



2025:DHC:2621



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

% **Reserved on: 09th December 2024**
Pronounced on: 17th April 2025

+ CM(M) 4025/2024

UNION OF INDIA & ANR.Petitioners

Through: Mr. Jivesh Kumar Tiwari, SPC
with Ms. Samiksha, Adv.

versus

SUDHIR TYAGIRespondent

Through: Mr. Sanjoy Bhaumik, Adv.

CORAM:-
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

RAVINDER DUDEJA, J.

1. This petition under Article 227 of the Constitution of India impugns the order dated 25.10.2024, passed by the learned District Judge in Ex. 55/2017, titled “*Sudhir Tyagi Vs. Union of India.*”

2. At the core, the issue is whether the expression “unless the award otherwise directs” in Section 31(7)(b) of the Arbitration & Conciliation Act, 1996 [“**the Act**”], relates to rate of interest and not entitlement of interest.



3. Shorn of all the unnecessary details, the relevant facts are that petitioner No. 1 i.e., Northern Railway, awarded contractual work to the respondent, but due to certain disputes, respondent invoked the arbitration clause of the agreement. The High Court, vide order dated 16.11.2012, appointed a sole arbitrator.

4. Following three issues were raised and considered by the learned Arbitrator:-

- i) Is the time essence of the contract between the parties or not?
- ii) Whether the respondent imposed any penalty/liquidated damages upon the complainant till the completion of work?
- iii) Whether the complainant is entitled to claim amounts as per the claim petition?

5. Issues No. 1 & 2 were decided in favour of the respondent and against the petitioners. The findings of learned Sole Arbitrator on Issue No. 3 are extracted herein below:-

“Respondent shall pay a sum of Rs. 61,48,277/- (Rs. Sixty One Lakhs, forty eight thousand, two hundred and Seventy Seven with interest on sum of Rs. 10,84,385/- @ 10% per annum w.e.f. 18.01.2005 till payment as per following break-up:-

- | | |
|---------------------|--|
| (a) Rs. 10,84,285/- | allowed with interest @ 10%
Per annum w.e.f. 18.01.2005 till the
date of realization/payment as against
claim No. 1 & 8 (Consolidated); |
| (b) Rs. 46,83,892/- | Allowed against claim No. 2,3,4 & 5 |
| (c) Rs. 50,000/- | Allowed against claim No. 7 |
| (d) Rs. 3,50,000/- | Allowed against claim No. 9 |



Total Rs.61,48,277.00

The award is made as above.”

6. Petitioner filed an Objection Petition under Section 34 of the Act before the learned District Judge against the aforesaid Arbitral Award. The petition was dismissed by the learned District Judge. Petitioners then preferred an appeal (FAO 158/2024) before this Court against the order dated 07.07.2023, passed by the learned District Judge.

7. In the meanwhile, respondent filed an Execution Petition bearing Ex. No. 55/2017 for the execution of the arbitral award dated 13.10.2015. Petitioners made complete payment of Rs. 82,86,547.62 to the respondent as per award dated 13.10.2015. However, respondent filed an application under Section 151 CPC on 20.09.2024, praying *inter alia*,:-

“6. Hence it is prayed that Decree Holder is entitled to Rs. 77,1800/- (Seventy Seven lacs & eighteen thousand) on Rs. 46,83,892/- from 13.10.2015 to 25.08.2024 as on 25.08.2024, Since Ld. Arbitrator did not direct post award interest on Rs. 46,83,892/- on claim No. 2,3,4 & 5.”

8. The learned executing court passed the impugned order that post-award interest at the rate of 18% per annum as per the mandate of Section 31(7)(b) of the Act would be payable and accordingly directed the petitioners/JD to make payment of Rs. 77,18,000/- within two months. This order was passed by the learned executing court while relying upon the decision of the Supreme Court in the case of **R.P.**



Garg Vs. The Chief General Manager, Telecom Department and Ors. Civil Appeal No. 10472/224.

