

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: February 21, 2022**

Pronounced on: March 10, 2022

+ OMP (ENF.) (COMM.) 145/2021 & EX.APPL.(OS) 1008/2021,
1282/2021, 38/2022

DELHI AIRPORT METRO EXPRESS PRIVATE
LIMITED

..... Decree Holder

Through: Mr.Rakesh Khanna, Senior Advocate
with Mr. Mahesh Agarwal, Mr. Rishi
Agrawala, Ms. Megha Mehta,
Ms. Niyati Kohli, Mr. Pranjit
Bhattacharya & Ms. Manavi Agarwal,
Advocates

Versus

DELHI METRO RAIL CORPORATION
LTD.

..... Judgement Debtor

Through: Mr.Parag P. Tripathi & Mr.Ajit
Kumar Sinha, Senior Advocates with
Mr. Tarun Johri, Mr. R. Srinivasan &
Mr. Vishwajeet Tyagi, Advocates

Mr. Ramji Srinivasan, Senior
Advocate with Mr. PBA Srinivasan,
Ms. P.S. Chandralekha & Mr. Parth
Tandon, Advocates for
applicants/Canara Bank & Union
Bank of India

**CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

JUDGMENT

1. The present petition has been filed under Section 36 of the Arbitration and Conciliation Act, 1996 by the decree holder- Delhi Airport Metro OMP (ENF.) (COMM.) 145/2021

Express Private Limited (henceforth referred to as the 'Delhi Airport Metro') seeking execution/enforcement of the arbitral award dated 11.05.2017.

2. Pertinently, the challenge to the arbitral award dated 11.05.2017 by the judgment debtor under the provisions of Section 34 of the Act stood dismissed vide judgment dated 06.03.2018 [OMP (COMM.) No. 307 of 2017], against which judgment debtor preferred an appeal [FAO (OS) (COMM) No. 58 of 2018], which was partly allowed by the Division Bench of this Court vide judgment dated 15.01.2019 and the impugned award was set aside. Against judgment dated 15.01.2019 passed by the Division Bench of this Court, decree holder preferred a Special Leave Petition before the Hon'ble Supreme Court [Civil Appeal No. 5627 of 2021 in SLP(Civil) No. 4115 of 2019, *(2022) 1 SCC 131*], which was allowed by judgment dated 09.09.2021 by the Hon'ble Supreme Court. The review petition [EA (OS) No. 1282 of 2021] filed by the judgment debtor against the judgment dated 09.09.2021 also stood dismissed by the Hon'ble Supreme Court on 23.11.2021. Hence, the present petition is being filed by the decree holder for execution of the award dated 11.05.2017 passed by the learned arbitral tribunal.

3. Learned senior counsel for decree holder submitted that the award being final and binding is enforceable under Section 36 of the Act read with the provisions of the Code of Civil Procedure, 1908 and deserves to be executed as such.

4. Learned senior counsel for decree holder next submitted that gross decretal sum along with interest up to 14.02.2022 computed in accordance with the arbitral award is Rs. 8009.38 crores. Out of the said amount, only a sum of Rs. 1678.42 crores has been paid so far by DMRC. Thereby, as on 14.02.2022, the remaining decretal amount payable with interest is Rs.6330.96 crores [Rs.8009.38 crores - Rs. 1,678.42 crores]. Learned senior counsel for decree holder also submitted that the aforesaid calculation has strictly been made in accordance with the arbitral award and the settled legal principles, which are certified by the Chartered Accountant vide Certificate dated 13.02.2022.

5. Besides other grounds, the primary objection raised by the judgment debtor to the aforesaid calculation submitted on behalf of decree holder, is that the decree holder has calculated interest for the delayed period of Termination Payment at the rate of Prime Lending Rate + 2% interest whereas it should have been calculated on the basis of applicable Prime

Lending Rate (PLR) notified by SBI. Learned senior counsel for judgment debtor submitted that as per the Arbitration Award dated 11.05.2017 higher deterrent interest to be paid in case of unpaid amount to decree holder as per Article 29.8 of the Concession Agreement, is SBI Prime Lending Rate + 2%.

6. It was also submitted by learned senior counsel that Reserve Bank of India had replaced the Prime Lending Rate with Base Lending Rate vide notification dated 01.07.2010, which was further replaced with Marginal Cost of Lending Rate w.e.f. 01.04.2016.

7. During the course of hearing, learned senior counsel for judgment debtor drew attention of this Court to the provisions of Section 31 (7) of the Arbitration and Conciliation Act, 1996 wherein it is stated that “*the arbitral tribunal may include in the sum for which the award is made interest*” to submit that the word “may” clearly points out that the discretion is vested in the arbitral tribunal, which in this case has been exercised by the arbitral tribunal and no interest over interest i.e. capitalization of the awarded amount till the date of the award, has been awarded. It was submitted that the execution amount claimed by the Delhi Airport Metro is incorrect as it has added on the Termination Payment Amount as stood on the date of

becoming due i.e. 07.08.2013 plus the amount of interest @SBI Prime Lending Rate +2% till the date of the Award i.e. 11.05.2017 and thereafter, it has applied interest on such capitalization amount from the date of Award till 14.02.2022. Learned senior counsel for judgment debtor submitted that decree holder itself has not claimed interest over interest in the prayer made before the Tribunal and also, the same has not been awarded by the Tribunal and so, the amount has to be reduced by an amount of Rs.1258.33 crore, which has been wrongly added as compound interest till 14.02.2022.

