

Continental Construction Vs. Export Import Bank of India and

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Court : DRAT Mumbai

Decided On : Jun-12-2002

Reported in : IV(2004)BC194

Judge : P Upasani

Appellant : Continental Construction

Respondent : Export Import Bank of India and

Judgement :

1. This Misc Appeal is filed by the appellant/original defendant No. 1 M/s. Continental Construction Limited, being aggrieved by the order dated 27.12.2001, passed by the Incharge Presiding Officer, DRT I, Mumbai on Exhibit 9 in OA. No. 1241/2000.

By the impugned order, the learned Presiding Officer, after hearing both the sides and after perusing the proceedings, especially the order dated 10.9.1998 passed by the learned Single Judge of the Bombay High Court in the Notice of Motion taken out by the original plaintiff i.e.

M/s. Export Import Bank of India (hereinafter to be referred to as the 'Exim Bank') in Suit No. 660 of 1998, directed the appellant to deposit amount of compensation which the appellant had received from the United Nations Compensation Commission with the applicant Bank i.e. Exim Bank and the original defendant No. 2 State Bank of India (hereinafter to be referred to as the 'SBI'), who are creditors

of the appellant in the proportion of 50.08% and 49.92% respectively. The Presiding Officer also directed, the appellant, to deposit interest accrued on the FDRs with the applicant Exim Bank and the original defendant No. 2 SBI in the same proportion with further direction to reinvest other accrued interest on the FDRs with the above Banks during the pendency of the original application, pending on the file of DRT I, Mumbai.

The learned Presiding Officer also further directed the appellant to deposit compensation amount, which they would receive in future other than the amount which they had already received with the applicant Bank namely Exim Bank and the original defendant No. 2 SBI in the same proportion i.e. 50.08% and 49.92% respectively during the pendency of the original application. Being aggrieved, more specifically by the direction given in the last para i.e. para No. 4 of the impugned order, the present Misc. Appeal has been filed by the appellant in this Appellate Tribunal.

2. To understand controversy between the parties, few facts are required to be stated, which are as follows : The respondent No. 1 herein i.e. Exim Bank filed suit on the original side of the Bombay High Court being suit No. 660 of 1998 against the present appellant namely M/s. Continental Construction Limited and Another for recovery of sum of Rs. 102,93,09,734.98 (One hundred two crores ninety-three lacs nine thousand seven hundred thirty-four and paise ninety-eight only) under the Deferred Dues Facility together with further interest thereon @ 15% p.a. from the date of filing of the suit till payment or realisation for declaration that the above mentioned amount and interest due to the SBI, who was joined as a formal party defendant No. 2 in this suit, was validly secured in favour of the plaintiff and the second defendant i.e. SBI by a valid and subsisting hypothecation of the appellant's tangible movable property, past and future books debts and movables in transit or otherwise. There were other incidental and consequential prayers for appointment of Court Receiver, injunction, etc.

3. Background and cause of action for filing of the suit by the Exim Bank against the appellant also has to be narrated, which is as follows: The appellants had entered into diverse construction contracts relating to water supply and sewerage

projects with various public authorities of the Government of Iraq. At that time, at the request of the appellants, in order to part finance the costs and related expenses of supplies and services for the execution of these contracts, the SBI who was joined by the Exim Bank as party defendant No. 2 in the suit filed by them in the High Court through its Overseas Branch Office at London granted an overdraft facility at the foreign office initially upto the limit of 34 million US Dollars which was increased from time-to-time on request of the appellants to 110.695 million US Dollars inter alia against the guarantees executed by the SBI from time-to-time in favour of its foreign office for like amounts with 50% risk participation therein by the original plaintiff i.e. Exim Bank at the request of the appellants. In consideration of the SBI issuing the Overseas Borrowing Guarantee in respect of the said overdraft facility therefor, the appellants executed and delivered to the SBI diverse security documents.

4. Because of the outbreak of the Gulf war the appellants failed to recover its dues from its principals, being the public authorities and/or Government bodies of Iraq. The amount due from the appellants as on 30.12.1992 in respect of the said overdraft facility was quantified to 110.695 million US Dollars, including accrued interest remaining unpaid. The SBI's foreign office demanded liquidation of the aforesaid overdraft facility. The appellant thereupon approached the SBI and Exim Bank for assistance and at the request of the appellants and with the approval to liquidate the entire outstanding under the aforesaid US Dollars overdraft facility by remitting the equivalent dollar funds from India in 3 tranches, the first 2 of such tranches being of the sum of 35 million US Dollars and third tranche to be of such amount as was necessary to liquidate the then outstanding balance remaining unpaid.