9. The award in this case was passed on 25.10.2024. Section 31 of the 1996 Act deals with form and contents of the arbitral award. Section 31 has eight Sub Sections. Sub Section (7) is relevant for the purpose for decision in this case. Sub Section (7) as it stood at the relevant point of time read as under:-

“31. Form and contents of arbitral award –

* * * * *

(7)(a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per cent per annum from the date of award to the date of payment.”

10. On a bare reading of sub Section (7), it is seen that it is in two parts, the first part i.e., Clause (a) deals with passing of award which would include interest upto the date on which the award is made, while the second part i.e., Clause (b) deals with the grant of interest on the sum awarded by the Arbitral Tribunal.

11. In the present scenario, the court is more concerned with the interpretation of Clause (b), which deals with the post-award interest. What Clause (b) provides for is that Arbitral Tribunal may award interest on the sum adjudged under Clause (a). But if no such interest is awarded, then there shall be interest at the rate of 18% on the sum



awarded by the Arbitral Tribunal from the date of the award to the date of payment. The intent behind granting the pre-award interest is to compensate the complainant for the loss suffered from the time the cause of action arose till the passing of the arbitral award. This is also for ensuring that the arbitral proceedings are concluded expeditiously. Similarly, the intent behind grant of post-award interest is that the award debtor is discouraged to delay the payment of the arbitral amount to the award holder.

12. Section 31(7)(b) of the Act specifically states that the Arbitral award shall carry an interest unless the award otherwise directs. Learned counsel for the petitioner submits that the mandate of law is very clear, the Section does not restrict the discretion of the Arbitrator for the grant of post-award interest. It is submitted that learned Arbitrator in the present matter has expressly exercised its authority and decided to award interest only with regard to Claims No. 1 & 8.

13. It is submitted that non-grant of post-award interest with regard to some of the claims by the learned Arbitrator was never challenged by the respondent before any court. The executing court, therefore, cannot go behind the decree and has to enforce the award under Section 36 of the Act, as if it was a decree of the court and cannot be interfered with.

14. It is argued that the executing court did not consider the issue of discretion upon the learned Arbitrator with regard to post-award interest and there is nothing in Section 31(7)(b), which restricts the



discretion with regard to the post-award interest. The Arbitrator has discretion to award post-award interest on a part of the claim. It is thus argued that the learned trial court made an error of law in passing the impugned order dated 25.10.2024, particularly when, it was hearing the matter in the capacity of an Executing Court.

15. *Per contra*, while supporting the impugned order, the learned counsel for the respondent submits that grant of interest under Section 31(7)(b) is mandatory and the only discretion that the Arbitrator has is to determine the rate of interest failing which it is statutory rate of interest, which would be payable on the sum awarded by the Arbitrator.

16. Learned Arbitrator granted interest at the rate of 10% per annum w.e.f. 01.02.2005 till the date of actual payment or realization on a sum of Rs. 10,84,383/- with respect to Claim No. 1 & 8 but did not award any future interest with respect to the remaining claims.

17. The law with regard to the power of an Arbitrator to award interest for pre-award period, the interest *pendent lite* and interest post-award period is no more in dispute. Section 31(7)(a) provides that the Arbitrator has the power to award interest at such rate as it deems reasonable, on the whole or on any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made. The grant of such interest during the pre-award period is subject to the agreement as regard the rate of interest or unpaid sum between the parties.



18. Clause (b) of Section 31(7) of the Act gives discretion to the Arbitral Tribunal to award interest for the post-award period but that discretion is not subject to any contract. If such discretion is not exercised by the Arbitral Tribunal, then the statute steps in and mandates the payment of interest at the rate specified for the post-award period. While Clause (a) gives parties an option to contract out of interest, no such option is available in regard to the post-award period.

