

A NIFTY CHEMICALS PVT. LTD.

v.

UNION OF INDIA

(I.A. Nos. 1-2 in T.C. (Civil) No. 113 of 2005 etc.)

FEBRUARY 27, 2009

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[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ.]

*Refund – Of amount paid as per interim order – Litigation between coal suppliers and coal purchasers – Over*

*C enhanced amount demanded by supplier – Interim order directing the purchasers to pay 1/3rd of the enhanced amount – Supplier undertaking for refund of amount, if final decision passed against them – Final decision passed against the supplier – Applications and contempt petitions, seeking D refund and direction for payment of interest thereon till the actual date of payment – Held: Coal purchasers are entitled to refund, with interest computed till the date refund payment was actually made.*

*E Applicants (non-core linked consumers of coal) of the respondent-coal company (a subsidiary of Coal India Ltd.) were getting supply of coal at fixed price (Notified price). After introduction of E-Auction Scheme, the non-core linked consumers were required to pay the price as determined by market forces in place of the notified price.*

*F During pendency of the cases challenging 'E-Auction Scheme' it was directed by interim order passed by Supreme Court that the coal would be supplied to the coal consumers on their paying 1/3rd of the enhanced price i.e. in addition to the notified price and on their furnishing security for the balance 2/3rd of the enhanced price. Coal India and its subsidiaries under-took that if 'E-Auction Scheme' is not upheld consequently, they would refund the enhanced price of 1/3rd with interest thereon*

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at 12% PA, from the date of payment. Thereafter, E-  
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Auction scheme was quashed holding the same invalid  
and *ultra vires* Article 14 of the Constitution. The coal  
consumers filed contempt petitions alleging violation of  
the orders wherein the undertaking for refund of the price,  
over and above the notified price, was made. Thereafter,  
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present applications were filed seeking the refund as  
undertaken. They also sought interest on the amount  
already refunded not only upto 30.4.2008, but till the date  
of payment. Respondent-Company in its affidavit stated  
that it had released the refund payments to 118 parties  
out of 122 parties. It also stated that it had no objection  
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to pay the interest on the amount till the date, the amount  
was actually refunded.

Disposing of the applications and contempt  
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petitions, the Court

HELD: 1. Since the applicants were refunded the  
extra amount deposited by them only on 28.6.2008 they  
are entitled to receive interest computed and calculated  
up to 28.6.2008 and not till 30.4.2008, for which there is  
no basis at all. Interest is payable on the amount found  
due and payable on the ground that the concerned  
person is deprived of the benefit of the aforesaid amount  
which is otherwise due and payable to it. The intention  
is to compensate the concerned person for being  
deprived of utilizing the money for the period during  
which he was unable to utilize the amount. Similarly, the  
extra amount which was paid by the applicants was  
invested in the fixed deposit receipt pursuant to the order  
of this Court. [Para 14] [509-G, H; 510-A]

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2. Whatever interest was received by the coal  
company as against the FDR made on the amount  
deposited by the applicants towards extra amount  
charged, may be paid back to the applicants. The  
aforesaid aspect could be settled between the parties, if

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- A the coal company provides to the representatives of the applicants, the statement of the bank indicating the interest that actually accrued and was paid on the aforesaid FDR to the Respondent-Company, which was made against the extra payment made by the applicants.
- B [Para 15] [510-C, D]

CIVIL APPELLATE JURISDICTION : Transfer Case No. 113 of 2005.

- From the Judgment and Order dated 12.12.2005 in SLP
- C No. 20471 of 2005.

M.L. Verma, Manish Kumar Saran, Jyoit Mendiratta, S. Chandra Shekhar, Manish Pitale, Chander Shekhar Ashri, Manish Kumar Saran and Nirmal Kumar Ambastha for the Petitioner.

- D Anip Sachthey, Mohit Paul, Anil Katiyar, S.P. Singh, Kiran Bhardwaj, D.S. Mehra, Cp. Capt. Karan Singh Bhati, Sweta Rani, Rekha Giri, Ajit Kumar Sinha and V.K. Verma for the Respondents.

- E The Order of the Court was delivered by

#### ORDER

- DR. MUKUNDAKAM SHARMA, J. 1. By this order we
- F propose to dispose of the above mentioned interlocutory applications arising out of Transfer Case Nos. 113, 115, 117, 118, 119, 120, 121, 122 of 2005 and contempt petition No. 47 of 2008 in T.C. (C) 116/2005 and contempt petition No. 49 of 2008 in T.C. (C) 112/2005.

