07.2023

Moushumi Bhattacharya, J.

1. The question which falls for adjudication in the present case is whether the award-debtor, being the Union of India represented by the Chief Engineer, Metro Railway, can deduct 10% of the amount awarded to the award-holder and pay the balance amount to the award-holder.

2. The orders on record indicate certain admitted facts. The award-debtor's application for setting aside of the award under section 34 of The Arbitration and Conciliation Act, 1996, was dismissed and the award-debtor's appeal therefrom was also dismissed. This led to a Co-ordinate Bench of this Court being of the view that there was no further impediment to execution of the award. The order dated 1st March, 2023 records the stand of the award-debtor, as expressed by learned counsel, that the award-debtor was in the process of making payment to the award-holder in full satisfaction of the awarded amount. The Court accordingly directed the award-debtor to return the bank guarantee and to make payment of the awarded sum along with interest payable within four weeks from the date of the order following which the order of attachment passed against the award-debtor would stand vacated. The award-debtor sought for time to make the payment to the award-holder and time was extended for a further period of three weeks by a later order dated 29th March, 2023.

3. The order of 20th April, 2023 records that the petitioner/award-holder has received payment of approximately Rs. 3.5 crores and that the award-debtor has disbursed an amount of Rs. 3.88 crores.

4. The grievance of the award-holder is that instead of Rs. 3.88 crores which was recorded in the order dated 4th May, 2023, the award-holder received an amount of only Rs. 3.5 crores. The difference of about Rs. 38 lacs was a result of the award-debtor deducting TDS on

the said amount. This was the express stand taken on behalf of the award-debtor.

5. Learned counsel appearing for the award-debtor/Metro Railway produced a Sanction Memorandum dated 19th April, 2023 which records that an amount of Rs. 3,88,98,848/- was released by the respondent in favour of the petitioner. Counsel also produced a Memo dated 5th March, 2008 of the Railway Board, Ministry of Railways, on the applicability of TDS provisions in respect of certain transactions/payments made by the Railways. Item 18 of the document relates to “Arbitration Award” which provides for a corresponding deduction of 10% under section 194A of the Income Tax Act, 1961.

6. Therefore, the issue is whether the award-debtor Metro Railway could have deducted 10% from the awarded amount of Rs. 3.88 crores as TDS and paid the balance amount of Rs. 3.50 crores to the award-holder/petitioner.

7. In *All India Reporter Ltd. vs. Ramchandra D. Datar*; AIR 1961 SC 943, the Supreme Court decided the question of whether the amount decreed in favour of the respondent would attract the statutory liability under the Income Tax Act. In the facts of that case, the respondent *Ramchandra D. Datar*, had filed a Civil Suit in the Court of the 5th Additional District Judge, Nagpur, for a decree of Rs.1,30,000/- as compensation for wrongful termination of employment, arrears of salary and interest. The Court passed a decree on 17th July, 1953 for Rs. 42,359/- which included compensation for termination, salary and costs. The respondent applied for execution of the decree. The Income

Tax Officer, Nagpur, served a notice under the Indian Income Tax Act upon the respondent that the appellant company be permitted to deduct tax at source and to pay Rs. 15,956/- as income tax, surcharge and super tax on the sum of Rs. 50,972/- awarded to the respondent into Government Treasury. The executing Court directed the appellant to pay the amount to the Income Tax Department and to pay the balance amount to the respondent. The High Court of Judicature at Nagpur reversed the order of the District Judge and the appellant company approached the Supreme Court.

8. The Supreme Court held that the judgment-debtor cannot satisfy the claim of a third party against the judgment-creditor and pay only the balance to the latter in the absence of a direction in the decree to that effect. The Supreme Court further held that there is nothing in the Income Tax Act, as it then stood, which permits the debtor to deduct income tax which may become due and payable by the judgment-creditor. The ratio of the decision is that the amount payable by the appellant (employer who terminated the contract) to the respondent (employee) was no longer to be viewed as salary but as “judgment-debt” and that the appellant hence could not deduct tax at source before making payment of the decretal amount to the respondent.

9. The dictum in *All India Reporter* was reiterated by a Division Bench of this Court in *S.S. Miranda Ltd. vs. Shyam Bahadur Singh*; 1984 SCC OnLine Cal 161 where the Court went a step further and directed that the appellant, which had deducted TDS, - would be at

liberty to take steps for recovery of the amount from Income Tax Authority in accordance with law. A Single Bench of the Delhi High Court in *Voith Hydro Ltd. vs. NTPC Limited*; 2021 SCC OnLine Del 1325 held that the judgment-debtor NTPC Limited was entitled to apply to the Income Tax Authorities for refund of the amount deducted as TDS and that the Income Tax Authorities shall process the request for refund of TDS which was incorrectly deposited. The question before the Delhi High Court was similar to that which is before this Court, namely, whether NTPC/judgment-debtor was entitled to deduct the TDS from the payments made to Voith/decree-holder. The Court relied on the *All India Reporter* decision to come to the conclusion as stated above.

10. The decisions following *All India Reporter* hold that the decretal amount is a “judgment-debt” and must be paid in its entirety to the decree-holder. No amount can be deducted as tax at source from the decretal sum and that the judgment-debtor is not entitled to pay only the balance amount to the decree-holder. This is the position in law.

11. The action of the award-debtor Metro Railway in deducting 10% from the awarded amount of Rs. 3.88 crores as TDS and paying the balance amount of Rs. 3.50 crores to the petitioner/award-holder is hence contrary to the settled position of law. The award-debtor’s reliance on the Notification dated 5th March, 2008 is also contrary to law and the award-debtor cannot seek recourse to the same for depriving the petitioner of the balance amount of approximately Rs. 38 lacs.

12. EC 272 of 2022 is accordingly disposed of by directing the award-debtor Union of India/Metro Railway to make payment of the balance amount of Rs. 38,98,848/- (Rs.3,88,98,848 - Rs. 3.50 crores) to the award-holder within three weeks from date. This direction is also in terms of the recording in the order passed by the Court on 20th April, 2023.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of the requisite formalities.

(Moushumi Bhattacharya, J.)