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Unjust Enrichment Post-Resolution: Justice Sundaresan Holds Award-Creditor Cannot Keep Money that No Longer Exists in Law

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On 17 December 2025, a learned Single Judge of the Bombay High Court, Justice Somasekhar Sundaresan, delivered a crisp but far-reaching ruling in Reliance Naval & Engineering Ltd. v. Afcons Infrastructure Ltd., Interim Application (L) No. 9646 of 2024 in Arbitration Petition No. 1755 of 2015. The judgment unpacks the intersection of two statutory streams the Arbitration & Conciliation Act, 1996 and the Insolvency & Bankruptcy Code, 2016 when an award-creditor has already pocketed a court-deposit, only to discover later that the approved resolution plan of the corporate debtor has surgically reduced the multi-crore claim to a symbolic rupee. The Court held that money which was merely in custodia legis must retrace its steps; retention thereafter would be nothing short of unjust enrichment.

Reliance Naval & Engineering Ltd. (formerly Pipavav Defence and Offshore Engineering Co. Ltd.), now styled “Reliance Defence & Engineering”, was saddled with an arbitral award dated 31 August 2015 that required it to pay Afcons Infrastructure Ltd. approximately ?49.11 crores. Reliance promptly challenged the award under Section 34 of the Arbitration Act. By a consensual order of 20 February 2017, a Single Judge directed Reliance to deposit ?12,76,91,279 in Court; Afcons was permitted to withdraw the sum after furnishing an equivalent bank guarantee. The withdrawal was thus conditional contingent upon the ultimate outcome of the Section 34 petition.

Events, however, outpaced the litigation. After the deposit but before the Section 34 hearing could conclude, Reliance was admitted into corporate insolvency resolution. The resolution professional formulated a plan that was approved by the National Company Law Tribunal on 23 December 2022. The plan wrote down Afcons’ claim of ?49.11 crores to Re. 1, extinguished all rights of action and conferred a “clean slate” on the corporate debtor. Armed with the plan, Reliance moved the present Interim Application seeking return of the money withdrawn by Afcons and, additionally, 18 % simple interest from the date of deposit.

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Rival Submissions

Reliance argued that once the resolution plan attained finality, the very source of Afcons’ entitlement disappeared; the money, having been an asset of the corporate debtor, had to revert to the resolution applicant in terms of the statutory waterfall. Reliance relied upon the Supreme Court’s ratio in Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss ARC (2021) 9 SCC 657 and the Division Bench decision of the same High Court in Siti Networks Ltd. v. Rajiv Suri 2024 SCC OnLine Bom 3550 to contend that cash lodged in court, though in custodia legis, remains part of the insolvency estate and must be conserved for the successful resolution applicant.

Afcons resisted the application on two planes. Firstly, it contended that the deposit having been released against a bank guarantee prior to the commencement of CIRP, the money ceased to be an asset of Reliance; the guarantee was furnished to protect Afcons’ risk and its invocation would cause prejudice without fresh contractual or statutory cause. Secondly, it submitted that the claim for interest at 18 % was untenable because the original deposit order contained no stipulation for interest and the request amounted to a new cause of action alien to the Section 34 petition.

Issues Framed

The narrow questions that emerged were: (i) whether an award-creditor who had withdrawn a court-deposit pursuant to an interim arrangement was bound to return it when the underlying award stood extinguished by an approved resolution plan; and (ii) whether interest could be awarded in these summary proceedings.

Analysis and Reasoning

Justice Sundaresan, after a meticulous reading of Sections 3(6), 3(10), 3(11) and 31 of the IBC, held that the arbitral award merely crystallised a “claim” as defined; the claim constituted a “debt” and Afcons a “creditor”. The moment the resolution plan was approved, the claim stood statutorily expunged except for Re. 1. Continued retention of the withdrawn sum would constitute

unjust enrichment. The Court emphasised that the custodia legis principle does not metamorphose the beneficial ownership of the fund; it merely regulates its physical location. Therefore, when the substratum of the award vanishes, the condition attached to the withdrawal fails and the money must be restored.

On interest, the Court observed that the prayer was framed from the date of deposit, not from withdrawal, and no provision or undertaking envisaged such compensation. Award of interest would entail adjudication of a fresh cause of action, something beyond the scope of an interim application in a Section 34 petition that had itself become infructuous.

Final Directions

Consequently, the Court allowed prayers (A) and (C) while rejecting prayer (B). Afcons was directed to re-deposit ?12,76,91,279 with the Registry within four weeks of the upload of the judgment; in default, the Registry was mandated to invoke the bank guarantee and remit the proceeds to Reliance within two weeks thereafter. The application was disposed of finally with no order as to costs.

Concluding Reflection

The decision re-affirms a fundamental postulate of the IBC ecosystem: the moment a resolution plan wipes the slate clean, pre-existing adjudicatory labels including arbitral awards lose their vitality. Funds that were merely parked in court cannot be insulated from the statutory waterfall; they must follow the extinguished claim back to the corporate debtor's revived coffers. For award-holders, the lesson is stark: interim withdrawals remain conditional, and equitable security can swiftly turn into a debit memo once the resolution applicant rings the closing bell.

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