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

% ***Judgment reserved on: 11.08.2025***
Judgment delivered on: 27.08.2025

\+ FAO(OS) 60/2019

PANKAJ MITTAL .....Appellant
Through: Mr. Bhupesh Narula, Mr. H.L Narula, Mrs. Rinku Narula, Mr. Anugrah Ekka, Mr. Kanishk Taneja, Advocates

versus

UNION OF INDIA .....Respondent
Through: Ms. Pratima N. Lakra, CGSC with Mr. Shailendra Kumar Mishra and Mr. Chandan Prajapati, Advocates

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% **<u>JUDGEMENT</u>**

<u>HARISH VAIDYANATHAN SHANKAR J.</u>

1. The present Appeal under Section 37 of the **Arbitration and Conciliation Act, 1996**[1] read with Section 10 of the Delhi High Court Act, 1966, has been preferred challenging the **Judgment dated 05.12.2018**[2] passed by the learned Single Judge of this Court in O.M.P. No. 691/2012, which was filed under Section 34 of the A&C Act. The Appellant seeks to set aside the Impugned Judgment as well

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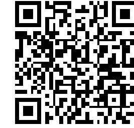
[1] A&C Act
[2] Impugned Judgment



as the **Arbitral Award dated 22.03.2012**[3] rendered by the learned Arbitrator, in respect of Claim No. 1 and Counter Claim No. 1.

2. At the outset, it needs to be stated that the learned Single Judge has affirmed the Award passed in favour of the Respondent, meaning thereby that this is an Appeal against two concurrent findings in favour of the Respondent.

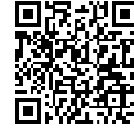
CONTENTIONS OF THE APPELLANT:

3. Learned counsel for the Appellant would challenge the Award on the following points:

(a). The learned counsel for the Appellant would contend that no interest was claimed in the counter-claim and, while referring to the prayers as sought therein, would urge that the Award of interest, having not been specifically sought for, ought not to have been granted by the learned Arbitrator; and that the learned Single Judge, in exercise of his jurisdiction under Section 34 of the Act, has further exacerbated the position by failing to reverse the same.

(b). He would further contend that the learned Arbitrator has erred in allowing the counter-claim of the Respondent towards penalty. He would contend that in terms of Clause 17B of the **General Conditions of Contract**[4], the maximum liquidated damages for a contract of a value of more than Rs. 2 lacs is 10% of the first Rs. 2 lacs and 5% of the balance amount. The Arbitrator, however, has awarded a penalty of 10% on the total

[3] Award
[4] GCC.



contract value, thereby acting in ignorance of the contractual condition.

(c). It is his contention that the learned Arbitrator has awarded a total sum of Rs.5,38,015/- against what was the maximum allowable, which is a sum of Rs.2,39,007/-.

(d). He also states that the learned Arbitrator erred in permitting the earnest money to be forfeited.

(e). He would further contend that the Respondent had not issued any notice before claiming damages from the Appellant.

4. Learned counsel for the Appellant would specifically contend that the letters dated 17.04.2008, 21.09.2008, 23.10.2008 and 17.11.2008 were not considered and reading of these letters would make it evident that the necessary documents had not been provided by the Respondent, resulting in the Appellant being rendered unable to form its part of the Agreement.

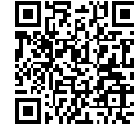
CONTENTIONS OF THE RESPONDENT:

5. *Per contra*, learned counsel for the Respondent submits that the Impugned Judgment as well as the Award suffers from no infirmity. She would further state that both the fora below have concurrently ruled in favour of the Respondent, and having regard to the narrow scope of interference permissible under Section 37 of the A&C Act, no ground for intervention is made out in the present matter.