- G 2. The basic facts in all these applications are similar. Therefore, the facts in I.A. No. ....with I.A. Nos. 1-2 in T.C. (Civil) No. 113 of 2005 are taken as illustrative for the purpose of our decision.

- H 3. The present application is filed on behalf of the four

applicants, namely, M/s. Trimurti Moulds Pvt. Ltd., Coventry Stonewares Pvt. Ltd., Vidharbha Ceramics Pvt. Ltd. and Ceramics Industries (I) Pvt. Ltd. through their respective Directors praying for issuance of directions to the M/s. Western Coalfields Ltd. (a subsidiary of Coal India Ltd) being respondent herein for implementation and execution of the direction given by this Court in its order dated 30.10.2007 in T.P. (C) No. 100 of 2006. The prayer was to the following effect : –

- (i) Direct the respondent Coal Company i.e. M/s. Western Coalfields Ltd. to implement and obey their own undertaking given before this Court and as recorded by this Court in it's order dated 12.12.2005 and 30.10.2007 in Transfer Petition (Civil) No. 100 of 2006 and analogous matters and refund excess money deposited by the Petitioners/ Applicants herein over and above the Notified Price since the introduction of E-auction along with interest at the rate of 12% per annum, and/or
- (ii) Direct the Respondent M/s. Western Coalfields Ltd. to pay Bank interest on the amount already refunded to applicants (on 25.07.2008) not only up to 30.4.2008 but till the date of payment.

4. The applicants are non-core linked consumers of coal of M/s. Western Coalfields Ltd. It is stated in the application that the applicants and other similarly situated non-core linked consumers were being supplied coal by M/s. Western Coalfields Ltd. at fixed price which is stated to be Notified Price, which was used to be fixed once in a year by the respondent coal company. The Coal India Ltd. and its subsidiary coal company like the respondent herein introduced a new Scheme in the year 2004 for sale of coal and the said scheme was made applicable to even non-core linked consumers like the applicants herein. The aforesaid Scheme was called as "E-auction Scheme" in which price of coal was to be determined

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- A by market forces in place of fixed price, i.e. the Notified Price. The validity and legality of the aforesaid scheme of E-auction was challenged by the various companies like and including the applicants herein by way of writ petitions before the Bombay High Court, Nagpur Bench. The writ petition of the applicants
- B was registered as Writ Petition (Civil) No. 2421 of 2005. In the said writ petition the High Court passed an interim order on 21.06.2005, whereby and whereunder Coal India Ltd. and M/s. Western Coalfields Ltd. were directed to supply coal to the applicants at Notified Price subject to petitioner depositing with M/s. Western Coalfields Ltd. the difference between the E-auction price and the Notified Price.

- 5. In view of and in terms of the aforesaid interim order applicants started lifting coal after depositing the amount in cash, with respect to the difference between the average E-auction price and the notified price. Similar writ petitions were filed challenging the legality of the aforesaid Scheme of sale of coal through E-auction in various other High Courts. Interim orders were passed by a number of High Courts also, and therefore, special leave petitions came to be filed by the
- C companies like the applicants in this Court. The coal companies preferred a number of transfer petitions in this Court seeking transfer of all the writ petitions pending on the aforesaid subjects before the various High Courts to this Court. The special leave petitions filed by the various coal consumers in
- D this Court and the transfer petitions preferred by the coal companies were taken up together and this Court under order dated 12.12.2005 finally allowed all the transfer petitions preferred by different coal companies by passing a detailed order. The operative portion of paragraphs 8 and 9 of the aforesaid order is reproduced hereinbelow :

H “8.....Taking note of the circumstances as a whole we feel that it would be just and proper to direct the petitioner companies/firms, having coal linkage, to pay in addition to the notified price, 33 1/3 % of the enhanced price, each

time they claim supply of coal to them based on the linkage and by furnishing security for the balance 66 2/3 % of the enhanced price with an undertaking filed in this Court that the said part of the price will also be paid within 6 weeks of the decision of this Court in the Writ Petitions in case the writ petitions are decided against the petitioners. To protect the interest of the petitioners and to ensure that no permanent harm is caused to them we also think it proper to record the undertaking given on behalf of the Coal India Ltd. and its subsidiaries that in case this Court upholds the challenge made by the petitioners and allows the writ petitions filed by them, the enhanced price of 33 1/3% now to be paid by the petitioners will be refunded to the petitioners within 6 weeks of the judgment of this Court with interest thereon at 12% per annum from the date of payment till the date of return to the concerned petitioner.

