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## **The relevant date for determining the conversion rate of foreign award expressed in foreign currency is the date when the award becomes enforceable i.e., when the objections against it are finally decided**

In a recent judgment of *DLF Ltd. vs. Koncar Generators and Motors Ltd.*<sup>1</sup>, the Hon'ble Supreme Court of India ("Supreme Court") formulated the following twin principles:

1. *firstly*, following the principle in *Forasol vs. Oil and Natural Gas Commission*<sup>2</sup>, the date when an arbitral award becomes enforceable will be the date for conversion. Under the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), this date is when the objections against the arbitral award are dismissed, and such award attains finality; and
2. *secondly*, in terms of the principle in *Renusagar Power Co. Ltd. vs. General Electric Co.*<sup>3</sup>, when the award debtor deposits an amount before the court during the pendency of objections and the award holder is permitted to withdraw the same, even if against the requirement of security, this deposited amount must be converted as on the date of the deposit.

### **Brief facts**

1. The appellants are Indian companies, and the respondent is a Croatian company. The parties executed a contract for the design, engineering, manufacturing, and supply of 2 (two) generators by the respondent. Certain disputes arose between the parties which were referred to International Chamber of Commerce for arbitration. An arbitral award dated May 12, 2004, was passed in favour of the respondent (claimant in the arbitration) and held that the appellants are jointly and severally liable to pay Euro 1,093,989, (Euro one million ninety-three thousand nine hundred and eighty-nine) plus interest ("**Arbitral Award**").
2. The respondent filed for execution of the Arbitral Award in 2004 ("**Execution Petition**"), while the appellants filed a petition under Section 34 of the Arbitration Act seeking to set aside the Arbitral Award. The Execution Petition under Section 34 of the Arbitration Act was dismissed on April 28, 2010.
3. Thereafter in 2010, the appellants filed objections in the Execution Petition under Section 48 of the Arbitration Act ("**Objections**") and additionally, filed an appeal under Section 37 of the Arbitration Act against order dismissing the Section 34 petition.

<sup>1</sup> [2024] 8 S.C.R. 291; 2024 INSC 593 (decided on August 8, 2024)

<sup>2</sup> 1984 Supp SCC 263

<sup>3</sup> 1994 Supp (1) SCC 644

4. The Punjab and Haryana High Court dismissed the appeal (filed under Section 37 of the Arbitration Act) by its order dated October 15, 2010. In terms of the consensus arrived between parties and in accordance with the court directions, the appellants deposited INR 7,50,00,000 (Indian Rupees seven crore fifty lakh) with the executing court on October 22, 2010.
5. Subsequently, the Executing Court dismissed the Objections filed by the appellant by an order dated April 2, 2011. Against this dismissal, the appellants filed a Revision Petition ("**Revision Petition**"), which was admitted by the High Court by an order dated June 3, 2011. Additionally, the High Court stayed the operation of the Executing Court order dismissing the Appellant's Objections (i.e., stayed the order dated April 2, 2011). This was made subject to the appellants depositing with the Executing Court, a further amount of INR 50,00,000 (Indian Rupees fifty lakh), over and above, INR 7,50,00,000 (Indian Rupees seven crore fifty lakh) previously deposited by the appellants.
6. The Revision Petition was dismissed by the High Court on July 1, 2014, on which date the Arbitral Award attained finality as this order was not challenged any further.
7. Thereafter, on August 24, 2016, the Execution Court permitted the respondent to withdraw the entire amount of INR 8,00,00,000 (Indian Rupees eight crore) deposited by the appellants. Pursuant to this, the respondent received INR 11,60,12,100 (Indian Rupees eleven crore sixty lakh twelve lakh and one hundred) (i.e., principal sum along with interest) on October 10, 2016, upon furnishing a bank guarantee of an Indian Bank for the release of the deposit.
8. The Execution Petition was allowed by the Executing Court by order dated February 3, 2017, wherein it was held that the relevant date to convert the Arbitral Award amount expressed in Euro to Indian rupees is July 1, 2014, i.e., the date on which all the Objections against the Arbitral Award were finally decided, as it is only on such date that the award is deemed to be a decree.
9. The appellants filed a revision petition against the order dated February 3, 2017, which revision petition was dismissed by the High Court by order dated February 26, 2018. In this revision petition, the appellant contended that the exchange rate as on the date of the Arbitral Award should be applied (instead of the date of July 1, 2014).
10. It is against this order dated February 26, 2018 (dismissing its revision petition) that the Appellants filed a special leave petition before the Supreme Court ("**Impugned Order**").

## Issues

The Supreme Court adjudicated on the following issues:

1. what is the correct and appropriate date to determine the foreign exchange rate for converting the award amount expressed in foreign currency to Indian rupees? and
2. what would be the date of such conversion, when the award debtor deposits some amount before the Court during the pendency of proceedings challenging the award?

