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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 8th May, 2019

Date of decision : 30th May, 2019

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EX.P. 223/2009 EX.APPL.(OS)355/2016

NATIONAL AGRICULTURAL CO-OPERATIVE

MARKETING FEDERATION OF INDIA LTD. Decree Holder

Through: Mr. A.K. Thakur, Mr. R.K. Mishra
and Mr. Rishi Raj, Advocates (M:
9810141402).

versus

RAJESH KHANNA & ORS.

..... Judgement Debtors

Through: Mr. Divyanshu Goyal, Ms. Swati Jain
and Ms. Shikha Sinha, Advocates
with client Mr. Pradeep Khanna and
Rajat Khanna (M: 9810630916).

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The present execution petition, which has a long and chequered history, seeks execution of the arbitral award dated 24th April, 2009 passed by the Ld. Sole Arbitrator. The award was passed pursuant to a settlement entered into between the Petitioner – National Agricultural Cooperative Marketing Federation (*hereinafter*, 'NAFED') and some of the Judgment Debtors, arising out of Memorandums of Understanding ('MoU') dated 27th February, 2004 and 20th September, 2004.

2. The first MoU was entered into between NAFED and M/s. Rital Impex, a sole proprietary concern of Shri Rajesh Khanna. The said MoU was for procurement of dry fruits and other items for marketing. Under this MoU, an amount of Rs.75 crores was advanced as a loan by NAFED to M/s. Rital Impex. The second MoU dated 20th September, 2004 was entered into

between NAFED and M/s. Kripa Overseas through its proprietor Shri Sandeep Khanna. This was for the purpose of imports of *hing*, iron scrap, dry fruits, herbs from Tazakistan/Kyrygystan. Rs.10 crores were advanced by NAFED to M/s. Kripa Overseas under the said MoU.

3. The borrowers M/s. Rital Impex and M/s. Kripa Overseas failed to make payment of pre-sales interest to NAFED. NAFED then sought to invoke the pledged/mortgaged properties and orders of attachment were also issued in this Court. Thereafter, Ld. Arbitrator Justice Devinder Gupta (Retd.) was appointed vide order dated 14th November, 2006 to decide the claim of NAFED against M/s. Rital Impex and counter claim by M/s. Rital Impex against NAFED. Thereafter, disputes arose between NAFED and M/s. Kripa Overseas. On 20th March, 2007, Justice D. P. Wadhwa (Retd.) was appointed as the Ld. Sole Arbitrator to decide the claim of NAFED against M/s Kripa Overseas.

4. Parallely, NAFED also commenced criminal proceedings against the borrowers and its promoters. In one such case, Mr. Rajesh Khanna was arrested and is still in judicial custody. He was also held guilty of contempt by this Court in CCP(O) 124/2007 in OMP 291/2006, vide order of the Ld. Single Judge dated 29th May, 2009. This order was confirmed by the Ld. Division Bench of this Court, vide its judgment dated 1st August, 2016, however, the sentence of imprisonment was reduced from 6 months to three months. The conviction was confirmed by the Supreme Court on 14th April, 2019, however the Supreme Court reaffirmed the sentence of 6 months' imprisonment, as awarded by the Ld. Single Judge.

5. While the criminal cases ensued, parties started negotiations for amicable settlement of the disputes. The borrowers agreed to mortgage some

other properties, belonging to the family, till the repayment of the entire amount was made. Family members of Shri Rajesh Khanna and Mr. Sandeep Khanna, who were the owners of these properties, admitted and ratified the terms of the settlement. The settlement deed was executed on 3rd May, 2007 and was recorded before the Ld. Additional Sessions Judge. In view of the settlement, both the Ld. Arbitrators were requested to pass awards in terms of the settlement.

6. In the Section 9 petition, being OMP No.291/2006 the family members of the borrowers sought impleadment and the same was allowed. The Court recorded the settlement. In the joint application being I.A.5743/2007, which was filed in OMP 291/2006 for taking the settlement on record, the Court passed the following order on 16th May, 2007:

“I.A. 5743/07 & OMP 291/06

By this application parties have placed on record the settlement arrived at between the parties including added parties. The application is accompanied by affidavits of the parties and the settlement arrived at. The settlement is signed by the respondent as well as Mr. Sandeep Khanna, as regards other respondents they have given individual guarantees and undertakings for implementation of this settlement. The settlement is sought to be implemented through Court. Since, the parties have arrived at a compromise in respect of the entire dispute, which was referred to the Arbitrator, the settlement is considered as the final settlement of dispute between the parties and the proceedings before the Arbitrator therefore have become redundant. The settlement is to be implemented by parties in phases. The first phase is sale of property no. E-18, East of Kailash, New Delhi which was attached by this Court. The respondent has to pay Rs. 5 crores within 30 days from today after sale of the

property. Respondent is given permission to sell this property, the attachment is lifted for this purpose and the payment of Rs.5 crores to be made in terms of the undertaking within the period specified. The OMP is disposed of with liberty to move appropriate application seeking implementation of the compromise. Dasti.”

Thus, as per the above order, the disputes between the parties were finally settled.

7. The arbitral proceedings before Mr. Justice Devinder Gupta (Retd.) were kept pending in order to see the outcome of the settlement terms and implementation of the same. Parallely, the matters continued in the High Court, for auction of the properties, etc. Finally, vide order dated 24th April, 2008, the mandate of Justice D. P. Wadhwa (Retd.) was terminated and Justice Devinder Gupta (Retd.), the Ld. Arbitrator entered reference in the second arbitration as well. The Court also directed that common award be passed in both the matters.

8. Before the Ld. Arbitrator, M/s. Rital Impex sought adjudication of its counter claims. On the said issue, the Ld. Arbitrator perused the settlement agreement and the order dated 3rd May, 2007 recording the settlement. After considering the same, the Ld. Arbitrator came to the conclusion that neither M/s. Rital Impex nor M/s. Kripa Overseas had intended to keep their counter claims pending. Thus, the Ld. Arbitrator held that there was no outstanding dispute between the parties, after execution of the settlement deed dated 3rd May, 2007.