19. In the case of **M/s. Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa, AIR 2015 SC 856, a three Judge Bench overruled the decision in State of Haryana & Ors. Vs. S.L. Arora & Company, (2010) 3 SCC 690** to the extent that latter decision held that the Arbitral Tribunal does not have the power to award interest over interest. Three separate judgments were authored in this case. Justice A.N. Sapre in his concurring opinion has noted that while the grant of pre-award interest is at the discretion of the Arbitral Tribunal, post-award interest is mandated by the statute where the Arbitrator only has the discretion to decide the rate of interest. That is if the Arbitral Tribunal has used its discretion to grant post-award interest at a particular rate, then such rate, as directed, would prevail, otherwise, the rate of interest mentioned in the statute would be applicable. The relevant extract of the judgment reads as under:-

“5. Section 31(7)(a) of the Act deals with grant of pre-award interest while sub-clause (b) of Section 31(7) of the Act deals with grant of post-award interest. Pre-award interest is to ensure that arbitral proceedings are concluded without unnecessary delay.



Longer the proceedings, would be the period attracting interest. Similarly, post-award interest is to ensure speedy payment in compliance of the award. Pre-award interest is at the discretion of Arbitral Tribunal, while the post-award interest on the awarded sum is mandate of statute - the only difference being that of rate of interest to be awarded by the Arbitral Tribunal. In other words, if the Arbitral Tribunal has awarded post-award interest payable from the date of award to the date of payment at a particular rate in its discretion then it will prevail else the party will be entitled to claim postaward interest on the awarded sum at the statutory rate specified in clause (b) of Section 31(7) of the Act, i.e., 18%. Thus, there is a clear distinction in time period and the intended purpose of grant of interest.”

20. In **Morgan Securities & Credits Pvt. Ltd. Vs. Videocon Industries Ltd., Civil Appeal No. 5437/2022**, while considering the issue as to whether the Arbitrator has discretion to grant post-award interest only on the principal amount due under Section 31(7)(b) of the Act, the Hon’ble Apex Court in Para No. 22, summarized the following findings:-

“22 In view of the discussion above, we summarise our findings below:

- (i) The judgment of the two-Judge Bench in SL Arora (supra) was referred to a three-Judge Bench in Hyder Consulting (supra) on the question of whether post-award interest could be granted on the aggregate of the principal and the pre-award interest arrived at under Section 31(7)(a) of the Act;
- (ii) Justice Bobde’s opinion in Hyder Consulting (supra) held that the arbitrator may grant post-award interest on the aggregate of the principal and the pre-award interest. The opinion did not discuss the issue of whether the arbitrator could use their discretion to award post-award interest on a part of the ‘sum’ awarded under Section 31(7)(a);
- (iii) The phrase ‘unless the award otherwise directs’ in Section 31(7)(b) only qualifies the rate of interest;
- (iv) According to Section 31(7)(b), if the arbitrator does not grant post-award interest, the award holder is entitled to post-award interest at eighteen percent;



(v) Section 31(7)(b) does not fetter or restrict the discretion that the arbitrator holds in granting post-award interest. The arbitrator has the discretion to award post-award interest on a part of the sum;

(vi) The arbitrator must exercise the discretionary power to grant post-award interest reasonably and in good faith, taking into account all relevant circumstances; and

(vii) By the arbitral award dated 29 April 2013, a post-award interest of eighteen percent was awarded on the principal amount in view of the judgment of this Court in **SL Arora** (supra). In view of the above discussion, the arbitrator has the discretion to award post-award interest on a part of the ‘sum’; the ‘sum’ as interpreted in **Hyder Consulting** (supra). Thus, the award of the arbitrator granting post award interest on the principal amount does not suffer from an error apparent.”

21. In **R.P. Garg Vs. The General Manager, Telecom Department & Ors., Civil Appeal No. 10472/2024**, the Apex Court was dealing with the question as to whether the appellant was entitled to post-award interest on the sum awarded by the Arbitrator. In that case, the Arbitrator had denied payment of interest under a misplaced impression that the contract between the parties prohibited it. The executing court affirmed the finding of the Arbitrator and rejected the prayer. However, allowing the appeal, the District Judge held that the appellant will be entitled to post-award interest. The High Court allowed the revision against the said order and had set aside the District Court order while holding that the contract between the parties did not permit the grant of post-award interest. While allowing the appeal, the Supreme Court held that the sum directed to be paid under the arbitral award must carry interest. While taking note of the decision of the Supreme Court in **Morgan Securities & Credits Pvt.**