8. Learned senior counsel for judgment debtor further submitted that under interim orders of this Court, judgment debtor had paid amount of Rs.678.42 crores to decree holder on different dates, which has been deducted by the decree holder as the final amount, whereas it should be made less on actual dates of payment and thereby, reducing the principal amount and passing of the reduced interest amount benefit to the judgment debtor. It was submitted that as on 14.02.2022, amount of Rs.417.22 cores is to be deducted from the Termination Payment amount as calculated by the decree holder as well as amount of Rs.1,000 crores paid by the judgment debtor during pendency of this petition.

9. On the asking of this Court, respondent/ DMRC placed on record

affidavit dated 10.01.2022 disclosing its fund position. According to the said statement, a total of Rs.5694.25 crores is available as on 14.02.2022, which includes funds under the heads (i) DMRC funds of Rs.1452.10 crores (ii) Project funds of Rs.2,681.29 crores and (iii) funds of Rs.1560.86 crores under the head of Other than DMRC funds.

10. Learned senior counsel for judgment debtor pleaded that the DMRC is not possessed of sufficient resources to satisfy the amount due under the Award and the funds available under the head “Project Funds” pertain to the equity and debt funds available to DMRC for construction of Mass Rapid Transport System in Delhi by DMRC and the said equity funds can be utilized by the DMRC only for the said purpose, as these funds have been invested by the Government of India and Government of NCT of Delhi in the share capital of DMRC solely for the purpose of construction of Metro Project and cannot be attached for any payment to the Creditors of the DMRC. Learned senior counsel submitted that the Government of India and GNCTD while issuing different orders have contemplated the manner in which the funds allocated are to be employed for the purpose of construction and procurement of building, track, rolling stock and other fixed structures etc. and thereby, the funds invested by Government of India are part of

capital expenditure to be incurred in the creation of fixed assets of the Metro and do not qualify as “earnings” of DMRC and thus, cannot be attached.

11. Learned senior counsel for judgment debtor next submitted that the funds reflected under the head “Other than DMRC funds” pertain to the funds provided by Government of Bihar and Government of Maharashtra for carrying on, “Deposit Work” by the DMRC of construction of Metro Rail in the city of Patna and Mumbai. It was, therefore, submitted that the funds received by DMRC as part of Deposit Work are not under the ownership of DMRC, who is only a trustee and has to employ these funds for the purpose of construction of Metro Rail in Patna and Mumbai. It was submitted that for the said work, DMRC is entitled to receive only “Fee” amount and so, the funds other than the “fee” are to be spent towards the expenditure of construction of the Metro Rail only. It was submitted that the net fee payable to DMRC is Rs.482.97 crores for Bihar Agreement, which shall be paid on completion of full project and Rs.329 crores + Rs.329 cores for Mumbai project, which shall be payable to DMRC in 20 quarterly equal installments.

12. It was emphatically submitted by learned senior counsel for judgment debtor that the “Project Funds” and “Other than DMRC funds” cannot be attached in execution of decree, as it is settled law that the monies advanced

and earmarked for a purpose, are impressed with the character and cannot be proceeded against by the creditors. It was also submitted that the monies received by the DMRC are neither a saleable property belonging to the judgment debtor nor are funds over which it has disposing power and therefore, cannot be attached. Reliance was also placed upon provisions of Section 60 of Code of Civil Procedure to submit that only such saleable property shall be liable to attachment in execution of a decree which are belonging to the judgment debtor or over profits of which, it has a disposing power, except for the purpose of which they have been received. Further submitted that the bar contemplated under Section 89 of the Metro Railways (Operation & Maintenance) Act, 2002 is in the form of statutory protection conferred by the Parliament upon DMRC in public interest and as per the provisions thereof, no rolling stock, metro railway tracks, machinery, plant, tools, fittings, materials or effects used or provided by the metro railway administration for the purpose of traffic/stations/workshop or offices shall be taken in execution of any decree or order and it is only the earnings of the metro railway administration which can be attached in execution of a decree or an order.

13. Learned senior counsel for judgment debtor submitted that the funds

which have been earmarked to DMRC cannot be attached in the first instance, as the same are for construction of metro lines and further, the rolling stock, tracks, plant, machinery, building, etc., cannot also be attached in view of the bar contemplated under Section 89 of the 2002 Act. Also submitted that the revenue of an organization means the 'Gross Inflow of Cash' and not 'earnings'. So, the funds/revenue available with the judgment debtor after defraying all expenditures shall be the 'earnings' which can only be attached in execution proceedings.

14. Once again attention of this Court was drawn to additional affidavit dated 21.12.2021 filed on behalf of judgment debtor before this Court to submit that upon termination of Concession Agreement, in terms of Article-30 thereof, decree holder can withdraw the payment amounts from the ESCROW account only after Vesting Certificate is issued by the judgment debtor, which has to be issued after all the specifications and covenants under the agreement are performed by the decree holder, which in fact have not been performed by the decree holder. It was submitted that this has led to incurring of further expenditure to tune of Rs.297.82 crores to the judgment debtor.

