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

Date of decision: 28th JULY, 2026

IN THE MATTER OF:

EX.APPL.(OS) 1025/2024

IN

\+ **OMP (ENF.) (COMM.) 87/2018**

HINDUSTAN CONSTRUCTION CO. LTD. .....Decree Holder

Through: Mr. Dayan Krishnan, Senior Advocate with Mr. Rishi Agrawala, Ms. Shruti Arora, Mr. Rajat Sinha, Ms Tarini Khurana, Mr. Shreedhar Kale, Advocates

versus

NATIONAL HYDRO ELECTRIC POWER CORPORATION LTD. .....Judgement Debtor

Through: Ms. Shikha Tandon, Mr. Shubham Mittal, Mr. Piyush Sharma, Mr. Anuj Kumar Sharma, Advocates

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

EX.APPL.(OS) 1025/2024 in OMP (ENF.) (COMM.) 87/2018

1. The present application under Section 151 of the CPC has been filed by the Decree Holder seeking direction of this Court directing the Judgment Debtor to make the balance payment of the awarded amount passed in favour of the Decree Holder *vide* Award dated 31.12.2015 which was upheld by this Court in OMP (COMM) 224 of 2018 *vide* Judgment dated 02.04.2024.

2. The facts of the case leading to the filing of the present application are

that the Decree Holder awarded a contract dated 10.05.2006 to the Judgment Debtor for execution of civil works package (Lot-1): Construction of Diversion Arrangement, Concrete Gravity Dam along with Spillway, Roller Compacted Concrete Dam, Intake Structure Powerhouse, Tail Race Channel, Switchyard and other associated civil works of Teesta Low Dam H.E. Project – Stage – IV on a certain agreed contract price by the Judgment Debtor.

3. Disputes arose between the parties. The Arbitral Tribunal was constituted to adjudicate the disputes. An Award was passed on 31.12.2015 and the Petitioner was awarded a sum of Rs.53,73,94,463/-. The operative portion of the Award reads as under: -

> *"219. RELIEF:*
> *In view of our findings above, we hereby summarize our award as follows:*

Sr. No.	*Particulars*	*Amount (Rs.)*
1.	*Claim 1(a)*	*8,21, 72,489/-*
2.	*Claim 1(b)*	*7,05,14,386/-*
3.	*Claim 2*	*28,68,81,832/-*
4.	*Interest*	*9, 78,25,755/-*
5.	*Total*	***53,73,94,463/-***

> *220. With regard to interest from date of award onwards, the Arbitral Tribunal, exercising its powers under Section 31(7)(b) of the Act allows interest on the aforementioned amounts @ 18% p.a."*

4. A sum of Rs.53,73,94,463/- along with *pendent lite* interest @ 14% was to be paid from 29.08.2013 till the date of the award. The learned Arbitrator also awarded future interest @ 18% from 31.12.2015 till the date

of payment.

5. The Award has now been confirmed. Amounts have also been paid under the Award. The details of the amounts which have been paid in the interregnum, the manner it has been paid will be discussed in the later part of the judgment.

6. A number of awards arising of the disputes in the construction sector were pending challenge before various judicial forums wherein one of the parties was the government or a public sector undertaking. Contractors who were successful in the proceedings were not able to get the fruits of the Awards due to these challenges in Court. These contractors were therefore in severe liquidity crunch. Representations were given by these contractors to the Government of India highlighting the difficulties faced by them. In order to assuage the difficulties faced by the contractors, the Government brought out two Office Memorandums both dated 05.09.2016 for releasing interim payments in cases where awards were under challenge. Needless to state that these interim payments were subject to the final outcome of the proceedings under Section 34 of the Arbitration & Conciliation Act.

7. Both the Office Memorandums (OMs) are being reproduced as under:-

"First Office Memorandum dated 05.09.2016"

"No.N-14070/14/2016-PPPAU
Government of India
National Institution for Transforming India (NITI Aayog)

NITI Bhavan, New Delhi
September 05, 2016

Office Memorandum

Subject: Measures to revive the Construction Section – reg.

The construction sector has been facing a number of problems, mainly arising from the liquidity constraints caused on account of their payments not being released by the Government Departments/ Public Sector Undertakings (PSUs) pursuant to the arbitral awards. To discuss the problems of the construction sector, detailed deliberations/ consultations were held with the representatives of the construction industry, banks, major government PSUs and concerned Ministries/ Departments. Based on the above deliberations/ consultations, the NITI Aayog placed a proposal before the Cabinet Committee on Economic Affairs (CCEA) for its consideration suggesting various short-term and long-term measures required for addressing the issues ailing the construction sector. The CCEA, chaired by the Prime Minister, has considered the proposals of NITI Aayog in its meeting held on 31st August 2016 and approved the same for the revival of construction sector.

