IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO.9646 OF 2024
IN
ARBITRATION PETITION NO.1755 OF 2015
WITH
CHAMBER SUMMONS NO.539 OF 2019
IN
ARBITRATION PETITION NO.1755 OF 2015

Reliance Naval and Engineering Ltd. ....Applicant

IN THE MATTER BETWEEN

Reliance Defence & Engineering Limited. ....Applicant

Versus

M/s Afcons Infrastructure Ltd. ....Respondent

Mr. Cyrus Ardeshir *a/w. Mr. Amir Ariswala and Mr. Rahul Gupta, for Applicant in IAL/9496/2024.*

Mr. Janak Dwarkadas *a/w. Mr. Naushad Engineer, i/b Ms. Meenakshi Iyer for Respondent in IAL/9646/2024*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : DECEMBER 17, 2025

ORAL JUDGEMENT:

Context and Factual Background:

1. Interim Application No. 9646 of 2024 ("***Interim Application***") in Arbitration Petition No. 1755 of 2015 ("***Section 34 Petition***") seeks this Court's intervention in a rather narrow compass.

2. The Applicant (Original Petitioner in the Section 34 Petition), Reliance Naval & Engineering Ltd. ("***Reliance***"), earlier known as Pipavav Defence and Engineering Limited was a *"Corporate Debtor"*, which underwent resolution under the provisions of the Insolvency and Bankruptcy Code, 2016 (***"IBC"***).

3. Under an arbitral award dated August 31, 2015 ("***Arbitral Award***"), Reliance owed to the Respondent, Afcons Infrastructure Ltd. ("***Afcons***"), a sum of Rs. ~49.11 Crores. The Arbitral Award was challenged by Reliance in the Section 34 Petition.

4. During the conduct of the Section 34 Petition, pursuant to an order of a Learned Single Judge dated February 20, 2017, Reliance deposited a sum of Rs.12,76,91,279 with the Registry of this Court. Such amount came to be withdrawn by Afcons by furnishing a bank guarantee for a corresponding amount. The bank guarantee is admittedly valid until April 30, 2026.

5. It is common ground that after such deposit and withdrawal, Reliance was admitted to the corporate insolvency resolution process ("***CIRP***") under the IBC. The resolution process was successful with the resolution plan being approved on December 23, 2022 ("***Resolution Plan***"), entailing writing down of the debt due under the Arbitral Award from Rs.~49.11 Crores to Re.1. In other words, Afcons' right to receive

the amount awarded under the Arbitral Award was extinguished under the Resolution Plan.

Reliefs Sought:

6. The Interim Application essentially seeks release of the amount withdrawn by Afcons in terms of the order dated February 20, 2017, but also along with interest at 18% per annum, from February 20, 2017. The prayers in the application bear reproduction and are extracted below :-

> *A) That the Respondent be directed to forthwith return the amount of Rs. 12,76,91,279/- to the Registry of this Hon'ble Court, and in the event that it fails to do so within such time as may be stipulated, then the Registry of this Hon'ble Court be directed to invoke the bank guarantee provided by it;*
>
> *B) That the Respondent be directed to deposit with the Registry of this Hon'ble Court simple interest @ 18% upon the amount of Rs. 12,76,91,279/- from the 20th of February, 2017, till the date of actual payment;*
>
> *C) That the Applicant be permitted to withdraw the amounts deposited by the Respondent under prayers (A) and (B) above.*

Analysis and Findings:

7. Since Reliance is a Corporate Debtor that has been resolved, the terms of the resolution plan having reduced the claim of Rs.49.11

Crores represented by the Arbitral Award to Re.1, such withdrawn amount cannot continue to remain with Afcons. The amount deposited in Court was *custodia legis* and had been released on the strength of the bank guarantee provided by Afcons.

8. It is only proper that the amount so withdrawn should now be brought back by Afcons since the underlying Arbitral Award itself stands extinguished with Reliance starting with a clean slate, post-resolution under the IBC.

9. The law in this regard is well covered by the decision of the Supreme Court in ***Ghanashyam Mishra***[1]; the decision of a Division Bench of this Court (of which I was a member) in ***Siti Networks***[2] and another decision by a Learned Single Judge of this Court in ***Garden Silk***[3].

10. Copious extraction from each of the aforesaid case law is not necessary. Suffice it to say that in ***Siti Networks***, the amounts deposited in Court by a judgement debtor became a corporate debtor admitted to CIRP under the IBC. The amounts deposited by such corporate debtor were sought to be returned to the resolution professional of corporate debtor during the conduct of the CIRP, in

1 Ghanashyam Mishra & Sons Private Limited Vs. Edelweiss Asset Reconstruction Company-(2021) 9 SCC 657.
2 Siti Networks Ltd. Vs. Rajiv Suri – 2024 SCC OnLine Bom 3550
3 Garden Silk Mills Limited Vs. Gayatri Industries & Ors.-IA/3540/2021.

order to conserve the insolvency estate and the future liquidation estate of the judgement debtor. On an analysis of the IBC, the prayer for release of the cash deposited was allowed.

11. In the matter in hand, the CIRP has even been successfully completed. This is a further conclusive step. Where the judgement creditor under the Arbitral Award stands is now crystal clear – the very right to receive the amounts awarded under the Arbitral Award stands effaced by the terms of the approved Resolution Plan and therefore, the Section 34 Petition itself is rendered infructuous since the Arbitral Award stands effaced, with nothing awarded in it capable of being enjoyed.

