(2024) 08 SC CK 0017

Supreme Court Of India

Case No: Civil Appeal No. 7702 Of 2019

DLF Ltd. (Formerly Known As DLF Universal Ltd) And Anr		APPELLANT
	Vs	
Koncar Generators And Motors Ltd		RESPONDENT

Date of Decision: Aug. 8, 2024

Acts Referred:

- Code of Civil Procedure, 1908 - Order 21 Rule 1, Order 24
- Arbitration Act, 1940 - Section 17
- Arbitration and Conciliation Act, 1996 - Section 34, 37, 45, 46, 47, 48, 49, 50, 51, 52

Citation: (2024) 08 SC CK 0017

Hon'ble Judges: Pamidighantam Sri Narasimha, J; Aravind Kumar, J

Bench: Division Bench

Advocate: Karanjawala & Co.

Final Decision: Partly Allowed

Judgement

Pamidighantam Sri Narasimha, J

1. The issue arising in the present appeal relates to enforcement of an arbitral award expressed in foreign currency. In this context, two questions

arise for consideration. First, what is the correct and appropriate date to determine the foreign exchange rate for converting the award amount

expressed in foreign currency to Indian rupees. Second, what would be the date of such conversion, when the award debtor deposits some amount

before the court during the pendency of proceedings challenging the award. Two uncertainties have a direct bearing on the question to be answered, a

local factor, and the ever-fluctuating exchange rates- a global factor.

1.1 Taking into account these two factors and the statutory provisions, coupled with the decisions of this Court, we have formulated twin principles:

First, following the principle in Forasol v. Oil and Natural Gas Commission 1984 Supp SCC 263, the date when the arbitral award becomes

enforceable shall be the date for conversion. Under the Arbitration and Conciliation Act, 1996 Hereinafter Ã¢â‚¬Ëœthe ActÃ¢â‚¬â„¢ this date is when the

objections against the award are dismissed, and award attains finality. Second, in the event that the award amount or part of it is deposited in court

pending objections, enabling withdrawal by the decree holder, that date of such deposit shall be the relevant date for conversion as per the principle in

Renusagar Power Co Ltd v. General Electric Co1 994 Supp (1) SCC 644. Before we consider the submissions of the counsels representing the

parties, followed by our reasons and decision, we will refer to the relevant facts of the case.

2. Facts: The relevant facts are that the appellants are Indian companies and the respondent is a Croatian company. The parties entered a contract for

the design, engineering, manufacturing, and supply of two generators by the respondent. Certain disputes arose between them that were referred to

arbitration before the International Chamber of Commerce Hereinafter Ã¢â‚¬Å“ICCÃ¢â‚¬., Paris. The three-member arbitral tribunal passed its award dated

12.05.2004 in favour of the respondent-claimant and held the appellants to be jointly and severally liable to pay Euros 10,93,989, along with interest, as

follows:

i. Euros 9,60,308.41 with interest of 5% p.a. starting on 31.10.1999 until final repayment;

ii. Euros 18,411.40 for the storage and maintenance of the goods with interest of 5% p.a. starting from the date of the award;

iii. Euros 5,545.40 relating to lawyer expenses of the claimant, euros 99,482.70 relating to arbitration fees paid to the ICC, euros 3,389.57 as guaranty expenses relating

to the repayment of the appellantsÃ¢â‚¬â„¢ arbitration fee to the ICC, euros 6,852 relating to the arbitration costs in Paris, all these amounts with interest of 5% p.a. from

the date of the award.

2.1 The respondent filed for execution of the award in 2004, while the appellants filed a petition under Section 34 of the Act, which was dismissed on

28.04.2010. In 2010, the appellants then filed objections against the award under Section 48 of the Act and also filed a Section 37 appeal against the

Section 34 order. The High Court dismissed the appeal by its order dated 15.10.2010, the terms of which are important for our purpose and are hence

extracted:

Ã¢â‚¬Å“After arguing for some time learned counsel have reached a consensus on the present appeal. It has been agreed by learned counsel for the appellants that

the appeal as well as the application under Section 34 of the Arbitration and Conciliation Act, 1996 would be dismissed as withdrawn. It has been further agreed

that the appellants would deposit an amount of Rs.7.5 Crores before the Executing Court on or before 08.11.2010.

It has been agreed by learned counsel for the respondent that the application under Section 48 which has been filed by the appellants would be decided on its

own merits without being influenced by any findings or observations in the order on the application under Section 34 dated 28.04.2010. It has further been

agreed by learned counsel for the respondent that the amount of Rs. 7.5 Crores which would be deposited by the appellants would be released to it only

consequent to furnishing a bank guarantee of a scheduled bank of India in the amount of Rs. 7.5 Crores in favour of the Executing Court and the said bank

guarantee would be kept alive during the proceedings under Section 48 and for a period of 60 days thereafter. The final order thereon would obviously be passed

by the Executing Court after the conclusion of the proceedings under Section 48.Ã¢â‚¬â€¹

2.2 InÃ, accordanceÃ, withÃ, theÃ, above,Ã, theÃ, appellantsÃ, deposited Rs. 7.5 crores with the Executing Court on 22.10.2010.

2.3 The Trial Court dismissed the objections filed under Section 48 by order dated 02.04.2011. The appellants filed a revision, which the High Court

admitted by order dated 03.06.2011. By this order, the High Court also stayed the operation of the Trial Court order dismissing objections, subject to

the appellants depositing a further amount of Rs. 50 lakhs, in addition to Rs. 7.5 crores, with the Executing Court. The Court directed that the amount

shall be disbursed to the successful party on the final adjudication of this lis. It also rejected the respondentÃ¢â‚¬â„¢s prayer for deposit of the amount in

euros. Pursuant to this order, the appellants deposited Rs. 50 lakhs on 15.07.2011. Subsequently, the revision came to be dismissed by the High Court

on 01.07.2014, by which the award attained finality as this order was not challenged any further.

2.4 In the execution proceedings, the Trial Court by order dated 24.08.2016 permitted the respondent to withdraw the entire deposit of Rs. 8 crores as

per the direction of the High Court. On 10.10.2016, the respondent received Rs. 11,60,12,100, including the interest that had accrued on the deposited

amount.

2.5 The execution petition was allowed by the Trial Court by its order dated 03.02.2017, wherein it was held that the relevant date to convert the

award amount expressed in euros to Indian rupees (the foreign exchange rate) is 01.07.2014, i.e., the date on which all the objections against the

award were finally decided as it is only on such date that the award is deemed to be a decree. The Trial Court accepted the calculation as submitted

by the respondent.

