

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

% Date of decision: June 20, 2022

+ OMP (ENF.) (COMM.) 145/2021

DELHI AIRPORT METRO EXPRESS PRIVATE
LIMITED

..... Decree Holder

Through: Mr. Sandeep Sethi, Sr. Adv. with
Mr. Mahesh Agarwal, Mr. Rishi
Agrawala, Ms. Megha Mehta,
Ms. Niyati Kohli, Mr. Pranjit
Bhattacharya, Mr. Ankit Banati and
Ms. Manavi Agarwal, Advs.

versus

DELHI METRO RAIL CORPORATION LTD.

..... Judgement Debtor

Through: Mr. Parag P. Tripathi, Sr. Adv. and
Mr. A.K. Sinha, Sr. Adv. with
Mr. Tarun Johri, Mr. Vishwajeet
Tyagi, Mr. Ankur Gupta and Mr. R.
Srinivasan, Advs.

**CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO**

V. KAMESWAR RAO, J. (ORAL)

1. By this order, I shall consider the application being EX.APPL.(OS) No.2933/2022. Suffice it to state that the execution petition bearing OMP (ENF.) (COMM.) No.145/2021 was disposed of by this Court on March 10, 2022, holding as under:

“40.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 funds 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 crore (Rs.514+ Rs.114 crore) 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.”

2. The aforesaid order was the subject matter of a Civil Appeal No.3657/2022 ('appeal' in short) filed by the Decree Holder before the Supreme Court, with regard to the findings of this Court in Paragraph 30 of the judgment which reads as under:

“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.”

3. The appeal filed by the applicant herein, i.e., the petitioner/decreed-holder was dismissed.

4. The submission of Mr. Sandeep Sethi, learned Senior Counsel appearing for the applicant i.e., Delhi Airport Metro Express Pvt. Ltd. ('DAMEPL', for short and hereinafter referred to as decreed-holder / DAMEPL interchangeably) is, despite the Court directing payment of the awarded amount in the aforesaid terms, the Judgment debtor, i.e., the Delhi Metro Rail Corporation ('DMRC', for short and hereinafter referred to as DMRC / Judgment Debtor interchangeably) has paid only a sum of ₹166.44 crores to DAMEPL on March 14, 2022, and has not paid any amount thereafter. Hence, DAMEPL filed the present application claiming the payment of ₹4427.41 crores (as on May 10, 2022) by attachment of, *inter alia*, bank accounts, fixed deposit, etc. of DMRC. Further, interest continues to apply till the date of actual payment by DMRC.

5. It is his submission that DMRC has, contrary to the Arbitral Award dated May 11, 2017 ('Award', for short) and the Supreme Court judgment dated September 09, 2021, upholding the Award, contended that paragraph 30 of the Execution Judgment allegedly rejects the present applicant's entitlement to all pre-award interest. He states the attempt of DMRC is to read a single sentence *de hors* the remaining Execution Judgment to mislead this Court. To buttress his arguments, Mr. Sethi stated that in addition to the Termination Payment of ₹2782.33 crores, the Arbitral Tribunal has awarded ₹210.16 crores in

favour of the Decree Holder towards other claims/compensation as well as ₹46.94 crores in favour of the respondent towards outstanding Concession Fee. Pre-award interest has been granted in favour of the Decree Holder only on Termination Payment. Other than Termination Payment, on which there is pre-award as well as post-award interest at SBI Prime Lending Rate ('PLR', for short) +2% per annum, the interest granted by the Arbitral Tribunal on other claims is @ 11% per annum only from the date of payment of stamp duty. While DAMEPL has paid therequisite stamp duty on May 12, 2017, DMRC is yet to do so.

6. It is his case that paragraph 129 of the Award has expressly granted interest at SBI PLR +2% per annum on Termination Payment from August 07, 2013, in concurrence with the stipulation provided in Article 29.8 of the Concession Agreement. The relevant Paragraph 129 of the Arbitral Award and Article 29.8 of the Concession Agreement on which he placed reliance are reproduced as under:

“As such, we decide that the Termination payment will be as per the provisions of Article 29.8 of CA and the interest on the Termination payment will accrue from 7.8.2013 (i.e. the date 30 days after the demand of Termination payment by OAMEPL on 08.07.2013).”

