

Continental Construction Limited Vs. Export Import Bank of India and anr.

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Court : Mumbai

Decided On : Mar-22-2006

Judge : V.G. Palshikar and ;V.R. Kingaonkar, JJ.

Appeal No. : Writ Petition No. 3768 of 2002

Appellant : Continental Construction Limited

Respondent : Export Import Bank of India and anr.

Advocate for Def. : Aspi Chinoy Sr. Counsel, ;Kevic Setalvad and ;G.M. Kotwal, Advs., i/b., Tayabji Dayabhai, Adv. for Respondent No. 1, ;H. Bhave and ;S. Pawar, Adv. for Respondent No. 2

Advocate for Pet/Ap. : Janak Dwarkadas Sr. Counsel, ;P.K. Dhakephalkar, Sr. Adv., ;V. Sharma, R.R. Goenka, ;Arun Kathphalia and ;J.N. Shiradhonkar, Advs.

Judgement :

V.G. Palshikar, J.

1. This petition arises out of the original proceedings instituted by the Exim bank in DRT, Bombay for recovery of certain monies due from the defendant. Civil Suit No. 660/98 was filed on 5-2-1998 in the Bombay High Court. It was for a sum of Rs. 102,93,09,734.98 paise, as the amount due under an agreement between the parties dated 6-2-1995.

2. Similar application was filed before the DRT, Delhi by the State Bank of India, Delhi. The Tribunal decreed the claim of the State Bank of India and therefore the present petitioner filed an appeal before the DRAT, Delhi. Along with the appeal they also filed an application under section 21 of the Act for waiver of the amount of deposit as required by that section.

3. The petitioner Continental Construction Limited (hereinafter referred to as the Company) was to receive large sums of monies (approximately 16 millions US dollars). This amount was payable to the company by United Nations Compensation Commission for the loss caused to the company. During the pendency of the appeal before DRAT, Delhi, an amount of 5 million US dollars was received and was therefore brought for consideration before the DRAT, Delhi.

4. That by its order dated 10th July 2001 the DRAT, Delhi directed the Exim Bank and the State Bank of India to deliberate on distribution of the said sum of 5 million US dollars. They were further directed to move an application for such distribution before the DRT, Bombay in Civil Suit No. 660/98 which was transferred to DRT, Bombay by the DRAT, Delhi and was renumbered as O.A. No. 1241/00. On 3rd August 2001 the Exim bank filed an application in O.A. No. 1241/00 claiming distribution of the said amount of 5 million US dollars. This application was numbered as Exh.9 in O.A. No. 1241/00. By this application the amount of 5 million US dollars as prayed for, be invested in the interest bearing deposit account between the Exim bank and the State Bank of India, Delhi.

5. To this application, reply was filed by the company and it was stated that the said amount has been kept in fixed deposit with the United Commercial Bank and Standard Chartered Bank. The company also requested the DRT, Bombay to permit the petitioner company to use the money accrued by way of interest on this fixed deposit.

6. The interim application was decided by the tribunal at Bombay on 27-12-2001 directing the distribution of million US dollars in a stated proportion between Exim Bank and the State Bank of India. It was directed that the Exim Bank would get 50.08% and State Bank of India would get 49.92% of the said sum. Directions were also issued for deposit of the interest accrued and it was also stipulated that

the interest so accrued be re-invested with the above mentioned banks during the pendency of the O.A. It also contained a direction to the defendants to deposit the compensation amount which they may receive in future in the same proportion.

7. On 19-1-2002 the company filed Misc. Appeal No. 28/02 before DRAT, Bombay challenging the order dated 27-12-2001 passed by the DRT, Bombay. The appellate tribunal by its interim order dated 5-2-2002 directed that the amount of Rs. 20.89 crores (equivalent to US dollars of 5 million) be deposited with Exim Bank and the State Bank of India. It however stayed the direction of requiring the deposit of future receipts by the company. This order was not challenged by the company and has therefore acquired finality and it was complied also. In this order, it was passed by the Appellate Tribunal, Bombay after considering the orders made by the Bombay High Court on 10-9-1998. The order passed by the DRAT, Bombay as an interim order in Misc. Appeal No. 28/02 on 5-2-2002, was passed after taking into consideration the order of this court on 10-9-1998 and the order of DRAT Delhi on 10-7-2001. By this order the DRAT, Bombay directed that the sum of Rs. 20.87 crores be distributed in the ratio of 50.08% to Exim Bank and 49.92% to the State Bank of India. It was directed by the DRAT, Bombay by the said interim order that the monies so deposited would be governed by the order to be made by DRAT, Delhi. It was also stipulated that neither the Exim Bank nor SBI would award the same rate of interest which the UCO Bank presently awarding on the fixed deposits and would award from time to time. It did not make any order or stipulate in relation to user of the interest accruing on these deposits as directed by the said order.