ANALYSIS:

6. At the outset, we consider it appropriate to extract the relevant portion of the impugned Judgement, which reads as follows:

> *"**5.** I have considered the submissions made by the counsel for the petitioner, however, I find no merit in the same. As noticed by the*



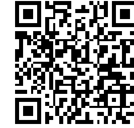
Arbitrator, upon issuance of the Letter of Acceptance in favour of the petitioner and in terms of paragraph 5.2 (a) and (b) of the Special Tender Conditions and instructions to tenderers, it was the obligation of the petitioner to submit a Performance Guarantee within 15 days of the issue of Letter of Acceptance in the form of an irrevocable Bank Guarantee amounting to 5% of the Contract value. On submission of such Bank Guarantee, a formal contract was to be executed between the parties for the work in question. In spite of repeated requests by the respondent vide letters dated 14.01.2008, 19.03.2008 and 09.04.2008, the petitioner failed to submit the Performance Guarantee.

6. *The letters now sought to be relied upon by the petitioner are all dated after the stipulated date of completion of work which, even as per the petitioner was 05.04.2008. There is absolutely no justification given by the petitioner for non- submission of the Performance Guarantee in terms of the Tender Conditions.*

7. *The respondent in its reply has rightly stated that the petitioner never wanted to undertake the work and having secured the work, first waited for the stipulated date of completion of work to expire and thereafter started demanding enhancement of rates. This in my opinion, was a clear case of blackmailing and the petitioner cannot claim any equity in its favour.*

8. *Counsel for the petitioner has further submitted that the Arbitrator has erred in allowing the counter claim of the respondent towards penalty. He submits that in terms of Clause 17B of the General Conditions of Contract (GCC), the maximum liquidated damages for a contract of a value of more than Rs.2 lacs is 10% of the first Rs.2 lacs and 5% of the balance amount. The Arbitrator, however, has awarded a penalty of 10% on the total contract value thereby acting in ignorance of the contractual condition.*

9. *He further submits that the respondent had not issued any notice before claiming damages from the petitioner. Relying upon the judgment of the Punjab and Haryana High Court in Bodh Raj Daulat Ram & Ors. v. Food Corporation of India & Anr. 2003(2) Arb LR 677 (P&H), he submits that no damages can be claimed by the respondent without issuance of a show cause notice to the petitioner in that regard. Further, relying upon the judgment in Kailash Nath Associates vs. DDA &Anr. (2015) 4 SCC 136, he submits that in any event, no evidence was led by the respondent to show any loss being suffered by it due to any reason attributable to the petitioner. In absence of such evidence, the claim of damages could not be sustained.*



10. I have considered the submissions made by the counsel for the petitioner, however, find no merit in the same.

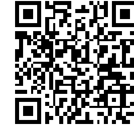
11. In my view, Clause 17B of the GCC is not relevant to the claim of damages raised by the respondent. Admittedly, the contract was not entered into between the parties due to a default of the petitioner in submission of the Performance Guarantee in terms of the Tender Conditions. Clause 17B of the GCC would become applicable in case of delay in execution of the work by the petitioner and not in case of total abandonment of the work by the petitioner. In the present case, the question is not of delay but of total abandonment of the work by the petitioner.

12. As far as the plea of the petitioner that no damages can be claimed without a show cause notice being issued, the same cannot be accepted. In case of a breach of contract, once the disputes are referred to arbitration, the party not in breach can always claim damages from the party in breach of the contract. No further notice is required for the said purpose.

13. As far as the plea of the petitioner that the respondent had failed to lead any evidence of loss suffered by it due to non-performance of the work by the petitioner, I may only note that the work in question is of a public importance and therefore, once it is accepted that there was a total abandonment of work by the petitioner after having become successful in a tender process, the damages awarded by the Arbitrator cannot be said to be unreasonable or perverse in any manner so as to warrant any interference of this Court in exercise of its powers under Section 34 of the Act. Such damage or loss can be inferred from the very fact that the respondent would have to re-tender for the work and have to incur additional costs due to escalation etc. In any case, the matter of quantification of damages by the Arbitrator cannot be interfered with unless the same is found to be totally perverse or unreasonable. In the present case, the damages awarded are reasonable and, therefore, deserve no interference from this Court.