5. Pursuant to the aforesaid agreement, the SBI remitted an aggregate of US Dollars 70 million in tranches to its foreign office. In discharge of its obligation to assume 50% of the risk in the aforesaid Overseas Borrowing Guarantee transaction, the plaintiff Exim Bank paid 50% of the said remittance, amounting to Rs. 112,51,64,236/- (One hundred twelve crores fifty-one lacs sixty-four thousand, two hundred thirty-six only) being rupee equivalent to the SBI for and on behalf of the appellant. The remaining third tranche which was to be paid in discharge of the

liabilities of the appellants outstanding as on 6th February 1995 was 44,080,799.82 US Dollars. The plaintiff Exim Bank's 50% shares thereof was remitted by it to the SBI on 6th February, 1995 in rupee equivalent amounting to Rs. 69,21,23,658/- the aggregate amount of rupee equivalent of the final tranche being Rs. 138,42,47,316/-.

Thus, it was the Exim Bank's case that the appellant become liable to forthwith pay to the plaintiff/Exim Bank a sum of Rs. 919,68,08,866.16 including accrued and unpaid interest and Rs. 189,48,73,286/- to the second defendant, SBI, including accrued, unpaid interest.

The appellant expressed its inability to make the said payment immediately. Therefore, on the appellant's request and in order to facilitate the repayment of the aforesaid amount, the plaintiff Exim Bank and original defendant No. 2 SBI agreed to defer payment of their respective dues by granting a deferred payment facility to the appellants in the nature of rupee loans. The terms and conditions upon which the said deferred payment facility granted to the appellants were reduced into writing and set out in a comprehensive tripartite Deferred Dues Facility Agreement dated 6.2.1995 made between plaintiff Exim Bank, second defendant SBI and the first defendant namely Continental Construction Limited, which the appellants herein.

As per the terms and conditions agreed upon between the parties, the appellants executed and delivered to the plaintiff Exim Bank and the original defendant No. 2 SBI stamped letter of undertaking dated 6.2.1995, irrevocably and unconditionally agreeing and confirming that all the receivable and monies due and payable to the first defendant/ appellants under and in pursuance of its said contract relating to projects in Iraq or under any policy, guarantee or indemnity of the Export Credit Guarantee Corporation of India Limited would be receivable by and paid to the plaintiff i.e. Exim Bank and second defendant SBI pro-rata in their respective shares in the Deferred dues facility. By the said letter of undertaking, the appellants further agreed and undertook to forthwith pay over to the plaintiff/Exim Bank and second defendant SBI in proportion of their respective shares, any amount received by the appellants for any reason directly under the said contracts

or any E.C.G.C. policy. The appellants also agreed to endorse in favour of the plaintiff Exim Bank and second defendant SBI any bonds, instruments or other writings executed in favour of or received by the appellants under the said contracts or under any agreement between the Government of India and Government of Iraq.

6. In consideration of having been granted the aforesaid Deferred Dues Facility under the said agreement and in respect thereof and in pursuant to and in furtherance of Clause 11 of the general conditions of the said agreement, the appellants executed and delivered to the plaintiff Exim Bank and the second defendant SBI, deed of hypothecation of movables dated 6.2.1995, whereby the appellant inter alia hypothecated in favour of the plaintiff Exim Bank and the second defendant SBI all its book debts, receivables, bills, outstanding monies, claims, demands, contracts, engagements and securities, all its movable plant and machinery, equipment, appliances, furniture, vehicles, etc., etc. as security for the due repayment of the aforesaid amounts, costs and interests to the plaintiff Exim Bank and defendant No. 2 SBI in proportion of their respective shares under the Deferred Dues Facility.