15. Lastly, learned senior counsel for judgment debtor persistently

submitted that because of restriction imposed due to Covid pandemic, judgment debtor has incurred huge losses and is not in a position to raise funds from the market and therefore, is unable to pay the execution amount.

16. In rebuttal, learned senior counsel for decree holder submitted that the present petition is for execution of a decree arising out of arbitral award dated 11.05.2017 wherein it has been held that the termination of Concession Agreement dated 25.08.2008 by decree holder is valid awarded and Claim No.1 has been awarded in favour of decree holder by granting Termination Payment of Rs.2782.33 crores. Interest on the Termination Payment (pre-award as well as post-award) has been awarded at the contractually agreed rate of interest set out in Article 29.8 of the Concession Agreement i.e. SBI Prime Lending Rate + 2%. In addition, arbitral tribunal has also awarded Rs.147.52 crores as expenses incurred in running the line post-termination, Rs.62.07 crores as costs of decree holder's Bank Guarantee wrongfully invoked, and another Rs. 56.80 lakh towards security deposits. It was strenuously submitted by learned senior counsel for decree holder that the Award in question has been upheld by the Hon'ble Supreme Court and it is impermissible for an executing court to go beyond the decree and/or the award. Factual objections can be raised in a suit in its trial but not

in execution proceedings. Learned senior counsel submitted that the objection raised by the judgment debtor that instead of SBI Prime Lending Rate, Base Rate or Marginal Cost of Lending Rate has to be used for calculation of interest, was never raised in any proceedings so far and it leads to modification of the Award, which in express terms directs payment of interest basis SBI PLR + 2% on Termination Payment.

17. With regard to calculation of interest, learned senior counsel submitted that decree holder/Delhi Airport Metro has unilaterally segregated the period of interest in two parts i.e. period prior to 11.05.2017 i.e. the date of award and thereafter, has capitalised interest for the period up to 11.05.2017 and calculated combined interest from 12.05.2017 till 14.02.2022 charging interest on interest. In this regard, learned senior counsel submitted that under the provisions of Section 31 of the Arbitration and Conciliation Act, 1996, the Arbitral Tribunal has the power to award interest for pre-award period, interest *pendente lite* and interest for post award period. Further, as per Section 31(7)(b) of the Act, unless otherwise directed, interest shall be calculated at the rate 2% higher than the current rate of interest prevalent on the date of award, from the date of award till date of payment and by clause(b) means that the rate specified in the Award

or else, rate of interest shall be 2% higher than the current rate of interest prevalent on the date of award and in the present case, the arbitral award dated 11.05.2017 does direct about the applicable rate of interest. It was submitted that inclusion of pendente lite interest along with the principal amount till the date of Award and claiming interest on such sum awarded, comprising of principal and interest, has already been dealt by the Hon'ble Supreme Court in catena of decisions.

18. Regarding the objection of judgment debtor that amount of Rs.678.42 crore paid by it on different dates should have been adjusted from the due amount on the date of payment thereby reducing the interest component, learned senior counsel for decree holder submitted that for appropriation of amounts received in execution of money decrees in respect of Order XXI Rule 1 of the CPC, it is settled legal principle that if the amount deposited by the judgment debtor falls short of the decretal amount, the decree-holder is entitled to apply the rule of appropriation by appropriating the amount first towards interest, then towards costs and subsequently towards principal amount due to the decree holder.

19. Learned senior counsel for decree holder submitted that judgment debtor/DMRC is seeking to mislead this Hon'ble Court that it does not

possess sufficient resources to satisfy the amount due under the Award whereas its own records reflect that its total revenue for F.Y. 2019-2020 was approximately Rs. 7,015 crores; Other bank balances (Deposits) were to the tune of Rs. 10280 crores and nothing prevents it from raising money to satisfy the award. It was submitted that DMRC is completely a government owned entity, having total assets of approximately Rs.78,439 crores and being a government entity, it cannot claim any differential or special treatment and refuse to honour a decree under the Arbitral Award, especially when the Award has been upheld by Hon'ble Supreme Court. Reliance was placed upon decision of Hon'ble Supreme Court in the case of ***Pam Developments Private Ltd. Vs. State of West Bengal*** (2019) 8 SCC 112 wherein it has been held that no special treatment can be given only because Government is a party and that the provisions of CPC as well as the Arbitration and Conciliation Act, call out no difference between a private party and the Government as a party.

20. Further submitted that as on 09.02.2022, judgment debtor has amount of Rs.5708.50, however, it has pleaded that the 'funds are not available with the DMRC' and these are purportedly allocated towards future expansion projects and for this purpose, judgment debtor has erroneously relied upon

the provisions of Section 89 of the 2002 Act, which is meritless and untenable for the reason that Section 89 of the Act prohibits only those properties which are used by a metro railway administration for the purpose of traffic; such as rolling stock etc. on its railway or stations or workshops; and it does not restrict attachment of bank accounts or any other properties, which are not being used or provided by railway administration for the purpose of traffic on its railway or its stations or workshops or offices. Therefore, the distinction between funds and earnings raised by the judgment debtor is fictitious and non-existent. It was cogently submitted that Section 89(1) of the Act does not affect the power of any Court to attach the earnings of metro railway in execution of a decree. So, the allocation made by judgment debtor for utilizing the funds lying in its bank accounts, which are intended expenditures not already incurred, are liable to be attached.

