



2025:DHC:9754-DB



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

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Reserved on: 16th October 2025

Pronounced on: 10th November 2025

+ **FAO(OS) (COMM) 170/2025 & CM APPL. 65604/2025 CM APPL.
65605/2025**

BHARAT HEAVY ELECTRICALS LIMITED (BHEL)Appellant

Through: Mr. Rajesh Yadav, Sr. Adv. with Mr.
Ankit Choudhary & Mr. Vinay Kumar,
Advs.

versus

TEKNOW OVERSEAS PRIVATE LIMITEDRespondent

Through: Mr. Moazzam Khan, Mr. Sumeet Lall,
Mr. Prince Kumar, Mr. Sidhant
Kapoor, Ms. Kopal Chaturvedi & Mr.
Devesh Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal has been filed under *Section 13* of the Commercial Courts Act, 2015 and *Section 37* of the Arbitration & Conciliation Act, 1976 ('*A&C Act*') assailing the impugned order dated 04th August 2025 passed by the Single Judge of this Court, whereby certain claims towards pending invoices



2025:DHC:9754-DB



have been allowed. The genesis of the matter is a dispute between the parties pertaining to work order dated 30th April 2013 issued by appellant in favour of respondent/claimant, which contained an arbitration clause.

2. Respondent/claimant stated that it was engaged in civil and electrical works and executed projects of specialised nature, particularly in the Power, Steel, and Transmission Sector.

3. Respondent/claimant claimed itself to be a Micro & Small Enterprise (***MSME***) and pursued its claims against the appellant and made a reference to Micro & Small Enterprise Facilitation Council (***MSEFC***) for resolution of disputes under *Section 18* of the *Micro, Small & Medium Enterprises Development Act, 2006* (***MSMED Act***). MSEFC referred the parties to Arbitration under the aegis of the Delhi International Arbitration & Conciliation Centre (***DIAC***).

4. The Sole Arbitrator nominated by the DIAC noted the claims raised by the respondent/claimant, as under:

Claim No. 1 - Bank guarantee charges of Rs. 99,895/-;

Claim No. 2 -Outstanding dues for Running Account Bills of Rs. 31,26,447/-;

Claim No. 3 – Over run charges of Rs. 3,20,536/-;

Claim No. 4 - Cost of proceedings under *Section 31A-A* of the A&C Act of Rs. 6,91,429/-; and

Claim No. 5 - Interest of Rs. 1,12,23,035/-.

5. By a tender of 2013, appellant invited work relating to the *400 kV Substation at Raichur, Karnataka*. Respondent/claimant submitted its offer on 28th January 2013, and a Letter of Intent was issued by appellant by e-mail



2025:DHC:9754-DB



dated 11th February 2013. Work order was awarded on 30th April 2013, with stipulated period for completion being 8 months, i.e. up to 10th October 2013.

6. Respondent/claimant stated that it could not complete the work order within time due to reasons attributable to appellant and sought extension of time (*'EOT'*) *vide* letter dated 12th November 2013. EOT was granted by appellant by communication dated 19th November 2018, till 05th February 2015, without imposition of any penalty or liquidated damages.

7. As per respondent/claimant, appellant had recorded that overrun charges as per *Clause 7* of the Work Order would be applicable since the delay in completion was for reasons attributable to appellant. Claims were also made in respect of Running Account Bills. A letter of encashment of bank guarantees was stayed by this Court *vide* order dated 30th March 2017. Respondent/claimant further contended that it had completed its works on 10th October 2013 and accordingly raised its disputes before the MSMEFC.

8. Appellant denied the claims of respondent/claimant, stating that the claim was barred by limitation, as the contract had been commissioned in December 2013 and claims were raised only in 2021. It was also contended that respondent/claimant failed to complete the entire work, and additional costs of *Rs.19.35 lakhs* were incurred to complete the project in time. It was submitted that grant of an EOT did not imply waiver of delay by respondent/claimant. Further, appellant stated that payment of final Running Account Bills could be made only subject to adjustments towards the *North Chennai Project*, for which recoveries were still to be affected from respondent/claimant.



2025:DHC:9754-DB



9. Before the DIAC Arbitrator, issue arose whether respondent/claimant was registered as an MSME on the date of award of works or by the time the contract was executed. Respondent/claimant contended that its MSME registration dated 03rd January 2017, which preceded the final closure of the contract, as the final bill was agreed only on 25th September 2018.

