

## Will Interest Stop Accruing Once Awarded Amount is Deposited in the Court

An interesting, though less pondered over, question is as to what is the effect of depositing the awarded amount by the judgement debtor in the courts? This question assumes importance in the context of monetary arbitral awards, where invariably the courts dealing with challenge to such awards direct for deposit of awarded money in the court during pendency of the petition. In some cases, the amount is released in favour of the decree holder subject to the decree holder furnishing a bank guarantee, or like security, for the equivalent amount. What happens with respect to the interest awarded by the arbitrator in such a scenario? Will the liability to pay interest stop from the day the amount was deposited by the judgment debtor in the court? This is a crucial question which is being examined in this article. A judgment of division bench of Hon'ble Delhi High Court has dealt with such issues in its judgement dated 16 March 2009 in the case of Delhi Development Authority Vs Sardar Singh & Sons; reported as 2009 (1) ARB L R 446 (Delhi).

In the fact of the case, in appeal arising out of challenge to an arbitral award dated 12<sup>th</sup> August 1998 under the 1940 Act, the appellate court directed for deposit of the decretal/awarded amount with that court, during the pendency of the appeal. Accordingly, a sum of Rs. 58,80,380 (i.e., awarded amount with interest @18% p.a.) was deposited with the appellate court between March to May 2002. Appeal was allowed and the matter was remanded back to the Ld. Single Judge for deciding the challenge to the award on merit. The Ld. Single Judge finally dismissed the petition challenging the award vide Judgement dated 15<sup>th</sup> July 2005 with the direction that in case the awarded amount was paid within six weeks from 15<sup>th</sup> July 2005, interest would be payable @ 9% p.a. failing which the interest shall revert to 18% p.a. as awarded by the Arbitrator. It so happened that the payment was not release by DDA within



**Vikas Goel**  
Partner  
E: [vikas@singhania.in](mailto:vikas@singhania.in)



**Vivek Gupta**  
Senior Associate  
E: [vivek@singhania.in](mailto:vivek@singhania.in)

the period of six weeks of 15<sup>th</sup> July 2005. Accordingly, the respondent preferred execution petition. In the execution proceedings, the judgment debtor/DDA made a statement before the court that it had no objection if the money lying deposited with the appellate court is withdrawn by the decree holder. At that point, the decree holder submitted that the amount lying deposited with the court fell short of the decretal amount. The executing court directed the decree holder may withdraw the amount deposited and thereafter file execution, if necessary.

In the above circumstances, decree holder applied to the appellate court for release of the amount lying deposited with it. On the other hand, the judgment debtor filed an application in the execution proceedings for refund of Rs. 19,95,291 on the premise that the Ld. Single Judge had reduced the rate of interest to 9% p.a. though the amount deposited with the appellate court was calculated based on interest awarded by the arbitrator @18% p.a. On the same premise, judgment debtor opposed the application filed by the decree holder for release of amount deposited with the court. The appellate court directed for release of the deposited amount in favour of the decree holder, which was finally released.

However, as both the parties were still dissatisfied on the question of amount payable in view of the previously mentioned development, another round of litigation ensued between them. Finally, the issue was decided by the division bench of Delhi High Court vide judgment dated 16 March 2009. An interesting question arose as to *"whether the liability to pay interest would stop from the date when the amount was deposited with the appellate court."* Another related issued was, *"can the decree holder avail itself to higher interest merely because the judgment debtor had failed to pay the amount within 6 weeks from 15 July 2004"*. For answering the first issues, the division bench examined the provisions of Order XXI of the Civil Procedure Code (**"CPC"**) which prescribes the mode of paying money under a decree.

Examining the provision of CPC, the division bench held that deposit of amount in the appellate court would not satisfy the requirements of Order XXI. It was further held by the court that mere deposit of decretal amount in the court other than executing court can never amount to "payment" and even where decretal amount is deposited in the executing court, the judgment debtor's liability to pay interest does not cease until notice contemplated under Sub-rule (2) of Rule 1 of Order XXI is given. It was further held that Order XXI, Rule 1 CPC does not contemplate decree holder having to chase the judgment debtor to realise the decretal amount by seeking attachment of one or other account of the judgment debtor or property of the judgment debtor. If resort to the execution process is required to be paid by the decree holder, and decretal amount is recovered pursuant to the order of attachment of account of the judgment debtor and/or slae of assets of the

judgement debtor, such realization of decretal amount would not amount to payment of decretal amount under Order XXI Rule 1 CPC.