21. Learned senior counsel submitted that judgment debtor has erroneously made claim of Rs.297.82 crores on account of Vesting Certificate, which is self serving quantification and barred by limitation and is meritless and does not at all deserve to be considered.

22. Lastly, learned senior counsel for decree holder submitted that the judgment debtor has delayed the execution proceedings on frivolous

objections which were not raised by it either before the Arbitral Tribunal or in Section 34 and Section 37 proceedings or in its Special Leave Petition before the Hon'ble Supreme Court, therefore, cannot be permitted to be raised now in execution proceedings. The conduct of DMRC is to avoid payment of a money decree, which has attained finality. It is, therefore, prayed that judgment debtor be directed to forthwith pay to the decree holder the balance decretal amount of Rs.6330.96 crores along with further interest due up to the date of actual payment and amounts lying in the bank accounts of judgment debtor as per affidavit of 10.01.2022 be attached to recover the part payment i.e. Rs.5708.50 crores out of the awarded amount and for the remaining amount of Rs.622.46 crores, judgment debtor be directed to forthwith pay the same with up-to-date interest.

23. This Court has carefully gone through the material placed on record and heard learned senior counsel representing both the sides at length. It is not disputed that the arbitral award dated 11.05.2017 has attained finality by virtue of decision of Hon'ble Supreme Court dated 09.09.2021, wherein it has been held as under:-

“52. The Tribunal awarded interest in accordance with the terms of the Concession Agreement on termination payment. DMRC contended before the High Court that the award in respect of interest had to be set aside on the ground that it

would result in unjust enrichment. After a thorough consideration of Article 29.8 and Article 36.2.6.1 of the Concession Agreement, the High Court has rightly refused to interfere with the findings by the Tribunal relating to interest and we see no cause for interference.

53. For the aforementioned reasons, the appeal filed by DAMEPL is allowed and the judgment [DMRC v. Delhi Airport Metro Express (P) Ltd., 2019 SCC OnLine Del 6562] of the Division Bench of the High Court is set aside. The appeal arising out of SLP (C) No. 8311 of 2019 filed by DMRC is dismissed.”

24. In the aforesaid view of the matter, the question for determination by this Court is limited to the extent of execution of the arbitral award dated 11.05.2017 with interest and also, how and in what manner the decretal amount shall be recovered from judgment debtor.

25. For the purpose of adjudicating as to what is due and payable to decree holder, this Court has gone through the arbitral award dated 11.05.2017, wherein the claims of claimant/ respondent as well as counter claims of decree holder have been awarded as under:-

“DMRC’S ISSUES ON CLAIM:

Sr. No.	ISSUES	ANSWERS
1.	Whether the letter dt. 08.10.2012 issued by respondent is illegal, incorrect and against the provisions of the Concession Agreement and should be treated as null and void?	In the negative. The termination notice dtd. 08.10.2012 issued by the Respondent DAMEPL is valid.

2.	<i>Whether the Claimants have performed their obligations under Concession Agreement towards curing of the defects as pointed out by the Respondent vide their letter dated July 9, 2012?</i>	<i>In the negative.</i>
3.	<i>Whether the real motive of Respondent to terminate the concession agreement is Financial viability of their Business Plan?</i>	<i>Not relevant in view of answer to issues 1 and 2 above.</i>
4.	<i>Whether the Claimants are entitled to the compensation of Rs.3173 crore from the respondent along with interest @ 18% as per the Claim Petition?</i>	<i>In the negative.</i>
5.	<i>Whether the Claimant is entitled to an amount of Rs.4.92 crore per month as claimed in the Claim Petition along with interest @ 18% per annum?</i>	<i>In the negative.</i>
6.	<i>Whether the Claimant is entitled to an amount of Rs.1,000 crores along with interest as loss of reputation and goodwill caused due to illegal acts of the Respondent?</i>	<i>In the negative.</i>
7.	<i>Whether the Claimant is entitled to cost of the Arbitration proceedings?</i>	<i>We direct parties to bear their own cost of arbitration.</i>
8.	<i>Whether, as stated by Respondents, the Claimants had failed to cure the breach within the period specified under Concession Agreement as per the provisions of Article 29.5.1? (Para 11 of Reply)</i>	<i>In the affirmative.</i>
9.	<i>Whether, as stated by Respondent, the Claimants failed to make honest or sincere efforts or take effective steps for curing the defects as required by Concession Agreement? (Para 11 & 12 of Reply)</i>	<i>Claimants DMRC failed to take effective steps for curing the defects as required by the Concession Agreement.</i>
10.	<i>Whether the participation of Respondent in the repair process, submission of Application to CMRS and recommencement of Operation</i>	<i>In the negative.</i>

	<i>and Maintenance of the Project by Respondent, proves that the contentions of Respondent, as contained in letter dated October 8, 2012, stood negated and nullified. (Para 32 of the claim)</i>	
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DMRC'S ISSUES ON COUNTER CLAIM:

<i>Sr. No.</i>	<i>ISSUES</i>	<i>ANSWERS</i>
1.	<i>Whether the Respondent is entitled to sum of Rs.3470 cr. as Termination Payment along with interest and further interest @ SBI PLR plus 2% per annum as claimed in the Counter Claim?</i>	<i>DAMEPL (Respondent) is entitled to the sum of Rs.2782.33 crores from DMRC. Interest and manner of payment should be as stipulated in Articles 29.8 and 29.9 of CA.</i>
2.	<i>Whether the Respondent is entitled to sum of Rs.166.32 crore including interest on the Principal amount of Rs.152.59 cr. of claims in Counter Claim?</i>	<i>In the affirmative, DAMEPL is entitled to receive the sum of Rs.147.52 crores from DMRC interest at the rate of 11 percent per annum will accrue from the date requisite stamp duty is paid by DAMEPL.</i>
3.	<i>Whether the Respondent is entitled to sum of Rs.105.74 cr with interest @ 18% per annum as claimed in Counter Claim?</i>	<i>In the negative.</i>
4.	<i>Whether the Respondent is entitled to an amount of Rs.66.93 crores with interest @ 18% per annum as claimed in Counter Claim?</i>	<i>In the affirmative, DAMEPL is entitled to receive sum of Rs.62.07 crores. Interest at the rate of 11 percent per annum will accrue from the date requisite stamp duty is paid by DAMEPL.</i>
5.	<i>Whether the Respondent is entitled to an amount of Rs.56.8 lakhs with interest @ 18% per annum as claimed in Counter Claim?</i>	<i>In the affirmative, DAMEPL is entitled to receive sum of Rs.56.8 lakh. Interest at the rate of 11 percent per annum will accrue from the date requisite stamp duty is</i>

		<i>paid by DAMEPL.</i>
6.	<i>Whether the Respondent is entitled to an amount of Rs.2382.82 crore with interest @ 18% per annum as claimed in Counter Claim?</i>	<i>In the negative.</i>
7.	<i>Whether the Respondent is entitled to an amount of Rs.452.17 crore with interest @ 18% per annum as claimed in Counter Claim?</i>	<i>In the negative.</i>
8.	<i>Whether the Respondent is entitled to an amount of Rs.1250 crore with interest @ 18% per annum as claimed in Counter Claims?</i>	<i>In the negative.</i>
9.	<i>Whether the Respondent is entitled to an amount of Rs.2382.82 crore with interest @ 18% per annum as claimed in Counter Claim?</i>	<i>In the negative.</i>
10.	<i>Whether the Respondent is entitled to cost as claimed in the Counter Claim?</i>	<i>Parties to bear their own cost of Arbitration.</i>

26. A perusal of the arbitral award dated 11.05.2017 shows that the decree holder has been awarded Termination Payment of Rs.2782.33 crores with interest at the rate of SBI PLR +2% w.e.f. 07.08.2013 onwards. In addition, the tribunal has awarded Rs. 147.52 crores with 11% p.a. interest as expenses incurred in running the line post-termination; Rs. 62.07 crores with interest @11% p.a. as costs of decree holder's Bank Guarantee wrongfully invoked and Rs.56.80 lakh with interest @11% p.a. towards security deposits.

27. In the present petition, the decree holder has claimed the following interest calculation in respect of Termination Payment:-

“Calculation of interest as on 10.09.2021

(All financial numbers in Rs. Crores)

Interest Calculation for Claim I – Termination Payment

S. No.	Termination Payment (in Rs. Crores)	Start date	End date	No. of days	Prevailing SBI PLR	SBI PLR+2 %	Interest for the period (in Rs. Crores)
1.	2782.33	07.08.2013	18.09.2013	43	14.45%	16.45%	53.920
2.	2782.33	19.09.2013	06.11.2013	49	14.55%	16.55%	61.817
3.	2782.33	07.11.2013	09.04.2015	519	14.75%	16.75%	662.671
4.	2782.33	10.04.2015	07.06.2015	59	14.60%	16.60%	74.658
5.	2782.33	08.06.2015	04.10.2015	119	14.45%	16.45%	149.221
6.	2782.33	05.10.2015	31.12.2016	454	14.05%	16.05%	555.452
7.	2782.33	01.01.2017	31.03.2017	90	14.00%	16.00%	109.769
8.	2782.33	01.04.2017	11.05.2017	41	13.85%	15.85%	49.537
9.	4499.37	12.05.2017	30.06.2017	50	13.85%	15.85%	97.692
10.	4499.37	01.07.2017	30.09.2017	92	13.75%	15.75%	178.619
11.	4499.37	01.10.2017	31.12.2017	92	13.70%	15.70%	178.052
12.	4499.37	01.01.2018	31.03.2018	90	13.40%	15.70%	170.853
13.	4499.37	01.04.2018	30.06.2018	91	13.45%	15.45%	173.312
14.	4499.37	01.07.2018	30.09.2018	92	13.70%	15.70%	178.052
15.	4499.37	01.10.2018	09.12.2018	70	13.75%	15.75%	135.906
16.	4499.37	10.12.2018	09.09.2019	274	13.80%	15.80%	533.663
17.	4499.37	10.09.2019	15.12.2019	97	13.70%	15.70%	187.729
18.	4499.37	16.12.2019	09.03.2020	85	13.20%	15.20%	159.266
19.	4499.37	10.03.2020	09.06.2020	92	12.90%	14.90%	168.979
20.	4499.37	10.06.2020	09.09.2020	92	12.15%	14.15%	160.474
21.	4499.37	10.09.2020	09.12.2020	91	12.15%	14.15%	158.729
22.	4499.37	10.12.2020	09.03.2021	90	12.05%	14.05%	155.876
23.	4499.37	10.03.2021	14.06.2021	97	12.15%	14.15%	169.195
24.	4499.37	15.06.2021	10.09.2021	88	12.25%	14.25%	154.581
						Total	4678.02