10. However, after assessing the contentions of the parties, the DIAC Arbitrator held that the date of completion of works was 05th February 2015, while MSME registration was on 03rd January 2017. Therefore, in light of applicable decisions *inter alia* in ***Silpi Industries etc. v Kerala State Road Transport Corporation & Anr.*** 2021 SCC OnLine SC 439, the Arbitrator held that to avail benefits under the MSMED Act, a supplier must be registered under the Act prior to entering into the contract. Accordingly, the DIAC Arbitrator held that respondent/claimant could not have invoked the powers of the MSMEFC, and consequently, the Arbitral Tribunal lacked jurisdiction.

11. Thereafter, on 06th September 2023, respondent/claimant issued a notice under *Section 21* of A&C Act, proposing a Sole Arbitrator. Due to a dispute between the parties, the High Court, *vide* order dated 30th September 2024 under *Section 11* A&C Act, appointed an Arbitrator and directed the arbitration to be held under the aegis of DIAC.

12. The Arbitration Tribunal entered reference and passed the impugned award dated 28th October 2024 against the appellant. Claims raised and the decision in respect to the same are tabulated as under:



2025:DHC:9754-DB



S.No.	Particulars	Decision
a)	Whether the Claimant is entitled to an amount of INR 64,66,427/- or any other amount, from the Respondent as outstanding amount against the Running Account Bills raised by it from time to time?	In favour of Claimant INR 64,66,427
b)	Whether the Claimant is entitled to Bank Guarantee Charges of INR 99,895 or any other sum from the Respondent?	In favour of Claimant INR 99,895
c)	Whether the Claimant is entitled to Over Run Charges of INR 2,71,641 or any other sum from the Respondent?	In favour of Claimant INR 2,72,641
d)	Whether the Claimant or Respondent is entitled to claim the cost of the present proceedings?	Both parties will bear their own cost of litigation.
e)	Whether the Claimant is entitled to claim interest in terms of the MSME Act (from the date when the sums became due to the Claimant, pendent lite and post award) or at such other rate as may be determined by the Tribunal from the Respondent on the outstanding sums due and payable to it?	In-favour of Respondent. Claimant is not entitled for Compound interest at 3 times of Bank rate notified by RBI as per section 16 of MSMED Act but @ 9% per



2025:DHC:9754-DB



		annum on amount due in each claim
f)	Whether the Claimant is entitled to any sums towards loss of opportunity and profit from the Respondent?	In favour of Respondent
g)	Whether the Claimant is entitled to damages on account of substantial interest incurred by Claimant in availing the overdraft facility from its bank owing to the Respondent's delay in making requisite payments to the Claimant to the tune of INR 1,55,26,916?	In favour of Claimant only to the extent that the Claimant is entitled to get the interest charges claimed i.e., INR 1,25,40,347- and not any sums towards loss of opportunity and profit from the Respondent.
h)	Whether the Respondent is entitled to a sum of INR 401,429 claim as amount of Fee paid by Respondent in the previous arbitration proceedings along with Advocate's fee and other overhead expenses incurred for defending the earlier arbitration proceedings before the DIAC, Delhi High Court?	In favour of Claimant Respondent is not liable for litigation expenses of previous arbitration.



2025:DHC:9754-DB



i)	Whether the Respondent can inter-link two separate contracts and attempt to recover uncrystallised sums due under one contract from the other contract?	In favour of Claimant
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13. The said award was assailed under *Section 34* of the A&C Act before the Single Judge of this Court on three specific grounds, which the Single Judge tabulated as under:

S.No.	Particulars	Decision
a)	Whether the Claimant is entitled to an amount of INR 64,66,427/- or any other amount from the Respondent as outstanding amount against the Running Account Bills raised by it from time to time?	In favour of Claimant INR 64,66,427/-
e)	Whether the Claimant is entitled to claim interest in terms of the MSME Act (from the date when the sums became due to the Claimant, pendent lite and post award) or at such other rate as may be determined by the Tribunal from the Respondent on the outstanding sums due and payable to it?	In favour of Respondent Claimant is not entitled for compounded interest at 3 times of Bank rate notified by RBI as per section 16 of MSME Act, but @ 9% per annum on amount due in



2025:DHC:9754-DB



		each claim
g)	Whether the Claimant is entitled to damages on account of substantial interest incurred by Claimant in availing the overdraft facility from its bank owing to the Respondent's delay in making requisite payments to the Claimant to the tune of INR 1,55,26,916?	In favour of Claimant only to the extent that the Claimant is entitled to get the interest charges claimed i.e., INR 1,25,40,347/- and not any sums towards loss of opportunity and profit from the Respondent.