The division bench of the High Court referred to the judgment of Hon'ble Supreme Court of India in the case PSL Ramanathan Chettiar & Ors Vs. O.R.M.P.RM. Ramanathan Chettiar; (1968) 3 SCR 367 where the Hon'ble Supreme Court held that the fact of judgement debtor's depositing the sum in a court to purchase peace by way of stay of execution of the decree on terms the decree holder can draw it out on furnishing security, does not pass the title to the money to the decree holder. He can if he likes to take the money out in terms of the order; but so long as he does not do it, nothing prevents the judgement debtor from taking it out by furnishing other security, say, of immovable property if the court allows him to do so and on his losing the appeal putting the decretal amount in the court in terms of order XXI Rule 1 of CPC in the satisfaction of the decree. The apex court, in the cited case, had held that the real effect of deposit of money in the court is that to put the money beyond the reach of parties pending disposal of the appeal. The decree holder could only take it out on furnishing security which means that the payment was not in satisfaction of the decree and security could be proceed against by the judgment debtor in the case of success in appeal pending determination of the same it was beyond the reach of the judgement debtor.

Taking cognizance of the law laid down by the Hon'ble Supreme Court in the aforesaid case, the division bench held that judgement debtor/DDA cannot claim that the interest in terms of the decree had stopped running from the date of deposit. It was further held that the decree holder will have advantage of higher interest because judgement debtor had failed to satisfy the decree within 6 weeks from 15th July 2005. On the aforesaid conclusion necessary directions were passed by the division bench while disposing of the matter.

A somewhat similar question arose before the Bombay High Court in matter of Nahar Builder Ltd. Vs. Housing Development and Infrastructure Ltd. (Comm Arbitration Petition No. 74 of 2017 which was decided vide order dated 21. January 2020). In the said case, a ld. single judgment of Bombay High Court directed for release of the amount lying deposited the court, in favour of Nahar Builders. In the said case, Nahar Builders had filed an application under Section 9 before the Bombay High Court for a direction to the opposite party to furnish security pursuant whereto the Bombay High Court directed the opposite party to furnish bank guarantee in the sum of Rs. 8 crores. The said security having not been furnished by the opposite party, contempt proceedings came to be filed. Thereafter, the opposite party deposited the amount of Rs. 8 crores in the court. In the arbitration proceedings, Nahar Builder was successful and sum of Rs. 8 crores along with interest @8% p.a. from 23<sup>rd</sup> March 2016 was awarded in favour of Nahar Builder. After the expiry of the statutory period available for challenging the award, Nahar builder moved an application before the High

Court for release of the deposited amount. The Opposite party opposed the application on the ground that there was a moratorium in place due to pendency of insolvency proceedings against the opposite party and the amount deposited with the court being the property of the opposite party, the same cannot be released. While considering the said application, the Bombay High Court held that the amount once deposited in the court was placed beyond the reach of either party. Once the money is deposited in the court no part can automatically claim any right to it without an adjudication by a court. Rejecting the contention of the opposite party resting on the moratorium being in vogue, the court held that the application for release of money cannot be considered as a suit, proceeding or execution within the meaning of Section 14(1)(a) of the IBC code.

## **CONCLUSION**

The issue decided by the division bench of Delhi High Court is of greater importance though the parties seldom decide to keep contesting for the interest beyond the date of deposit of the amount in the court. Parties normally put quietus to the matter if the amount deposited in the court is released in their favour along with the interest, if any, accruing thereon. However, the situation may not be the same where the decretal amount is substantial, and the rate of interest awarded in the award /decree is more than the nominal interests paid by bank on the FDRs.

Therefore, parties to the proceedings must be aware that with deposit of the amount against any award/decree before any court, including the executing court, if not done in the manner provided under Order XXI Rule 1 would not result in satisfaction of a decree. Hence, the liability to pay interest would not stop on the date of deposit. Accordingly, depending on the facts of the case, the judgment debtor can be called upon to pay interest on the amount deposited in the court at the rate directed in the decree/award till the date of actual payment. Of course, if the amount deposited with the court also earns interest during the time of deposit, such amount will enure for the benefit of the judgment debtor.

© 2021 All rights reserved. This article is for information purposes only. No part of the article may be reproduced or copied in any form or by any means [graphic, electronic or mechanical, including photocopying, recording, taping or information retrieval systems] or reproduced on any disc, tape, perforated media or other information storage device, etc., without the explicit written permission of Singhania & Partners LLP, Solicitors & Advocates ("The Firm").

**Disclaimer:** Though every effort has been made to avoid errors or omissions in this article, errors might creep in. Any mistake, error or discrepancy noted by the readers may be brought to the notice of the firm along with evidence of it being incorrect. All such errors shall be corrected at the earliest. It is notified that neither the firm nor any person related with the firm in any manner shall be responsible for any damage or loss of action to anyone, of any kind, in any manner, therefrom