## Findings of the Supreme Court

1. Following are the 3 (three) key findings of the judgement:
  - a) the relevant date for determining the conversion rate of foreign award expressed in foreign currency is the date when the award becomes enforceable;
  - b) when the award debtor deposits an amount before the court during the pendency of objections and the award holder is permitted to withdraw the same, even if against the requirement of security, this deposited amount must be converted as on the date of the deposit; and

- c) after the conversion of the deposited amount, the same must be adjusted against the remaining amount of principal and interest pending under the arbitral award. This remaining amount must be converted on the date when the arbitral award becomes enforceable, i.e., when the objections against it are finally decided.
2. In arriving at the above conclusions, the Supreme Court formulated twin principles while applying the law laid down in *Forasol* (supra) and *Renusagar* (supra).
- a) *Re: Principle 1: The date when an arbitral award becomes enforceable shall be the date for conversion (i.e., when the objections against the arbitral award are dismissed, and such award attains finality.)*
    - i) Applying the principle in *Forasol*, the Supreme Court held that the statutory scheme under the Arbitration Act does not require a judgment or decree to be passed for a foreign award to be enforceable. Rather, the enforceability of a foreign award is automatic and deemed under Section 49 of the Arbitration Act, after the objections against such an award under Section 48 of the Arbitration Act are finally decided and disposed of. At this point, the award is enforceable as a decree of a court (Section 49 of the Arbitration Act). Therefore, the date on which the objections are finally decided and dismissed would be the proper date for determining the exchange rate to convert an amount expressed in foreign currency.
    - ii) In the present case, such date was July 1, 2014, i.e., when the High Court dismissed the Revision Petition against the Executing Court order dismissing the appellants' Objections. No further appeal was preferred from this order and hence, it attained finality.
  - b) *Re: Principle 2: If the award amount or part of it is deposited in court pending objections, enabling withdrawal by the decree holder, the date of deposit shall be the relevant date for conversion.*
    - i) the Supreme Court drew a distinction between the 2 (two) deposits made by the appellants in the present case. As regards the first deposit of INR 7,50,00,000 (Indian Rupees seven crore fifty lakh), the Supreme Court held that such deposit stands converted as on the date of deposit i.e., October 22, 2010.
    - ii) the Supreme Court reasoned that through a deposit, the award debtor parts with the money on that date and provides the benefit of that amount to the award holder. Provided that the award holder is permitted to withdraw this amount, it can convert, utilise, and benefit from the same at that point in time. Considering that the deposited amount inures to the benefit of the award holder, it would be inequitable and unjust to hold that the amount does not stand converted on the date of its deposit.
    - iii) As regards the second deposit of INR 50,00,000 (Indian Rupees fifty lakh) pursuant to the High Court order dated June 3, 2011, the Supreme Court held that the same stands on a different footing from the first deposit. This order did not permit the Respondent to withdraw this amount till the completion of the proceedings. Hence, the amount cannot be converted as on the date of deposit as the Respondent could not have benefitted from the same. This amount could be withdrawn only in 2016, pursuant to the Executing Court's order dated August 24, 2016. The Respondent withdrew the entire deposit of INR 8,00,00,000 (Indian Rupees eight crore), along with the interest that accrued on this amount, on October 10, 2016.
    - iv) Thus, the first deposit of INR 7,50,00,000 (Indian Rupees seven crore fifty lakh) must be converted as on the date of deposit being October 22, 2010. The second deposit of INR 50,00,000 (Indian Rupees fifty lakh) as well as the remaining amount due under the award must be converted when the Objections proceedings attained finality on July 1, 2014.
    - v) After the conversion of the deposited amount, the same must be adjusted against the remaining amount of principal and interest pending under the arbitral award. This remaining amount must be converted on the date when the arbitral award becomes enforceable, i.e., when the objections against it are finally decided.
3. Therefore, in the present case, the exchange rate on July 1, 2014, must be used for converting the entire arbitral award and interest.

## Conclusion

By conclusively establishing the law on currency conversion of arbitral awards, the Supreme Court has provided the much-needed clarity on the relevant date for converting foreign currency amounts to Indian Rupees.

The Supreme Court has further settled the law covering a situation where the award debtor deposits the award amount in part during the pendency of execution proceedings/challenge to the award. Where the award holder is permitted to withdraw such amount, even if against the requirement of security, this deposited amount must be converted as on the date of the deposit.

This judgement provides an impetus to the enforcement of foreign arbitral awards by making it clear that the appropriate date to determine the foreign exchange rate for converting the award amount expressed in foreign currency to Indian Rupees, is the date on which such award attains finality.

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