14. In respect of *Issue no. (a)*, Mr. Rajesh Yadav, Senior Counsel appearing for appellant, submitted that in the statement filed before the MSMEFC on 03rd March 2024, respondent/claimant had restricted its claim to about *Rs.31 lakhs*; however, before the Arbitrator, the said claim had ballooned to *Rs. 64,66,427/-*, which, according to appellant, is not acceptable. The Single Judge dismissed this assertion, relying on *paragraphs 66-68* of the award dated 28th October 2024, holding that the invoices produced by respondent/claimant stood duly proved and, therefore, the respondent/claimant is entitled to the said amount.



2025:DHC:9754-DB



15. The Single Judge also noted that the witness of respondent/claimant, who proved the invoices, was neither cross-examined by the appellant, nor confronted with the MSME claim. Accordingly, the contention as regards **Issue No. (a)** was dismissed.

16. As regards **Issue no. (e)**, counsel for the respondent/claimant had stated before the Single Judge that their claim was not contested by the appellant and, therefore, may be set aside.

17. As regards **Issue no. (g)**, which related to interest charges on overdraft facility, was concerned, the Single Judge held that it warranted consideration and had issued notice to that extent and posted the matter for 12th December 2025.

18. *Mr. Rajesh Yadav*, Senior Counsel for appellant, had a grievance in relation to the direction passed by the Single Judge in *paragraph 16* of the impugned order, which is extracted as under:

“16. In the meanwhile, the amount awarded in issue No. (a) along with pendente lite and post award interest, shall be paid to the respondent in its Account No. 0348256005720, IFSC Code CNRB0000348 within 6 weeks from today.”

19. Essentially, he reiterated the contention regarding unacceptable ballooning of the claim from *Rs.31 lakhs* to around *Rs.64.66 lakhs* and that *pendente lite* interest could not have been allowed, particularly in light of *Clause No. 4.7* of the Work Order, which precluded the respondent/claimant from getting any interest. The said clause is extracted as under:

“4.7. No interest shall be payable by BHEL on Security Deposit or on any money due to the contractor.”



2025:DHC:9754-DB



20. *Clause 4.7* of the Work Order expressly provides that no interest shall be payable on the security deposit or any other money due to the contractor. Appellant pointed out that this condition is reiterated and resonated in the Special Condition of Contract (**‘SCC’**) under *Clause A.18.0* and *Clause C.3.5*. Same are extracted as under:

"A.18.0: No interest shall be payable by BHEL on EMD, Security Deposit or any money due to the contractor. "

"C.3.5: No interest shall be payable by BHEL on EMD, Security Deposit or any money due to the contractor by BHEL."

21. Mr. Rajesh Yadav, Senior Counsel for the appellant, relied upon the decision of the Supreme Court in ***Union of India v Manraj Enterprises*** (2022) 2 SCC 331 in support of his plea, wherein, in *paragraphs 10-12*, the Court examined the issue of the award of *pendente lite* and future interest by the Arbitrator. After discussing the relevant law and the statutory provisions under *Section 31(7)(a)* of the A&C Act, the Court held that the Arbitrator had erred in awarding *pendente lite* and future interest on the amount due and payable to the contractor.

22. Countering the same, counsel for the respondent relied upon a subsequent decision of the Supreme Court in ***Oil & Natural Gas Corporation Ltd. v M/s. G&T Beckfield Drilling Services Pvt. Ltd.*** 2025 SCC OnLine SC 1888, decided on 2nd September 2025. In that case, the Court was dealing with a similar *Clause 18.1* of the agreement, which stated that “*no interest would be payable by ONGC on delayed payment/disputed claims.*”



2025:DHC:9754-DB



23. The plea raised was that *Clause 18.1* did not bar the award of *pendente lite* interest. After assessing previous decisions in this regard, including *Ambika Construction v. Union of India* (2016) 6 SCC 36 and (2017) 14 SCC 323 (referred to as '*Ambika First*' and '*Ambika Second*'), the Court held, particularly relying upon *Sayeed Ahmed & Co. v. State of U.P. & Ors.* (2009) 12 SCC 26 and *Tehri Hydro Development Corporation Ltd. v. Jai Prakash Associates Ltd.* (2012) 12 SCC 10, that an Arbitral Tribunal can be denuded of its power to award *pendente lite* interest only if the agreement/contract between the parties expressly or by necessary implication bars such award as was the case in *Sayeed Ahmed & Co.* (*supra*) and *THDC* (*supra*).

