

National Projects Construction Corporation Ltd. Vs. Royal Construction Company Pvt. Ltd.

Civil Appeal No.1991 of 2019
2023-10-10 | Vikram Nath, J.
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Full judgment text

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[Civil Appeal No.1991 of 2019]

Royal Construction Company Pvt. Ltd. Vs. National Projects Construction Corporation Ltd.

[Civil Appeal No. 2528 of 2019]

Vikram Nath, J.

1. These two appeals have been filed under Article 134A read with Article 133(1)(a) of the Constitution of India by the rival parties before the High Court of Delhi in EFA (OS) No.19 of 2017. The High Court, by the impugned order, certified that the case involved the following substantial question of law of general importance which required a decision by this Court.

"In terms of the agreement dated 29th June 1982 between the parties and in light of the judgment dated 24th February 2015 of the Supreme Court of India in Civil Appeal Nos. 2543-44/2015, what should be the relevant date for conversion of the awarded sum from USD to Indian rupees?"

2. Relevant facts necessary for adjudication of the issue are as follows:

2.1. An agreement was executed between the parties to carry out earth work in Iraq by the Royal Construction Company Private Limited¹ given by the National Projects Construction Corporation Limited². According to the contract, Clauses 31 and 32 of the agreement along with their sub-paragraphs relate to payments and advances, the same are reproduced hereunder:

"31. PAYMENTS AND ADVANCES:

All amounts and schedule of prices as mentioned in the Agreement documents are in Iraqi Dinars³ and represent the total lump sum amount payable to the Associate for various components of works. For the purpose of payment, the schedule of prices shall be used, and payment released against all monthly account bills submitted by the Associate after due verifications.

32. PAYMENT OF WORK IN PROGRESS

32.1. The NPCC may pay initial advance in the form of purchase of air tickets for workers and staff of the Associate from Delhi to Iraq.

2. The NPCC shall give advance, towards the construction of residential accommodation including field office, store at the site of work, towards cost of transport vehicles (1 mini - bus, 1 land Rover and Jeep, 2 Mobile lighting units garage tools and equipment).

3. Help required for setting up of camp and for initial running of equipment will be extended to by the Chief Project Manager to the extent he deems necessary in the interest of work.

The above advances shall be recovered from the "on account bills" after 10% of the work is completed and before 90% of the work is complete. The recovery will be in the same currency as NPCC has spent for the advance. The recovery shall be made on the pro-rata basis.

Payment of work in progress:

32.2 The monthly running account bills for the quantity of work executed by the Associate shall be presented to the Chief Project Manager, NPCG before the 10th of every month. The Associate shall be paid the net amount due after all deductions towards advances, retention money and recoveries towards cost of materials and other services.

The payment shall normally be made within 15 days of such presentation of the bill. All monthly payment shall be treated as advance payments only. The running payment shall be made in the form of 65% in U.S\$ and 35% in I.D. The rate of exchange for the purpose of calculations will be 1 ID = 3.37778 U.S. Dollar and this rate of exchange shall be operative throughout the period as contract.

32.3 Payment Adjustment:

Any due payment under the Agreement to be made by the Associate or to him contrary to the work completed shall be added or deducted from the payment certificate issued by the Contractor.

The - Contractor may adjust any payment certificate, if necessary, with respect to other previous payment certificates. The Associate shall have no right to claim; thereto for compensation.

32.4 Deduction from payment due to the Associates: All payments due by the Associate to the Contractor under this Agreement shall be deducted from any other payments due to the Associate, and if the event of no such dues, the Contractor shall recover the same against the performance bond furnished by the Associate. The Associate must, thereafter immediately replenish such recoveries. All deductions shall be made irrespective of any apportion from the Associate and without any court action, but under advice to the Associate.

32.5 Retention money: Retention money shall be done by the Contractor at the rate of 10% of the gross value of each R.A. Bills subject to a total deduction of 5% of the contract value.

32.6 Currency:

Payments against monthly account bill's shall be made to the Associate by the NPCC in Iraqi Dinars and US Dollars. i) 35 % Iraqi Dinars ii) 55 % US Dollars

32.7 Payments not to be deemed as the Acknowledgements:

Payments made to the Associate shall not be deemed as the acknowledgement on the part of the contractor, of acceptance of work and any part thereof and/or of materials and workmanship etc.

32.8 Exchange Rate: For the purpose of conversion of Iraqi Dinars to US Dollars, the exchange rate of 1 Iraqi Dinars equivalent to 3.37778 US Dollars shall be applicable.