2.6 The appellants filed a revision petition against this order, which was dismissed by the High Court by order dated 26.02.2018 In CR No. 1827 of

2017 (O&M), Punjab and Haryana High Court (hereinafter Ã¢â‚¬Å“impugned judgmentÃ¢â‚¬), which is impugned herein. The High Court rejected the

appellantÃ¢â‚¬â„¢s reliance on this CourtÃ¢â‚¬â„¢s decision in Forasol (supra) to submit that the date of decree shall be deemed as the relevant date for

conversion and since the award dated 12.05.2004 is a deemed decree under the Act, the exchange rate as on the date of the award should be applied.

The Court reasoned that this CourtÃ¢â‚¬â„¢s judgment in Forasol (supra) was passed under the Arbitration Act, 1940 and hence, does not apply in the

present case. Instead, the High Court referred to the Delhi High CourtÃ¢â‚¬â„¢s decision inP rogetto Grano S.P.A. v. Shri Lal Mahal Limited 2014

SCC OnLine Del 3348, against which this Court dismissed the SLP SLP No. 27041/2014, order dated 21.11.2014, where it was held that the relevant

date for conversion is when the objections filed under Section 48 are finally decided. Further, the Court referred to Section 49 of the Act[Section 49 of

the Act reads: Ã¢â‚¬Å“49. Enforcement of foreign awards.Ã¢â‚¬"Where the Court is satisfied that the foreign award is enforceable under this

Chapter, the award shall be deemed to be a decree of that Court.Ã¢â‚¬] that provides that the foreign arbitral award shall be deemed to be a decree

of the court when it is satisfied that it is enforceable under Part II, Chapter I of the Act. It reasoned that such satisfaction required under Section 49 is

complete only when the objections filed under Section 48 are finally decided, which was on 01.07.2014 in the present case (when the High Court

dismissed the revision). It also observed that the appellants delayed execution of the award by initially filing under Section 34, despite such application

not being maintainable and then filing an appeal against this order and subsequently withdrawing it. The appellants cannot be permitted to benefit from

the fluctuation in exchange rates when the delay is attributable to them. Therefore, the relevant date for conversion is 01.07.2014.

2.7 While issuing notice on the special leave petition filed by the appellant on 10.09.2018[By order 10.09.2018, this Court ordered: Ã¢â‚¬Å“Issue notice,

returnable within four weeks, limited to the conversion rate that would be applicable on 15.10.2010 insofar as the deposit of Rs. 7.5 Crores

is concerned. The same will apply to the further deposit of Rs. 50,00,000/-.Ã¢â‚¬], this Court confined the issue to determining whether the foreign

exchange rate as on 15.10.2010 would apply to the deposit of Rs. 8 crores.

3. Submissions: Learned senior counsel Mr. Pinaki Mishra appeared on behalf of the appellants. Initially, he submitted that 01.07.2014 would not be

the relevant date for conversion for the entire amount and argued for using the exchange rate on 02.04.2011, when the Trial Court dismissed

objections under Section 48. However, he later restricted his submissions to the exchange rate that applies when the amount of Rs. 8 crores was

deposited by the appellants on 22.10.2010 as per the order dated 15.10.2010. The crux of his argument is that the deposited amount stands converted

as on the date of its deposit, and this amount then cannot be converted again as per the exchange rate prevailing on 01.07.2014. He has submitted that

the High Court passed an order dated 15.10.2010 directing the appellants to deposit Rs. 7.5 crores on the consent of both parties, and also permitted

the respondent to withdraw this amount on furnishing a bank guarantee in Indian rupee for the entire amount, to which the respondent had agreed at

the time. He further submitted that the appellants cannot be faulted for the respondent not withdrawing the amount when it was deposited. In response

to the respondentÃ¢â‚¬â„¢s contention regarding their inability to furnish a bank guarantee of a scheduled Indian bank, he submitted that the respondent

had agreed to this condition when the order was passed, and in any case, it could have applied for a modification but did not do so. Since the

respondent consented to the deposit of Rs. 7.5 crores and it was also permitted to withdraw the same, the amount stood converted as on the date of

its deposit on 22.10.2010. The exchange rate on this date was 1 euro = Rs. 59.17. While the arbitral award along with interest was euros 16,73,469.07,

the deposited amount of Rs. 7.5 crores gets converted to euros 12,67,534.22 at that exchange rate, and the balance of the award would be euros

4,05,934.85 that remained pending as on this date. Subsequently, pursuant to the High CourtÃ¢â‚¬â„¢s interim order dated 03.06.2011 in revision against

the Trial Court dismissing the objections petition, the appellant deposited an additional amount of Rs. 50 lakhs on 15.07.2011. As on this date, the

amount of arbitral award including interest pending payment was euros 4,17,278.78, i.e., after converting and adjusting the earlier deposit against the

award. Using the prevailing exchange rate of 1 euro = Rs. 62.89 as on 15.07.2011, the appellantÃ¢â‚¬â„¢s deposit amounts to euros 79,503.90. Therefore,

a balance of euros 3,37,774.88, along with interest, remains pending for which the exchange rate as on 01.07.2014 would apply.

3.1 Mr. Mishra concluded by submitting that the appellants would be required to pay only Rs. 3.19 crores if their calculation is accepted. On the other

hand, if the impugned judgment is upheld, they would be required to be pay more than double the amount, i.e., Rs. 6.48 crores.

3.2 Mr. Abhay Mahajan, learned counsel, appearing for the respondent submitted that the exchange rate on 01.07.2014 would apply to the entire

award amount. He submitted that the respondent had not consented to the deposit of Rs. 7.5 crores and that the High Court did not convert the

amount but only directed deposit of a lump sum amount. He relied on this CourtÃ¢â‚¬â„¢s decision in P.S.L. Ramanathan Chettiar v. O.R.M.P.R.M.

Ramanathan Chettiar (1968) 3 SCR 367 where it was held that the judgment debtor depositing a sum in court during the pendency of the appeal does

not pass the title and vest the money with the decree-holder. The decree-holder may withdraw the amount only on furnishing security, which means

that the payment is not in satisfaction of the decree. Further, the judgment debtor can proceed against the security in case he succeeds in the appeal.

Rather, the purpose of the deposit is to obtain a stay of execution and to put the money beyond the reach of the parties pending the disposal of the

appeal. On this basis, Mr. Mahajan submitted that the deposit of Rs. 8 crores during the pendency of the objections under Section 48 does not pass the

title of this amount to the respondent and such deposit was not under the arbitral award as the award can be deemed to be a decree only on

01.07.2014 when all the objections to the award stood dismissed. Hence, this is the relevant date for conversion.