“29.8 Termination Payments: *The Termination Payment pursuant to this Agreement shall become due and payable to the Concessionaire by DMRC within thirty days of a demand being made by the Concessionaire with the necessary particulars duly certified by the Statutory Auditors. If DMRC fails to disburse the full Termination Payment within 30 (thirty) days, the amount remaining unpaid shall be disbursed along with interest at an annualized rate of SBI PLR plus two per cent for the period of delay on such amount.”*

7. This grant of interest by the Arbitral Tribunal on Termination Payment has been upheld by the Supreme Court in its Judgement dated September 09, 2021, titled *Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd., SLP (Civil) No. 4115/2019*, relevant portion whereof is set out below:

“45. 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 29.08 and Article 36.2.6.2 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.”

8. Paragraph 30 of the Execution Judgement dated March 10, 2022, does not disturb the express grant of pre-award interest component on Termination Payment by the Arbitral Tribunal. Contrary to DMRC's assertions, the pre-award interest component on Termination Payment has been expressly affirmed by the Executing Court in Paragraphs 26, 28 and 29 of the Execution Judgement, which are extracted below:

“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.

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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.	Claim 2 – 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.”

9. A bare perusal of the complete paragraph 30 read with Paragraphs 26 to 29 of the Execution Judgement dated March 10, 2022, evidences that the sentence being relied upon by DMRC deals with the post-award interest component commencing from May 12, 2017, i.e., the date of payment of stamp duty and that too on claims other than Termination Payment. The aforesaid position is amply clear from the following two sentences of Paragraph 30 extracted herein below:

“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.”

10. He stated that, contrary to the assertions of DMRC, the pre-award interest on Termination Payment could not and has not been disturbed by the Executing Court in Paragraph 30 of the Execution Judgment. Hence, there was no requirement for DAMEPL to challenge the same.

11. DAMEPL had challenged a limited portion namely Paragraph 30 of the Execution Judgement by way of SLP (C) No.4901/2022 (Civil Appeal No.3657/2022). This grant of pre-award interest on Termination Payment commencing from August 07, 2013, has been unequivocally affirmed by the Supreme Court in its judgment dated May 05, 2022, disposing of Civil Appeal No.3657/2022, the relevant extract whereof is set out below:

“28. It is thus clear that the Arbitral Tribunal has directed that the Termination payment would be as per the provisions of the Concession Agreement and

the interest on the Termination payment would accrue from 7th August, 2013 (i.e., the date 30 days after the demand of Termination payment by DAMEPL on 8th July, 2013). It is pertinent to note that though the Arbitral Tribunal has found that the rates of interest on loans taken by the appellant- DAMEPL are lower than SBI PLR + 2%, it has observed that it was beyond the competence of the Arbitral Tribunal to change or alter or modify the provisions of the Concession Agreement. The Arbitral Tribunal, therefore, has granted interest at an annualized rate of SBI PLR + 2%, though it had found that the rate of interest on which the loan was taken by the appellant-DAMEPL was on the lower side. The Arbitral Tribunal, therefore, has rightly given effect to the specific agreement between the parties with regard to the rate of interest. We find that the arbitral award has been passed in consonance with the provisions as contained in clause (a) of sub-section (7) of Section 31 of the 1996 Act and specifically, in consonance with the phrase “unless otherwise agreed by the parties”.

(Emphasis supplied)

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35. We are therefore of the considered view that in view of the specific agreement between the parties, the interest prior to the date of award so also after the date of award will be governed by Article 29.8 of the Concession Agreement, as has been directed by the Arbitral Tribunal. The findings recorded by the Arbitral Tribunal have reached finality in view of the judgment and order dated 9th September, 2021, passed by this Court in Civil Appeal No.5627 of 2021 [arising out of Special Leave Petition (Civil) No.4115 of 2019].”

12. Further, he submitted that the contentions of DMRC are merely an afterthought, misleading, and *mala fide* as all along,

including in the counter affidavit dated April 12, 2022, filed by DMRC in Civil Appeal No.3657/2022, it has been DMRC's position that the interest on Termination Payment granted as per Article 29.8 accrues from August 07, 2013. Paragraphs 10, 14, and 16 of DMRC's counter-affidavit in this regard are extracted below:

“10. It is apparent from the aforesaid observation in the Arbitral Award, that the Arbitral Tribunal, did not considered appropriate to interfere in the rate of interest applicable on the payment of Termination Payment, agreed to between the Parties in the Concession Agreement under Article 29.8, though the SBI PLR + 2% rate as mentioned to in Article 29.8 was much more than the rate of interest payable by Petitioner on the loans taken by it for the project.