9. Hence the Ld. Arbitrator, after taking note of the above application filed before the Court, arrived at the following finding in the final award dated 24th April 2009, in respect of the submission of the Judgment Debtors

for keeping their counter claims alive:

“Going through the terms and conditions of the settlement and the contents of the application, it cannot, by any stretch of imagination, be said that any dispute or difference remained outstanding. All disputes and differences between the parties, which were subject matter of the two arbitral proceedings, were made the subject matter of the settlement and stood duly settled finally. The parties first agreed for the total principal outstanding amount payable by Rital Impex and Kripa Overseas to NAFED. On the principal outstanding amount, interest was worked out till 30th April, 2007 payable by Rital Impex and Kripa Overseas. The liability was agreed to be discharged by Rital Impex and Kripa Overseas in different phases and in the manner as detailed in various clauses of the settlement.”

10. After the settlement agreement dated 3rd May, 2007 further developments took place and the parties agreed for changing/modifying of the terms of settlement. The borrowers agreed for sale of the immovable properties by NAFED through public auction. This fact was duly taken note of by the Ld. Arbitrator, in his award. The relevant of the same portion reads as under:—

“After the parties settled the disputes and differences as incorporated in settlement deed dated 3rd May, 2007 there have been further developments as well. Due to those developments the parties have mutually agreed for change/modification in some of the terms of settlement in the matter of liquidating their liability. Instead of the respondents themselves selling their properties or raising further loan against their properties, they agreed to the sale of the properties by NAFED through public auction. This will be evident from some of the orders of the courts and the undertakings filed by the respondents in court

proceedings by filing affidavit. This further developments modifying/altering some of the terms of settlement deserve to be noticed.”

11. Since the auctions did not generate adequate response, orders were passed by various Courts from time to time extending the time for effecting sale of the properties and making payment to NAFED. However, when the Judgment Debtors were unable to discharge their obligation under the settlement by raising sufficient amount for making payment to NAFED, they agreed to effect sale of the properties through public auction. Thus, on 4th April, 2008, in W.P. (CrI.) 785/2007, Mr. Rajat Khanna, one of the Judgment Debtors and sole proprietor of M/s Rital Impex, undertook to the Court not to interfere or create obstructions in the sale of the properties. On the same date, Justice Sharda Aggarwal was appointed as the Court Observer to oversee the auction of the properties and submit a report. Since none of the parties questioned the legality and validity of the settlement arrived at, vide deed dated 3rd May, 2007, the Arbitral Tribunal then concluded as under:

“..... In my view, nothing now survives thereafter except to take note of the slight change in the method and manner and mechanism of clearing the outstanding amounts. Instead of clearing the outstanding amount, in terms of the settlement, the same had to be done in terms of various directions issued in collateral proceedings particularly the order of Justice S. L. Bhayana passed on 4th April, 2008.

In view of the above, I hold that the scope of the arbitral proceedings before me is limited one only to proceed to record the settlement between the parties and to proceed to make an award in terms thereof. As some of the causes of the settlement dated 3.5.2007 stood modified by various proceedings subsequent

thereto as regards the method, manner and mechanism for clearing the outstanding, not by sale of the property by the Respondent but by putting their properties to sale by public auction, it is the modified settlement in consonance of which award will have to be passed to enable the parties to have the benefit of settlement. There is no denial and there is no dispute about the due execution of the agreement or modified terms, as noticed above.

I thus proceed to make an award in favour of the NAFED and against Shri Rajesh Khanna sole proprietor of Rital Impex and Shri Sandeep Khanna, sole proprietor of Kripa Overseas jointly and severally for the outstanding amounts of Rs.43.21 crores as principal and Rs.18.46 crores as interest as on 30th April, 2007 with further interest at the rate of 15% per annum on and from 1.5.2007, on the diminishing balance basis till the date of award and future interest at the same rate from the award till payment. Due adjustments will be given for the payments received by NAFED from the respondents after 30.4.2009.

The award is passed personally against Shri Rajesh Khanna sole proprietor of Rital Impex and Shri Sandeep Khanna, sole proprietor of Kripa Overseas jointly and severally and their properties as also the properties of Respondents 3 to 10 (as per memo of parties dated 29.7.2008) and to that extent will be equally binding on them. NAFED is held entitled to the outstanding amount by sale of the properties, mentioned in the deed of settlement dated 3.5.2007, by public auction, as agreed and ordered in the order of Mr. Justice S. L. Bhayana dated 4th April, 2008. NAFED is also held entitled to the costs of the arbitration from the respondents.”

12. Thus, as on 24th April, 2009, the amounts payable to NAFED by the Judgment Debtors have been crystallised in the award of the Ld. Arbitrator. The immovable properties were to be sold by public auction by NAFED.

13. On 14th September, 2009, the present petition came to be filed, seeking execution of the said award. On the said date, warrants of attachment were issued in respect of all the immovable properties, which were mentioned in the petition as Annexure-D. On 10th December, 2009, four of the properties were recorded by this Court as having been attached, which are as under:

- (i) Property No. FA/B-1 Extension, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi-110044 (*hereinafter, 'FA/B-1 Mohan Cooperative Industrial Estate, Extension'*);
- (ii) Property No. E-18, East of Kailash, New Delhi (*hereinafter, 'E-18, East of Kailash'*);
- (iii) Plot No. E-16/B-1, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi-110044 (*hereinafter, 'E-16/B-1 Mohan Cooperative Industrial Estate, Extension'*); and
- (iv) Plot No. A-13, Block B-1, Mohan Co-operative Industrial Estate Limited, Extension, New Delhi-110044 (*hereinafter, 'A-13, Mohan Cooperative Industrial Estate, Extension'*).