3.3 As per the calculation sheet submitted by the respondent, the exchange rate as on this date is 1 euro = Rs. 82.21 and this rate must be used for

converting the entire arbitral award and interest. The amount of Rs. 11.6 crores withdrawn by the respondent on 10.10.2016 must first be appropriated

towards interest and then towards the principal sum. After adjusting this amount and after accounting for interest, the respondent submits that it is

entitled to Rs. 6,57,62,057 from the appellants.

4. Analysis Ã¢â‚¬" Statutory Scheme: It is important to first set out the statutory scheme for the enforcement of foreign arbitral awards in India. Under

the Act, Part II deals with the enforcement of certain foreign arbitral awards. Chapter I deals with awards under the New York Convention. Section

45 provides for the power of a court to refer parties to arbitration.[11 Section 45 reads: Ã¢â‚¬Å“45. Power of judicial authority to refer parties to

arbitration.Ã¢â‚¬"Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when

seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one

of the parties or any person claiming through or under him, refer the parties to arbitration, [unless it prima facie finds] that the said

agreement is null and void, inoperative or incapable of being performed.Ã¢â‚¬] Section 46 provides that a foreign award which is enforceable under this

Chapter shall be treated as binding for all purposes on the persons between whom it is made.[Section 46 reads: Ã¢â‚¬Å“46. When foreign award

binding.Ã¢â‚¬"Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons

as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any

legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to

relying on an award.Ã¢â‚¬] Section 47 provides for the evidentiary requirements for enforcement of a foreign award.[13 Section 47 reads: Ã¢â‚¬Å“47.

Evidence.Ã¢â‚¬"(1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the

courtÃ¢â‚¬" (a) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was

made; (b) the original agreement for arbitration or a duly certified copy thereof; and (c) such evidence as may be necessary to prove that

the award is a foreign award. (2) If the award or agreement to be produced under sub-section (1) is in a foreign language, the party

seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country

to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

[Explanation.Ã¢â‚¬"In this section and in the sections following in this Chapter, Ã¢â‚¬Å“CourtÃ¢â‚¬ means the High Court having original

jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject-matter of a suit on its

original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to

such High Court.]Ã¢â‚¬ Section 48 sets out various grounds on which the court may refuse the enforcement of a foreign award.[Section 48 reads:

Ã¢â‚¬Å“48. Conditions for enforcement of foreign awards.Ã¢â‚¬"(1) Enforcement of a foreign award may be refused, at the request of the party

against whom it is invoked, only if that party furnishes to the court proof thatÃ¢â‚¬" (a) the parties to the agreement referred to in section 44

were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have

subjected it or, failing any indication thereon, under the law of the country where the award was made; or (b) the party against whom the

award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to

present his case; or (c) the award deals with a difference not contemplated by or not falling within the terms of the submission to

arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters

submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted

to arbitration may be enforced; or (d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the

agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in

which, or under the law of which, that award was made. (2) Enforcement of an arbitral award may also be refused if the Court finds

thatÃ¢â‚¬" (a) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or (b) the enforcement of

the award would be contrary to the public policy of India. [Explanation 1.Ã¢â‚¬"For the avoidance of any doubt, it is clarified that an award

is in conflict with the public policy of India, only if,Ã¢â‚¬" (i) the making of the award was induced or affected by fraud or corruption or was

in violation of section 75 or section 81; or (ii) it is in contravention with the fundamental policy of Indian law; or (iii) it is in conflict with the

most basic notions of morality or justice.] [Explanation 2.Ã¢â‚¬"For the avoidance of doubt, the test as to whether there is a contravention

with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.] (3) If an application for the setting aside or

suspension of the award has been made to a competent authority referred to in clause (e) of sub-section (1) the Court may, if it considers it

proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the

award, order the other party to give suitable security.Ã¢â‚¬] Section 49 provides that where the court is satisfied that a foreign award is enforceable

under this Chapter, it shall be deemed to be a decree of that court. Section 50 provides for appeal against certain orders, i.e., orders refusing to refer

parties to arbitration under Section 45 and orders refusing to enforce a foreign award under Section 48.[Section 50 reads: Ã¢â‚¬Å“50. Appealable

orders.Ã¢â‚¬"(1) [Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the order refusing

toÃ¢â‚¬" (a) refer the parties to arbitration under section 45; (b) enforce a foreign award under section 48, to the court authorised by law to

hear appeals from such order. (2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section

shall affect or take away any right to appeal to the Supreme Court.Ã¢â‚¬] Finally, Section 51[Section 51 reads: Ã¢â‚¬Å“51. Saving.Ã¢â‚¬"Nothing in this

Chapter shall prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of

any award if this Chapter had not been enacted.Ã¢â‚¬] is a savings clause and Section 52[Section 52 reads: Ã¢â‚¬Å“52. Chapter II not to

apply.Ã¢â‚¬"Chapter II of this Part shall not apply in relation to foreign awards to which this Chapter applies.Ã¢â‚¬â€‹] provides that Chapter II of Part

II shall not apply to awards governed under this Chapter.

4.1 From the statutory scheme, it is clear that a foreign arbitral award is binding between the parties when it is enforceable under Part II, Chapter I of

the Act (Section 46). The enforceability of the award can be challenged under Section 48, and the order passed on such an application can be

appealed under Section 50 only if it is allowed and the court refuses enforcement of the award. Therefore, a foreign award can be enforced when the

objections against it are finally decided and dismissed. At this point, the award is deemed to be a decree of the court as per Section 49. [See Fuerst

Day Lawson v. Jindal Exports Limited, (2001) 6 SCC 356, paras 30 and 31.] Unlike under the Arbitration Act, 1940, there is no requirement for a

separate decree by a court for making the award a rule of the court ibid.

5. Case-law on Relevant Date for Conversion: Now, we will discuss the case-law on the relevant date of conversion, both in the context of arbitral

awards and judgments where the decretal amount is expressed in a foreign currency. The seminal case that first decided this question was Forasol v.