14. In view of the above, I find no merit in the present petition and the same is dismissed, with no order as to costs."

7. While considering the grounds raised in this appeal under Section 37 of the A&C Act, this Court bears in mind the rulings of the Hon'ble Supreme Court, which confine judicial intervention in arbitral matters to a limited sphere. In its decision in ***Punjab State Civil***



Supplies Corpn. Ltd. v. Sanman Rice Mills[5], the Hon'ble Supreme Court encapsulated the settled legal position in the following terms:

> *"**11.** Section 37 of the Act provides for a forum of appeal inter-alia against the order setting aside or refusing to set aside an arbitral award under Section 34 of the Act. The scope of appeal is naturally akin to and limited to the grounds enumerated under Section 34 of the Act.*
>
> ***12.** It is pertinent to note that an arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible there is no scope for the court to reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.*
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> ***13.** In paragraph 11 of Bharat Coking Coal Ltd. v. L.K. Ahuja, it has been observed as under:*
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>> *"11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside."*
>
> ***14.** <u>It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner</u>.*
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> ***15.** In Dyna Technology Private Limited v. Crompton Greaves Limited, the court observed as under:*

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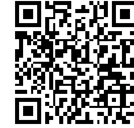
[5]2024 SCC OnLine SC 2632



"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

16. *It is seen that the scope of interference in an appeal under Section 37 of the Act is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act. In other words, the powers under Section 37 vested in the court of appeal are not beyond the scope of interference provided under Section 34 of the Act.*

17. *In paragraph 14 of MMTC Limited v. Vedanta Limited, it has been held as under:*

"14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent

findings."

***18.** Recently a three-Judge Bench in Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking referring to MMTC Limited (supra) held that the scope of jurisdiction under Section 34 and Section 37 of the Act is not like a normal appellate jurisdiction and the courts should not interfere with the arbitral award lightly in a casual and a cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle the courts to reverse the findings of the arbitral tribunal.*

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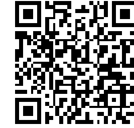
CONCLUSION:

***20.** In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.*

***21.** It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement."*

8. It is with the above caveat that we would need to examine the judgment impugned herein.

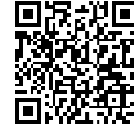


9. We have carefully considered the submissions advanced by the learned counsel for both parties, examined the Award as well as the Impugned Judgment, and are of the view that no interference is warranted with the findings recorded by the learned Single Judge or the learned Arbitrator.

10. A perusal of the Impugned Judgment reveals that the learned Single Judge has duly considered all the contentions raised and, after proper evaluation, concluded that there was no occasion to interfere with the Award. The learned Single Judge has specifically dealt with the objections urged by the Appellant, particularly the issue concerning the alleged cap under Clause 17-B of the GCC, as is evident from the reasoning contained in the Impugned Judgment.

11. The learned Single Judge has clearly held, and we concur with the finding, that Clause 17-B has no relevance in the present case, as the Appellant was in breach of the contract owing to his failure to furnish the Performance Guarantee in accordance with the tender conditions. It was further observed that the said clause would apply only in cases involving delay in execution of work, and not in a case such as the present one where the Appellant had completely abandoned the work.

12. We also note that the learned Single Judge has appropriately dealt with the issue relating to award of damages. It has been rightly held that once a breach of contract occurs and the disputes are referred to arbitration, the non-defaulting party is entitled to claim damages from the defaulting party, without any requirement of issuing a further notice for such claim.