14. On the said date, the Ld. Single Judge appointed four Local Commissioners to sell the aforementioned properties by public auction after following the procedure under Order XXI CPC. It was, thereafter, noticed that the property at serial no.4 above i.e. A-13, Mohan Cooperative Industrial Estate, Extension had been sold pursuant to the attachment having been lifted in the earlier OMP 291/2006 vide order dated 14th December, 2007 read with 18th December, 2007. Thus, the order dated 10th December, 2009 was restricted to three of the properties. Further, interim orders were passed against the alienation and creation of any third-party interest in respect of the following properties vide order dated 11th January, 2010:

“Shop Nos.469 and 470, Katra Eswar Bhawan, Khari Baoli, Delhi and 506, Pragati House, 47-48, Nehru Place, New Delhi.”

15. On 30th April, 2010, an error in the address of the property at serial no.3 above was directed to be corrected and the same was to be read as under:

“E-16/B-1, Extension, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi-110044”

16. On 16th July, 2010, this Court restrained the Judgment Debtors from encashing two FDRs for the sum of Rs.4 lakhs each and the same reads as under:

“Mr. Rustagi says that the FDRs in issue bearing nos. CTDR/STDR/4090943 and CTDR/STDR/4090944 shall not be encashed without prior permission of the Court.”

17. The said FDRs were directed to be deposited with the Registrar General of this Court – which however were never deposited as they were subject matter of proceedings with a third party. On 1st April, 2011 it was observed that the Judgment Debtors were creating unnecessary delays in the auctioning of the properties and accordingly, fresh auction was directed by this Court of property bearing No. E-16/B1, Mohan Cooperative Industrial Estate, Extension. On 9th August, 2011 by a detailed order in this petition, the objections preferred by the proposed purchaser Shri Baldev Raj Jaggi of property bearing No.A-13 Mohan Cooperative Industrial Estate, Extension were dismissed. This Court held that the sale by the Judgment Debtors to Mr. Baldev Raj Jaggi was not valid as the said property stood attached, both under Section 9 proceedings, being OMP 291/2006, as also the impugned award.

18. This Court, thereafter, called upon the DDA to disclose the conversion charges and other charges in respect of property bearing No. E-16/B-1 Mohan Cooperative Industrial Estate, Extension and FA/B-1 Mohan Cooperative Industrial Estate, Extension, in order to ensure that a higher amount can be recovered by auctioning the said properties.

19. Insofar as property E-18, East of Kailash is concerned, an application came to be filed by Mr. Miftha Majib Shaw, Mr. Munib Shaw, Mr Mubashir Ahmed Shaw and Mr. Moaqin Shaw, seeking impleadment as objectors in the execution petition. They had entered into an MoU dated 1st May, 2008, with the Judgment Debtors for sale of property E-18, East of Kailash. Since the property was mortgaged with NAFED, the sale transaction was to be completed after obtaining the NOC from NAFED. Further, pursuant to an order dated 24th June, 2008 passed by the Ld. Arbitrator, an amount of Rs.1 crore was paid by the judgment debtors to NAFED and the remaining Rs.6.70 crores was to be paid by the applicants. However, vide order dated 13th September, 2011, this Court set aside the above sale of the property bearing No. E-18, East of Kailash, on the ground that the time granted by the Court to effect sale of the property expired long before execution of the MoU dated 1st May, 2008, and in any case, this Court could not go behind the order dated 4th April, 2008, whereby a Court Observer was appointed for auction of the property, in W.P.(Crl.) 461/2007. This Court further held that the Ld. Arbitrator had passed the order dated 24th June, 2008 without jurisdiction, and the sale of the said property was set aside.

20. Thus, vide order dated 19th October, 2011, proceedings for re-auction of properties E-18, East of Kailash and A-13, Mohan Cooperative Industrial Estate, Extension was again permitted to commence. Insofar as the other two

properties are concerned, this Court Commissioner's fees were directed to be paid. Thereafter, repeated orders have been passed by this Court in the present petition to facilitate the auction of these properties.

21. On 13th February, 2013, NAEFD made a statement before Court that it is willing to purchase the property bearing No.E-18, East of Kailash for a consideration of Rs.21 crores minus Rs.20 lakhs. The said order is set out hereinbelow:

“This application is filed by the DH stating therein that since the property, which was to be sold as per the previous order, could not be sold despite three auctions and thus, the petitioner/DH is willing to purchase the same at a sum of Rs.21.00 crore minus Rs.20.00 lakh which has already been incurred as expenses in conducting the auctions.

Learned counsel appearing for the JD, on instructions, states that JD has got a buyer for Rs.21.00 crore and the said buyer is also prepared to give some advance/earnest money to show his bonafide.”

22. On 17th May, 2013, the proposal for purchase of property E-18, East of Kailash by the Decree Holder for a sum of Rs.20 crores was accepted by the Judgment Debtors and accordingly, the sale deed was executed in respect of the said property, which is recorded in the order dated 30th April, 2014.

23. In the meantime, vide order dated 28th November, 2013, the Ld. Division Bench, dealing with the appeal arising out of the order dated 9th August, 2011, held that the property bearing No.A-13 Mohan Cooperative Industrial Estate, Extension was not subject matter of any attachment and accordingly, the impugned order dated 9th August, 2011 was set aside. This

resulted in the sale of the said property to Mr. Baldev Raj Jaggi being confirmed by the Ld. Division Bench

24. On 30th April, 2014, this Court records that since both the parties are not willing to pay the conversion charges for conversion from leasehold to freehold, the two remaining properties i.e. FA/B-1 Mohan Cooperative Industrial Estate, Extension and E-16/B-1 Mohan Cooperative Industrial Estate, Extension would be sold on an as is where is basis. The said order is relevant and is set out herein below:

“ Learned counsel for the decree holder states that one o the properties was sold in execution situated at E-18, East of Kailash, which has been purchased by the decree holder itself for Rs.20 Crores, which was the reserve price.