However, the Arbitral Tribunal directed that the payment of Termination Payment should be as per the provisions of Article 29.8 of Concession Agreement and the interest on the Termination Payment would accrue from 07.08.2013.

It is explicit that the Article 29.8 of the Concession Agreement, laid down the agreement between the parties in respect of interest payable on the Termination Payment and period for which the said interest would be payable. This period was mandated to be the whole, “period of delay” which had occurred between the expiry of the 30 days demand notice and the date on which the payment of Termination Payment is actually done by the Respondent.

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14. The Arbitral Award on the contrary had directed the payment of interest on the Termination Payment as per the provisions of Article 29.8 of the Concession Agreement, and which direction would include the whole period starting from the date of accrual of

cause of action, i.e. 07.08.2013 till the amount is actually paid to by the Respondent.

The Execution Petition therefore, in as much as it relates to enforcement of payment of Termination Payment is liable to be dismissed as the amount claimed under the Execution petition with respect to termination payment does not reflect the express relief granted by the Arbitral Award.

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16. That as per the Annexure CC-1 to the Counter Claim, the amount of interest of Rs. 194 cr. (Rs. 3470 – Rs. 3276) was sought between the date of 07.08.2013 (i.e. when the Termination payment has become due) to 14.12.2013 (i.e., the date of the filing of Counter Claim before the Arbitral Tribunal had not prayed for any interest at the rate of SBI PLR + 2% on the combined amount of Principle amount due + interest due on such Principal amount till filling of the Counter Claim i.e. Rs. 3,470 cr. In fact, explicitly the future interest of SBI PLR + 2% was prayed for only on the amount of Rs. 3276 Crore, which was the principal Termination Amount due on the date of accrual of cause of action, i.e. 07.08.2013.

In the instant case the petitioner has confined its prayer to challenge only in limited portion of the order dated 10.03.2022 i.e. para 30 of the impugned order. The prayer of the decree holder as quoted in paragraph 16 of the counter claim confines its claim of the future interest at the rate of SBI PLR + 2% of the amount of Rs.3276.00 Crore only which is the principal termination amount not on the aggregate sum of termination payment and interest.

It is well settled that a relief which is neither prayed for nor sought for cannot be granted and thus the petitioner/decreed holder as per its own prayer is entitled to future interest only on the principal termination payment amount and not on the combined amount of principal termination payment amount and

the interest accrued on the said principal termination amount till the date of award. Even the arbitral award directed the payment of interest on the termination payment as per the provisions of Art. 29.8 of the Concession Agreement and the direction would include the whole period starting from the date of accrual of cause of action i.e. 07.08.2013 till the amount is actually paid to by the respondent.”

13. That apart, he states that DMRC has accepted the interest on Termination Payment granted as per Article 29.8 of the Concession Agreement from August 07, 2013, in its counter-affidavit dated April 12, 2022, (paragraphs 17 and 18) in the aforesaid appeal, and is now taking a contrary stand to intentionally mislead this Court. In any event, it is settled law that the court in execution proceedings cannot go behind the decree. In this regard, he has placed reliance on the following judgments:

- ***Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and Others, (1970) 1 SCC 670;***
- ***Sneh Lata Goel vs. Pushplata and Others, (2019) 3 SCC 594;***
- ***Lekh Raj (dead) through his LRs and Others v. Ranjit Singh and Others, (2018) 12 SCC 750 and***
- ***Punjab State Civil Supplies Corpn. Ltd. v. Atwal Rice & General Mills, (2017) 8 SCC 116.***

14. Further, the executing court has not set aside the grant of interest on Termination Payments from August 07, 2013, which has also been upheld by the Supreme Court *vide* order dated September 09, 2021. It is Mr. Sethi's submission that accordingly, on the awarded

Termination Payment of ₹2782.33 crores, the applicant is entitled to pre-award interest from August 07, 2013 to May 11, 2017, at SBI PLR+ 2 % per annum amounting to ₹1717.04 crores.

15. He stated, that DMRC's calculation that only an amount of ₹2652.17 crores remains to be paid as on May 20, 2022, is erroneous, as they have not considered ₹1717.04 crores towards the interest component on the Termination Payment for the period between August 07, 2013 to May 11, 2017. Further, as per the summary of payments as on May 20, 2022, DMRC has wrongly deducted an amount of ₹25.94 crores towards interest on the Concession Fee @11%. In this regard, Mr. Sethi has relied upon Paragraph 111 of the Award which reads as under:

“Therefore, we award an amount of Rs. 46.94 crore to be paid by DAMEPL to DMRC. Interest at the rate of 11 percent per annum will accrue from the date requisite stamp duty is paid by DMRC.”