24. The Supreme Court held that a clause merely barring the award of interest on delayed payment by itself will not be readily inferred as a bar to the award of *pendente lite* interest by the Arbitral Tribunal. Relevant paragraph from the said decision is extracted as under:

“26. Seen in light of the discussion above, Clause 18.1, which appellant relies upon to canvass that the agreement between the parties proscribes grant of pendente-lite interest, when read as a whole, does not expressly or by necessary implication proscribes grant of pendente lite interest by the arbitral tribunal. The clause merely says that there would be no interest payable by the Corporation on any delayed payment/disputed claim. Neither it bars the arbitral tribunal from awarding pendente lite interest nor it says that interest would not be payable in any respect whatsoever as was the phraseology of the interest proscribing clause in Sayeed Ahmed & Co. (supra) and THDC First (supra). In our view, therefore, Clause 18.1 would not limit the statutory



2025:DHC:9754-DB



power of the arbitral tribunal to award pendente-lite interest. Consequently, we find no such error in the award of pendente lite interest as may warrant interference with the award. Since post-award interest is in line with the statutory provision of clause (b) of sub-section (7) of Section 31 as was in vogue then, we find no merit in the appeal, and the same is, accordingly, dismissed.”

(emphasis added)

Analysis

25. It was put to the Senior Counsel for appellant that the matter is still before the Single Judge and notice has been issued on one of the three issues raised; therefore, the same can be addressed before the Single Judge. However, *Mr. Rajesh Yadav*, Senior Counsel for appellant, pointed out to the direction passed in *paragraph 16* of the impugned order, where the Single Judge had directed the amount awarded, *i.e. Rs.64,66,427/-* to be paid to the respondent within a period of 6 weeks from 04th August 2025, along with *pendente lite* and post award interest. Therefore, the appellant was aggrieved by that specific direction.

26. The Court is bound by the decisions of the Supreme Court, and applying the latest decision of *ONGC (supra)*, it cannot be stated, from a perusal of *Clause 4.7* or any of the other clauses in the SCC, that there was a specific bar on award of *pendente lite* interest. Therefore, the principle laid down in *ONGC (supra)* would squarely apply.

27. The Supreme Court in *ONGC (supra)* considered the clauses in *Sayeed Ahmed (supra)* and *THDC (supra)*, and noted that the clauses in those



2025:DHC:9754-DB



matters expressly barred the payment of interest and included the words “*or in any other respect whatsoever*”. For ready reference, the interest clauses in the contracts in *Sayeed Ahmed* (*supra*) and *THDC* (*supra*) are extracted as under:

Clause in Sayeed Ahmed (supra)

“Clause G. I.09. No claim for interest or damages will be entertained by the Government with respect to any money or balance which may be lying with the Government or any becoming due owing to any dispute, difference or misunderstanding between the Engineer-in-Charge on the one hand and the contractor on the other hand or with respect to any delay on the part of the Engineer-in-Charge in making periodical or final payment or any other respect whatsoever.”

Clause in THDC (supra)

“1.2.14. No claim for delayed payment due to dispute, etc.- The contractor agrees that no claim for interest on damages will be entertained or payable by the Government in respect of any money or balances which may be lying with the Government owing to any disputes, differences or misunderstandings between the parties or in respect of any delay or omission on the part of the Engineer-in-Charge in making immediate or final payments or in any respect whatsoever.

1.2.15. Interest on money due to the contractor.— No omission on the part of the engineer in charge to pay the amount due upon measurement or otherwise shall vitiate or make void the contract, nor shall the contractor be entitled to interest upon any guarantee or payments in arrears nor upon any balance which may on the final settlement of his accounts be due to him.”

(emphasis added)



2025:DHC:9754-DB



28. The Supreme Court relied upon the decision in ***Ferro Concrete Construction (India) Pvt. Ltd. v State of Rajasthan*** 2025 SCC OnLine SC 708, where it was held that the Arbitrator's power to grant interest would depend on ‘*contractual clause in each case*’ and whether it expressly takes away the Arbitrator's power to award *pendente lite* interest. The Supreme Court’s opinion, for easy reference, in *paragraph 13* of ***Ferro Concrete Construction*** (*supra*), is extracted as under:

“13. From the above extracted paragraphs, the decision of the three-Judge Bench in the First Ambika case (*supra*) can be stated as follows. The arbitrator's power to grant interest would depend on contractual clause in each case, and whether it expressly takes away the arbitrator's power to grant *pendente lite* interest. This would have to be determined based on the phraseology of the agreement, clauses conferring powers relating to arbitration, nature of claim and dispute referred to the arbitrator, and on what items the power to award interest is contractually barred and for which period. Further, a bar on award of interest for delayed payment would not be readily inferred as an express bar to the award of *pendente lite* interest by the arbitrator.”