Mr.Prem Kumar had been appointed as the Local Commissioner to execute the sale vide order dated 10.12.2009. However no report has been filed by him. Let a reminder be issued to Mr. Prem Kumar for filing his report for taking further action in the matter.

Since a substantial amount is still outstanding under the decree, learned counsel for the judgement debtor states that the judgement debtor is agreeable to the sale of property bearing Nos. FA/B-1 Extension Mohan Cooperative Industrial Estate, Mathura Road, New Delhi; and E-16/B-1 Extension Mohan Cooperative Industrial Estate, Mathura Road, New Delhi.

Since neither party is willing to bear the charges for the conversion of the aforesaid properties from leasehold to freehold, it is directed that the same be sold on as-is-where-is basis. The Court Commissioners appointed by the Court vide order dated 10.12.2009 in respect of these properties be communicated this order, so that they may take further steps in this regard. The sale be undertaken in an open and transparent manner, and the judgement debtor shall also ben entitled to

bring interested persons whose offers may be considered on their own merits. The parties may file their valuation reports in respect of the aforesaid two properties within four weeks with copies to the respective Court Commissioners.”

25. On 23rd February, 2015 it was recorded that M/s. Kripa Overseas has paid a total sum of Rs.9.53 crores to NAFED and, therefore, the property bearing No.E-16/B-1 Mohan Cooperative Industrial Estate, Extension ought not to be put to public auction. On the said date, the auction of property bearing No.E-16/B-1 Mohan Cooperative Industrial Estate, Extension, which was fixed for 28th February, 2015, was postponed till 5th May, 2015. On 27th April, 2015, this Court rejected the plea of M/s. Kripa Overseas that the liability is not joint and several, and though M/s. Kripa Overseas had paid Rs.9.53 crores to NAFED, the auction of property bearing No.E-16/B-1 Mohan Cooperative Industrial Estate, Extension was directed to continue. Thereafter, various applications are considered by this Court, including in respect of the reserve price of the properties, FA/B-1 Mohan Cooperative Industrial Estate, Extension and E-16/B-1 Mohan Cooperative Industrial Estate, Extension. An application, being Ex. Appl. 355/2016, was also moved by the Decree Holder seeking attachment of the three shops mentioned in para 14 above.

26. On 4th May, 2017 this Court records that 'No-Objection' was granted by the DDA for entertaining the application for conversion of the properties by the successful auction purchaser. On 4th September, 2018, the DDA was directed to calculate the conversion charges and file computation in respect of the properties bearing FA/B-1 Mohan Cooperative Industrial Estate, Extension. On the said date, since the Judgment Debtor, who was in

possession of the property bearing FA/B-1 Mohan Cooperative Industrial Estate, Extension, was also running his factory from the said premises, it was directed that the Judgment Debtor would bring the keys of the property to Court on the next date. Similar orders were passed in respect of E-16/B-1 Mohan Cooperative Industrial Estate, Extension, and the Judgment Debtors were directed to deposit the keys of the same in Court.

27. On 12th October, 2018, DDA filed computation of the charges payable in respect of the properties bearing No. FA/B-1 Mohan Cooperative Industrial Estate, Extension and E-16/B-1 Mohan Cooperative Industrial Estate, Extension. It was clarified that the said charges would be added towards the account of the Judgement Debtor. The said order reads as under:

“1. The DDA has filed the computation in respect of two properties i.e., FA/B-1 Extension, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi and E-16/B-1, Extension, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi – 110044.

2. Insofar as property bearing No.FA/B-1, Extension, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi is concerned, Item No.3, 5 and 6 would not be chargeable by the DDA as agreed by Ms. Shobhana Takiar. Insofar as property bearing No.E-16/B-1, Extension, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi – 110044 is concerned, NAFED is agreeable to the charges mentioned in the letter dated 19th October, 2018 (sic. 9th October, 2018)

3. Since the charges are acceptable to NAFED, insofar as DDA is concerned, nothing further remains to be done.

4. Since NAFED wishes to purchase these properties and adjust the amounts of reserve price which was fixed in respect thereof, NAFED is permitted to do so in respect of property bearing No.E-

18, East of Kailash, New Delhi (sic. E16/B-1 Mohan Cooperative Industrial Estate, Extension)

5. Mr. Saket Sikri, appearing for Judgment Debtors who are in possession of the property bearing No. FA/B-1 Extension, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi submits that he has brought the keys of the property. However, in view of the Diwali season, he requests the permission be granted to hand over the possession to NAFED officers on 15th November, 2018 by the Judgment Debtor-1, 4 and 8. Ordered accordingly. The keys shall be handed over on 15th November, 2018, without fail.

6. The charges to be paid to the DDA by NAFED will be over and above the reserve price which is fixed. However, the said charges can be added towards the account of the Judgment Debtor.

7. Mr. Mukesh Anand, learner counsel for Kripa Overseas submits that Shop Nos. 469 and 470, Katra Eshwar Bhawan, Khari Baoli, Delhi is under attachment proceedings before the Delhi Rent Tribunal (sic. Debt Recovery Tribunal) (hereinafter, 'DRT') in respect of a loan from Indian Overseas Bank. Therefore, he prays for vacation of the attachment order dated 11th January, 2010.

8. Let notice be issued to Indian Overseas Bank, Lok Kala Manch, Lodhi Road, New Delhi for the next date to report on the status of the DRT proceedings.

9. There is an order of the Supreme Court in the contempt petition by which the implementation of the Division Bench judgment challenging the order passed in the contempt dated 27th May, 2009, stands stayed.