13. With respect to entitlement of damages from the defaulting party, in ***Dwaraka Das v. State of Madhya Pradesh & Anr.***[6], the Hon'ble Supreme Court held that a contractor's claim for damages in the form of expected profits from a contract cannot be disallowed merely on the ground that actual loss suffered to the extent of the amount claimed was not proved. The relevant portion of the said judgment states as follows:

> *"**9.** The claim of the petitioner for payment of Rs 20,000 as damages on account of breach of contract committed by the respondent-State was disallowed by the High Court as the appellant was found to have not placed the material on record to show that he had actually suffered any loss on account of the breach of contract. In this regard, the appellate court observed:*
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> > *"It is not his case that for due compliance of the contract he had advanced money to the labourers or that he had purchased materials or that he had incurred any obligations and on account of breach of contract by the defendants he had to suffer loss on the above and other heads. Even in regard to the percentage of profit he did not place any material on record but relied upon assessment of the profits by the Income Tax Officer while assessing the income of the contractors from building contracts."*
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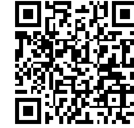
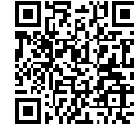
> *Such a finding of the appellate court appears to be based on wrong assumptions. The appellant had never claimed Rs 20,000 on account of alleged actual loss suffered by him. He had preferred his claim on the ground that had he carried out the contract, he would have earned profit of 10% on Rs 2 lakhs which was the value of the contract. This Court in A.T. Brij Paul Singh v. State of Gujarat [(1984) 4 SCC 59] while interpreting the provisions of Section 73 of the Contract Act, 1872 has held that damages can be claimed by a contractor where the Government is proved to have committed breach by improperly rescinding the contract and for estimating the amount of damages, the court should make a broad evaluation instead of going into minute details. It was specifically held that where in the works contract, the party entrusting the work committed breach of contract, the contractor is entitled to claim the damages for loss of profit which he expected to earn by undertaking the works contract. Claim of expected profits is legally admissible on proof of the breach of contract by the erring party. It was observed: (SCC pp. 64-65, paras 10-11)*

[6] AIR 1999 SC 1031.



> *"What would be the measure of profit would depend upon facts and circumstances of each case. But that there shall be a reasonable expectation of profit is implicit in a works contract and its loss has to be compensated by way of damages if the other party to the contract is guilty of breach of contract cannot be gainsaid. In this case we have the additional reason for rejecting the contention that for the same type of work, the work site being in the vicinity of each other and for identical type of work between the same parties, a Division Bench of the same High Court has accepted 15 per cent of the value of the balance of the works contract would not be an unreasonable measure of damages for loss of profit.*
>
> *****
>
> *Now if it is well established that the respondent was guilty of breach of contract inasmuch as the rescission of contract by the respondent is held to be unjustified, and the plaintiff-contractor had executed a part of the works contract, the contractor would be entitled to damages by way of loss of profit. Adopting the measure accepted by the High Court in the facts and circumstances of the case between the same parties and for the same type of work at 15 per cent of the value of the remaining parts of the works contract, the damages for loss of profit can be measured."*

To the same effect is the judgment in Mohd. Salamatullah v. Govt. of A.P. [(1977) 3 SCC 590 : AIR 1977 SC 1481] After approving the grant of damages in case of breach of contract, the Court further held that the appellate court was not justified in interfering with the finding of fact given by the trial court regarding quantification of the damages even if it was based upon guesswork. In both the cases referred to hereinabove, 15% of the contract price was granted as damages to the contractor. In the instant case however, the trial court had granted only 10% of the contract price which we feel was reasonable and permissible, particularly when the High Court had concurred with the finding of the trial court regarding breach of contract by specifically holding that "we, therefore, see no reason to interfere with the finding recorded by the trial court that the defendants by rescinding the agreement committed breach of contract". It follows, therefore, as and when the breach of contract is held to have been proved being contrary to law and terms of the agreement, the erring party is legally bound to compensate the other party to the agreement. The appellate court was, therefore, not justified in disallowing the claim of the appellant for Rs 20,000 on account of damages as expected profit out of the contract which was found to have been illegally rescinded."