2. Accordingly, following instructions are hereby issued for compliance and necessary action by all concerned i.e. the Government Departments/ Ministries/ Public Sector Undertakings awarding the public contracts/ implementing various projects involving construction activities.

2.1 In case of contracts/ concessions where the process of arbitration was initiated under the pre-amended Arbitration Act, the PSUs/ Departments may seek the consent of the contractors/ concessionaires to transfer the pending cases under the amended Arbitration Act, wherever possible. The shift to amended Arbitration Act is expected to make the arbitration process more cost effective and help in settlement of the disputes in a *timely manner;*

2.2 In case of claims where the PSU/ Department has challenged the Arbitral Award already announced, 75% of the award may be paid by the PSU/ Department to the contractor/ concessionaire against Bank Guarantee without prejudice to the final order of the Court in the matter under challenge. The payment may be made into a designated Escrow Account with the stipulation that the amount so released will be used, first, for payment of lenders' dues, second, for completion of the project and then for completion of other projects of the same PSU/Department, as mutually agreed/ decided. Any balance remaining in the escrow account subsequent to settlement of lenders' dues and completion of projects of the PSU/ Department may be allowed to be used by the contractor/concessionaire with the prior approval of the lead banker and the Department/PSU.

2.3 In case the subsequent court order requires refund of the money paid by a PSU/ Department against a Bank Guarantee, the amount shall be refunded by the contractor/ concessionaire along with appropriate interest. The rate of interest on such refund amount may be decided by the PSU/ Department keeping in view the cost of capital to the PSU/ Department or the rate of interest provided for in the Contract Agreement or the rate of interest awarded under the Arbitral Award under challenge.

Notes:

(i) For Departments, cost of capital shall be taken as Weighted Average Coupon rate of outstanding stock of Central Government securities for the period ending in the preceding quarter, or Weighted Average Coupon rate of Central Government securities issued during the preceding quarter (whichever is higher);

(ii) PSUs shall either calculate their own cost of capital or take State Bank of India's One Year Marginal Cost of fund-based Lending Rate plus 2%;

(iii) The appropriate interest rate on such refund shall be decided at the time of releasing funds to the Escrow Account;

(iv) If otherwise eligible and subject to contractual provisions, retention money and other amounts withheld may also be released against bank guarantee as per the laid down criteria.

3. All the concerned Ministries/ Departments shall also issue instructions to their respective PSUs for taking necessary action accordingly.

(A. Muthuvezhappan)
Director (PPPAU)"

<u>"Second Office Memorandum dated 05.09.2016"</u>

"No.N-14070/14/2016-PPPAU
Government of India
National Institution for Transforming India (NITI Aayog)

NITI Bhavan, New Delhi
September 05, 2016

Office Memorandum

Subject: Initiatives on the measures for revival of the Construction Sector -regarding.

The construction sector has been facing a number of problems, mainly arising from the liquidity *constraints caused on account of their payments not being released by the Government Departments/ Public Sector Undertakings (PSUs) pursuant to the arbitral awards. To discuss the problems of the construction sector, detailed deliberations/ consultations were held with the representatives of the construction industry, banks, major government PSUs and concerned Ministries/ Departments. Based on the above deliberations/ consultations, the NITI Aayog placed a proposal before the Cabinet Committee on Economic Affairs (CCEA) for its consideration suggesting various immediate and long-term measures required for addressing the issues ailing the construction sector. The CCEA, chaired by the Prime Minister, has considered the proposals of NITI Aayog in its meeting on 31st August 2016 and approved the same for the revival of construction sector.*

2. The NITI Aayog has separately issued instructions on the subject with regard to the immediate measures to be taken by all concerned. In addition to the said instructions, the CCEA has also directed that the following gmeasures may be expeditiously examined by all the concerned Departments/ Ministries /PSUs:

2.1 Item-rate contracts, may be substituted by EPC (turnkey) contracts, wherever appropriate. Such contracts have been in vogue for over two decades in the developed world and Federation Internationale Des Ingenieurs-Conseils (FIDIC - an International Federation of Consulting Engineers, known by its French acronym) has also published such contractual frameworks;

2.2 Model bidding documents and Model EPC contracts, suitably revisited or modified wherever required to suit the requirements of particular sectors, may be adopted by PSUs/ Government Departments for construction works;

2.3 Ministry of Finance has issued model bidding documents for RFQ, RFP etc. which may be adopted (with appropriate changes wherever required) in all sectors. Model EPC contracts have been developed for Highways and Railways and published by the erstwhile Planning Commission also. NHAI has already adopted this document and all construction contracts are currently being structured on this model. NITI Aayog shall assist the concerned departments, wherever required, in this regard.