10. List on 18th December, 2018."

28. Insofar as property No. FA/B-1 Mohan Cooperative Industrial Estate, Extension and No.E-16/B-1 Mohan Cooperative Industrial Estate, Extension are concerned, NAFED agreed to the charges as mentioned in the letter of the DDA dated 9th October, 2018.

29. However, in respect of the shops at Katra Eshwar Bhawan, Khari Baoli, Ld. Counsel for Indian Overseas Bank had appeared and stated that the bank had taken possession of the said two shops i.e. 469 and 470, Katra Eshwar Bhawan, Khari Baoli Delhi.

30. On 12th October, 2018, NAFED had made a statement that they are willing to purchase the properties i.e. E-16/B-1 Mohan Cooperative Industrial Estate, Extension and FA/B-1 Mohan Cooperative Industrial Estate, Extension, after adjusting the amount of reserve price.

31. On 18th December, 2018, since the occupants of these properties were not handing over the possession to NAFED, a direction was given by this Court to the Judgement Debtors to hand over the vacant and peaceful possession. The Executive Director of NAFED accepted one key of property bearing No.FA/B-1 Mohan Cooperative Industrial Estate, Extension. Insofar the other property being E-16/B-1 Mohan Cooperative Industrial Estate, Extension is concerned, the key was to be handed over on the same date at 4:00 pm. Thereafter, it was recorded on 20th December, 2018 that the keys of both the properties had been handed over to NAFED.

32. Disputes were raised as to what should be the valuation of the said two properties, and accordingly a valuer was appointed for valuing the above two properties. This Court appointed Valuer submitted his valuation report. Thereafter, the parties have submitted their respective calculations in the execution petition.

33. Insofar as the shops at Katra Eshwar Bhawan, Khari Baoli are concerned, these properties have already been taken over by the Indian Overseas Bank, so no orders can be passed in respect of the same. Insofar as property No.506, Pragati House, 47-48, Nehru Place, New Delhi is

concerned, the interim injunction, which was passed on 11th January, 2010 was made absolute during the pendency of the execution petition.

34. This Court has considered the developments in this petition till date. It can be seen that at the time of filing of the execution petition, the total amount was tabulated by NAFED as under:

“STATEMENT OF JOINT ACCOUNT AS ON 31.8.2009 IN RESPECT OF M/S. RITAL IMPEX DELHI AND M/S. KRIPA OVERSEAS DELHI IN TERMS OF THE AWARD DATED 24.4.09 PASSED BY MR. JUSTICE DEVINDER GUPTA (RETD), SOLE ARBITRATOR

<u>Particulars</u>	<u>Amount</u> (Rs.Lakhs)
a. <i>OUTSTANDING AMOUNT AS ON 30.4.2007 AS PER DEED OF SETTLEMENT DT 3.5.2007 PRINCIPAL AND INTEREST (4321 + 1846)</i>	6167.00
b. <i>(-) Amount received during the period from 1.5.2007 to 31.8.2009 adjusted towards principal</i>	202.02
c. <i>Recovery appropriated in interest</i>	730.89
d. <i>Total Recovery in A/c (b+c)</i>	932.91
e. <i>Principal Revoverable (a-b)</i>	5964.98
f. <i>Total interest charged during the period from 1.5.2007 to 31.8.2009 @ 15% p.a. simple</i>	2114.48
g. <i>Interest recoverable (f-c)</i>	1383.59
h. <i>Total Recoverable Principal + Interest (e+g)</i>	7348.57
i. <i>(+) Arbitration cost</i> <i>Arbitrator's Fee Rs.3,48,500.00</i> <i>Advocates Fees Rs.5,10,000.00</i>	

<i>Misc</i>	<i>Expenses</i>	
Rs.3,28,029.00		
	<u>Rs.11,86,529.00</u>	11.87
	<u>Total recoverable including</u>	7360.44
	<u>arbitration cost (h+i)</u>	

35. Initially itself all the four properties belonging to the Judgement Debtors were attached and in respect of the shops at Khari Baoli and Nehru Place, restraint orders were also passed. The attachment having taken place as on 10th December, 2009 and the Court Commissioner having been appointed for auctioning the properties, the question arises as to what is the Principal amount due and whether interest is payable post the order of attachment of the said properties.

36. Clearly, there is no doubt that the Judgement Debtors have raised various objections from time to time. However, there have been various errors committed by NAFED as well. It can be noticed that insofar as the property bearing No.A-13 Mohan Cooperative Industrial Estate, Extension is concerned, the Id. Division Bench permitted the sale of the said property, as the same was not under attachment. Further, insofar as property bearing No.E-16/B-1 Mohan Cooperative Industrial Estate, Extension is concerned, the auction of the said property, which was made pursuant to an auction notice dated 6th June, 2008, was set aside due to an error in the auction notice on the part of NAFED. The said judgment was passed on 16th July, 2013 by a Ld. Single Judge of this Court in CS(OS) 2363/2010 and was affirmed by Ld. Division Bench on 2nd August, 2016. Thus, the property bearing E-16/B-1 Mohan Cooperative Industrial Estate, Extension was always under the control of NAFED.

37. Insofar as the property bearing No.E-18, East of Kailash is concerned, the same was sold under supervision of this Court and NAFED itself purchased it for a consideration of Rs.20 crores. This property also was directed to be auctioned vide order dated 10th December, 2009. Thus, all the four properties were either under the control of NAFED for the purpose of public auction or under the supervision of this Court post attachment. The delay in the auction of these properties is not, thus, solely attributable to the Judgement Debtors. Insofar as FA/B-1 Mohan Cooperative Industrial Estate, Extension is concerned, the said property was attached from inception and was to be put to public auction by NAFED.

38. In this background, the amounts due and payable in this execution petition are to be determined by this Court, and this Court has to also determine, if any further orders are to be passed in respect of any of the properties.