To compensate the appellants against its payment held up in Iraq on account of execution of two construction projects thereat, Government of India through the Reserve Bank of India issued Government of India Compensation (Projects Exports to Iraq) Bonds 2001 (hereinafter referred to as "GOI Bonds") in favour of the plaintiff Exim Bank and defendant No. 2 SBI. The plaintiff Exim Bank also received Bonds and payment from the Export Credit Guarantee Corporation of India (E.C.G.C.) on 31.3.1995 on account of the claims of the plaintiff Exim Bank under the counter guarantees of E.C.G.C. The plaintiff Exim Bank adjusted the GOI Bonds received by it to the extent of Rs. 340,127,947.80 towards the outstanding dues of the appellants to the plaintiff Exim Bank in respect of its other accounts with the plaintiff Exim Bank and the GOI Bonds to the extent of Rs. 594,090,800.24 were adjusted by the plaintiff Exim Bank towards reduction of the outstanding dues owing to the plaintiff Exim Bank under the aforesaid Deferred Dues Facility. After all the adjustments and all the credit given to the appellants, a sum of Rs. 102,93,09,734.98 was due and payable by the appellants to the

plaintiff Exim Bank under the aforesaid deferred dues facility after giving credit for part payments made from time-to-time by the appellant. However, the plaintiff Exim Bank was constrained to file suit for recovery of the remaining amount which was due and payable from the appellant to the plaintiff Exim Bank, since the defendant No. 1 failed and neglected to pay the balance amount.

7. After filing of the suit in the Bombay High Court on 5.2.1998, the plaintiff took out a Notice of Motion on 2.9.1998, praying for several reliefs at the ad interim stage, including injunction, appointment of receiver, etc. in the said Notice of Motion, Minutes of Order were filed by both the sides on 10.9.1998 and order in terms of Minutes came to be passed by the learned Single Judge of the Bombay High Court.

It appears that the appellants had submitted their claim to the United Nations Compensation Commission for being awarded compensation because of the losses suffered by the appellants on account of gulf war, etc.

It also appears that the claim for compensation was being prosecuted on behalf of the appellants by their lawyers based at U.S.A. who were to be paid contingent fee of 10% of the amount of compensation that would be awarded by the U.N. Compensation Commission. It was on this background that prayer for appointment of receiver and injunction with respect to all the receivables including compensation to be received from U.N. Compensation Commission, estimated to be 16 million US Dollars was made by the plaintiff Exim Bank in the said Notice of Motion. However, in the minutes submitted by both the sides, it was mentioned that since the said compensation, was not expected till the year 2000, the appellants agreed and undertook to the Court not to part with, alienate, disburse or dispose of the compensation of US Dollars 16 million or any part thereof (save & except an amount of 10% of the aforesaid compensation as legal fees) without obtaining further orders of that Court.

Since, such an undertaking was given by the appellants, other reliefs were not pressed at that stage by the plaintiff Exim Bank. The High Court however, gave liberty to both the parties to apply. It was also clarified in the Minutes of order that the said order was without prejudice to the rights and contentions of the parties.

This Minutes of Order was passed at ad interim stage and notice was made returnable.

Thereafter, on establishment of the DRT, Mumbai, the above suit being Suit No. 660 of 1998 came to be transferred to the DRT-I, Mumbai and was numbered as Original Application No. 1241 of 2000.

8. In the meantime, SBI who is a secured creditor of the appellants had also filed Original Application No. 38 of 1998 before the DRT, Delhi against the appellants and their Directors for recovery of Rs. 89,21,25,119.08 along with pendente lite and future interest at the rate of 15% per annum with half yearly rests from the date of filing of the original application till realization. The Exim Bank was also made a formal party as defendant No. 5 in that original application filed by SBI in DRT at Delhi, By order dated 26.5.1999, the DRT Delhi ordered defendants Nos. 1 to 4 to pay to the applicant Bank namely State Bank of India, the said sum of Rs. 89,21,25,119.08 along with interest as claimed together with costs etc. and further directed to pay the said sum within four weeks. Further direction was also given that in the event of failure to pay the said amount within stipulated period, the State Bank of India would be entitled to recover the same by sale of hypothecated fixed assets, receivables, book debts, plant & machinery, outstanding monies, claims, demands, etc., as per the joint deed of hypothecation. Other consequential orders were also passed.

Being aggrieved by the aforesaid order, passed by the DRT, Delhi, defendant Nos. 1 to 4 to original application filed appeal before the appellate Tribunal at Delhi, wherein the appellants were directed to deposit certain amount as security deposit in terms of Rule 9 of " the DRAT (Procedure) Rules, 1994. At the time of hearing, on 10.7.2001, the respondent therein, namely SBI submitted to the appellate Tribunal on affidavit that the appellants (M/s. Continental Construction Ltd.) had received aggregate sum of 5 million US Dollars from U.N. Compensation Commission on 29.3.2000, which was equivalent to Rs. 10,89,500/- and that the appellants had also received on 4.1.2001 from the U.N.Compensation Commission an amount, which was equivalent to Rs. 23,21,33,000/- and that appellants had not disclosed to the appellate Tribunal about the receipt of that