8. During the course of the pendency of the appeal before DRAT it was disclosed by the company that it has received a further sum of Rs. 47.57 crores from the United Nations Compensation Commission. They sought to deposit the said amount with DRAT, Delhi but DRAT, Delhi directed them to seek orders from DRAT, Bombay.

9. On 4th April 2002 Exim bank filed Misc. Application No. 72/02 in Misc. Appeal No. 28/2002 claiming deposit of the sum of Rs. 52.86 crores with Exim Bank and the State Bank of India in the same proportions as ordered earlier by the

impugned order. Ultimately on 12th June 2002 the DRAT passed an order dismissing the appeal of the petitioner, allowing the Misc. Application of the Exim Bank in terms of para 6(a) of the application. However, the petitioner company was not satisfied with the order dated 12-6-2002 and it therefore filed the present writ petition before this court. During the pendency of this petition, the interim order was made directing, depositing of the said sum with the United Commercial Bank and ultimately after several adjournment, the matter came to be finally heard. 10. We heard the parties through their learned counsel at length. At this stage it would be necessary to note certain facts having definite bearing on the adjudication claimed in this writ petition. During the pendency of this proceeding in various courts or tribunals, there arose a dispute between the Board of Directors of the petitioner company, claims and cross claims were made and two groups came into existence, and for the sake of convenience one is called Basi group and the other is called Verma group. These groups made rival claims at various stages in various proceedings and are now contesting the order impugned in this court and the order of appellate tribunal. Now Basi group is contending before this court that order as passed by the appellate tribunal is liable to be maintained and the Verma group contended that it is liable to be set aside and deposits should be distributed as ordered by, as an interim measure in Misc. Appeal No. 28/02. On behalf of the Exim Bank it was contended that no fruitful purpose will be served by changing the manner of deposit or requiring the deposit to be made or kept in some other bank. 11. Another development which requires notice, is the fact that there was a settlement between the Exim bank and the Basi group in which the whole dispute between the Exim Bank and the petitioner company, in so far as the claim before DRT, Bombay is concerned was settled by payment of one sum. There were disputes regarding correctness of this settlement, regarding the powers of Basi group to do so, but ultimately the DRT accepted the consent terms and passed the order disposing of the original application No. 1241/00 as per those terms of of the argument. The appeal before the DRAT against this order of DRT, Bombay is pending. The dispute which originated in the DRT, which is now before DRAT, Bombay is not finally decided. There is no adjudication on the merit of the claim of Exim bank, what it is claimed by way of aforesaid original application is interest at the different rate as agreed and therefore the whole liability is disputed and as

such there is no need to file consent terms, without there being any adjudication of the dispute. According to Basi group, however, if the compromise is not completed, serious loss of crores of rupees would be caused to the company as stipulated period is already over. However, this submission, in our opinion, is now baseless because the original application stands decided as per the consent terms.

12. In our opinion, we, in the facts and circumstances of this case, need not go into the question of law and the facts raised by the learned senior advocates appearing on behalf of the parties, as the whole dispute contained in the present petition, can be resolved by requiring the parties to abide by the order disposing of the writ petition in terms of the order dated 5-2-2002 passed as an interim order by DRAT, Bombay.

13. We therefore, direct as under:

i) The amount of Rs. 47.57 crores presently held by UCO bank be deposited by it with Exim bank and the State Bank of India in the proportion of 50.08% with the Exim Bank and 49.92% with the SBI.

ii) Such deposit be made by the UCO bank shall contain the interest which has accrued on the same from the date of its deposit to the date of its redeposit as per direction

(i) above.

iii) The Exim Bank and State Bank of India shall offer the same rate of interest, which is presently offered by the UCO Bank to the deposits of 47.57 crores plus interest.

iv) After the deposits are made by UCO bank as per the above directions, the Exim bank and the SBI will reinvest the interest accrued on such deposit.

v) The Exim bank and the SBI would further disburse the said monies, according to the final adjudication of this petition, or such other order which may have bearing these directions.

vi) Exim bank and the SBI will not use the interest but as aforesaid reinvest the same. vii) The above directions be carried out on or before 30-4-2006.

14. Writ Petition is thus disposed of in terms of directions issued above, There shall be no orders as to costs.

15. The parties to act on authenticated copy of this order.

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