He stated, as is clear from the express directions in the award, that DMRC's entitlement to interest on the claim of ₹46.94 crores would arise only upon payment of stamp duty by DMRC, which has not been done by DMRC as of yet.

16. He has further submitted that DMRC's contention that DAMEPL has not made adjustments as on the date of the payments by DMRC and DAMEPL's interest computation thereafter is not made on the balance principal amount after adjusting DMRC's payments, is erroneous. In support of their contentions, the DMRC has relied upon the figure of ₹2221.56 crores as set out in Document 5 annexed to this

application. However, the said document filed only sets out two equal instalments of ₹2221.56 crores in case DMRC has made payments on April 30, 2022 and May 31, 2022, in terms of the Execution Judgment. No such payment has been made by the DMRC. In fact, it is Document 7 annexed to this application that actually sets out the working in relation to the balance amounts to be paid by the DMRC as on May 10, 2022, towards satisfaction of the decretal amount after taking into consideration payments to be made by the DMRC till date.

17. Mr. Sethi submitted that the total amount of interest on the Termination Payment itself is much more than the total payment made by the DMRC so far, i.e., ₹2444.87 crores. Even after adjusting this, the interest on Termination Payment from mid-January, 2019 as well as principal amounts and interest on other awarded claims remain outstanding in full. Therefore, the question of adjustment of such payments against the principal amount does not arise.

18. That apart, Mr. Sethi has vehemently contested the submissions made on behalf of DMRC regarding its funds and the same cannot be attached. He stated that as per the Additional Affidavit filed by DMRC on May 30, 2022, the DMRC's Net Funds after adjusting the earnings from the operation of Airport Line would come to ₹71.07 crores. DMRC has also stated on June 01, 2022, that even this sum is needed for payment of salaries for the month of June 2022, and hence cannot be attached. Effectively, DMRC is stating that it has no funds to comply with the Execution Judgment, which amounts to saying that it is practically bankrupt.

19. He has also opposed the contention of DMRC that only its

earnings could be attached as other assets are protected by virtue of Section 89 of the Metro Railways (Operation and Maintenance) Act, 2002 ('MR Act', for short), by stating that Section 89 only prohibits attachment of properties listed in Section 89 (1) of the MR Act and DAMEPL is not seeking to attach any assets protected thereunder. There is no restriction on the attachment of bank accounts or any properties not being used or provided by a metro railway administration for the purpose of traffic on its railway, stations, workshops, or offices. Rigours of Section 89(1) of the MR Act will not apply to all assets. Section 89(2) of the MR Act clarifies that Section 89(1) will not affect the power of any court to attach the earnings of the metro railway in the execution of a decree.

20. He submitted that money lying in any other form in the bank accounts of DMRC, even if it was in the nature of an investment, and which did not fall within the strict restriction under section 89(1) of the MR Act (which is exhaustive in nature) would not be prevented from the rigours of attachment by a court in execution. He also submitted that DMRC's statement has funds under the three heads "Total DMRC Funds", "Total Project Funds" and "Total Other Funds". DMRC has asserted that only "Total DMRC Funds" were amenable to attachment, as other funds did not belong to DMRC. This contention that the funds lying with DMRC for project works and other works entrusted by various state governments and agencies cannot be attached, according to Mr. Sethi is meritless and deserves outright rejection.

21. It is stated that DMRC's assertions are contrary to the express directions in Execution Judgment whereby this Court has directed

utilisation of money lying under all three heads, namely Total DMRC Funds, Total Project Funds, and Total Other Funds for payments of balance decretal amounts. The relevant portion of the judgment is as under:

“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 crore is committed to the salary, medical and post retiral benefits of employees and Rs.114 crore 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 crore 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.”

22. Further, Mr. Sethi also stated that the different allocations/alleged encumbrances made by DMRC for utilising money already lying in their bank accounts, which are intended expenditures not already incurred or are contractual liabilities, are irrelevant and are liable to be attached. Attempts by DMRC to evade the execution of the Award is apparent from the fact that DMRC is, contrary to the law,

prioritising such liabilities over making payments in accordance with the Execution Judgement.

23. That apart, it is submitted that the funds of DMRC as on May 19, 2022, showed a total of ₹1009.50 crores as available funds which are liable to be attached. Even as per the Additional Affidavit filed by DMRC on May 30, 2022, the funds of DMRC as on May 27, 2022, are ₹960.62 crores, which ought to be attached towards the satisfaction of decretal sums.