ONGC (supra). Forasol was a French company that was awarded a tender for structural drilling of oil for exploration by ONGC. Pursuant to certain

disputes that arose between the parties, the matter was referred to arbitration and on 21.12.1974, an arbitral award was passed in ForasolÃ¢â‚¬â„¢s

favour where the amount was expressed in French francs. This award was made under the Arbitration Act, 1940. The Court held that the award can

be enforced either in foreign currency or in Indian rupee. The principles for determining conversion to Indian rupee are as follows:

5.1 Where the contract provides for a rate of exchange, the same must be used to convert the amount in accordance with the wording of the

contractual clause. In this case, article IX-3.1 of the contract provided for the exchange rate of FF 1.033 = Re. 1.000, which the Court held as

applying to only 20% of the fees and charges computed in French francs based on contractual interpretation Forasol (supra), para 16. Further, the

arbitral award provided for an enhanced rate of conversion of FF 1.000 = Rs. 1.5178 as applicable to payments in Indian rupee on or after 30.11.1966

as the Indian rupee was depreciated at this time. The Court interpreted the arbitral award and held this exchange rate to apply in place of what was

provided in article IX-3.1 to the extent of payments made in Indian rupee on and after 30.11.1966 ibid, paras 17-22.

5.2 For the remaining amount that still required to be converted to Indian rupee for which no exchange rate was provided in the contract or the arbitral

award, the Court considered six possible dates as the proper date for fixing the rate of exchange ibid, paras 24-25:

i. the date when the amount became due and payable;

ii. the date of the commencement of the action;

iii. the date of the decree;

iv. the date when the court orders execution to issue;

v. the date when the decretal amount is paid or realised;

vi. and in cases where a decree is passed by the court in terms of an arbitral award in foreign currency, the date of the award.

5.3 After an extensive discussion of English jurisprudence on the point, the Court noted the position of law in England at the time ibid, para 39. Briefly

stated, the position is as follows: Both courts and arbitrators in England have the jurisdiction to make a judgment/ award in foreign currency in certain

circumstances. In the Jugoslavenska case Jugoslavenska Oseanska Plovidba v. Castle Investment Co. Inc., [1973] 3 All E.R. 498, the Court of

Appeal held that in cases of arbitral awards, the date of award is the relevant date for determining the exchange rate. This was a departure from the

Ã¢â‚¬Ëœbreach date ruleÃ¢â‚¬â„¢, i.e., the conversion must be as per the exchange rate on the date when the debt was payable, which principle was laid down

by the House of Lords in the Havana case In re United Railways of the Havana andR egia Warehouses, Ltd.,[1959] 1 All E.R. 214 (CA).

Subsequently, in the Schorsch Meier case Schorsch Meier GmbH v. Hennin ,[1975] 1 All E.R. 152 (this was not a case of arbitration but a claim

for payment of price of goods in a foreign currency filed before English courts), the Court of Appeal held that the date of conversion should be the

date of payment, i.e., the date on which the court authorises enforcement of the judgment in terms of sterling. Finally, in the Miliangos case Miliangos

v. George Prank (Textiles) Ltd., 1976 AC 443, the House of Lords also held that the date of conversion should be the date when the court authorises

enforcement of the judgment in terms of sterling pound. While Jugoslavenska (supra) was not expressly overruled by the House of Lords, its

correctness was doubted.

5.4 The Court held that there is no bar on courts in India to pass a decree for a sum expressed in foreign currency. However, for the purpose of

payment of such amount, the limitations and restrictions under the Foreign Exchange Regulation Act, 1973 (that was in force at the time) must be

considered. If permission is not granted by the authorities to pay the decretal amount in foreign currency, the amount would have to be converted to

Indian rupees for payment of an equivalent amount. The date of conversion becomes relevant here, as the Ã¢â‚¬Å“court must select a date which puts

the plaintiff in the same position in which he would have been had the defendant discharged his obligation when he ought to have done,

bearing in mind that the rate of exchange is not a constant factor but fluctuates, and very often violently fluctuates, from time to time.Ã¢â‚¬â€‹

Forasol (supra), para 40. These are the guiding principles and considerations for the Court to determine the relevant date, which are apposite even

today.

5.5 The Court then undertook a detailed examination of each of the 6 dates that it set out earlier and held that the date of the decree (the third option)

is the most appropriate amongst them. The Court adopted the approach of eliminating other possible dates, on the following grounds:

i. The date when the amount becomes due and payable does not have the same effect of putting the plaintiff in the same position that he would have been in if the

defendant had discharged his obligation. Due to the fluctuations in exchange rate, using this date could result in the decree-holder only receiving a fraction of or a lot

more than what he is entitled to ibid, para 41.

ii. The second date Ã¢â‚¬" when the action or suit commenced Ã¢â‚¬" was rejected for the same reason as above, considering that there is usually a large period of time

between the filing of the suit, the decree by the Trial Court, subsequent appeals, revisions, and reviews, and the final decision ibid, para 42.

iii. The Court favourably discussed the third option, i.e., the date of the decree or judgment. It held that the decree crystallises the amount payable to the decree-

holder. To account for appeals and revisions, the date when the action is finally disposed of and when the decree becomes final and binding on both parties, after

exhausting all remedies, can be used. However, it observed that the only objection to be considered against this date is that there is a significant lapse of time

between the decree and its execution ibid, para 43.

iv. The Court rejected the fourth date, i.e., the date of court order for execution, despite the same being used in English law as per the decision in Miliangos (supra). It

noted that the process of execution in India is a lengthy one that may require attachment of property, deciding third party claims to such property, proclamation with

particulars, and auction sale. Moreover, multiple applications for execution may be required if the initial attachment and sale does not cover the decretal amount.

Hence, it may lead to a situation where there are multiple execution orders, meaning multiple exchange rates would have to be considered. Another difficulty is that

the execution application itself requires the amount to be expressed in Indian currency ibid, paras 44-46.

v. The date of payment was also rejected as the proper date due to practical and procedural difficulties of having to pay court fees on a determined amount in Indian

rupee; the pecuniary limit of the jurisdiction of courts would depend on the amount claimed, which must again be in Indian rupee; and execution is for a specific sum

expressed in Indian rupee. For these reasons, the Court held that the conversion of the amount to the domestic currency cannot be left to the date of payment as the

legal procedures in India require the amount to be determined in domestic currency before that ibid, paras 47-52.

vi. Among the remaining dates, the Court was of the opinion that the date of the judgment/decree is the most appropriate ibid, para 53. It rejected the date of the

arbitral award as the proper date while observing that the Jugoslavenska case (supra), where this date was used, was doubted even by the House of Lords in

Miliangos (supra). If the law laid down in Miliangos (supra) were to be applied to arbitral awards, the date of conversion would be when the court grants leave under

Section 26(1) of the Arbitration Act, 1950 (UK) to enforce such award in the same manner as a judgment or to the same effect ibid, paras 61-62. Further, noting the

differences between the statutory scheme for enforcement of foreign arbitral awards in the UK and in India, it held that the Jugoslavenska case (supra) will not apply

in the Indian context considering the procedure under Section 17 is different from the procedure under English law ibid, paras 63-65. Section 17 of the Arbitration Act,