IBC Provisions and Siti Networks:

12. The following extracts from the provisions of the IBC would suffice to appreciate the aforesaid position. The terms "*claim*", "*creditor*" and "*debt*" are defined in Section 3(6); Section 3(10); and Section 3(11) respectively, in the IBC as follows:

> ***Section 3(6):***
>
> *"(6) '**claim**' means—*
>
> *(a) **a right to payment, whether or not such right is reduced to, fixed, disputed, undisputed, legal, equitable, secured or unsecured;***
>
> *(b) **right to remedy for breach of contract under any law for the time being in force**, if such breach gives rise to a right to payment, **whether or not***

> ***such right is reduced to judgment****, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;"*
>
> ***Section 3(10):***
>
> *"(10) '****creditor****' means any* ***person to whom a debt is owed*** *and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder;*
>
> ***Section 3(11):***
>
> *(11) '****debt****' means a liability or* ***obligation in respect of a claim*** *which is due from any person and includes a financial debt and operational debt;"*
>
> ***[Emphasis Supplied]***

13. It will be seen that the term "*claim*" means a right to payment regardless of whether such right has been reduced to writing in a judgment. In this case, the Arbitral Award firmly reduced to writing the amount Reliance was obligated to pay Afcons. This is the claim for purposes of IBC.

14. The term "*debt*" means an obligation in respect of a *claim* – Reliance owed the debt to Afcons under the Arbitral Award, which is the claim for purposes of the IBC. The term "*creditor*" means a person to whom a *debt* is owed – Afcons is the creditor of Reliance, the corporate debtor, who is now resolved under the IBC.

15. Based on the aforesaid provisions, in ***Siti Networks*** it was held that the cash deposited in court by the corporate debtor was an asset to which the corporate debtor had title, even while such asset was held in

the custody of the court. If, pending hearing of the challenge under the court's consideration, the corporate debtor were to be admitted to CIRP, then during the CIRP, it was held, the assets of the corporate debtor deserved to be conserved. Therefore, the assets belonging to the corporate debtor were held to be liable to be returned to the custody of the resolution professional. If a resolution plan were to be approved, it would abide by the approved resolution plan, and if the resolution were to fail, the assets in question would form part of the liquidation estate of the corporate debtor.

16. The matter in hand is far more conclusive than the factual matrix obtaining in ***Siti Networks***. The resolution plan has indeed been approved and has been completed. Possession of the asset (the cash) had been handed over to the Court by Reliance, which later went insolvent. Before CIRP commenced, possession of the cash was further handed over to Afcons, taking care to ensure that Afcons provided a bank guarantee to secure the return of the amount so released should the need arise. This was a discretionary equitable measure permitted by the Court, pending and subject to the outcome in the Section 34 Petition.

17. The right to receive the amount awarded in the Arbitral Award was nothing but a "claim" of Afcons validly held against the debt declared as being payable by Reliance to Afcons, the creditor. The

amount owed by Reliance (corporate debtor) to Afcons (judgement creditor) has since been effaced by the approved Resolution Plan. Therefore, the Section 34 Petition has been rendered infructuous.

18. Meanwhile, the amount deposited pending the hearing of the Section 34 Petition, has been released to Afcons. Now that the Section 34 Petition has been rendered infructuous, there is no prospect of execution of the Arbitral Award, and indeed the very challenge to the Arbitral Award is redundant. Therefore, with nothing being owed under the Arbitral Award (other than Re.1) the amount withdrawn by Afcons ought to be brought back, failing which, the guarantee provided by Afcons would need to be invoked.

19. Therefore, the Interim Application deserves to be allowed in terms of Prayer Clause (A) read with Prayer Clause (C) extracted above. In other words, Afcons ought to be directed to bring the money back to the Court, which in turn ought to allow Reliance to withdraw such money. If Afcons does not bring the money back, the bank guarantee is liable to be invoked by the Registry and the amounts realised ought to be released to Reliance.

Interest Claim – a Separate Cause of Action:

20. In the Interim Application, interest is being claimed by Reliance – strangely, from the date of the order directing Reliance to deposit the

monies in Court, instead of the date on which the deposited amount was withdrawn. Be that as it may, there is no basis for awarding interest generally, and indeed specifically at the rate of interest as claimed by Reliance, under this Interim Application.

21. On the face of it, the claim for interest entails pursuit of a separate cause of action that is distinct and different from the cause of action that was involved either in the arbitral proceedings that led to the Arbitral Award or the Section 34 Petition. Such a claim for interest cannot be provided under the Interim Application. Appropriate proceedings would need to be adopted should Reliance desire or be advised to pursue such action for interest.

22. Therefore, Prayer Clause (B), which is a claim for interest at 18% per annum deserves to be rejected, leaving such pursuit entirely open for appropriate proceedings that may be adopted by Reliance if so advised.

Directions and Order:

23. Therefore, Afcons is directed to bring back the amount of Rs.12,76,91,279 to the Registry. The Respondent must do so within a period of four weeks from the upload of this order on the website of this Court.

24. Should such amount not be brought back within the four-week deadline as above, the Registry must invoke the bank guarantee provided by Afcons, in order to recover the amount and pay it to Reliance. Such invocation and payment must be completed within a period of two weeks from the expiry of the aforesaid four-week deadline.

25. With the aforesaid directions, the captioned Interim Application is hereby ***finally disposed of***. In the peculiar facts of this case, there shall be no order as to costs.

26. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]