32.9 Refund of Retention Money after Maintenance Period:

Necessary or desirable and for that purpose, shall have power to order the Associate to do and -the Associate shall do any or all of the following:-

- a) Increase or decrease the quantity of any work' included in the Agreement
- b) Quit any such work.
- c) Change the -character or quality or kind of any such work.
- d) Change levels, lines, positions and dimensions of any part of the works and
- e) Execute additional work of any kind necessary for the completion of the works and no such variation shall in any way vitiate or invalidate the Agreement. The value (if any) of all such variations shall be taken into account in ascertaining the amount of the Agreement Price and its completion time."

2.2. Sometime in the year 1988, the parties invoked the arbitration clause. The arbitrator gave an award dated 10.08.2002. Award was given in the currency of Iraq i.e., Iraqi Dinars. Following is the operative portion of the award:

"After setting off the allowed counter claims of the respondent against the allowed claims of the claimant, I thus make the award as follows: -

- (a) The respondent shall pay ID 223777.14 (two lakh twenty-three thousand seven hundred seventy-seven and point one four) to the claimant along with 12% interest p.a. from date of commencement of arbitration proceedings i.e. 26.9.1988 to the date of payment.
- b) The respondent shall also pay to the claimant a sum of Rs.20,00,000/- (Rupees twenty lakh) along 12% interest p.a. from the date of encashment of Bank Guarantee upto the date of payment.

c) The amount payable in ID shall be convertible into US dollars as per the original agreement dated 29.6.1982. Further, all payments of settlement in foreign exchange shall be made as per original agreement and Government rules.

d) There shall be no order as to cost and the parties are left to bear their own costs. Award made and pronounced at New Delhi on 10th August, 2002."

2.3. Aggrieved by the said award, objections were filed under section 34 of the Arbitration and Conciliation Act, 1996 by the NPCCL which were dismissed on 26.05.2008. Further, the appeal filed under section 37 of the 1996 Act was disposed of, vide judgment dated 19.05.2014 wherein the Division Bench of the Delhi High Court firstly, reduced the rate of interest from 12 % p.a. to 6% p.a. and secondly, fixed the date of further conversion of US dollars into Indian Rupees as the date of the award i.e. 10.08.2002. A Review filed by the appellant was also dismissed by the Division Bench on 19.09.2014.

2.4. Aggrieved by the same, the NPCCL preferred a Special Leave Petition before this Court. This Court vide order dated 24.02.2015 after granting leave, allowed the appeal, set aside both the orders of the Division Bench i.e. 19.05.2014 and 19.09.2014. This Court further held that whatever directions have been given in the award by the learned Arbitrator would govern the field.

This Court had further held that the date of conversion would be as per the original agreement dated 26.09.1982, as the learned Arbitrator had already in clear terms said so. It further was of the view that the midway approach of the Division Bench by reducing the rate of interest was also not justified. It would be beneficial to reproduce the last two paragraphs of the judgment of this Court:

"The issue that arises for consideration is whether the High Court should have fixed the date of conversion contrary to the agreement and contrary to the award which is in consonance with the agreement and further reduced the rate of interest. In our considered opinion, when the learned arbitrator had already, in clear terms, stated the date of conversion would be as per the original agreement dated 29.06.1982, the same could not have been changed.

That apart, we do not see any justification to change the rate of interest as has been determined by the learned arbitrator. It needs no special emphasis to state that while dealing with an appeal from an order rejecting an application under Section 34 and the principles relating to arbitration. The High Court would not have passed such an order terming it as "mid-way approach".

In view of the aforesaid, we allow the appeals and set aside both the orders passed by the High Court. Needless to emphasize, whatever the directions given in the award by the learned arbitrator shall govern the field. The amount that has been deposited before this Court in pursuance of the order dated 08.12.2014 be refunded to the appellant. There shall be no order as to costs."

2.5. After the judgment of this Court, the respondent RCCPL initiated execution proceedings. The learned Single Judge decided the same vide order dated 26.05.2017 and directed for payment to be made in Indian Rupees and the date of conversion from US Dollars to Indian Rupees to be the date of agreement i.e. 26.09.1982.

The respondent RCCPL preferred an appeal before the Division Bench. By the impugned order dated 17.12.2019, the Division Bench had allowed the appeal, set aside the order passed by the Single Judge and had referred the question of law to this Court. That is how the present appeals are before us, one filed by NPCCL and other by RCCPL.