1940[Section 17 reads: Ã¢â,¬Å“17. Judgment in terms of award.Ã¢â,¬"Where the Court sees no cause to remit the award or any of the matters referred to arbitration for

reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been

made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow and no appeal shall lie

from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award.Ã¢â,¬] required a judgment and decree to give an award the

status of a decree, i.e., making it a rule of court, for the award to become enforceable. On the other hand, English law [See Section 26(1) of the Arbitration Act, 1950,

which provides: Ã¢â,¬Å“26. Enforcement of award.Ã¢â,¬"(1) An award on an arbitration agreement may, by leave of the High Court or a Judge thereof, be enforced in the

same manner as a judgment or order to the same effect, and where leave is so given, judgment may be entered in terms of the awardÃ¢â,¬Â¦Ã¢â,¬] did not require a judgment

to be passed in all cases and it was sufficient for the court to grant leave to enforce the award in the same manner as a judgment. In Indian law, it was not the arbitral

award but only the decree of the court that could be enforced by an application for execution Forasol (supra) paras 65-66. Hence, the Court found that rather than the

date of the arbitral award, the date of the judgment and decree under Section 17 is the most appropriate one to determine the conversion rate as it was only then that

the arbitral award became enforceable.

6. The above extensive discussion on Forasol (supra) is necessary to understand the principles set out by this Court to determine the relevant date for

conversion. The law laid down in this case was subsequently affirmed by a 3-judge bench of this Court in Renusagar Power Co. Ltd v. General

Electric Co Renusagar (supra), see paras 131-133.Ã, in the context of the Foreign Awards (Recognition and Enforcement) Act, 1961. A foreign

arbitral award in favour of the respondent-claimant, which is an American company, was passed where the amount was expressed in US dollars. The

respondent then filed for enforcement of this award before the Bombay High Court under the Foreign Awards (Recognition and Enforcement) Act,

1961 as the appellant was an Indian company. Both the single judge and division bench of the High Court allowed the enforcement of the award and

dismissed RenusagarÃ¢â‚¬â„¢s objections under Section 7 of this Act. The matter was then appealed to this Court, which dealt with several issues on

objections to the enforceability of foreign awards, including the scope of inquiry under Section 7 and the meaning of Ã¢â‚¬Ëœpublic policyÃ¢â‚¬â„¢. The most

relevant issues framed by the Court, for our purpose, are which law would govern the rate of exchange for conversion in proceedings for enforcement

of a foreign arbitral award and whether Forasol (supra) required reconsideration. The Court held that the applicable law to determine the proper date

for conversion is the lex fori ibid, paras 107-108, which would be Indian law. After extensively discussing the principles under English law as well as

the reasoning in Forasol (supra), the Court rejected the contention that Forasol (supra) required reconsideration ibid, para 133.

7. The law laid down in Forasol (supra) has also been used in other cases though they do not pertain to arbitration but involved an issue of a debt

expressed in foreign currency that required to be converted to Indian rupee. United India Insurance Co. Ltd. v. Kantika Colour Lab (2010) 6 SCC

449 involved a consumer complaint for payment of an insurance claim due to the damage of a printer in transit. This Court did not cite Forasol (supra)

but used the date of its judgment as the proper date for conversion of the cost of the printer that was expressed in Singaporean dollars. In Meenakshi

Saxena v. ECGC Limited (2018) 7 SCC 479, again was a consumer complaint for payment under an insurance contract for loss suffered during

export of goods, the Court noted that the contract provided for a date on which the exchange rate must be determined and followed Forasol (supra)

to hold that this is the proper date.

7.1 In certain other cases, the principle in Forasol (supra) has been considered but not applied due to the peculiar facts of those cases. For example,

in cases of motor accident deaths where the deceased was earning in foreign currency, the Court has refused to use the date of the judgment as the

proper date and has instead used the date of filing the claim as the claims in these cases were filed in Indian rupee and the Tribunal also decided the

cases in Indian rupee. Hence, it was held that the amount already stood converted in the claim itself. See United India Insurance Co. Ltd v.

Patricia Jean Mahajan, (2002) 6 SCC 281; Jiju Kuruvila v. Kunjujamma Mohan, (2013) 9 SCC 166. Similarly, inT riveny Kodkany v. Air India

Limited (2021) 19 SCC 214.Ã, involving claim for compensation due to the death of an airline passenger, the Court considered Forasol (supra) and

Renusagar (supra) but did not apply them. It differentiated the facts in those cases as in both of them, the award holders were foreign companies.

However, in this case, the claimants seeking compensation were residing in India. Further, like in motor accident cases, it found that the claim for

payment was itself in Indian rupees and interest was also provided on such amount. Hence, it found that the date of filing the complaint is the proper

date for conversion.

8. It is therefore clear from the above-referred analysis of judicial determinations that the principle and law laid down in Forasol (supra) has been

widely considered and followed by this Court in various types of matters. There is no impediment for us to apply this decision to cases under the 1996

Act, even though it was decided under the Arbitration Act, 1940. We therefore disagree with the High Court that Forasol (supra) does not apply to

cases under the 1996 Act.

9. The Delhi High Court has also relied on Forasol (supra) in several cases on the enforcement of domestic and foreign arbitral awards where the

amount is expressed in foreign currency:

9.1 In Fuerst Day Lawson v. Jindal Exports Ltd 2012 SCC OnLine Del 5647, the High Court relied o nForasol (supra) and analogised that the date

on which the objections to the enforcement of the award are finally rejected and the foreign award becomes enforceable would be the date that it is

deemed to be a decree under Section 49. Hence, this would be the relevant conversion date.

9.2 This case was followed in Progetto (supra), where the relevant date was held to be when this Court dismissed the SLP in the objections petition.

The award debtor herein had deposited the entire amount only after the dismissal of the SLP by using the exchange rate as on the date of deposit,

which was higher than the rate as on date of dismissal of SLP. Hence, the High Court while deciding the execution petition directed refund of the

excess amount by using the date of this CourtÃ¢â‚¬â„¢s order as the relevant date. In so far as the present appeal is concerned, we have already

mentioned that the respondent was permitted to withdraw 7.5 crores during the pendency of the proceedings.

9.3 Similarly, in Trammo AG v. MMTC Limited 2019 SCC OnLine Del 7337, the date of dismissal of review by this Court in the proceedings to set

aside the award was held to be the relevant date.