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9.....All the same, we think it appropriate to direct that on the concerned petitioner paying the notified price plus 33 1/3% of the enhanced price as per the E-auction and furnishing security for the balance 66 2/3% of the enhanced E-auction price, and filing the undertaking in this Court within four weeks from today, the coal as per the linkage will be supplied to the concerned petitioner within a period of 3 weeks from the date of such payment. It is clarified that there will be no obligation on the part of the Coal India Ltd, and its subsidiaries to supply the coal as per this interim order in the case of those who have not complied with the order for payment of 33 1/3% of the difference in price in addition to the notified price and for furnishing of security for the balance 66 2/3% of the enhanced price, and filing the undertaking in this Court to pay the entire amount if they do not succeed in their challenge. It is directed that this interim order will enure until these writ petitions are finally heard and disposed of by this Court."

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A 6. On 18.1.2006, the aforesaid order passed on 12.12.2005, came to be clarified in the following manner :

“.....We must note that assurance has been given by the learned Solicitor General appearing on behalf of Coal India

B Ltd. and other subsidiary Companies that the interim order of this Court date December 12, 2005 shall be implemented in letter and spirit.

We would clarify that so far as furnishing of security for the balance 66 2/3% of the enhanced price is

C concerned, the Coal Companies shall not insist on furnishing bank guarantees and shall supply Coal on their furnishing undertaking by the Managing Director or Managing Partner of the Company/Firm, as the case may be, apart from indemnity bonds or other types of securities

D subject of course to the compliance of other directions.”

The applicants have stated in the application that pursuant to the aforesaid orders passed by this Court they submitted entire detail in a chart showing the amount which the respondent M/s. Western Coalfields Ltd. was liable to refund to the applicants.

F 7. This Court by the judgment and final order dated 01.12.2006 in Civil Appeal No. 5302 of 2006 titled as *Ashoka Smokeless Coal India (P) Ltd. v. Union of India*, reported in

F (2007) 2 SCC 640 upheld the challenge of the applicants to the scheme of E-auction. While allowing the writ petitions this Court held that the aforesaid scheme of E-auction was invalid and declared the same as ultravires of Article 14 of the Constitution of India and quashed the said E-auction Scheme.

G Consequence of the said judgment and order is that the coal companies like the Respondent were required to refund the entire price paid by the applicants over and above the Notified Price as per their undertaking before this Court and as recorded in the order dated 12.12.2005 and 30.10.2007.

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8. Alleging violation of the aforesaid orders passed by this Court contempt petitions were filed in which the following order came to be passed by this Court on 30.10.2007 :

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"(i) The Petitioners shall furnish all documents to the learned Advocates-on-Record of the respondents, showing the actual payments made to any of the subsidiaries of the Coal India Ltd. and the difference between the amount paid and the amount notified by 12th November, 2007.

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(ii) The documents furnished by the Petitioners shall be verified by the officers of the concerned Coal companies within four weeks thereafter.

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(iii) In case of any difference, the learned counsel, would deliberate upon the matter so as to enable them to come out with an accepted solution.

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(iv) The Bank guarantee furnished by the Petitioners shall stand discharged"

9. Despite representation filed in that regard by the aforesaid four applicants and no effective steps having been taken by the Respondent for redressal of their grievances, the present application was filed in which an affidavit also came to be filed on behalf of the M/s. Western Coalfields Ltd., the respondent herein. In the said affidavit the respondent coal company has stated on oath that after verification of all records and after considering the report of the Committee constituted under the order of this Court and on their recommendation the respondent herein released the refund payments to 118 parties out of 122 parties, as the remaining 4 parties were directed to submit documents, namely, money receipt and PAN so as to enable the company to release their amount. The company has further stated in their affidavit in the following manner :

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"....Further the parties who have deposited the additional amount due to increase in the e-auction price at the time

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A of delivery are also entitled to refund alongwith interest."

10. In the light of the aforesaid pleadings of the parties we have heard the learned counsel appearing for the parties.

B 11. Mr. M.L. Verma, the learned senior advocate primarily made following threefold submissions before us. His first submission was that the interest which was payable pursuant to the orders of this Court on the extra amount taken and received by the respondent in terms of the interim orders of this Court is payable till the date when extra money taken by the

C respondent was refunded but instead the respondent coal company has computed the said interest only till 30.4.2008 and not till 28.6.2008, when the aforesaid extra money taken by them was actually refunded. His second submission was that the respondent-Company has also not paid to the applicants the

D entire interest that actually accrued on the fixed deposit receipt which was deposited on the account of the applicants. It is next submitted by him that the writ petition of the applicants registered as Writ Petition (Civil) No. 6629 of 2005 is still pending disposal in the High Court of Judicature Bombay,

E Nagpur Bench and the said High Court did not take up the writ petition for final disposal as the issue with regard to excess amount over and above Notified Price paid prior to passing of the order dated 4.7.2005, i.e. from the date on which E-auction Scheme came to the existence is pending consideration before

F this Court. He further submitted that since now this Court has disposed of the said issue, there should be a direction to the concerned High Court to dispose of the aforesaid writ petition as expeditiously as possible.