2.4 The method of conciliation has proved more effective in settling disputes as per experience of some of the PSUs. All PSUs/ Departments issuing public contracts may consider setting up Conciliation Committees/Councils comprising of independent subject experts in order to ensure speedy disposal of pending or new cases. Recourse to such conciliation may be open before, during or after the Arbitration proceedings. A provision to this effect would also need to be made in the Contract Agreements in future as a mechanism for resolution of disputes.

3. All the concerned Ministries/ Departments shall also communicate the above to their respective PSUs for taking necessary action on the aforesaid measures.

(A. Muthuvezhappan)
Director (PPPAU)"

(emphasis supplied)

8. In terms of the Office Memorandums, interim payments were received by the Petitioner. On 18.08.2017, a sum of Rs.47,55,94,100/- was released to the Decree Holder against the amount that was due and payable. Another sum of Rs.37,10,29,058/- was received by the Decree Holder on

29.06.2024. Both the amounts represented 75% of the amounts due and payable on the date when the partial amounts were received.

9. The present application has been filed by the Decree Holder seeking payment of balance amount.

10. The short question which arises for consideration in this case is how to apportion an amount paid in execution of an award between principal and interest and whether in the facts and circumstances of this case, the calculation given by the Decree Holder should be accepted or not even after paying the amounts of Rs.47,55,94,100/- on 18.08.2017 and a sum of Rs.37,10,29,058/- on 29.06.2024, was there anything else due and payable. Disputes have arisen between the parties regarding the adjustments of the amounts towards the principal and interest.

11. The Apex Court in Leela Hotels Ltd. v. Housing & Urban Development Corpn. Ltd., **(2012) 1 SCC 302** has laid down as to how the amounts in terms of the Award is to be appropriated. The Apex Court has held that first the interest component has to be appropriated and then the balance amount has to be appropriated to the principal amount unless there is any agreement to the contrary. The relevant portion of the said Judgment reads as under:-

> *"**36.** Consequently, the only issue which remains for decision is whether the amounts deposited and/or paid by HUDCO to M/s Leela Hotels in terms of the award of the learned arbitrator, was first to be appropriated towards payment of the interest due on the principal sum or whether the same was to be appropriated against the principal sum itself.*
>
> *xxx*

__39.__ As indicated hereinbefore, the submissions made by the learned ASG on behalf of HUDCO was based on the proposition as contained in Sections 59 and 60 of the Contract Act, 1872, on account of the stipulation recorded on behalf of HUDCO that the amount of Rs 89.78 crores was being tendered towards the principal sum, to which there was no objection from the appellant and, accordingly, it must be held that since the amount had been received without demur, such payment fell within the provisions of Section 59 of the aforesaid Act. In fact, the Division Bench of the High Court proceeded to consider such payment and acceptance to be a voluntary acceptance by the appellant of the aforesaid amount as appropriation towards the principal as it made good business sense to accept the same and to utilise the same in spite of waiting for something indefinite in the future. Such a submission, though legal and correct, is not supported by the materials on record.

__40.__ Admittedly, there was no agreement between the parties as to how the amounts to be paid in terms of the award were to be appropriated by the appellant. Accordingly, in terms of the well-settled principle that in such cases it was for the creditor to appropriate such payment firstly against the interest payable, would, in our view, be squarely attracted to the facts of this case. As was laid down by the Privy Council in Venkatadri Appa Row v. Parthasarathy Appa Row [(1920-21) 48 IA 150 : AIR 1922 PC 233] (IA p. 153) and later reiterated in Rai Bahadur Seth Nemichand case [AIR 1922 PC 26] , when monies are received without a definite appropriation on the one side or the other,

> *"the rule which is well established in ordinary cases is that in those circumstances the money is first*

applied in payment of interest and then when that is satisfied in payment of the capital".