3. The counsel for the parties have not raised any issue with regard to contents of the agreement or the award or the proceedings undertaken till the impugned order by the Division Bench had been passed referring the question under Article 134A of the Constitution. The agreement is thus binding on the parties. The award has attained finality and the orders passed in the multiple rounds of the litigations are also not in issue. Thus, we have to proceed on the basis of the material on record and answer the question requiring this Court to determine the date of conversion of US Dollars into Indian Rupees.

4. We have gone through the contents of the agreement, the award and the order passed by this Court on 24.02.2015 allowing the appeal of the NPCCL and issuing directions.

5. This Court in the judgment dated 24.02.2015, relevant part of which is already extracted above, clarified the following:

- i) The date of conversion would be as per the original agreement dated 29.06.1982.
- ii) The change of rate of interest by the Division Bench by reducing it from 12 percent to 6 percent terming it as midway approach was not sustainable as it was beyond the scope of section 37 of the 1996 Act.
- iii) The directions given by the learned arbitrator in the award will govern the field.
6. It is very clear from the above that we have to fall back upon the terms of the agreement for the purposes of deciding the question regarding the date of conversion.
7. In the entire agreement, the relevant paragraphs dealing with the payments and advances and the payments of work in progress is laid down in paragraphs 31 and 32 and its sub-paragraphs. Paragraph 32.6 of the agreement states that payments against monthly account bills shall be made in Iraqi Dinars and US Dollars out of which 35 percent would be in Iraqi Dinars and 65 percent would be in US Dollars. Further, paragraph 32.8 defines the exchange rate for the purposes of conversion of Iraqi Dinars to US Dollars and the exchange rate being 01 Iraqi Dinar equivalent to 3.37778 US Dollars.
8. We do not find any mention of payment being made in the Indian Currency i.e. INR from the agreement. Once there is no contract between the parties of making payment in Indian Currency INR, then, there would be no question of determining or finding out any date of conversion.
9. Next, we need to examine the award and directions issued therein whether the award contained any stipulation of making the payment in Indian currency. The operative portion of the award contains three directions:
- a) The present appellant NPCCL shall pay Iraqi Dinars of 2,23,777.14 to the respondent RCCPL along with the interest at the rate of 12 percent per annum from the date of commencement of arbitration proceedings i.e. 26.09.1988 to the date of payment.
- b) The second direction was that NPCCL to pay Rs. Twenty Lakhs to the RCCPL along with the interest of 12 percent per annum from the date of encashment of Bank Guarantee upto the date of payment.
- c) The third direction was that the amount payable in Iraqi Dinars shall be convertible into US Dollars as per the original agreement dated 29.06.1982 and further all payments of settlements in foreign exchange shall be made as per the original agreement and Government Rules.
10. The agreement had stipulated that the Iraqi Dinar would be convertible to US Dollars at the following rate i.e. 1 Iraqi Dinar = 3.37778 US Dollars. The award does not permit or grant the liberty to the appellant to make the amount payable in Iraqi Dinars to be converted into Indian Currency (INR).
11. Apart from the amount of Bank Guarantee which had been encashed by the NPCCL of Rs.20 Lakhs, the other amount awarded is in Iraqi Dinars only.
12. The first question to be considered is whether the agreement, award or the judgment of this Court dated 24.02.2015 provided for payment of the awarded amount in Indian currency. In our considered view, perusal of the above material does not permit payment of the awarded amount in Indian currency except the amount of Rs. 20 lacs with admissible interest against the encashment of bank guarantee.
- As a necessary corollary, there would be no question of the amount awarded in Iraqi Dinars to be converted in Indian currency. The only conversion permissible was in US Dollars. In the above back drop, the question referred by the impugned judgment to be answered by this Court may not arise at all.
13. In the above fact situation, there is no occasion or requirement for determining or fixing any date for conversion of the US Dollars into Indian Currency (INR). The payment has to be made in the foreign currency only along with computed interest.
- It would be open for the parties to pay and the other parties claiming to accept the Indian currency either at the current rate or at the agreed rate but this Court cannot meddle with the terms of the agreement or the award or the directions contained in the judgment of this Court dated 24.02.2015.
14. The question is accordingly answered. Both the appeals stand disposed of as directed above. The RCCPL would be at liberty to continue with its execution proceedings in accordance with law.
15. Pending applications, if any, stand disposed of.

1 RCCPL

2 NPCCL

3 ID

4 The 1996 Act

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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