28. Regarding other claims, the decree holder has made the following

claims:-

S No.	Claim No.	Claim amount (In Rs. Crores)	Start date	End date	No. Of Days	Interest Rate	Interest for the period (In Rs.)

							Crores)
1.	Claim2- Expenses incurred for operating line as Agent	147.52	12-May- 17	10-Sep- 21	1583	11%	70.377
2.	Claim 4-BG Encashment	62.07	12-May- 17	10-Sep- 21	1583	11%	29.612
3.	Claim-5 Security Deposit Paid	0.57	12-May- 17	10-Sep- 21	1583	11%	0.271
						Total	100.26

29. A perusal of the aforesaid claims shows that calculation for interest for the delayed payment of Termination Payment has been done in accordance with Article 29.8 of the Concession Agreement i.e. SBI Prime Lending Rate + 2% and not generic Prime Lending Rate + 2% as alleged and the rates of SBI PLR have been taken for the period 07.08.2013 to 10.09.2021. The plea of judgment debtor that interest has to be calculated keeping in mind the various notifications issued by RBI changing the basis from PLR to BLR and then to MCLR cannot be permitted to be raised in execution proceedings. Moreover, the Hon'ble Supreme Court in its judgment dated 09.09.2021 has categorically held that the interest component is not required to be interfered with.

30. Further, the plea whether the decree holder has a right to claim interest over interest till the date of the payment in terms of arbitral award in

question or not, the impugned arbitral award holds that the decree holder shall be entitled to the interest from the date requisite stamp duty is paid by it. In the present case, the requisite stamp duty is said to have been made good by the decree holder on 12.05.2017. Meaning thereby, the interest on the awarded amount shall commence from 12.05.2017 till the date of realization. There is no observation in the award that interest, if not paid, shall be added in the principal amount for future interest. Therefore, the claim of decree holder that the outstanding interest has to be added in the principal amount cannot be accepted.

31. During pendency of these proceedings, the judgment debtor had also made payment of Rs.678 crores and Rs.1,000 crores i.e. Rs.1678.42 crores. Even on the day orders in the present petition were reserved, learned senior counsel for judgment debtor had undertaken that the amount of Rs.600crores shall be deposited in the ESCROW account. The judgment debtor has raised the contention that the payments made by the judgment debtor should have been adjusted from the due amount on the date of payment can not be accepted. The Constitution Bench of Hon'ble Supreme Court in ***Gurpreet Singh Vs. Union of India***, (2006) 8 SCC 45 has held that the payments made by the judgment debtor to decree holder has to be appropriated first

towards the interest and costs and then towards the principal amount. Also, the Hon'ble Supreme Court in ***Bharat Heavy Electricals Ltd. Vs. R.S. Avtar Singh*** (2013) 1 SCC 243 has held that if the payment made by the judgment-debtor falls short of the decretal amount, the decree-holder will be entitled to apply the general rule of appropriation by appropriating the amount deposited towards the interest, then towards costs and finally towards the principal amount due under the decree and observed as under:-

“31. From what has been stated in the said decision, the following principles emerge:

31.1. The general rule of appropriation towards a decretal amount was that such an amount was to be adjusted strictly in accordance with the directions contained in the decree and in the absence of such directions adjustments be made firstly towards payment of interest and costs and thereafter towards payment of the principal amount subject, of course, to any agreement between the parties.

31.2. The legislative intent in enacting sub-rules (4) and (5) is a clear pointer that interest should cease to run on the deposit made by the judgment-debtor and notice given or on the amount being tendered outside the court in the manner provided in Order 21 Rule 1(1)(b).

31.3. If the payment made by the judgment-debtor falls short of the decreed amount, the decree-holder will be

entitled to apply the general rule of appropriation by appropriating the amount deposited towards the interest, then towards costs and finally towards the principal amount due under the decree. 31.4. Thereafter, no further interest would run on the sum appropriated towards the principal. In other words if a part of the principal amount has been paid along with interest due thereon as on the date of issuance of notice of deposit interest on that part of the principal sum will cease to run thereafter. 31.5. In cases where there is a shortfall in deposit of the principal amount, the decree-holder would be entitled to adjust interest and costs first and the balance towards the principal and beyond that the decree-holder cannot seek to reopen the entire transaction and proceed to recalculate the interest on the whole of the principal amount and seek for reappropriation.”