> ***41.*** *In the latter case, the said principle was restated and it was indicated that a creditor to whom principal and interest are owed is entitled to appropriate any indefinite payment which he gets from a debtor to the payment of interest. It was also indicated that a debtor might in making a payment stipulate that it was to be applied only towards the principal. If he did so, the creditor was at liberty to refuse payment on such terms, but then he would have to give back the money or the cheque by which the money is proffered and if the same is accepted, the creditor would then be bound by the appropriation as proposed by the debtor."*

12. According to the Decree Holder, as on 12.03.2026, an amount of Rs.14,14,83,063/- was still due and payable and as on 02.07.2026, an amount of Rs.16,39,87,708/- is still due and payable by the Judgment Debtor. This is being disputed by the Judgment Debtor stating that the amount stands fully paid and no further amounts are due and payable.

13. Learned Counsel for the Decree Holder has claimed the amounts which are due and payable as on 02.07.2026, in the following manner:-

A	B	C	D	E	F
S.No.	Particular	Principal (INR)	Interest (INR)	Total (INR)	Comments
1(a)	Revision of rate of item 9.1.3 of Group B of BOQ viz. M15A40 concrete in dam foundation, backfill concrete in dental excavation & leveling concrete in foundation and consequent payments.	8,21,72,489		8,21,72,489	
(1b)	Payments by rate revision in respect of item 9.2.3 of Group B of BOQ viz. 'M25/A40 in intake structure and consequent payments.	7,05,14,386		7,05,14,386	
2	Revision of rate of item 22.2 of Group C of BOQ viz. 'Roller Compacted Concrete (RCC)' and consequent payments.	28,68,81,832		28,68,81,832	
I	**Total of Claim 1(a), 1(b), and 2**	**43,95,68,707**		**43,95,68,707**	
II	**Interest (@14%)** from dt 23.12.2011 to date of award dated 31.12.2015.		**9,78,25,755**		
III	**Total Awarded Amount**	**43,95,68,707**	**9,78,25,755**	**53,73,94,462**	**Sl. No. (I+II)**

Signature Not Verified
Signed By:HARIOM SINGH KIRMOLIYA
Signing Date:03.08.2026 17:21:07

A	B	C	D	E	F
S.No.	**Particular**	**Principal (INR)**	**Interest (INR)**	**Total (INR)**	**Comments**
III(a)	**Future Interest @ 18% SI on Awarded Amount 53,73,94,462 from 31.12.2015 to 31.12.2016** *(366 days)*				
III(b)	**Future Interest**		**9,69,96,020**		
	Total Amount due on 31.12.2016	**53,73,94,462**	**9,69,96,020**	**63,43,90,482**	**Sl. No. [III+III(b)]**
	ADJUSTING PART PAYMENT RECEIVED ON 18.08.2017 OF INR 47,55,94,100				
IV	**Future Interest @ 18% SI on Awarded Amount 53,73,94,462 from 31.12.2016 to 18.08.2017** *(230 days)*				
IV(a)	**Future Interest**		**6,09,53,783**		
V	**Total Amount due on 18.08.2017**	**53,73,94,462**	**15,79,49,802**	**69,53,44,264**	**Sl. No. [III+ III(b) + IV(a)]**
VI	Part payment released by NHPC as per CCEA			**47,55,94,100**	*As per HCC*

A	B	C	D	E	F
S.No.	**Particular**	**Principal (INR)**	**Interest (INR)**	**Total (INR)**	**Comments**
	guidelines (NITI Aayog) on 18.08.2017				*released date 18.08.2017*
	Apportionment of Rs. 47,55,94,100 first against interest and rest against principal	31,76,44,297	**15,79,49,802**		
VII	**Balance amount due on 18.08.2017** Principal : 53,73,94,462 - 31,76,44,297 Interest : 15,79,49,802 - 15,79,49,802	**21,97,50,165**	**0**	**21,97,50,165**	**SI. No. (V-VI)**
	ADJUSTING PART PAYMENT RECEIVED ON 29.06.2024 OF INR 37,10,29,058				
	Future Interest @ 18% SI on balance amount INR 21,97,50,165 from 18.08.2017 to 29.06.2024 *(2507 days)*				
VIII	**Future Interest**		**27,16,83,450**		
IX	**Total Awarded Amount due on 29.06.2024**	**21,97,50,165**	**27,16,83,450**	**49,14,33,615**	**(VII + VIII)**
X	**Part payment received on 29.06.2024 of INR**			**37,10,29,058**	