(emphasis supplied)

14. With respect to the contention that the Award grants interest upon interest, we find no substance in such argument. What have in fact been awarded is damages quantified as a percentage of the work, on which interest was awarded. The said aspect would, in our view fall within the contours of the Hon'ble Supreme Court's Judgments in ***Hyder Consulting (UK) Ltd. v. State of Orissa***[7] and ***UHL Power Co. Ltd. v. State of H.P.***[8]. Relevant paragraph of ***Hyder Consulting*** (*supra*) is produced hereinbelow:

> *"**21.** In the result, I am of the view that **State of Haryana v. S.L. Arora and Co., (2010) 3 SCC 690,** is wrongly decided in that it holds that a sum directed to be paid by an Arbitral Tribunal and the reference to the award on the substantive claim does not refer to interest pendente lite awarded on the "sum directed to be paid upon award" and that in the absence of any provision of interest upon interest in the contract, the Arbitral Tribunal does not have the power to award interest upon interest, or compound interest either for the pre-award period or for the post-award period. Parliament has the undoubted power to legislate on the subject and provide that the Arbitral Tribunal may award interest on the sum directed to be paid by the award, meaning a sum inclusive of principal sum adjudged and the interest, and this has been done by Parliament in plain language."*

15. In any event, in the present case, the Appellant has not produced any calculation to establish that interest upon interest was granted.

16. As for the contention based on Clause 16(3) of the Contract that no interest would be payable on earnest money, the same is misplaced. That clause only prohibits payment of interest <u>to the contractor</u> on earnest money, security deposits, or amounts payable under the contract. The interest has been awarded to the Respondent/

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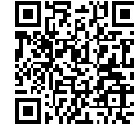
[7] (2015) 2 SCC 189
[8] (2022) 4 SCC 116



Contractee. There is no prohibition in awarding any interest under the Agreement to the Contractee.

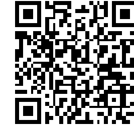
17. The further contention raised by the learned counsel for the Appellant is that the interest was not specifically prayed for in the counter-claim by the Respondent. The learned Arbitrator, in the award, granted the post award interest in the following terms:

> "IN CONCLUSION M/s Sanmati Builders, (claimant) shall pay Rs.258897/-to U.O.I. represented through the Sr. Divisional Engineer-III, Northern Railway, DRM office, New Delhi (Respondent) in full and final settlement of all claims/Counter Claims of both the parties arising out of the disputes and counter disputes as referred by the General Manager in his letter No. 63-W/5/1014-WA Dated 17.08.2009. That the award is published under Arbitration and Conciliation Act, 1996.
>
> That this amount as mentioned above should be paid to the Respondent within 90 days from the date of publication of the award failing which amount of award will carry Compound interest @ 8% per annum till the date of payment."
>
> ***(emphasis supplied)***

18. Perhaps this plea by the Appellant is based on paragraph 26 of the Section 34 petition before the learned Single Judge, wherein the Appellant, has contended as follows:

> *"26. That the Ld. Arbitrator has allowed interest that too compound interest at the rate of 8% per annum for future which was never **paid** before him by the Respondent. And the same is contrary to the terms of the contract and the respondent is not allowed to any interest. Thus the Ld. Arbitrator has exceeded his jurisdiction by making an award in favour of the Respondent which was not **paid** before him."*

19. Assuming for a moment that the same is an inadvertent error, what needs to be seen is that, there is, in fact, no interest made payable on the amount awarded, if paid within the stipulated period of 90 days. The interest is conditioned upon the Contractor not making the payment within the period stipulated. It can thus be seen that the

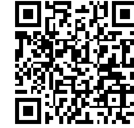


interest has been imposed as a measure of deterrence and to ensure timely compliance with the terms of the award.