(Emphasis supplied)

32. In the light of afore-noted decisions of Hon'ble Supreme Court in ***Gurpreet Singh (Supra)*** and ***Bharat Heavy Chemicals Limited (Supra)***, this Court is of the opinion that the part payments made on behalf of judgment debtors shall be first adjusted towards the outstanding interest component and cannot be taken as payments made towards the principal amount.

33. On the aspect as to whether the funds available with the DMRC under OMP (ENF.) (COMM.) 145/2021

different heads in terms of additional affidavit dated 21.12.2021 can be attached barring provisions of Section 89 of the Metro Railways (Operation & Maintenance) Act, 2002 or Section 60 CPC, this Court has gone through the aforesaid provisions of law.

34. The provisions of Section 89 of the Act of 200, read as under:-

“89. Restriction on execution against metro railway property.— (1) No rolling stock, metro railway tracks, machinery, plant, tools, fittings, materials or effects used or provided by a metro railway administration for the purpose of traffic on its railway, or its stations or workshops, or offices shall be liable to be taken in execution of any decree or order of any court or of any local authority or person having by law the power to attach or distrain property or otherwise to cause the property to be taken in execution, without the previous sanction of the Central Government.

(2) Nothing in sub-section (1) is to be construed as affecting the authority of any court to attach

*the earnings of the metro railway administration
in execution of a decree or order.”*

35. The afore-noted Section 89 of the Act mandates that without prior sanction of the Central Government, the property mentioned in sub-Section (1) of Section 89, cannot be attached in execution, however it does not fetter the authority of the Court to attach the earnings of the metro administration in execution of a decree or order.

36. Further, the provisions of Section 60 CPC provide that:-

1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the

judgment-debtor or by another person in trust for him

or on his behalf:

37. The afore-noted Section 60 CPC also mandates that properties belonging to the judgment debtor, which are under its disposing power, whether in its name or in the name of any other persons, profits/benefits of which shall accrue to the judgment debtor, are liable to be attached in execution proceedings.

38. In the light of above noted provisions, for the purpose of deciding the present execution petition, this Court now proceeds as to in what manner the decretal amount with interest up-to-date shall be recovered from the judgment debtor.

39. On the directions of this Court, judgment debtor has placed on record affidavit dated 14.02.2022 showing the funds position of DMRC. The said affidavit reads as under:-

Particulars	Project/Corridor	Current A/C	FFD	FD	Total For 14.02.2022
ICICI Bank CIA – 000705038601	E Payment-O&M	0.05	14.52	-	14.57
SBI CIA- 35281970524	E- TENDER AIC	1.64	-	-	1.64
UBI BANK (eCorp. Bank) -O&M Alc- 510131000002	LC payments		0.53	-	0.53
SBI ((POS)- 34974989616	Common Mobility Card	0.01	-	-	0.01
PNB(Traffic earning)-	Traffic Earning	0.05	61.40	-	61.45

1120005800000014					
PNB (O&M Exp.)- 1120005800000032	O&M/Airport line-Exp.	0.05	6.15	-	6.20
UBI307801110050003	O&M Property Business	0.05	946.41	-	946.46
Canara Bank (Syndicate Bank) CIA-903632100000	O&M Property Business	0.05	0.16	-	0.21
	Sub Total Consultancy	0.05	168.31	-	168.36
UBI307801110050003	O&M Property Business	0.05	946.41		946.46
Canara Bank (Syndicate Bank) CIA-9036321000001	O&M Property Business	0.05	0.16	-	0.21
	Sub Total- Property Business	0.10	946.57	-	946.67
PNB Bank(eOBC Bank) CIA- 05021131002591	Consultancy	0.05	168.31	-	168.36
	Sub Total Consultancy	0.05	168.31	-	168.36
PNB Bank (eOBC Bank) FEE CIA- 0502109200001	External Project Fee	0.05	242.67	-	242.72
ICICI Bank Fee C/A 055505006256	Mumbai Fee	0.05	9.90	-	9.95
	Sub Total- External Project Fee	0.10	252.57	-	252.67
	TOTAL DMRC FUNDS	2.05	1,450.05/-	-	1,452.10

Figures in
crores

Particulars	Project/Corridor	Current A/c	FFD	F D	Total for 14.02.2022
ICICI Bank C/A	Project Phase-	0.05	58.69	-	58.74

0007050366534	III				
SBICIA(75523)- 10569543300	Project- Tax Payments	0.03	16.46	-	16.49
	Sub Total- Phase-III	0.08	75.15	-	75.23
ICICI Bank CIA 000705047952	Project Phase - IV	0.05	137.20	-	137.25
PNB Bank (eOBC Bank) CIA 05021131004311	Statutory Payment	0.05	585.65	-	585.70 I
PNB Bank (eOBC Bank) CIA 0502102100000049	GOI-Equity/SD	0.05	489.47	-	489.52
PNB Bank (eOBC Bank) CIA 0502102100000058	GOI-PTAA/c	0.05	853.06	-	853.11
PNB Bank (eOBC Bank) CIA 0502102100000067	GNCID EQUITY /SD	0.05	501.11	-	501.16
UBI BANK (Corp. Bank) C/A- (3727)51010f0056884	Non-JICA LC Pyrnts	-	7.65	-	7.65
ICICI Sank CIA 000705045337	TENDER CELL	0.05	11.23	-	11.28
	Sub Total- Phase-IV	0.30	2,585.37	-	2,585.67
ICICI Bank CIA - 000705011546	Property Development- Income	0.05	20.34	-	20.39
	Sub Total- Property Development	0.05	20.34	-	20.39
	TOTAL PROJECT FUNDS	0.43	2,680.86	-	2,681.69