A	B	C	D	E	F
S.No.	Particular	Principal (INR)	Interest (INR)	Total (INR)	Comments
	37,10,29,058				
	Apportionment towards principal and interest	9,93,45,608	27,16,83,450		
XI	Balance amount due on 29.06.2024	12,04,04,557	0	12,04,04,557	Sl. No. (IX - X)
	Future Interest @ 18% SI on balance amount INR 12,04,04,557 from 29.06.2024 to 02.07.2026 *(734 days)*				
XII	Future Interest		4,35,83,151		
	Total balance Amount due as on 02.07.2026	12,04,04,557	4,35,83,151	16,39,87,708	(XI + XII)

14. It is the case of the Decree Holder that amounts have been calculated strictly in terms of the Judgment passed by the Apex Court in Leela Hotels Ltd. (supra) as per which the interest component has to be adjusted first and then the principal amount.

15. *Per contra*, learned Counsel for the Judgment Debtor places reliance only upon the two OMs dated 05.09.2016 issued by NITI Aayog. According to the Judgment Debtor, the Decree Holder was required to furnish a Bank Guarantee for an amount equivalent to 75% of the payout amount together with interest thereon as a condition precedent for release of the amount.

16. It is stated by the learned Counsel for the Judgment Debtor that the Decree Holder vide Letter dated 09.12.2016 submitted documents for the Judgment Debtor's verification and confirmation of the 75% payout and

annexed its own calculation which is Annexure-III to the Letter dated 09.12.2016. The Decree Holder has included future interest at the rate of 18% and Annexure-III expressly records that as per the Decree Holder, the apportionment of 75% of the post-award amount as on 31.12.2016 was Rs.40,30,45,847/- and apportionment of 75% post-award interest as on 31.12.2016 was 7,27,47,015/- and thus, as per the Decree Holder, the total of 75% payout amount is Rs.47.56 crores.

17. It is stated by the learned Counsel for the Judgment Debtor that the Judgment Debtor vide Letter dated 28.12.2016 confirmed the amounts as admitted by the Decree Holder vide its Letter dated 09.12.2016. It is stated that the Decree Holder further vide Letter dated 08.02.2017 had unconditionally accepted the release of payments. It is stated that there was a delay on the part of the Decree Holder to give various documents. It is, therefore, stated that after receiving the amounts, it is not open for the Decree Holder to go back from their stand and claim the amount in terms of the Judgment passed by the Apex Court in Leela Hotels Ltd. (supra) which is barred by time.

18. It is further the case of the Judgment Debtor that Decree Holder once having apportioned the amount of Rs.40.30 crores towards principal out of the receipt of Rs.47.56 crores cannot now in 2024 reapportion it to Rs.31.76 crores, that too after 07 years of receipt of the 75% of the payout amount. The Decree Holder is estopped from reopening the calculation as having once accepted the payments as per its own calculation without demur cannot now seek to prejudice the Judgment Debtor who acted upon the Decree Holder's calculation.

19. Learned Counsel for the Judgment Debtor has drawn the attention of

this Court to the table as submitted by the Decree Holder to them claiming the amounts stating that the amounts as claimed by them have been paid and therefore no amounts are due and payable by the Judgment Debtor.

20. Learned Counsel for the Judgment Debtor states that the payments have been made strictly in accordance with the two OMs and therefore nothing is due and payable.

21. Reliance has been placed by the learned Counsel for the Judgment Debtor upon a judgment passed by the Apex Court in Kerala SEB v. Kurien E. Kalathil, **(2018) 4 SCC 793** wherein the Apex Court did not permit the Decree Holder from changing his stand. Attention of this Court has been drawn on paragraph Nos.12, 13, 14, 21 and 22 which read as under:

> ***"12.*** *Even as per the respondent's own Letter No. D.W/94/090 dated 25-11-1994, the respondent contractor has deducted the advances paid only towards the principal and claimed interest. The said letter reads as under:*
>
> > *"I am herewith submitting a comprehensive statement (claim bill), giving the details of labour escalation payable against each CC Bill, deducting the advances paid to me which are adjustable against the dues. The net labour escalation amount payable as on 31-10-1994 works out to Rs 6,32,84,050, after thus deducting the advances received. The interest amount payable has also been worked out and included in the enclosed bill, separately, which comes to Rs 7,66,35,927. The total amount due as on 31-10-1994 is Rs 13,99,19,1977. This amount may be paid to me without further delay."*
>
> *Thus by his own calculation and as per his own letter dated 25-11-1994, the respondent contractor has*

adjusted all payments received from the Board firstly towards the principal.

