Delhi High Court's Guidance On Conversion Rate For Foreign Currency Denominated Arbitral Awards

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INTRODUCTION & BACKGROUND

A contractual dispute had arisen between M/s Karam Chand Thapar & Co ("Petitioner") and MMTC ("Respondent"), which was referred to arbitration. The arbitral tribunal had passed an award in favour of the Petitioner, which was being enforced by the Petitioner before the Hon'ble Delhi High Court ("Court"). Although a substantial part of the award stood satisfied, the matter was argued in Court as the Court had to decide the foreign exchange conversion rate applicable to the extent of the amount awarded in foreign currency.

The Petitioner contended that the reference date to determine the rate of conversion should be the date on which the award attained finality, i.e. the date on which the Respondent's Special Leave Petition ("SLP") was dismissed by the Supreme Court. However, according to the Respondent, the date of reference to determine the conversion rate should be the date on which the Petitioner first made a demand for the amounts payable.

ANALYSIS OF THE ISSUE

The Court relied on the Supreme Court verdict of Forasol v. Oil and Natural Gas Commission[1], wherein the Supreme Court had held that the date on which a decree had become final would be the relevant date for determining the applicable exchange rate.

The Respondent had contended that the decision in Forasol could not be relied upon, considering that one of the parties in that case was a foreign entity. However, the Court refused to accept this ground of differentiation. The Court held that an executing court could not determine the exchange rate to be used for enforcing decrees based on whether both the parties were Indian entities or not. Further, it was also held that a commercial transaction between Indian parties could happen outside the Indian territory thereby involving foreign currencies. Therefore, the nationality of the disputing parties could not be considered to differentiate between enforcement of a decree/award where amounts are decreed/awarded in a foreign currency.

In light of the above, the reference date to determine the rate of exchange to be applied for computing the amount payable was held to be the date on which the Respondent's SLP was dismissed by the Supreme Court and the Award attained finality.

TAKEAWAYS

The agreement under which disputes had been referred to arbitration proceedings did not contain any provision regarding conversion of a foreign currency component in an award into Indian currency. Further, the pleadings leading to the award also did not indicate the conversion rate for computing the amount awarded in US Dollar into Indian Rupee and consequently the rupee equivalent of the claim. Due to this, while a substantial part of the award stood satisfied, the parties actually spent time, effort and money before the enforcement court as well as the appeal courts in adjudicating the aspect of what rate of conversion would apply to the award before them to ascertain the rupee equivalent of the awarded monies.

While a view exists, that arbitration has become needlessly expensive and time consuming, parties should take basic care and ensure that they do not spend, time, effort and resources in litigating a settled position of law. While one does not expect an agreement to stipulate the currency exchange rate due to the very nature of fluctuating rates, one would presume that as on the date on which a claim is crystallised in the statement of claim, basic foresight and care should be taken to include the conversion rate in the prayers to ensure that such situations do not arise.

ENDNOTES

1. (1984) Supp SCC 263

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