sum. In response to the said affidavit of SBI, the appellants submitted to the DRAT, Delhi that there was restraint order passed by the Bombay High Court on 10.9.1998 in the suit filed by the Exim Bank against them being Suit No.660/1998, which had stood transferred to the DRT, Mumbai and that in pursuance of that restraint order, the appellants had undertaken not to part with, alienate, or dispose of war compensation or any part thereof (except 10% of the amount on account of legal fees) without obtaining further orders from that Court and that monies were lying with the appellants but in view of the restraint order the appellants were not in a position to deal with the same. On such representation being made to the DRAT, Delhi, the learned Counsel appearing for the SBI submitted that in that event, monies should be deposited with the SBI in the interest bearing account, to which the learned Counsel for the appellants submitted that without permission of the DRT, Mumbai, they would not be in a position to deal with the monies in any manner, In view of this impasse, DRAT, Delhi directed SBI and Exim Bank to discuss amongst themselves whether appellants should deposit said amount with the second defendant in their name under the control of the appellate Tribunal in an interest bearing account and the interest which may accrue be utilized by the appellant in case they agreed to that, they should obtain suitable orders from the concerned DRT. Pursuant to the aforesaid order dated 10.7.2001 passed by the DRAT, Delhi and in view of disclosure about receipt of the amount of war compensation received by the appellant from the U.N. Compensation Commission, the original applicant Exim Bank made an interim application dated 3.8.2001 before the DRT-I, Mumbai on which the impugned order dated 27.12.2001 came to be passed.

It was mentioned in the said application that pursuant to the order of the DRAT, Delhi, the Exim Bank and State Bank of India had joint meeting at Mumbai, wherein they agreed that the appellants namely Continental Construction Limited should deposit aforesaid amount of war compensation since received by them as also any further amount that might hereinafter be received by them pursuant to their war claim in the interest bearing account with the Exim Bank and SBI in the same ratio as Government of India Compensation (Project Exports to Iraq) Bonds, 2001, were allotted to the applicant and the second defendant in March 1995 namely 50.08% and 49.92% respectively.

It was further mentioned in the said application that both the Banks had also agreed in the meeting that the Exim Bank would make necessary application before DRT-I, Mumbai to get modified the ad interim order dated 10.9.1998 passed by the High Court of Bombay in notice of motion taken out by the Exim Bank in its suit No. 660 of 1998 filed against the appellants and to which the SBI was joined as a formal party defendant No. 2 and which suit subsequently came to be transferred to DRT-I, Mumbai. It was also agreed between these two Banks that they would seek direction from the concerned Tribunal not to permit the appellants to utilize the interest accrued on the deposit that would be maintained with the two Banks, but to let such interest be accumulated for being ultimately available to the respective Banks for adjustment of their dues as the when orders of the respective DRTs become final.

Accordingly, it was prayed by the applicant Exim Bank in its interim application that appellants/Continental Construction Limited be directed to deposit amount of war compensation (in equivalent rupees), which they had received from U.N. Compensation Commission from time-to-time and all such further amounts that may hereinafter be received by them from U.N. Compensation Commission (U.N.C.C.) pursuant to their war claims, in an interest bearing deposit account each with the applicant Exim Bank and the defendant No. 2 SBI in same ratio as GOI Bonds were allotted to the applicant Exim Bank and the defendant No. 2 SBI in March 1995 namely 50.08% and 49.92% respectively. It was also prayed in the said interim application that the appellants should not be permitted to retain on account of legal fees or on any other account any portion of the war compensation that may be received by them the appellants not to claim the interest, that may accrue from time-to-time on the deposit that would be maintained with the applicant Exim Bank and the second defendant SBI, but to let such interest accumulate for ultimately being available to the applicant Exim Bank and the second defendant SBI along with the principal amount of their respective deposits for adjustment of their dues as the when orders of the respective Debts Recovery Tribunal become final.