13. *But when the respondent filed IA No. 6 of 2006, the entire method of calculation was changed by showing adjustment of payments firstly towards interest and then towards principal, only to claim that in spite of payment of Rs 12,82,96,320 by the Board, amounts are still due and payable to him. In the calculation sheet filed along with IA No. 6 of 2006 while making adjustments of payment of rupees four crores (payment made to the respondent contractor during the pendency of the earlier round of writ petition), the same was adjusted firstly against the interest and then against the principal amount. The calculation sheet filed by the respondent contractor in IA No. 6 of 2006 is as under:*

Principal (in Rupees)					*Interest @ 9% (in Rupees)*			*Remarks*
Balance	*DR*	*CR*	*Date*	*Particulars*	*DR*	*CR*	*Balance*	
	6,32,84,050			Principal amount of labour escalation up to CC. 78 as per Ext. P-20				Amount received from Kerala State Electricity Board is firstly adjusted against interest and then principal amount
				Interest up to CC. 78 for the period up to 20-6-1995	4,02,18,107			
			20-6-1995	Amount received Rs 1 crore		1,00,00,000	3,02,18,107	
				Interest from 21-6-1995 to 13-2-1996	37,13,820		3,39,31,927	
			13-2-1996	Amount received Rs 1 crore		1,00,00,000	2,39,31,927	
				Interest from 14-2-1996 to 23-2-1996	1,56,043		2,40,87,970	
			23-2-1996	Amount received Rs 2 crores		2,00,00,000	40,87,970	
				Interest 24-2-1996 to 20-3-2001	2,88,67,930		3,29,55,900	
5,62,39,950		70,44,100	20-3-2001	Amount received (4 crores)		3,29,55,900	0	Out of Rs 4 crores received the interest as on this date Rs 3,29,55,900 is wiped off and balance Rs 70,44,100

								adjusted against principal amount
				Interest 21-3-2001 to 5-9-2001	23,43,588			
4,85,83,538		76,56,412	5-9-2001	Amount received (1 crore)		23,43,588	0	Out of Rs 1 crore received, the interest as on this date Rs 23,43,588 is wiped off and balance Rs 76,56,412 adjusted against principal amount
				Interest from 6-9-2001 to 12-10-2001	4,43,242			

2,90,26,780		1,95,56,758	12-10-2001	Amount received (2 crores)		4,43,242	0	Out of Rs 2 crores received the interest as on this date Rs 4,43,242 is wiped off and balance Rs 1,95,56,758 adjusted against principal amount
				Interest 13-2-2001 to 1-6-2002	16,60,491			
2,39,55,276		50,71,504	1-6-2002	Amount received (67,31,995)		16,60,491	0	Out of Rs 67,31,995 received the interest as on this date Rs 16,60,491 is wiped off and balance Rs 50,71,504 adjusted against principal amount
				Interest 2-6-2002 to 17-8-2002	4,54,822			
2,27,34,120		12,21,156	17-8-2002	Amount received (16,75,978)		4,54,822	0	Out of Rs 16,75,978 received the interest as on this date Rs 4,54,822 is wiped off and balance Rs 12,21,156 adjusted against principal amount
				Interest 18-8-2002 to 10-2-2003	9,92,204			
1,38,37,977		88,96,143	10-2-2003	Amount received (98,88,347)		9,92,204	0	Out of Rs 98,88,347 received, the interest as on this date Rs 9,92,204 is wiped off and balance Rs 88,96,143 adjusted against principal amount
				Interest from	28,66,168		28,66,168	

				11-2-2003 to 31-5-2005				
					8,17,16,415			

14. Pursuant to the directions [Kurien E. Kalathil v. State of Kerala, OP No. 283 of 1995, decided on 2-4-1998 (Ker)] of the High Court and after disposal of Kerala SEB v. Kurien E. Kalathil [Kerala SEB v. Kurien E. Kalathil, (2000) 6 SCC 293] , the appellant Board made a total payment of Rs 12,82,96,320. Since the respondent contractor changed the method of adjustment i.e. by adjusting the payment firstly towards interest and then towards principal, even after payment of Rs 12,82,96,320, according to him Rs 3,38,57,618 was still due to him. The said calculation shown in IA No. 6 of 2006, reads as under:

Ext. P-20 (Labour escalation)		
Labour escalation claimed in CC Bill 14 to 78	(*Ref. Ext. P-20*)	6,32,84,050
Labour escalation claimed in CC Bill 79 to 85	(*Schedule 3*)	90,96,582
Total		*7,23,80,632*
Total interest up to 31-5-2005 @ 9% p.a.	(*Schedules 2 & 3*)	
(8,17,16,415 + 80,56,891)		8,97,73,306
Total amount due as on 31-5-2005		*16,21,53,938*
Less: Amounts received from K.S.E. Board on various dates (adjusted firstly against interest and then principal amount)	(*Schedule 6*)	12,82,96,320
Balance amount due as on 31-5-2005	(*Schedule 5*)	*3,38,57,618*
Principal amount		2,29,34,559
Interest		1,09,23,059
		3,38,57,618

This manner of appropriation, firstly towards the interest is in clear violation of the directions [Kerala SEB v. Kurien E. Kalathil, (2000) 6 SCC 293] given by this Court to make payment under Ext. P-20 and the method of adjustment which the respondent contractor himself adopted in Ext. P-20. In the original Ext. P-20, when the respondent contractor himself has expressly adjusted all payments made by the appellant towards *principal and not towards interest, the respondent contractor cannot turn round and change the method of calculation by showing the adjustment of payments made first against the interest and then towards the principal. This important aspect of change in the method of adjustment/appropriation was lost sight of by the High Court and the direction of the High Court to make further payment of Rs 4,12,58,224 under Ext. P-20 is not sustainable.*

xxx

21. *An "appropriation of money" is the indication of an intention that money should be applied in a particular way. In the present case, the statement of the respondent contractor himself and other circumstances clearly indicate that payment ought to be adjusted only towards the principal amount. As discussed earlier, in Ext. P-20 the respondent contractor himself has shown the labour escalation due as principal amount and interest thereon separately and has given the credit of the advances made by the Board firstly towards the principal and claimed the balanced amount of the principal. At this juncture, we may usefully recapitulate the respondent's own letter to the appellant Board dated 25-11-1994 extracted in para 12 above where the respondent contractor himself has stated that he has deducted the advances from the principal amount claimed under "labour escalation charges" and "interest" are shown separately.*

22. *By his own statement, the respondent contractor has firstly appropriated the advances towards the labour escalation due i.e. the principal amount. The respondent contractor is not justified in changing the method of calculation and claim appropriation of the payments firstly towards the interest and then towards the principal amount. The claim of the respondent contractor for a further sum of Rs 2,29,34,559 with interest under Ext. P-*

> *20 cannot be sustained and the direction of the High Court to pay the same is liable to be set aside."*

22. It is stated by the learned Counsel for the Judgment Debtor that even in Leela Hotels Ltd. (supra), the Apex Court has held that if the Parties have agreed to the contrary then principle of apportion of the interest first is not applicable. It is the case of the Judgment Debtor that by this method, the Decree Holder is actually compounding the interest which is not permissible.

23. Heard learned Counsel for the parties and perused the material on record along with the two OMs and the tabulated charts.

24. In the opinion of this Court, the communication given by the Decree Holder does not amount to an agreement to the contrary because the communications were given *in lieu of* the two OMs regarding the amounts which were payable during the pendency of the challenge to the Award. The communications do not have any effect once the Award has been upheld. The amounts which are due and payable under the Award is payable in accordance with the law laid down by the Apex Court in Leela Hotels Ltd. (supra).

25. Learned Counsel for the Judgment Debtor has placed emphasis on the Judgment passed by the Apex Court in Kerala SEB v. Kurien E. Kalathil, **(2018) 4 SCC 793.** In the opinion of this Court, the said Judgment is distinguishable on facts. In fact, Kerala SEB (supra) follows the Judgment passed by the Apex Court in Leela Hotels Ltd. (supra) and does not give any other view and in the opinion of this Court, the view taken by the Apex Court in Kerala SEB (supra) is completely distinguishable.