Ltd. Vs. Videocon Industries Ltd. (*supra*), the Hon'ble Apex Court held as under:-

"11. So far as the entitlement of the post-award Interest is concerned, sub-Section (b) of Section 31(7) provides that the sum directed to be paid by the Arbitral Tribunal shall carry interest. The rate of interest can be provided by the Arbitrator and in default the statutory prescription will apply. Clause (b) of Section 31(7) is therefore in contrast with clause (a) and is not subject to party autonomy. In other words, clause (b) does not give the parties the right to "contract out" interest for the post-award period. **The expression 'unless the award otherwise directs' in Section 31(7)(b) relates to rate of interest and not entitlement of interest. The only distinction made by Section 31(7)(b) is that the rate of interest granted under the Award is to be given precedence over the statutorily prescribed rate. The assumption of the High Court that payment of the interest for the post award period is subject to the contract is a clear error.**

12. The clear position of law that granting post-award interest is not subject to the contract between the parties was recently affirmed in the decision of this Court in Morgan Securities & Credits (P) Ltd. v. Videocon Industries Ltd.,[®] wherein the court observed as follows:

"24. The issue before us is whether the phrase "unless the award otherwise directs" in Section 31(7)(b) of the Act only provides the arbitrator the discretion to determine the rate of interest or both the rate of interest and the "sum" it must be paid against At this juncture, it is crucial to note that both clauses (a) and (b) are qualified. While, clause (a) is qualified by the arbitration agreement, clause (b) is qualified by the arbitration award. However, the placement of the phrases is crucial to their interpretation. The words, "unless otherwise agreed by the parties" occur at the beginning of clause (a) qualifying the entire provision. However, in clause (b), the words, "unless the award otherwise directs" occur after the words "a sum directed to be paid by an arbitral award shall" and before the words "carry interest at the rate of eighteen per cent". Thereby, those words only qualify the rate of post-award interest.

25. Section 31(7)(a) confers a wide discretion upon the arbitrator in regard to the grant of pre-award interest The



arbitrator has the discretion to determine the rate of reasonable interest, the sum on which the interest is to be paid, that is whether on the whole or any part of the principal amount, and the period for which payment of interest is to be made — whether it should be for the whole or any part of the period between the date on which the cause of action arose and the date of the award. When a discretion has been conferred on the arbitrator in regard to the grant of pre-award interest it would be against the grain of statutory interpretation to presuppose that the legislative intent was to reduce the discretionary power of the arbitrator for the grant of post-award interest under clause (b). Clause (b) only contemplates a situation where the arbitration award is silent on post-award interest, in which event the award-holder is entitled to a post-award interest of eighteen per cent."

22. In view of the aforesaid judicial pronouncement, the interpretation of Clause (b) of Section 31(7) of the Act is no more *res-integra*. The grant of post-award interest under Section 31(7)(b) is mandatory. The only discretion which the Arbitral Tribunal has is to decide the rate of interest to be awarded. Where the Arbitrator does not fix any rate of interest, then statutory rate, as provided in Section 31(7)(b), shall apply. Since in the present case the Arbitrator did not award the post-award interest in respect of Claims No. 2, 3, 4 & 5, petitioners would be entitled to the post-award interest at the rate of 18% per annum, as awarded by the learned executing court.

23. The grant of post-award interest is a statutory mandate and therefore even if non-grant of interest is not challenged by the petitioners, grant of post-award interest by the executing court would not amount to going beyond the decree. In the case of R.P. Garg Vs.



2025:DHC:2621



The General Manager, Telecom Department & Ors. (*supra*), the post-award interest awarded by the executing court, even though specifically denied in the award by the Arbitral Tribunal, was affirmed in appeal by the Hon'ble Supreme Court. I am, therefore, not impressed by the argument of the petitioners that the grant of interest by the executing court would amount to challenging the award in execution proceedings or going behind the decree.

24. I, thus find no illegality or perversity in the impugned order dated 25.10.2024, passed by the learned executing court.

25. The petition is therefore dismissed.

RAVINDER DUDEJA, J.

APRIL 17, 2025

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