9.4 In Voith Hydro v. NTPC Limited 2021 SCC OnLine Del 1325, the award debtor had paid some part of the arbitral award amount during the

pendency of proceedings to set aside the award. It paid 75% of the amount on 06.11.2018, against bank guarantees by the award holder, in

accordance with a Niti Aayog Circular. Subsequently, this Court dismissed the SLP in the 22.09.2020. The High Court held that the exchange rate as

on 06.11.2018 would apply insofar as 75% of the deposit is concerned as the claimant had received this part-payment and the exchange rate on

22.09.2020 was higher than on 06.11.2018. Relying on Forasol (supra), Renusagar (supra), and Fuerst Day Lawson (supra), it held that the

exchange rate on 22.09.2020 would apply to the remaining amount.

9.5 InÃ, Karamchand ThaparÃ, &Ã, Bros.Ã, (CoalÃ, Sales) Ltd.Ã, v. MMTC L.t d2022 SCC OnLine Del 949., the date on which the arbitral

award attained finality (when the SLP in the Sections 34 and 37 proceedings was dismissed) was determined as the relevant date for the exchange

rate. Here, the award debtor had deposited an amount subsequent to the dismissal of the SLP at the exchange rate as on date of deposit, which was

higher than the exchange rate when the SLP was dismissed. The High Court therefore also directed the award holder to refund the excess amount

paid by the award debtor. This case does not involve deposit during the pendency of the objections.

10. Applying the Principle in Forasol under the 1996 Act: The reason that this Court in Forasol (supra) determined the date of the decree under

Section 17 of the 1940 Act as the proper date is that it is only then that the arbitral award becomes enforceable. However, as set out earlier, the

statutory scheme under the 1996 Act does not require such a judgment or decree to be passed for a foreign award to be enforceable. Rather, the

enforceability of a foreign award is automatic and deemed under Section 49 after the objections against such an award under Section 48 are finally

decided and disposed of. At this point, the award is enforceable as a decree of a court (Section 49). Hence, the date on which the objections are

finally decided and dismissed would be the proper date for determining the exchange rate to convert an amount expressed in foreign currency.

10.1 In the present case, this date is 01.07.2014 Ã¢â‚¬" when the High Court dismissed the revision petition against the Trial Court order dismissing the

appellantsÃ¢â‚¬â„¢ objections. No further appeal was preferred from this order and hence, it attained finality. While the learned counsels have not

contested this issue, it was necessary for us to delve into the reason and principle behind selecting this date and to settle the position of law on the

applicability of Forasol (supra) under the 1996 Act.

11. Conversion of Deposited Amounts: The primary contention by the learned counsels was regarding the proper date to determine the exchange

rate to the extent of Rs. 8 crores that was deposited in the court pursuant to certain orders. The learned counsels have both referred to decisions by

the Delhi High Court on this point. Mr. Mishra heavily relied on Voith Hydro (supra), where the arbitral award was partly paid against bank

guarantees under a Niti Ayog circular, before the objections were finally decided. The High Court here held that the paid amount stood converted as

on the date of payment as it was received by the award-holder and the exchange rate increased by the time the objections were finally decided. On

the other hand, Mr. Mahajan has relied on Karam Chand Thapar (supra), where again a deposit of some part of the amount was made, albeit after

the final decision on objections. Here the High Court held that the date on which the SLP in the objections was dismissed would be the proper date.

11.1 In the present case, it is important to note the terms on which the two deposits of Rs. 7.5 crores and Rs. 50 lakhs were made. From the order of

the High Court dated 15.10.2010, it is clear that such order for deposit of Rs. 7.5 crores and for furnishing a bank guarantee of an Indian bank for the

release of the deposit was made in accordance with the consent of the parties. Mr. MahajanÃ¢â‚¬â„¢s submission that the respondent did not consent to

the deposit hence cannot be accepted. The further deposit of Rs. 50 lakhs was made pursuant to an interim order of the High Court dated 03.06.2011,

which stayed the Trial Court order dated 02.04.2011 and directed the deposit. However, unlike the previous order, neither was this order passed on

the consent of the parties nor did it permit the respondent to withdraw the money during the pendency of the proceedings. Rather, it directed that the

amount shall be deposited in a fixed deposit receipt and shall be disbursed to the successful party on the final adjudication of the objections.

11.2 We will first deal with the deposit of Rs. 7.5 crores. Despite being permitted to withdraw this amount by furnishing a bank guarantee, the

respondent did not do so until 2016. Mr. Mahajan contended that being a foreign company, it was unable to obtain a bank guarantee from an Indian

bank. However, the order of 15.10.2010 clearly records the respondentÃ¢â‚¬â„¢s consent to this condition. Further, when it was unable to comply with the

same, it also did not apply for a modification or removal of the condition. Hence, the respondent, in its own discretion, did not withdraw Rs. 7.5 crores

when it was deposited in 2010.

11.3 A similar situation arose in this CourtÃ¢â‚¬â„¢s decision in Renusagar (supra) as well. This Court was deciding an appeal against the dismissal of

RenusagarÃ¢â‚¬â„¢s objections under Section 7 of the Foreign Awards Act, 1961. During the pendency of the appeal, by order dated 21.02.1990, this

Court stayed the operation of the High Court order subject to deposit of one-half of the decretal amount calculated as on date. General Electric was

permitted to withdraw the deposited amount by furnishing security by way of bank guarantee for the sum to be withdrawn in excess of Rs. 4 crores. It

also directed that 10% interest p.a. would be payable by Renusagar on the balance of the decretal amount in case the appeal is dismissed, and the

same interest would be payable by General Electric on the amount withdrawn by it if the appeal is allowed. Pursuant to this order, Renusagar

deposited Rs. 9.69 crores on 20.03.1990, which was withdrawn by the respondent on furnishing necessary bank guarantee. In a subsequent order, this

Court directed a further deposit of Rs. 1 crore and bank guarantee of Rs. 1.92 crores to be furnished by Renusagar. The deposit was made on

03.12.1990, which was also withdrawn Renusagar (supra), para 18.. However, General Electric contended that it was unable to use a large part of

this amount as it had not received permission from the Reserve Bank of India to convert the same into US dollars due to the pendency of the appeals.