24. According to him, the dubious conduct of DMRC is apparent from its actions in so far as it has diverted an amount of ₹3131.89 crores lying with it for construction of Metro Projects in Delhi and elsewhere, purportedly acting on a letter dated April 27, 2022, of the Ministry of Housing and Urban Affairs, Government of India. As a result, the bank balances of DMRC now stand depleted at only ₹960.62 crores as on May 27, 2022, against ₹5694.25 crores on February 14, 2022.

25. Despite the Execution Judgment dated March 10, 2022, not having been challenged by DMRC, which directed payment of the outstanding decretal amount in two equal instalments by April 30, 2022 and May 31, 2022, respectively, and the Execution Judgment being in operation, DMRC has now submitted that time may be given to DMRC to arrange bank loans to pay the decretal amount.

26. In this regard, he stated that it is the contention of DMRC that; (a) DMRC is in advanced negotiations with banks to raise loan to pay the remaining amount; (b) the Central Govt has refused sanction to divert funds available with DMRC to pay towards the decree; (c)

DMRC is allegedly in dire financial straits and any further recovery would lead to stoppage of operations of DMRC, thereby affecting the public interest. DMRC's request for further time is not bona fide as the Award was passed on May 11, 2017, and upheld by the Supreme Court on September 09, 2021. No action has been taken by DMRC for raising funds for almost nine months after the judgment dated September 09, 2021, of the Supreme Court, upholding the decree. In fact, even as per reply to EA No.2933/2022, the first step taken by DMRC appears to be only on April 06, 2022. Further, DMRC has called for bids from banks only in May 2022.

27. That apart, he stated that DMRC ought to have initiated steps to arrange funds immediately after the Supreme Court judgment dated September 09, 2021, which it failed to do. DMRC has further orally submitted during the hearing on June 01, 2022, before this Court that attaching the said amount of ₹71.07 crores being meagre, no purpose would be served with attaching the same and hence the same also ought not to be attached.

28. He alleges this is an attempt to turn the orders of the Arbitral Tribunal, this Court, and the Supreme Court into mere paper decrees. In this regard, he has placed reliance on the judgments in the cases of *Satyawati v. Rajinder Singh and Anr.*, (2013) 9 SCC 491, and *Subhash Agarwal v. Abhishek Andley and Ors.*, (2019) 265 DLT 111.

29. It is his submission that the Execution Judgment dated March 10, 2022, being still in operation not having been challenged, DMRC now cannot be allowed to seek further time to arrange for bank loans

in order to pay the decretal amount. Such a request by the DMRC is not *bona fide* as the award was passed on May 11, 2017, and was upheld by the Supreme Court on September 09, 2021.

30. The submission of DMRC regarding the deficiency of resources to satisfy the awarded amount, also goes contrary to the records available, as its total revenue for the financial year 2019-2020 was approximately ₹7015 crores. Other bank balances (deposits) amounted to ₹10,280 crores. DMRC being a completely sovereign entity having total assets of ₹78,439 crores, will have no difficulty in raising debts for this purpose. Therefore, the conduct of DMRC shows that it has no intention to comply with the Execution Judgment. That apart, Mr. Sethi has also contested the averment of DMRC that its operations could be affected if its accounts were to be attached. Merely because the Judgment debtor is a sovereign entity, it cannot claim any differential treatment and refuse to honour a decree, more so, when the Supreme Court has upheld the Arbitral Award. In this regard he has referred to the Judgment in the case of *Pam Developments Pvt. Ltd. v. State of West Bengal, (2019) 8 SCC 112*.

31. Mr. Sethi has also submitted that the promotor company of the applicant, had lent out money to the applicant company by taking loans from public sector banks. As the promoter company has not been able to pay its creditors owing to the non-reimbursement of funds from the applicant, it is facing liquidation proceedings, debt recovery proceedings, and other legal actions under the SARFAESI Act, 2002, Insolvency and Bankruptcy Code, 2016, Negotiable Instruments Act, 1881, etc.

32. Considering the fact that the daily interest on the decretal amount is ₹1.15 crores and the incremental interest from September 10, 2021 to May 31, 2022, is ₹287.06 crores, it is in the interest of both the parties that the Supreme Court *vide* order January 24, 2022, in SLP (Civil) No. 770/2022 directed as follows:

“We request the High Court to take up the matter at the earliest and dispose of the Execution Application without any further delay, as consequences of the pendency of the said application are detrimental to the interest of the petitioner as well as the respondent”.