9. It is vehemently argued by Mr. Dhuper, learned Advocate, appearing for the appellants that the appellants are more particularly aggrieved because of the

direction given by the DRT, Mumbai that the appellants should deposit compensation amount, which they would receive in future other than the amount, which they had already received, with the Exim Bank and SBI in their proportion during the pendency of the original application. The appellants are also aggrieved because of the direction given by the learned Presiding Officer with respect to reinvestment of the interest, which was accrued on the FDRs. It is Mr. Dhuper's contention that though there is a deed of hypothecation irrevocable letter of undertaking had terms and conditions were drawn as per the Deferred Dues Facility Agreement, and the word "receivables" cannot be construed to include also the war compensation, which was received by the appellant from U.N.C.C. It is his submission that money, which was received by appellants from the said U.N.C.C. was the money belonging to them and neither the Exim Bank nor SBI was entitled to claim this amount. According to him, in spite of the clauses mentioned in the irrevocable letter of undertaking and hypothecation deed, amount of war compensation could be described only as a right to sue as per provision of Section 6(e) of the Transfer of Property Act, 1882, which could not be transferred. According to Mr. Dhuper, it was merely an actionable claim as per provision of Section 130 of the Transfer of Property Act, 1982 which ought to have been effected only by execution of an instrument in writing signed by the transferor or his duly authorised agent and since there was no such instrument in writing in respect of terms and conditions of Deferred Dues Facility Agreement, joint hypothecation deed and irrevocable letter of undertaking, both these Banks were not entitled to claim that amount, which was received by the appellants and the amount which would be received by them in future and appropriate the said amount towards the appellant's liability towards dues of the Bank. According to Mr. Dhuper, the impugned order is erroneous and illegal.

It is also contended by Mr. Dhuper that order passed on 10.9.1998 was a consent order and the said order passed by the Hon'ble High Court only restrained the appellant from alienating disbursing or disposing, of the aforesaid compensation of US Dollars 16 millions or any part thereof and amount of the 10% of the same, to be paid as a legal fees without obtaining further orders from that Court. It was the contention of Mr. Dhuper that after the order was passed, the applicant Exim Bank did not press for any further reliefs and therefore to approach DRT, Mumbai once

again with interim application like this that too after giving up other reliefs as per consent order, was improper. He also submitted that even though the appellants had received money from U.N.Compensation Commission, the appellants had not carried that amount at their home, but that they had deposited the said amount in FDRs and the said money was not utilized by them because they were bound by the High Court order dated 10.9.1998.

10. Per contra, it was contended by Mr. Setalwad, learned Advocate appearing for the respondent No. 1 Exim Bank that the order dated 10.9.1998 was not consent order, that it was an order passed in terms of Minutes of Order, that there was difference between the consent order and order in terms of Minutes of Order in view of judgment of the Supreme Court reported in (1996) 6 Supreme Court Cases 705 (Speed Ways Picture Pvt. Limited and Anr. v. Union of India and Anr.) It was contended by Mr. Setalwad that, first of all, the said order dated 10.9.1998 was passed by the Hon'ble High Court at the ad interim stage and therefore could be modified, reviewed, altered, etc. He then submitted that the said order was not a consent order but was the order passed in terms of Minutes of Order and therefore that order was appealable and reviewable. He also submitted that in the said order dated 10.9.1998, which was passed at the ad interim stage, it was clarified that the said order was passed without prejudice to the rights and contentions of the parties and that further liberty was given to both the parties to apply and the Notice of Motion was made returnable. He further submitted that since it was submitted by the appellants at that stage that compensation from U.N.C.C. was not expected till the year 2000 and since the defendant No. 1/appellant herein agreed and undertook not to part with the said amount, without obtaining further order of that Court, other reliefs were not pressed at that time. He further pointed out that, however, liberty was given to both the parties to apply and in view of that liberty, the present interim application was made by the applicant Exim Bank to the DRT, which was the proper forum for obtaining further order.

Mr. Setalwad also forcefully argued pointing out that in fact the appellants suppressed the fact that they had received amount of compensation from the U.N. Compensation Commission of Rs. 11 millions Dollars on the very day, when the impugned order dated 27.12.2001 came to be passed. He submitted that earlier

they had deposited 5 million Dollars in view of the order passed by this appellants Tribunal dated 5.2.2002. He pointed out that the appellant had not challenged that order and deposited 5 millions US Dollars, which was part of war compensation, which was received from U.N. Compensation Commission, though now they are contending that both the Banks are not entitled to claim this amount because the said amount cannot be construed as "receivables" as per the terms and conditions included in the joint hypothecation deed, irrevocable letter of undertaking and Deferred Dues Facility Agreement. He further submitted that now the appellants have resiled from their stand and are contending that remaining amount, which had been received from the same source, cannot be termed as "receivables" and had gone to the extent of suppressing the fact that they had received this amount of 11 millions US Dollars towards the last and final instalment of compensation. Mr. Setalwad further submitted that they learnt about this fact when they received letter dated 12.2.2002 from the Ministry of External Affairs, New Delhi. Mr.

