

Replies to clarifications sought:

1. Auditors appointed by whom?

This does not matter. You can assume both parties agreed to some auditor(s).

2. What are the terms and conditions on the basis of which amount is held in the retention account?

3. What is the due verification after which the amounts held in an escrow account were to be released?

4. What is the modus operandi as to how these contingencies were to be evaluated?

5. When does the interest accrued on the retention sum become payable to the seller?

The terms and conditions are extracted out in the order. Nothing more needs to be extrapolated or read into it such as due verification or modus operandi.

Also, this is an interest similar to FD interest; interest accrued on it belongs to seller as per agreement.

Short point is you don't need to get too much into the modalities of how the interest is calculated or how the verification is done or modus operandi as this is a question of law not facts; all you care about is the following:

- a) there was some retention amount (rs.3.25cr) which was withheld on signing of slump sale in FY 2002-03 (AY 2003-04) and
- b) it was said to be retained for period of 18 months (last para, page 3) and
- c) the fact in this case is that entire retention amount of rs.3.25cr was disbursed to the buyer only in the next year in FY 2003-04 (AY 2004-05); see penultimate para in page 2 *"It is a matter of record that Petitioner had offered the entire escrow amount of Rs. 3.25 Crore, in next year AY 2004-05 for capital gains computation when amounts were paid to Petitioner subsequently"*. So, one can obviously conclude that there were no claims to the retention money by Seller on account of some contingency nor was there a piecemeal disbursement to the buyer during this period, so in other words one can obviously conclude from facts that buyer got not nothing of retention money in FY 2002-03 and got it entirely in FY 2003-04.
- d) the buyer got in full and offered entire retention amount 3.25cr as income in FY 2003-04 (AY 2004-05) which is the next FY to signing of slump sale agreement

the question of law thus becomes purely whether this retention amount should be offered in FY 2002-03 itself or in FY 2003-04 when actually received. nothing more , nothing less.

6. What are the grounds for ITAT?

You can assume same as the question of law, there is a similar ground to the itat.

7. There is a mention of "interest accrued on the retention sum" under clause 6.2 of the 'business sale agreement'. Is there any specific rate of interest?

You can assume a FD interest rate.

8. What is the exact date of appeal to the Supreme Court?

Assume any day within 4 months after 9.8.2021

9. Whether there is any clause in the Slump Sale agreement regarding termination of the contract as a result of non-compliance of the provisions, specifically Clause 15.1?

Not clear the relevance of non-compliance of clause 15.1? Firstly, it's compliance is monitored by the auditors. Secondly, if it does happen there is a breach of such contract and a civil case; it is not of relevance here.

10. Whether the possession of the refractory plant was transferred to the purchaser in the year 2002-03?

Yes, it can be assumed possession would be handed over in FY 2002-03 when slump sale agreement was signed. It would be unworkable otherwise for the buyer.