33. Reliance has been placed on the judgment of the Supreme Court in the case of **Rahul S. Shah v. Jinendra Kumar Gandhi, (2021) 6 SCC 418**, to contend that execution proceedings must be disposed of within six months from the date of filing.

34. Mr. Sethi has prayed, that DMRC not be granted any further time and be directed to immediately make full payment towards the balance decretal sums of ₹4451.63 crores as on May 31, 2022, along with further interest up to the date of actual payment, for which the bank accounts and amounts lying in the credit of such bank accounts of DMRC along with all its fixed deposits, other financial investments and daily revenue / earnings be attached towards satisfaction of the decretal amount.

35. Mr. Parag P. Tripathi, learned Senior Counsel appearing for the DMRC / Judgment debtor has stated the instant application filed by the DAMEPL praying for an order of attachment of bank accounts of the DMRC including the fixed assets to the extent of ₹4427.41 crores, i.e., the amount which is calculated as payable by DMRC

under the Arbitral Award up to May 10, 2022. Admittedly, ₹2444.87 crores have already been paid in the escrow account of the decree holder, and the remaining amount to be paid is ₹2652.17 crores. He has admitted that this Court *vide* order dated March 10, 2022, had directed DMRC to either divert the funds shown to be available under different heads mentioned in the affidavit of February 14, 2022, after seeking permission of the Central Government, if necessary or raise loans to satisfy the Award. It was further directed to keep aside a sum of ₹628 crores from the amount of ₹1452 crores available under the head of DMRC Funds and from the remaining amount, make part payment of the decretal amount within two weeks.

36. Mr. Tripathi stated that DMRC had agreed to deposit a sum of ₹600 crores, which was recorded in the Order of this Court dated February 21, 2022, out of the “Total DMRC Funds”. Out of the balance of ₹224 crores (₹1452 crores - ₹628 crores - ₹600 crores), a sum of ₹166.44 crores remained in the running account as on the date of passing of the judgment dated March 10, 2022, after defraying running expenditure. The said sum was also paid on March 14, 2022.

37. On April 06, 2022, and April 26, 2022, permission was sought by DMRC from the Central Government seeking sanction under Section 89 of the MR Act for use of the funds lying under the head of Total Project Funds and Total Other Funds for the satisfaction of the Arbitral Award / decree. The said sanction was declined by the Central Government on April 13, 2022 and April 27, 2022, respectively.

38. Mr. Tripathi has submitted that quotations / proposals have been invited for raising Capex Loan from various banks for payment

of the amount due and payable to DAMEPL under the Award dated May 11, 2017. Banks have asked for extending the deadline for filing bids till June 10, 2022, to present their bids as a Consortium. DMRC expects to process the bids of the banks by July 10, 2022 and expects signing of loan documents by August 15, 2022.

39. He has argued that Section 89 of the MR Act is in the nature of statutory protection conferred by the Parliament in recognition of the function carried out by the DMRC in the public interest. As per Section 89 of the MR Act, only “*Earnings*” of DMRC would be open for attachment, and not the amounts held by DMRC in trust for construction of Metro Projects in NCR and elsewhere. “*Earnings*” are to be contradistinguished with “*Revenue*”, the latter being the total turnover of the DMRC in a particular year, out of which expenses are to be defrayed to reach the amount of “*Earnings*”. If the whole amount of Revenue is liable to be attached then the statutory scheme of granting protection to operation and maintenance assets under the MR Act, so that the public carriage services can continue, would be defeated. Further, Section 60 of the Code of Civil Procedure, 1908 (‘CPC’, for short) contemplates that only such properties belonging to the Judgment debtor which are under its disposing power are liable to be attached in execution. As is clear from the DMRC affidavit dated May 30, 2022, only a sum of ₹71.07 crores, is the amount over which DMRC has disposing power as on May 27, 2022. But even the said sum would have to be used to defray expenses towards salaries for the month of June 2022. Thus, any attachment of funds lying in the Bank Accounts of DMRC would lead to the stoppage of operation and

maintenance activities of DMRC and halting of public carriage activities of DMRC.