Setalwad submitted that this was the amount, which the appellants had to deposit in the Interest Bearing Account as per the directions of both DRAT, Delhi and DRT, Mumbai. He submitted that initially, also the said fact about the appellants receiving compensation came to know only when the original application filed by the SBI against the appellants was decreed and appellants filed appeal before the DRAT, Delhi and the question with respect to pre-deposit of 75 % of the amount decreed as per provisions of Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 crept up. He also submitted that both the Exim Bank and SBI are creditors of the appellants, that there is no question about the liability which the appellants owe towards these Banks, that the claim filed by SBI in DRT, Delhi has already been decreed, though the claim filed by Exim Bank is still pending in DRT, Mumbai. He also submitted that charge created upon the properties of the appellants is registered as per provisions of Section 125 of the Companies Act read with Registration Act.

11. Mr. Setalwad appearing for the Exim Bank took me through various clauses of the Deferred Dues Facility Agreement, irrevocable letter of undertaking and Deferred Dues Facility Agreement and highlighted that Clause 11 of the said document was an omnibus clause which states that everything that would be

received by the appellants with respect to contract in Iraq was hypothecated with both the Banks.

12. I have heard both the Advocates at length. I have gone through the entire proceedings including the initial orders in passed by the Hon'ble Mumbai, DRAT, Delhi and the impugned order passed by the DRT, Mumbai. I have also gone through the clauses of joint hypothecation deed, irrevocable letter of undertaking and Deferred Dues Facility agreement and in my opinion, no fault can be found with the impugned order.

As per the terms of joint hypothecation deed, irrevocable letter of undertaking and Deferred Dues Facility Agreement, everything which is connected with the contract in Iraq is hypothecated with the Exim Bank and SBI. It will be wrong to say that the amount of war compensation, which the appellant received was not connected with the construction contract in Iraq, which the appellants in had. If there was no contract in Iraq and if there were no difficulties and problems in executing the same faced by the appellants, they would not have approached the Exim Bank and SBI and there would not have been any war compensation also.

Thus, the amount of war compensation has a direct link with the execution of the contracts by the appellant in Iraq. Therefore, war compensation has to be construed as "receivables" as per the terms and conditions of the joint hypothecation deed, irrevocable letter of undertaking and Deferred Dues Facility Agreement.

As far as the grievance of the appellants on that interest accrued, at least should not be reinvested and direction of the learned Presiding Officer to that effect is erroneous, it will have to be stated that even this contention of the appellants is not correct. If the appellants like a true gentleman had deposited war compensation amount which they had received from UN Compensation Commission as per direction, with the Exim Bank and SBI in a given proportion, these Banks themselves, would have been entitled to the accrued interest and there was then no question of the appellants claiming the said accrued interest.

Under the circumstances and in view of the above discussion, in my opinion, the impugned order cannot be faulted with. There is no merit in this appeal and the same deserves to be dismissed.

13. There is a huge debt to be recovered from the appellants by the Exim Bank and SBI, both the Banks, at the request of the appellants and as per directions of the Reserve Bank of India procured tremendous finance assistance to the appellants in their hour of need and distress, using their money which was a public money. As such nothing is argued with respect to liability owed by the appellants to the Exim Bank. The claim of the SBI against the appellants is already decreed and it is only a question of time as far as disposal of the present pending original application filed by the Exim Bank against the appellants is concerned. In between much time has been lost in contesting interim applications. If only appellants had disclosed sincerely, honestly and truthfully that they had received such huge amount from U.N. Compensation Commission, much of the time would have been saved, but the appellants did not disclose this fact and suppressed it. On the other hand, the Exim Bank has come out with a very strong case. Since this amount of 11 million US Dollars was received as the last and final instalment of the compensation, there is no question now about payment of 10% of the said amount as legal fees also. Hence, I have no hesitation to allow Misc. Application taken out by the Exim Bank in terms of prayer Clause 6(a) of the said application. Hence, folk wing order is passed: M.A. No. 72/2002 is allowed in terms of prayer Clause 6(a) of the application.

The appellants are directed to deposit the said amount mentioned in prayer Clause 6(a) of the application and in the mode as provided therein within a period of two weeks from today.

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