(emphasis added)

29. Accordingly, the Supreme Court in ***ONGC*** (*supra*) held that the Arbitral Tribunal is not completely denuded of its power to award interest; rather, the grant of such interest would depend upon the nature of the clause in question.

30. Senior Counsel for appellant relied upon *Clause 4.7*, extracted above, which does not have any terminology or phraseology that would provide an over comprehensive and a blanket bar on payment of *pendente lite* interest, as



2025:DHC:9754-DB



opposed to clauses considered in *Sayeed Ahmed & Co. (supra)* and *THDC (supra)*. While in *Sayeed Ahmed & Co. (supra)*, the Supreme Court held that the clause was comprehensive and barred interest under any head in clear and categorical terms, and in *THDC (supra)*, the Court held that there was clear bar on payment of interest in any situation.

31. *Clause 4.7* is not of the same nature as that in *Sayeed Ahmed & Co. (supra)* and *THDC (supra)* and does not furnish or prescribe a blanket bar where it would imply that the Arbitrator or the Court is precluded from awarding *pendente lite* interest. The clauses in *Sayeed Ahmed & Co. (supra)* and *THDC (supra)* were comprehensive in scope and expressly prohibited any claim for interest or damages arising out of disputes, delays, or misunderstandings, thereby clearly excluding the jurisdiction of the arbitrator to grant interest for any period, including *pendente lite*. The terminology used in both these matters included the term in “*in any respect whatsoever*”, which is in contrast with *Clause 4.7* of the BHEL contract as it is narrowly worded and merely provides that “*no interest shall be payable by BHEL on Security Deposit or on any money due to the contractor*”. This clause only limits respondent’s/claimant’s contractual right to claim interest from appellant on amounts withheld or due prior to adjudication and does not restrict the arbitrator’s power to award *pendente lite* interest *Section 31(7)(a)* of the A&C Act, unless otherwise agreed by the parties under.

32. As regards post-award interest, the same is governed by *Section 31(7)(b)* of the A&C Act, and the appellant did not agitate regarding the same.



2025:DHC:9754-DB



33. As regards the issue whether respondent/claimant was estopped from amplifying its claim its claim from Rs. 31 lakhs before the MSMEFC to Rs. 64.66 lakhs before the Arbitrator, the Senior Counsel for appellant could not assert any provision of law that would estop the appellant from raising a full and comprehensive claim before the Arbitrator, which ultimately stood proven, as held by the Arbitrator in Arbitral Award and upheld by the Single Judge.

34. This is further underscored by the fact that the claim asserted before the MSMEFC was finally rejected by the Arbitrator for lack of jurisdiction, considering that the respondent/claimant was held to be not duly registered and had entirely raised a claim go for the MSMEFC.

35. The claim before the MSMEFC was, therefore, itself infirm, *void ab initio* and without jurisdiction. Any effect of the said claim would, therefore, stand extinguished having been denuded of its legal validity. Appellant cannot claim that respondent will be forever estopped from raising its full and final claims before the Arbitrator in respect of which a dispute arose. There was nothing that barred the respondent from raising their claims, even as per the order under *Section 11* of the A&C Act passed by the High Court on 30th January 2024 in ***Arbitration Petition No.1280/2023***.

36. In any event, it is also noted by the Single Judge that the witness of the respondent/claimant, who was testifying to prove their invoices, was neither cross-examined on this aspect, nor was he confronted with the MSMEFC claim, and the same has not been denied by the Senior Counsel for appellant. The assertion of the Senior Counsel for appellant that the direction by the



2025:DHC:9754-DB



Single Judge in *paragraph 16* of the impugned order is unmerited, is not acceptable to this Court.

37. Accordingly, the present appeal stands dismissed.

38. Pending applications are rendered infructuous.

39. The matter is reverted to the Single Judge for continuance of proceedings, which are duly notified for 12th December 2025.

40. Judgment be uploaded on the website of this Court.

**ANISH DAYAL
(JUDGE)**

**NITIN WASUDEO SAMBRE
(JUDGE)**

NOVEMBER 10, 2025/MK/bp