40. Mr. Tripathi has vehemently contested the submission of Mr. Sethi that the DMRC had diverted sums amounting to ₹3131 crores. He states that the said contention is wholly misplaced for the following reasons:

1. The said sums were advanced to DMRC for the specific purpose of carrying out development work of Phase III & IV of Delhi Metro as well as other Metro Projects. The DMRC, therefore, had no disposing power over the said funds as they were held in trust for government agencies that had advanced the said sums.
2. It was noting this fact that this Court in the order dated March 10, 2022, had directed payment only out of the funds available under the head 'Total DMRC funds' after keeping aside ₹628 crores towards salaries and statutory dues.
3. This contention of diversion of funds was not raised before the Supreme Court in Civil Appeal No. 3657/2022 filed against the Judgment of this Court on March 10, 2022. The said findings have thus attained finality.
4. Further, it was in the light of Section 89 of the MR Act that the Central Government wrote to the DMRC on April 13, 2022, and April 27, 2022, stating that such sums were only to be used for the purpose for which they have been earmarked and directed such sums be returned to the government agencies which had released the said funds.

41. It is also stated that Canara Bank has preferred an O.A. No. 116/2022 before the Debt Recovery Tribunal, Mumbai wherein a prayer has been sought for attachment of the amount of ₹700 crores receivable by Defendant No.1 therein (Reliance Infrastructure Ltd.) from DRMC under the award dated May 11, 2017.

42. Further, he submitted that the Paragraph 30 of the judgment dated March 10, 2022, has been challenged by the applicant in the Supreme Court in Civil Appeal No. 3657/2022, which was dismissed by the Supreme Court by stating that there is no error in the observations made by the learned Single Judge in Paragraph 30. The said judgment has thus attained finality, and as such the applicant cannot be allowed to argue that the interest shall not be calculated from the date of payment of requisite stamp duty, i.e., May 12, 2017, but from August 07, 2013.

43. He has also refuted the contention that the DMRC has not complied with the direction made in paragraph 41 of the judgment dated March 10, 2022, as a sum of ₹600 crores was paid to the applicant on February 22, 2022, in compliance with the undertaking recorded in the order dated February 21, 2022. This aspect has also been clarified in the order of this Court dated May 20, 2022 passed in Review Petition No. 107/2022. The balance sum of ₹166.44 crores lying in the account after defrayment of Operations and Maintenance expenses was remitted on March 14, 2022. He seeks further time to make the payments as per the Arbitral Award.

44. Having heard the learned counsel for the parties and perused the record and the written submissions filed by the counsel for the

parties, as stated above, I am considering the application being EX.APPL.(OS) No.2933/2022, which has been filed with the following prayers:

“In view of the aforesaid facts and circumstances of the present case, it is, therefore, most respectfully and humbly prayed that this Hon'ble Court may be pleased to:

a) Pass an ex-parte ad interim order of attachment of the Bank Accounts of the Judgment Debtor, including its fixed deposits, to the extent of Rs. 4427.41 crores, the amount which is calculated as payable under the Award by DMRC up to 10.05.2022 (considering the payments made by DMRC till date);

b) Pass an order directing the Judgment Debtor to declare through an affidavit the particulars of its bank accounts and the amounts available therein, as well as the particulars of its fixed deposits and other financial investments/assets as on date;

c) Pass such other further order/orders in favour of the Decree Holder which this Hon'ble Court may deem fit and proper in the interest of justice.”

45. It is a fact that the execution petition was disposed of on March 10, 2022, the directions of which have already been reproduced in paragraph 1 above. It is also a fact that the order dated March 10, 2022, was the subject matter of a challenge in Civil Appeal No.3657/2022 to the extent of Paragraph 30 of the order dated March 10, 2022. The appeal was dismissed by the Supreme Court on May 05, 2022. The review petition filed by the Judgment debtor seeking review of the order dated March 10, 2022, has been dismissed by this Court vide order dated May 20, 2022.

46. The submission of Mr. Sethi is that, after the directions given in the order dated March 10, 2022, only an amount of ₹166.44 crores has been paid to the decree-holder on March 14, 2022. The DMRC has not paid any amount thereafter.