20. We are fortified in our conclusion by the Judgment of the Hon'ble Supreme Court in ***Morgan Securities & Credits (P) Ltd. v. Videocon Industries Ltd.***[9], which holds that, the provisions of Section 31(7)(b) do not curtail the discretion of the Arbitrator to grant post-award interest and such discretion is inherent in the arbitrator's authority. It also holds that the object of post-award interest is to deter an award-debtor from delaying compliance with the award. While Section 31(7)(a) governs pre-award interest and makes it subject to the terms of the award, there is no equivalent limitation in respect of post-award interest. The phrase *"unless the award otherwise directs"* appearing in Section 31(7)(b) relates only to the rate of interest, not to the power to award it. Accordingly, the arbitrator retains complete discretion to award post-award interest, whether on the whole or part of the awarded sum, so long as such discretion is exercised fairly, reasonably, and in good faith. The relevant paragraphs of the judgment are reproduced below:

> ***"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.*

[9] (2023) 1 SCC 602

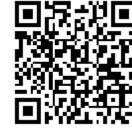


__25.__ Section 31(7)(a) confers a wide discretion upon the arbitrator in regard to the grant of pre-award interest. The arbitrator has the discretion to determine the rate of reasonable interest, the sum on which the interest is to be paid, that is whether on the whole or any part of the principal amount, 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.

__26.__ The arbitrator has the discretion to grant post-award interest. Clause (b) does not fetter the discretion of the arbitrator to grant post-award interest. It only contemplates a situation in which the discretion is not exercised by the arbitrator. Therefore, the observations in Hyder Consulting (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189, on the meaning of "sum" will not restrict the discretion of the arbitrator to grant post-award interest. __There is nothing in the provision which restricts the discretion of the arbitrator for the grant of post-award interest which the arbitrator otherwise holds inherent to their authority__.

__27. The purpose of granting post-award interest is to ensure that the award-debtor does not delay the payment of the award. With the proliferation of arbitration, issues involving both high and low financial implications are referred to arbitration. The arbitrator takes note of various factors such as the financial standing of the award-debtor and the circumstances of the parties in dispute before awarding interest. The discretion of the arbitrator can only be restricted by an express provision to that effect. Clause (a) subjects the exercise of discretion by the arbitrator on the grant of pre-award interest to the arbitral award. However, there is no provision in the Act which restricts the exercise of discretion to grant post-award interest by the arbitrator. The arbitrator must exercise the discretion in good faith, must take into account relevant and not irrelevant considerations, and must act reasonably and rationally taking cognizance of the surrounding circumstances__.

__28.__ In view of the discussion above, we summarise our findings below:



***28.1.** The judgment of the two-Judge Bench in State of Haryana v. S.L. Arora & Co., (2010) 3 SCC 690, was referred to a three-Judge Bench in Hyder Consulting (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189, 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.*

***28.2.** Bobde, J.'s opinion in Hyder Consulting (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189, 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).*

28.3. The phrase "unless the award otherwise directs" in Section 31(7)(b) only qualifies the rate of interest.

***28.4. 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 per cent**.*

28.5. 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.

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

***28.7.** By the arbitral award dated 29-4-2013, a post-award interest of eighteen per cent was awarded on the principal amount in view of the judgment of this Court in State of Haryana v. S.L. Arora & Co., (2010) 3 SCC 690. 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 (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189. Thus, the award of the arbitrator granting post-award interest on the principal amount does not suffer from an error apparent.*

(emphasis supplied)

21. We, are also of the view that the learned Single Judge correctly observed that, considering the nature of the works, being of public importance, and the admitted fact that the Appellant abandoned the project, the damages awarded by the learned Arbitrator cannot be regarded as either wholly unreasonable or perverse, so as to warrant judicial interference.

22. The learned Single Judge has also held, and we concur, that since the Respondent was compelled to re-tender the work and incur additional expenditure on account of escalation, and because quantification of damages by the Arbitrator cannot be interfered with unless shown to be perverse or unreasonable, no ground was made out for judicial interference with the Award.

23. In light of the foregoing discussion, we are of the firm opinion that the present appeal does not disclose any valid ground for interference. Consequently, the appeal stands dismissed.

24. The present Appeal, along with pending application(s), if any, is disposed of in the above terms.

ANIL KSHETARPAL
(JUDGE)

HARISH VAIDYANATHAN SHANKAR
(JUDGE)

AUGUST 27, 2025/rk/sm/kr