26. A perusal of the aforementioned OMs dated 05.09.2016 which are the

basis of the entire argument, shows that they have been brought out by the NITI Aayog only to assuage the problems faced by the contractors in construction sector. It was felt that contractors, who put money in the contracts had obtained Awards in their favour, were not getting the amounts in view of the prolonged litigation and were facing several litigations. In order to solve this problem, it was decided to release some money to the contractor's subject to submission of Bank Guarantee so that in case the Award is set aside then the Government would be in a position to take the money back with interest from the contractors. These OMs are, therefore, an aid to the execution. In the present case, the Award has attained finality. The amounts, therefore, have to be strictly paid in accordance with the law laid down by the Apex Court in Leela Hotels Ltd. (supra). The correspondence relied upon by the learned Counsel for the Judgment Debtor regarding admission as how the amount has to be paid under the OMs issued by the NITI Aayog is of no significance. Once the Award has attained finality then the amount under the Award has to be paid in accordance with the law laid down by the Apex Court in Leela Hotels Ltd. (supra) in execution proceedings after adjusting the amounts already received under the OMs. It cannot be said that any correspondence made regarding OMs issued by NITI Aayog would result in any agreement to the contrary as alleged by the Judgment Debtor. The Decree Holder vide Letter dated 08.02.2017 has accepted the amounts paid under the OMs issued by the NITI Aayog which is being reproduced as under:

HCC

Ref: HCC/HYD/CONT/PA/538

Date: 08.02.2017

To
Shri Om Prakash
Executive Director (Contracts)
NHPC Limited
NHPC Office Complex
Sector 33, Faridabad 121003
Haryana

Dear Sir,

Sub: Construction of Diversion Arrangement, Concrete Gravity Dam along with Spillway, Roller Compacted Concrete (RCC) Dam, Intake structure, Surface Power House, Tail Race Channel, Switch Yard and other associated Civil works (Civil Works Package (Lot-I) - (Contract Agreement No. NHPC/CCW/TLDP-IV/Lot-I) of Teesta Low Dam H.E. Project-Stage IV - Measures to revive Construction Sector- Release of 75% payment against arbitration awards as per policy decision of Government of India as per NITI Aayog Office memorandum dated 05.09.2016 - Arbitration Award dated 31.12.2015

Ref:

1. HCC Letter HCC/HYD/CONT/PA/518 dated 09.12.2016.
2. NHPC Letter NH/Arb Cell/CORR/04/834 dated 28.12.2016.

1. We acknowledge with thanks NHPC letter cited at reference No.2 intimating the 75% of the payment amount for a sum of Rs. 47.56 Cr as per the arbitration award dated 31.12.2015. We here by confirm the acceptance of the same. However, it is submitted that, the acceptance of the 75% of the payment against the award dated 31.12.2015 is without prejudice to our entitlement and right to receive the balance payment in terms of the award and the law.

2. Further, we unconditionally accept the Standard operating Procedure (SOP) for release of the payment

3. The Bank Guarantee for Rs. 56.12 Cr is being submitted separately.

Thanking you,
For Hindustan Construction Company Ltd.

Perwez Alam
Joint Chief Operating Officer – E & C

Copy to:

1. The Chairman & Managing Director, NHPC Ltd. Faridabad
2. The Executive Director (Region Siliguri)
3. The General Manager, NHPC Ltd. TLDP-IV HEP

CE(civil)
SM (F)
M(Tech)

NHPC Limited
Teesta Low Dam-IV Power Station
Kalijhora, Distt- Darjeeling- 734008
(West Bengal)

27. It is to be mentioned that the Decree Holder had accepted the amounts without prejudice to the entitlement to receive the balance payment in terms of the Award. Once the Award has attained finality, the OMs pale into insignificance and the amount is to be paid in accordance with law which is in accordance with the judgment passed by the Apex Court in Leela Hotels Ltd. (supra). The correspondence entered into between the parties for the

implementation of the OMs reproduced above is not part of the execution proceedings but only an interim measure taken by the Government to assuage the problems faced by the contractors which cannot be said to be a contract to the contrary. Further, this Court is of the opinion that the table given by the Decree Holder is in accordance with the law laid down by the Apex Court in Leela Hotels (supra).

28. In view of the above, the application is allowed.

29. The Judgment Debtor is directed to pay a sum of Rs.16,39,87,708/- as on 02.07.2026 which according to the Judgment Debtor is due and payable in accordance with the judgment passed by the Apex Court in Leela Hotels Ltd. (supra) within six weeks from the date of uploading of the Judgment.

OMP (ENF.) (COMM.) 87/2018 & EX.APPL.(OS) 463/2019, EX.APPL.(OS) 1848/2024

30. In view of the Orders passed in EX.APPL.(OS) 1025/2024, the petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JULY 28, 2026
S. Zakir/KG