Figures in
crores

Particulars	Project/Corridor	Current A/c	FFD	FD	Total for 14.02.2022
ICICI Bank CIA-679005115538	Jaipur	-	19.48	-	19.48
ICICI Bank Patna C/A- 000705049590	PATNA	0.01	37.47	-	37.48
ICICI KOCH I C/A-027705002729	KOCHI	0.01	5.38	-	5.39
UBI BANK (eCorp. Bank) -Kochi LC 510131000001936	KOCHI	0.05	10.38	-	10.43
ICICI Bank CIA 000705042152	Noida-G.Noida	0.05	360.78	-	360.83
ICICI Bank CIA 055505006255	Mumbai	0.05	74.99	-	75.04
ICICI Bank CIA 000705049474	Mumbai L-6	0.05	12.47	-	12.52
ICICI Bank CIA-000705028358	Central Delhi	0.01	167.86	-	167.87
ICICI Bank C/A-000705027461	ILBS	0.01	5.47	-	5.48
ICICI Bank C/A 000705050767	Navi Mumbai	0.05	19.20	-	19.25
	SUB- TOTAL DEPOSIT WORKS	0.29	713.48	-	713.77
ICICI Bank CIA 000705045629	DMICDC A/c	0.01	459.09	-	459.10
PNB-PPI-MTS Escrow ale-1120002900000023	Escrow A/c	2.85	-	-	2.85
PNB PPI Core-1120006000000026	Prepaid Card Value-Linked to Escrow Nc	0.10	247.42	-	247.52
PNB(Airport Line) -1120005800000023	Airport line A/c	0.05	125.99	-	126.04
ICICI CISF Unit 000705050104	CISF A/c	0.05	4.10	-	4.15
UBI FAME India Phase-2 -307802050000171	FAME INDIA-E Buses A/c	0.01	-	-	0.01
ICICI Bank CIA -000705046896	RMGL Exp. A/c	0.01	1.44	-	1.45
PNB -	RMGL Receipt	0.05	5.92	-	5.97

1120006000000017	<i>Nc</i>				
	SUB TOTAL OTHER WORKS ETC.	3.13	843.96	-	847.09
	TOTAL OTHER FUNDS	3.42	1,557.44	-	1,560.86

40. According to the aforesaid affidavit, as on 14.02.2022, the total funds available with the judgment debtor under the head **Total DMRC Funds** is Rs.1,452.10 cores; under the head **Total Project Funds** is Rs.2681.29 and under the head **Total Other Funds** is Rs.1,560/-. However, as per details of funds shown in Annexure-A in the affidavit dated 10.01.2022 filed on behalf of judgment debtor, a sum of Rs.514 crores is committed to the salary, medical and post retiral benefits of employees and Rs.114 crores is the portion of security deposit on smart cards, which is refundable to the commuters. In the considered opinion of this Court, the said amount i.e. Rs.514+ Rs.114 crores has to be kept aside for the aforesaid purpose, however, from the remaining amount available in different bank accounts of judgment debtor as well as under other heads, the payments towards decretal amount has to be made. The award dated 11.05.2017 has attained finality and cannot be allowed to remain as a paper award, therefore, the judgment debtor is duty bound to either divert its finds shown to be available

in different heads mentioned in the affidavit of 14.02.2022 after seeking permission of the Central Government, if necessary, or raise loans to satisfy the award.

41. Accordingly, out of the funds available under the head **Total DMRC Funds** of Rs.1,452.10 cores, judgment debtor is directed to keep aside amount of Rs.628 crores (Rs.514+ Rs.114 crores) towards statutory expenses as mentioned herein above and from the remaining amount, part payment of decretal amount be made within two weeks.

42. For the remaining outstanding amount, judgment debtor is directed to make the payments in two equal instalments within two months. The first instalment shall be paid on or before 30.04.2022 and the second instalment shall be made on or before 31.05.2022.

43. With aforesaid directions, the present petition and pending applications are accordingly disposed of.

Ex. APPLN. (OS) 205/2022 (u/O XXI R 58 CPC r/w Order 1 Rule 10 CPC)

44. By this application, applicants/ Canara Bank and Union Bank are seeking its impleadment in the present petition. It is averred in the application that the applicants had lent huge amount of money to the decree holder and they are liable to recover the said amount out of the decretal

awarded amount to be paid by the judgment debtor.

45. This Court had heard learned counsel appearing on behalf of applicant at some length. This Court finds that the present execution petition has been filed by the decree holder against the judgment debtor for execution of arbitral award dated 11.05.2017. Without going into the depth of claims raised by the applicants, I find that for any outstanding dues payable by the decree holder to these applicants, separate proceedings are required to be initiated and applicants cannot be permitted to settle their scores in the present petition.

46. Accordingly, the application is dismissed.

(SURESH KUMAR KAIT)
JUDGE

MARCH 10, 2022

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