39. The operative portion of the award, which is being executed in this petition, is as under:

"I thus proceed to make an award in favour of the NAFED and against Shri Rajesh Khanna sole proprietor of Rital Impex and Shri Sandeep Khanna, sole proprietor of Kripa Overseas jointly and severally for the outstanding amount of Rs.43.21 crores as principal and Rs.18,46 crores as interest as on 30th April, 2007 with further interest at the rate of 15% per annum on and from 1.5.2007, in the diminishing balance basis till the date of award and future interest at the same rate from the award till payment. Due adjustments will be given for the payments received by NAFED from the respondents after 30.4.2009. The award is passed personally against Shri Rajesh Khanna sole proprietor of Rital Impex and Shri

Sandeep Khanna, sole proprietor of Kripa Overseas jointly and severally and their properties as also the properties of Respondents 3 to 10 (as per memo of parties dated 29.7.2008) and to that extent will be equally binding on them. NAFED is held entitled to the outstanding amount by sale of the properties, mentioned in the deed of settlement dated 3.5.2007, by public auction, as agreed and ordered in the order of Mr. Justice S.L. Bhayana dated 4th April, 2008. NAFED is also entitled to the costs of the arbitration from the respondents.”

40. Thus, the principal amount, which was to be paid by the Judgment Debtors, is Rs.43.21 crores along with interest of Rs.18.46 crores. As per judgement in ***Hyder Consulting (UK) Ltd. v. Governor, State of Orissa AIR 2015 SC 856*** under Section 31(7)(b) of the Arbitration and Conciliation Act, 1996, the ‘sum’ includes interest. The relevant portion of the judgment reads as under:

“87. Coming now to the post-award interest, Section 31(7)(b) of the Act employs the words, "A sum directed to be paid by an arbitral award...". Sub-clause (b) uses the words "arbitral award" and not the "arbitral tribunal". The arbitral award, as held above, is made in respect of a "sum" which includes the interest. It is, therefore, obvious that what carries Under Section 31(7)(b) of the Act is the "sum directed to be paid by an arbitral award" and not any other amount much less by or under the name "interest". In such situation, it cannot be said that what is being granted Under Section 31(7)(b) of the Act is "interest on interest". Interest Under Sub-clause (b) is granted on the "sum" directed to be paid by an arbitral award wherein the "sum" is nothing more than what is arrived at Under Sub-clause (a).

88. Therefore, in my view, the expression "grant of interest on interest" while exercising the power Under

Section 31(7) of the Act does not arise and, therefore, the Arbitral Tribunal is well empowered to grant interest even in the absence of clause in the contract for grant of interest.”

The awarded sum, as per the arbitral award, is thus taken to be Rs.61,67,00,000/-.

41. From the amount of Rs.61,67,00,000/-, which is the amount payable as per the settlement deed dated 3rd May, 2007 (though the same was made as part of the award on 24th April, 2009), the amounts already paid by Judgment Debtors are liable to be deducted. In a statement filed by NAFED before the Supreme Court in SLP 24303/2016 between the parties, NAFED gave adjustments to the Judgment Debtors and reduced the principal sum. This chart was placed before this Court by the counsels for the Judgment Debtors and the same is taken into consideration by this Court. Adjusting the amounts paid by the Judgment Debtors towards the principal and thereafter, calculating the amounts due and payable, has been made an arduous task by both the parties. The interpretation being given to the award and the manner, in which the calculation is to be done, is being disputed by both the sides. There is no consensus on the same. The liability of Rs.61,67,00,000/- as of 30th April, 2007, was to be discharged in the manner contained in the settlement deed. The Clause in the settlement agreement on interest reads as under:

“10) Once our proposal is considered for re-payment of the principal amount in the manner indicated above, NAFED may charge interest @ 15% per annum on the diminishing balance basis in case of default and in that event entire amount shall become due and payable.”

42. There is no doubt that the Judgment Debtors were in default until

passing of the award dated 24th April, 2009. However, thereafter all the properties have been at the disposal of NAFED. Thus, in the opinion of this Court, interest should stop running post the attachment order passed by this Court from 14th September, 2009. The time consumed in auctioning the properties including objections by the DDA and the hindrances by the Judgement debtors does not take away the legal effect of the orders passed by this Court that NAFED was permitted to publicly auction the properties in 2009 itself.

43. The property at E-18, East of Kailash has already been sold and the sale of the property at A-13 Mohan Cooperative Industrial Estate, Extension has been upheld by the Id. Division Bench. The two properties namely FA/B1 Mohan Cooperative Industrial Estate, Extension and E-16/B-1 Mohan Cooperative Industrial Estate, Extension have been valued by the Court appointed Valuer as under:

Property	Valuation	
	Circle Rate (in Rs.)	Fair Market Value (in Rs.)
FA/B1 Mohan Cooperative Industrial Estate, Extension	38,78,42,232.00	14,47,99,650.00
E-16/B-1 Mohan Cooperative Industrial Estate, Extension	32,03,05,902.00	13,12,06,500.00

According to the valuer, the market value is lower than the circle rate. This could be attributed to several reasons – pending litigation, disputes as to conversion charges, objections by DDA, attachment orders, possession being with the judgement debtors etc.,

44. In fact, during the auction proceedings, the stand of NAFED has

always been that the reserve price of the properties ought to be circle rates. Illustratively, letter dated 28th August, 2015 addressed to one of the Local Commissioners states as under:

“Our management has taken a decision that the reserve price of the above property be based on the circle rate notified by the Government of NCT of Delhi. We, therefore, request you to consider the same and fix the reserve price accordingly.”