47. An issue has been raised by Mr. Tripathi by relying upon Paragraph 30 of the judgment dated March 10, 2022, to state that the applicant / decree holder cannot be allowed to argue that the interest shall not be calculated from the date of payment of the requisite stamp duty i.e., May 12, 2017, but from August 07, 2013. This submission of Mr. Tripathi relating to termination payment, is not appealing. It appears the attempt is to reargue an issue that has attained finality with the upholding of the Award by the Supreme Court on September 09, 2021. The Arbitral Tribunal has on the issue of termination payment which aspect has been noted by the Supreme Court in Paragraph 27 of its judgment, has held as under:

“129. Therefore, the Termination Payment to DAMEPL works out to Rs. 983.02 + Rs. 1260.73 + Rs. 538.58 crores = Rs. 2782.33 crores. As regards rate of interest on the Termination payment, the stipulation of Article 29.8 of CA is at an annualized rate of SBI PLR +2%. We have noted from the financial documents of DAMEPL (Pg 299 of CD11-Supplementary reply of DMRC dated 22.2.2014 to the Counter Claim of the Respondent) that the secured loan taken by DAMEPL carries the rate of interest of 12.75% on Rupee Term Loan and is in the range of 4.83% to 5.6% for Foreign Currency Loan. Although the rates of interest on loans taken by DAMEPL are lower than SBI PLR +2%, we are of the opinion that it is beyond the competence of the Tribunal to change or alter or modify the provisions of CA. As such, we decide that the Termination payment will be as per the provisions of Article 29.8 of CA and the interest on the Termination

payment will accrue from 7.8.2013 (i.e. the date 30 days after the demand of Termination payment by OAMEPL on 08.07.2013). In terms of Article 29.9 of CA, this amount shall be paid by DMRC by way of credit to the Escrow Account, details of which are available in Annexure CC-4 of the Counter Claim. We award accordingly.”

48. In Paragraph 30 of the judgment dated March 10, 2022, of this Court of which a reference has been made by Mr. Tripathi, as is clear, is with regard to the plea: “*whether the decree holder has a right to claim interest over interest till the date of payment in terms of Arbitral Award*”. It was this issue, which was negated by the Supreme Court in its judgment dated May 05, 2022. In this regard, I may state that the issue, which has been raised now by Mr. Tripathi has been dealt with by this Court in paragraph 29 of its judgment dated March 10, 2022, which reads as under:

“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.”

49. Mr. Sethi is justified in referring to the counter affidavit filed by the DMRC / Judgment debtor before the Supreme Court, more particularly Paragraphs 10, 14, and 16 which I have reproduced in

Paragraph 12 above.

50. One of the submissions of Mr. Sethi is with regard to the recovery of the outstanding amount from the funds other than the DMRC funds available with the DMRC. He had also opposed the contention of DMRC that only its earnings could be attached as other assets are protected by virtue of Section 89 of the MR Act. His submission was also, that the money lying in any other form in the bank accounts of DMRC, even if it is in the nature of investment which did not fall within the strict restriction under Section 89 of the MR Act would not be prevented from attachment by a Court in execution.

51. Mr. Tripathi has opposed the plea by stating that Section 89 of the MR Act is in the nature of statutory protection conferred by the Parliament in recognition of the functions carried out by DMRC in the public interest. He also stated that as per Section 89 of the MR Act only earnings of DMRC would be open for attachment and not the amounts held by DMRC in Trust for construction of metro projects in NCR and elsewhere. In other words, any attachment of funds lying in the bank accounts of DMRC would lead to the stoppage of operation and maintenance activities of DMRC and halting of public carriage activities of DMRC.

52. Similar submissions were made by the applicant / decree holder before this Court which resulted in the order dated March 10, 2022. The Court in Paragraph 40 gave an option to the DMRC / Judgment debtor either to divert its funds shown to be available in different heads after seeking the permission of the Central Government or raise loans to satisfy the Award. It is the case of the DMRC /

Judgment debtor that the Central Government has not granted sanction for diversion of funds in terms of their communications dated April 13, 2022 and April 27, 2022, respectively.

53. Rather the case of the DMRC / Judgment debtor is that in terms of the liberty granted for raising loans, the DMRC has called for quotations / proposals for raising Capex loan from various banks for payment of the amount due and payable to the applicant / decree holder and the DMRC expects to process the bids of the banks by July 10, 2022, and expects the signing of loan documents by August 15, 2022. He, during his oral submissions, did state that the matter be posted in the early part of August 2022 to ensure payment of the outstanding amount to the applicant / decree holder.

54. Noting the submissions made by the counsels, this Court is of the view that the challenge to the order dated March 10, 2022, by the petitioner was decided on May 05, 2022, and action has been initiated by the DMRC, as noted above, time should be granted to DMRC to ensure payment of the outstanding amount to the applicant/decree holder on or before August 05, 2022. It is ordered accordingly.

55. The DMRC / Judgment debtor shall file an affidavit, giving the break up of the payments made to satisfy the award within one week thereafter.

56. Renotify the application on August 16, 2022.

V. KAMESWAR RAO, J

JUNE 20, 2022/jg