G 12. Mr. Anip Sachthey, the learned counsel appearing for the coal company during the course of his submission submitted that they have paid the amount which became refundable to all the claimants who are entitled to receive it inclusive of interest in fixed deposit calculated up to 30.4.2008 as the fixed deposit receipts were time bound and, therefore,

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a fixed date was taken for calculation of the interest which was 30.4.2008. He also submitted that whatever interest is due and payable to the applicants have already been paid while refunding the amount due and payable to the applicants. He further submitted that the coal company has no objection if a direction is issued to the Bombay High Court, Nagpur Bench for early disposal of the aforesaid writ petition for according to him the issues raised in the said writ petition would now be governed and covered by the decision of this Court.

13. While considering the aforesaid submissions in the light of the pleadings of the parties we find that the area of controversy and the dispute between the parties, as highlighted in the present application, lie in a very narrow compass for during the course of arguments Mr. Sachthey, learned counsel for the respondent coal company has fairly stated that the coal company cannot have any objection to pay the interest accrued on the amount payable to be computed up to 28.6.2008 when the amount came to be actually refunded to the applicants. We also find justification in the claim of the applicants for the respondent coal company had agreed to refund the amount, if later on found to be due and payable with interest till the date when it is actually refunded. In fact that was also the intention of the order passed by this Court when the interim order to that effect was passed. We may point out that though the applicant in the application stated that the amount was refunded on 25.7.2008 but however during the submissions it was agreed that the same was refunded on 28.6.2008

14. According to us, since the applicants were refunded the extra amount deposited by them only on 28.6.2008 they are entitled to receive interest computed and calculated up to 28.6.2008 and not till 30.4.2008, for which there is no basis at all. Interest is payable on the amount found due and payable on the ground that the concerned person is deprived of the benefit of the aforesaid amount which is otherwise due and payable to it. The intention is to compensate the concerned

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- A person for being deprived of utilizing the money for the period during which he was unable to utilize the amount. Similarly, the extra amount which was paid by the applicants was invested in the fixed deposit receipt pursuant to the order of this Court.
- B 15. There is an apprehension in the mind of the applicants that the entire interest accrued on the said FDR, is not paid to the applicants. In that view of the matter, we are of the considered opinion that whatever interest was received by the coal company as against the FDR made on the amount deposited by the applicants towards extra amount charged, and not covered by the directions issued in the preceding paragraph may be paid back to the applicants. The aforesaid aspect could be settled between the parties if the coal company provides to the representatives of the applicants the statement of the bank indicating the interest that actually accrued and was paid on the aforesaid FDR to the Respondent – Company, which was made against the extra payment made by the applicants.

- 16. We are also of the considered opinion that since this Court has finally pronounced the judgment and order on 1.12.2006 in respect of the challenge to the Scheme of E-auction and passed consequential orders thereof, the writ petition filed and registered as Writ Petition (Civil) No. 6629 of 2005 could now be disposed of by the Bombay High Court, Nagpur Bench. Consequently, we pass the following directions in terms of the discussions and observations made hereinbefore :

- I. the respondent coal company shall now pay interest at 12% per annum in terms of order of this Court dated 12.12.05 on the extra amount which was refunded in terms of the claim of the applicants calculating and computing the same till 28.6.2008 when the said amount was actually refunded to the applicants and not till 30.4.2008 as has been done

by the applicants. A

- II. The respondent-Company shall make available to the representatives of the applicants statement of the bank indicating interest accrued on the FDR created as against the extra amount paid by the applicants and not covered by the directions issued in the preceding paragraph. B
- III. We also issue a direction to the Bombay High Court, Nagpur Bench now to take up the Writ Petition (Civil) No. 6629 of 2005 for consideration and disposal as expeditiously as possible. It is needless to say that all the contentions relating to the issue of extra amount over and above the Notified Price, that is to say, difference between average E-auction and Notified Price in cash and the issues relating to validity of Scheme of E-auction shall be decided in terms of the decision of this Court those are covered and governed by the said decision. If, however, any other and additional contentions are raised in the writ petition and pleadings of the parties which are not covered by the issues decided by this Court, the same shall be decided by the High Court as expeditiously as possible and according to law. C D E

15. All the applications and contempt petitions stand disposed of in terms of this order. F

K.K.T. Applications and contempt petitions disposed of.