45. NAFED had all along claimed that the circle rates ought to be taken as the reserve price. However, due to the variation between the circle rate and fair market rate, this Court, in the final calculations has taken the average of these two rates to be adjusted towards the sums due. Thus, taking 61,67,00,000/- as the awarded amount and giving adjustment of all the amounts paid till September 2009, the principal amount is reduced to Rs. 52,13,07,482/-. The interest amount as per the award is to be calculated at the rate of 15% on diminishing balance basis on the principal sum i.e., Rs. 61,67,00,000/-. This amount till 14th September 2009 is Rs.19,41,43,397/-. Thus, as on 14th September, 2009, the total amount due and payable is held to be Rs.71,54,50,877/- [principal of Rs.52,13,07,482 + interest @ 15% per annum] on the basis of the award passed by the Ld. Arbitrator. No interest would be payable post the said date as the properties stood attached and orders for public auction were passed in this petition.

46. The principal amount paid after 14th September, 2009, is Rs.21,13,37,129/- [Rs.1,01,56,416/- + Rs.25,00,000/-, + Rs.19,86,80,713], paid up till 31st January, 2015. Thus, the total principal amount due, after deducting the above amount, from the total amount due i.e., 71,54,50,877/- comes to Rs. 50,41,13,750/-. The calculation chart showing the amounts due

is as under:

Date	Value Date	Debit	Credit	Balance	Days	Rate	Interest (Balance*Days*Rate/365)
01-05-2007	04-06-2007	61,67,00,000		61,67,00,000	34	15%	86,16,904
04-06-2007	29-06-2007		5,35,852	61,61,64,148	25	15%	63,30,454
29-06-2007	13-07-2007		5,00,000	61,56,64,148	14	15%	35,42,177
13-07-2007	14-07-2007		75,00,000	60,81,64,148	1	15%	2,49,930
14-07-2007	19-07-2007		25,00,000	60,56,64,148	5	15%	12,44,515
19-07-2007	25-07-2007		50,00,000	60,06,64,148	6	15%	14,81,090
25-07-2007	28-07-2007		20,00,000	59,86,64,148	3	15%	7,38,079
28-07-2007	07-08-2007		5,00,000	59,81,64,148	10	15%	24,58,209
07-08-2007	31-08-2007		10,00,000	59,71,64,148	24	15%	58,89,838
31-08-2007	19-09-2007		5,00,000	59,66,64,148	19	15%	46,58,884
19-09-2007	02-11-2007		3,46,816	59,63,17,332	44	15%	1,07,82,724
02-11-2007	28-11-2007		1,00,00,000	58,63,17,332	26	15%	62,64,761
28-11-2007	28-12-2007		2,00,00,000	56,63,17,332	30	15%	69,81,995
28-12-2007	31-12-2007		1,25,00,000	55,38,17,332	3	15%	6,82,788
31-12-2007	02-01-2008		1,20,00,000	54,18,17,332	2	15%	4,45,329
02-01-2008	30-01-2008		55,00,000	53,63,17,332	28	15%	61,71,323
30-01-2008	06-08-2008		50,09,850	53,13,07,482	189	15%	4,12,67,307
06-08-2008	22-05-2009		1,00,00,000	52,13,07,482	289	15%	6,19,14,190
23-05-2009	14-09-2009		-	52,13,07,482	114	15%	2,44,22,898
14-09-2009	23-11-2012		1,01,56,416	51,11,51,066		0%	
23-11-2012	10-12-2013		25,00,000	50,86,51,066		0%	
10-12-2013	20-12-2018		19,86,80,713	30,99,70,353		0%	
20-12-2018	20-12-2018			30,99,70,353	-	0%	
				30,99,70,353			19,41,43,395
		Total amount due					50,41,13,748

47. Added to this would be conversion charges, which the Judgement Debtors have to bear. Notice was issued to the DDA in the petition, and vide letters dated 9th October, 2018, the DDA submitted that the following charges are payable property No. E-16/B-1 Mohan Cooperative Industrial Estate, Extension:

“No.B-1/Extn./E-16/78/LSB(1)/1542

Dated: 09/10/18

This is with reference to the order of the Hon’ble High Court of Delhi dated 04.09.2018.

In this regard, it is to inform that the provisional dues in r/o plot No. B-1/E-16 Extn. Mohan Cooperative Industrial Estate towards conversion from leasehold to freehold presuming that the original allottee is not available are as under:-

<i>1.</i>	<i>Ground Rent up to 30/11/2018 (Anticipated date of payment)</i>	<i>Rs.62,405/-</i>
<i>2.</i>	<i>Interest on ground rent upto 30/11/2018</i>	<i>Rs.51,456/-</i>
<i>3.</i>	<i>Conversion charges in case of GPA (2018-19)</i>	<i>Rs.1,29,51,037/-</i>

In addition to above, subletting/misuse charges UEI & composition will be calculated/charged if applicable, subject to the submission of prescribed documents by the unit/applicant.”

Thus, the conversion charges payable qua property bearing No. E-16/B-1 Mohan Cooperative Industrial Estate, Extension, as per the letter of DDA is Rs. which are to the tune of Rs.1,30,64,898/- as per the DDA letter.

48. The conversion and other charges payable in respect of property No. FA/B-1 Mohan Cooperative Industrial Estate, Extension are as per DDA’s letter dated 9th October, 2018, which reads as under:

““No.FA/B-1/Extn./78/LSB(1)/1553

Dated: 09/10/18

This is with reference to the order of the Hon’ble High Court of Delhi dated 04.09.2018.

In this regard, it is to inform that the provisional dues in r/o plot No. FA/B-1 Extn. Mohan Cooperative Industrial Estate towards conversion from leasehold to freehold presuming that the original allottee is not available are as under:-

1.	Ground Rent up to 30/11/2018	Rs.77,088/-
2.	Interest on ground rent upto 30/11/2018	Rs.63,596/-
3.	Conversion charges (allottee case 2018-19) (Rates 2018-19 provisional)	Rs.71,99,478/-
4.	Conversion charges (GPA case)	Rs.1,59,98,228/-
5.	UEI Charges	Rs.4,13,83,019/-
6.	Interest on UEI, upto 30/11/2018	Rs.5,19,87,417/-
7.	Damage Charge	Rs.1,59,679/-
8.	Interest on Damage Charges (w.e.f. 12/8/2010 to 31/5/2017)	Rs.1,96,405/-

The above mentioned charges in respect of this plot exclude the other charges i.e. composition fee, sub-letting, misuse, if any comes into picture.”