11.4 After rejecting various submissions by the appellant regarding the enforceability of the award, this Court decided the question of the amount in

Indian rupee that was to be paid. The relevant portion on this point is extracted:

Ã¢â‚¬Å“141. As indicated earlier, in pursuance to the orders of this Court dated February 21, 1990, Renusagar deposited a sum of Rs 9,69,26,590 on March 20, 1990

and a further amount of Rs 1,00,00,000 was deposited by Renusagar in pursuance to the order dated November 6, 1990 on December 3, 1990. These amounts have

been withdrawn by General Electric. The question is how and at what rate the said amount should be adjusted against the decretal amount. It is not disputed that

on the date when the said deposits were made by Renusagar and were withdrawn by General Electric, rupee-dollar exchange rate was Rs 17 per dollar. Shri

Shanti Bhushan has, however, submitted that although General Electric had withdrawn the amount deposited by Renusagar, it was not able to use the same

because the Reserve Bank of India did not grant the permission to General Electric to remit the amount by converting the same into U.S. dollars on account of the

pendency of these appeals in this CourtÃ¢â‚¬Â¦ Shri Shanti Bhushan has, therefore, submitted that the amounts deposited by Renusagar should be converted from

Indian rupees into U.S. dollars at the exchange rate prevalent on the date of the judgment of this Court and not on the basis of the rate of exchange prevalent at

the time of the said payments by Renusagar. We are unable to agree with this submission. The convertibility into U.S. dollars of money paid by Renusagar in

Indian rupees is not the condition for discharge of the decree and as laid down in Forasol case the decree can be discharged by payment in Indian rupees and it

is for General Electric to obtain the necessary permission from the Reserve Bank of India for such conversion of Indian rupees to U.S. dollars and the transfer

thereof to the United States. If General Electric were finding a difficulty in such transfer on account of the pendency of these appeals in this Court they could have

moved this Court and obtained necessary clarification in this regard. They did not choose to do so. In these circumstances, the amount of Rs 10,69,26,590 which

has been paid by Renusagar in pursuance to the orders dated February 21, 1990 and November 6, 1990 has to be converted into U.S. dollars on the basis of the

rupee-dollar exchange rate of Rs 17.00 per dollar prevalent at the time of such payment and calculated on that basis the said amount comes to US $ 6,289,800.00.

142. The judgment of the High Court passing a decree in terms of the award is, therefore, affirmedÃ¢â‚¬Â¦ The amount paid by Renusagar during the pendency of these

appeals will have to be adjusted against the said decretal amount and the present liability of Renusagar under this decision has to be determined accordingly.

Calculating on this basis the amount payable by Renusagar under the decree in terms of U.S. dollars is:

Amount awarded by the ArbitralÃ, Ã, Ã, Ã, : Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, 12,215,622.14

TribunalÃ,

InterestÃ, onÃ, USÃ, $Ã, 2,716,914.72 : Ã, Ã, 117,733.00

(the total amount awarded underÃ,

item Nos. 1, 3 and 5) @ 8% perÃ,

annum from 1-4-1986 to 15-10-Ã,

1986 in terms of the awardÃ,

Ã, Ã,

12,333,355.14

Less: Amount paid by RenusagarÃ, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, 6,289,800.00

in pursuance of the orders datedÃ,

21-2-1990 and 6-11-1990 duringÃ,

the pendency of the appeals in

this Court

6,043,555.14

143. In accordance with the decision in Forasol case the said amount has to be converted into Indian rupees on the basis of the rupee-dollar exchange rate

prevailing at the time of this judgment. As per information supplied by the Reserve Bank of India, the Rupee-Dollar Exchange (Selling) Rate as on October 6,

1993 was Rs 31.53 per dollar.Ã¢â‚¬â€‹

Ã,

11.5 From the above, it is clear that the Court adjusted the amounts deposited during the pendency of the proceedings and against security by

converting them to US dollars as on the date of their deposit. It applied the date of its own judgment only for converting the remaining portion of the

award in accordance with ForasolÃ¢â‚¬â„¢s (supra) ruling that the date of decree or judgment, after exhausting all remedies, is the proper date. It

rejected the respondentÃ¢â‚¬â„¢s argument regarding its inability to convert the amount on the grounds that a decree in foreign currency can be validly

satisfied by payment in Indian rupee and the respondent did not move the Court for necessary clarification.

12. The facts in this case are similar to Renusagar (supra) for an analogy to be drawn. Here as well, the deposit was made during the pendency of

the proceedings under the objections petition. It was permitted to be withdrawn against a bank guarantee of an Indian bank. Here the respondent was

entirely unable to withdraw the amount, while the issue there was that it was only unable to convert the amount to US dollars. However, in both cases,

the respondent failed to move the Court for necessary orders to be able to receive and utilise the amount. In this case, there is the added fact that the

respondent consented to the deposit and the condition requiring security. In light of these similarities, it is appropriate for us to adopt the CourtÃ¢â‚¬â„¢s

approach in Renusagar (supra).

13. We therefore hold that the deposit of Rs. 7.5 crores stands converted as on the date of deposit (22.10.2010), when the rate of exchange as

submitted by the appellants is 1 euro = Rs. 59.17. We also reject the submission by Mr. Mahajan that the respondent was unable to furnish a bank

guarantee of an Indian bank. This argument is only to serve its own interest to be able to benefit from a higher exchange rate but does not address the

principle that operates while enforcing a sum expressed in foreign currency.

14. It is important to appreciate the consequence and effect of deposit during the pendency of proceedings to understand the need to convert this

amount on that date. Through a deposit, the award debtor parts with the money on that date and provides the benefit of that amount to the award

holder. Provided that the award holder is permitted to withdraw this amount, it can convert, utilise, and benefit from the same at that point in time.

Considering that the deposited amount inures to the benefit of the award holder, it would be inequitable and unjust to hold that the amount does not

stand converted on the date of its deposit.

15. A similar logic underscores the statutory provisions in Order 21, Rule 1 and Order 24 of the Code of Civil Procedure, 1908 Hereinafter

Ã¢â‚¬Å“CPCÃ¢â‚¬ to determine whether interest will continue to operate on an amount deposited before a court. It would be relevant for us to briefly discuss

the law on this point:

15.1A constitution bench of this Court in Gurpreet Singh v. Union of India (2006) 8 SCC 457 extensively discussed the rules governing interest

calculation when the defendant/ judgment-debtor deposits some part of the amount. Order 24 governs deposits at the pre-decretal stage and Order 21,

Rule 1 at the post-decretal stage ibid, para 14. The essence of these provisions is that on any amount deposited into the court, interest shall cease to

run from the date when the depositor serves a notice to the plaintiff/decree-holder. Similarly, when payment is tendered to the decree-holder outside

the court, interest ceases on such amount even if the payment is refused ibid, paras 15, 25 and 26.

15.2 Order 21, Rule 1 embodies a rule of prudence that once the amount is tendered to the decree-holder by the judgment-debtor, whether in the form

of a court deposit or other forms of payment such as demand draft or cheque, the judgment-debtor cannot be made liable to then pay interest on such

amount KL Suneja v. Dr Manjeet Kaur Monga, (2023) 6 SCC 722, para 36

15.3 The rationale for this rule has been explained in Nepa Limited v. Manoj Kumar Agrawal 2022 SCC OnLine SC 1736 through a similar logic of

the decree-holder being able to benefit from the deposited amount. In this case, the award-debtor deposited 50% of the awarded amount before the

executing court to obtain a stay on the execution proceedings of the arbitral award during the pendency of appeal under Section 37 of the 1996 Act.

This amount was withdrawn by the award holder, and the issue before this Court was whether interest is payable on the deposited amount even after

the date of deposit. The Court held as follows:

Ã¢â‚¬Å“21. In the present case, the appellate court, on the appeal preferred under Section 37 of the Act did grant stay, subject to the condition that the appellant

would deposit 50% of the amount. Rs. 7,78.280/-was deposited by the appellant on 05.11.2001. The stay, therefore, only operated for the balance amount. On the

balance amount, certainly, the appellant would be liable to pay interest @ the rate of 18% per annum till the date of actual payment. However, on Rs. 7,78,280/-

paid, after adjusting/appropriating payment due on the interest accrued, on the balance principal amount paid to the respondent, interest would not be payable.

24. The respondent submits that the payment of Rs. 7,78,280/- being conditional, the respondent would have been under an obligation to refund the said amount

in case the appellant had succeeded in the appeal under Section 37 of the Act, 1996. This argument does not impress, as in the event the appellant had succeeded

in their appeal, the entire amount paid would have been refundable. The undertaking was not onerous, and was to operate only if the amount of Rs. 7,78,280/-

was not refunded by the respondent. The respondent had obviously used and utilized the money. The appellant did not have any right on the money paid to the

respondent, who could use it in a manner and way he wanted. There was no charge. Money is fungible and would have gotten mixed up with the other amounts

available with the respondent. Right to restitution would not make the payment conditional. Interest has been jurisprudentially defined as the price paid for

money borrowed, or retained, or not paid to the person to whom it is due, generally expressed as a percentage of amount in one year. It is in the nature of the

compensation allowed by law or fixed by parties, for use or forbearance or damage for its detention. In the context of the present case, interest would be the

compensation payable by the appellant to the respondent, for the retention or deprivation of use of money. Therefore, once the money was paid to the respondent,

interest as compensation for deprivation of use of money will not arise.Ã¢â‚¬‹

(emphasis supplied)

15.4 Therefore, the ability of the decree-holder to access and use the money in a manner he deems fit was considered by this Court while deciding the

issue.

15.5 Here, the Court also differentiated P.S.L. Ramanathan Chettiar (supra), which has also been relied on by the respondent in the present matter,

and another decision by this Court in Delhi Development Authority v. Bhai Sardar Singh and Sons C.A. 3867 of 2010..P .S.L. Ramanathan Chettiar

(supra) holds that a deposit is only a way to obtain a stay on execution and does not pass title to the decree-holder, and hence, is not in satisfaction of

a decree. The decree-holder in Delhi Development Authority (supra) was not permitted to withdraw the deposited amount and hence, interest was

calculated on the same. The Court in Nepa Limited (supra) however held that these cases do not apply in its facts as the respondent here was

permitted to withdraw the deposited sum and did so. Hence, the Court instead relied on the ability of the respondent to use the deposited money as it

deems fit.

16. These cases demonstrate that once there is a deposit by the award debtor and the award holder is permitted to withdraw the same, even if such

withdrawal is conditional and subject to the final decision in the matter, the court must consider that the award holder could access and benefit from

such deposit. It is then the burden of the award holder to furnish security, as required by the courtÃ¢â‚¬â„¢s orders, to utilise the amount or to make an

application for modification of the condition if it is unable to fulfil the same.

17. In furtherance of the above, we therefore reiterate that the deposit of Rs. 7.5 crores must be converted as on the date of such deposit, i.e.,

22.10.2010, when the rate of exchange as submitted by the appellants was 1 euro = Rs. 59.17.

18. The second deposit of Rs. 50 lakhs pursuant to the High Court order dated 03.06.2011 stands on a different footing from the first deposit. This

order did not permit the respondent to withdraw this amount till the completion of the proceedings. Hence, the amount cannot be converted as on the

date of deposit as the respondent could not have benefitted from the same. This amount could be withdrawn only in 2016, pursuant to the Executing

CourtÃ¢â‚¬â„¢s order dated 24.08.2016. The respondent withdrew the entire deposit of Rs. 8 crores, along with the interest that accrued on this amount,

on 10.10.2016.

19. From the above discussion on the first deposit, it is clear that the exchange rate on 22.10.2010 would apply to that extent and non-withdrawal by

the respondent of Rs. 7.5 crores was in its own discretion and inaction. However, since the order of 03.06.2011 permits withdrawal of Rs. 50 lakhs on

the completion of the proceedings, that would be the appropriate date for determining the exchange rate. Here, the revision proceedings were

complete on 01.07.2014. Hence, it would be appropriate to apply the exchange rate as on this date to convert the deposit of Rs. 50 lakhs.

20. Our conclusions from this judgment can be summarised as follows:

i. The statutory scheme of the Act makes a foreign arbitral award enforceable when the objections against it are finally decided. Therefore, as per the Act and the

principle in Forasol (supra), the relevant date for determining the conversion rate of foreign award expressed in foreign currency is the date when the award becomes

enforceable.

ii. When the award debtor deposits an amount before the court during the pendency of objections and the award holder is permitted to withdraw the same, even if

against the requirement of security, this deposited amount must be converted as on the date of the deposit.

iii. After the conversion of the deposited amount, the same must be adjusted against the remaining amount of principal and interest pending under the arbitral award.

This remaining amount must be converted on the date when the arbitral award becomes enforceable, i.e., when the objections against it are finally decided.

21. As per these conclusions, the first deposit of Rs. 7.5 crores must be converted as on the date of deposit being 22.10.2010. The second deposit of

Rs. 50 lakhs as well as the remaining amount due under the award must be converted when the objections proceedings attained finality on 01.07.2014.

The Executing Court, being the Additional District Judge cum Commercial Court, must determine the amount payable by taking into account the

exchange rate as on 01.07.2014.

22. In light of the above, we partly allow the appeal, and set aside the findings of the High Court in the impugned judgment to the extent that Forasol

(supra) does not apply under the 1996 Act and that the exchange rate on 01.07.2014 must be used for converting the entire arbitral award and

interest.

23. Pending applications, if any, stand disposed of.

24. No order as to costs.