49. On 12th October, 2018, Ms. Shobhana Takiar, Ld. Counsel for the DDA, had appeared before Court and submitted that the charges stipulated at Serial Nos.3, 5 and 6 are not applicable in this case. Thus, the conversion charges payable in respect of property No. FA/B-1 Mohan Cooperative Industrial Estate, Extension are Rs.1,64,94,996/-.

50. On the basis of all the above amounts, the following is the final calculation of the amounts in satisfaction of the award dated 24th April 2009:

S. No.	Particular(s)	Amount(s)
A.	Principal amount due as per award dated 24 th April, 2009	Rs.61,67,00,000/-
B.	Principal amount paid from 1 st May, 2007 to 14 th September, 2009	Rs.9,53,92,518/-
C.	Principal amount due after 14 th September, 2009 [A-B]	Rs.52,13,07,482/-
D.	Amount of interest payable till 14 th September, 2009	Rs.19,41,43,395/-
E.	Amount due and payable till 14 th September,	Rs.71,54,50,877/-

	2009 on the basis of the award dated 24 th April, 2009 [C+D]	
F.	Amounts paid after 14 th September, 2009 till date	Rs.21,13,37,129/-
G.	Total amount due [E-F]	Rs.50,41,13,748/-
H.	Value of the property FA/B1 Mohan Cooperative Industrial Estate, Extension as per the Court Valuer on circle rates	Rs.38,78,42,232/-
I.	Value of the property FA/B1 Mohan Cooperative Industrial Estate, Extension as per the Court Valuer on fair market value	Rs.14,47,99,650/-
J.	Amount adjustable from property FA/B1 Mohan Cooperative Industrial Estate, Extension, as per the Court valuer, taking average of circle rate and fair market value [(H+I) ÷ 2]	Rs.26,63,20,941/-
K.	Charges payable to the DDA in respect of properties bearing No.FA/B-1 Mohan Cooperative Industrial Estate, Extension	Rs.1,64,94,996/-
L.	Value of property E-16/B1 Mohan Cooperative Industrial Estate, Extension as per Court appointed Valuer on the basis of circle rates.	Rs.32,03,05,902/-
M.	Value of the property FA/B1 Mohan Cooperative Industrial Estate, Extension as per the Court Valuer on fair market value.	Rs.13,12,06,500/-
N.	Amount adjustable from property FA/B1 Mohan Cooperative Industrial Estate, Extension, as per the Court valuer, taking average of circle rate and fair market value [(L+M) ÷ 2]	Rs.22,57,56,201/-
O.	Charges payable to the DDA in respect of properties bearing No.E-16/B1 Mohan Cooperative Industrial Estate, Extension.	Rs.1,30,64,898/-
P.	Total Amount adjustable from both properties	Rs.49,20,77,142/-

	[J+N]	
Q.	Balance outstanding amount due to NAFED [G-P]	Rs.1,20,36,606/-

51. This Court, after perusing the valuation report filed by the Court appointed Valuer and taking into consideration the circle rate value and fair market value of the said properties, has taken the average value of the two. Thus, the said average amounts, as enumerated in the table above, is adjustable qua both properties and amounts to Rs.49,20,77,142/-. The conversion charges as stipulated by the DDA, have not been deducted from the said amount. However, since, as per order dated 12th October, 2018, NAFED undertook to purchase properties bearing Nos. FA/B-1 Mohan Cooperative Industrial Estate, Extension and E-16/B-1, Mohan Cooperative Industrial Estate, Extension, and also accepted the conversion charges leviable by DDA, NAFED is liable to bear the conversion charges.

52. However, as per the table, above the amount due and payable to NAFED, in terms of the award dated 24th April, 2009, was Rs.50,41,13,748/-. After deducting the amount which is adjustable qua properties FA/B-1 Mohan Cooperative Industrial Estate, Extension and E-16/B-1, Mohan Cooperative Industrial Estate, Extension, the balance outstanding sum due to NAFED from the Judgment Debtors is Rs.1,20,36,606/-. In order to enable NAFED to realise the said amount, this Court orders attachment of property bearing No.506, Pragati House, 47-48, Nehru Place, New Delhi, which was valued at Rs.50-60 lacs by NAFED, at the time of filing of the execution. The said property shall henceforth vest with NAFED. NAFED is permitted to deal with the said property in the manner as it deems fit, to realise the balance outstanding sum due to it. No

interest shall be payable on the said sum.

53. Thus, with the adjustment of the values of the properties bearing Nos. FA/B-1 Mohan Cooperative Industrial Estate, Extension and E-16/B-1, Mohan Cooperative Industrial Estate, Extension, and attachment of property bearing No.506, Pragati House, 47-48, Nehru Place, New Delhi, the execution petition stands satisfied. The Judgment Debtors are directed to execute all the requisite documents to transfer the following three properties in favour of NAFED:

- a) Property No. FA/B-1 Extension, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi-110044;
- b) Plot No. E-16/B-1, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi-110044; and
- c) Property No.506, Pragati House, 47-48, Nehru Place, New Delhi.

If the Judgment Debtors refuse to cooperate in transferring the said properties to NAFED, within three months, the concerned Sub-Registrar shall execute the sale deeds in favour of NAFED upon the expiry of three months from today.

54. The execution petition, thus, stands disposed of in the above terms. All pending applications also stand disposed of. There shall be no order as to costs.

**PRATHIBA M. SINGH, J.
JUDGE**

MAY 30, 2019/dk