



2025:DHC:5520-DB



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 14.07.2025

+ **FAO(OS)(COMM) 369/2019**

**SOUTH DELHI MUNICIPAL CORPORATION
OF DELHI**

..... Appellant

Versus

**M/S PKSS INFRASTRUCTURE PRIVATE
LIMITED**

..... Respondent

Advocates who appeared in this case:

For the Appellant : Ms. Malvika Trivedi, Sr. Adv. with Mr. Sanjay Vashishtha, Standing Counsel for MCD with Mr. Shailendra Slaria, Mr. Siddhartha Goswami, Mr. Sujal Gupta, Ms. Geetanjali Reddy, Advocates with Mr. Sanjay Sharma, Asst. Commissioner with Mr. Bijender Singh, JSA.

For the Respondent : Mr. Sandeep Bajaj, Mr. Soayib Qureshi & Mrs. Chetna Alagh, Advocates.

**CORAM
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA**

JUDGMENT

VIBHU BAKHRU, J.

Introduction

1. The Appellant [MCD] has filed the present appeal impugning a judgment dated 08.01.2018 passed by the learned Single Judge in OMP 715/2014 captioned *South Delhi Municipal Corporation v. M/s PKSS*



Infrastructure Private Limited. The said petition [OMP 715/2014] was filed by MCD under Section 34 of the Arbitration and Conciliation Act, 1996 [**the A&C Act**] impugning an arbitral award dated 19.03.2014 [**the impugned award**] passed by an Arbitral Tribunal comprising of a Sole Arbitration [**Arbitral Tribunal**].

2. The impugned award was rendered in the context of the disputes that had arisen between the parties in connection with the contract at border points of entry for toll collection in respect of specified commercial vehicles entering Delhi. The term of the contract was three calendar years and contemplated the respondent [**Contractor**] paying the agreed sum in 36 equal monthly instalments irrespective of the actual collection of toll.

PREFATORY FACTS

3. MCD was empowered under Section 103(2)(g) of the Delhi Municipal Corporation Act, 1957 to levy and collect toll tax from specified motor vehicles and trailers drawn by such vehicles, from points of entry into Delhi. It is stated that the MCD was also empowered to collect such tolls through contractors/agents.

4. MCD had issued a notice inviting tenders [**NIT**] dated 29.01.2008 inviting offers from various contractors for collection of toll at all entry points of Delhi at the rates as specified. MCD had also issued a Request for Proposal [**RFP**] comprising of three volumes, which included, (i) Instruction to Bidders; (ii) Project Information



Memorandum, (iii) Draft Agreement, setting out the terms and conditions of the contract.

5. Various bidders submitted their bids pursuant to the NIT. The technical bids were opened on 11.03.2008 and the financial bids were opened on 19.04.2008. The bid submitted by M/s P.K. Hospitality Services Pvt. Ltd. (JV) – a consortium constituted by P.K. Hospitality Services Pvt. Ltd., M/s Shankar Agencies; and Sangam India Ltd. for an amount of ₹606,60,78,660/- (to be remitted to the MCD in 36 instalments) was found to be the highest.

6. MCD issued a Provisional Letter of Award on 15.05.2008 awarding the contract to collect toll tax and develop, upgrade, operate and maintain toll plazas, posts and barriers at various sites. MCD also instructed successful bidders to commence the work with effect from 16.05.2008 at 6 AM. The Contractor was incorporated by the aforementioned consortium members and on 13.05.2009, the parties entered into the formal agreement [**the Agreement**]. Apparently, certain issues arose between the parties that remained unresolved. The principal issue between the parties related to collection of toll by integrated toll contractors (entities that were awarded the contract for construction of highways on Build-Operate-Toll [**BoT**] basis). M/s DGSC Ltd. was one such integrated toll contractor, who was collecting toll at the Rajokri Border.

7. It was broadly agreed that the integrated toll tax collectors would continue to collect toll, but pay a service fee, which would be



appropriated by the Contractor. The quantum of service fee would be determined mutually by executing a Tripartite Agreement. It is one of the grievances of the Contractor that the integrated toll contractor at Rajokri continued to collect toll without determination of the service fees. Apart from the above, there were other disputes as well including disputes relating to handing over of land/space with clear title at various locations where the Contractor was required to set up new infrastructure; getting the toll plaza sites cleared by the erstwhile contractor – M/s Banas Sand TTC-JV to enable the Contractor to set up its infrastructure at the site; and issues with regard to the rates which monthly passes were sold by the erstwhile contractor.

8. The disputes between the parties remained unresolved and were referred to Arbitration.

9. The Contractor filed its statement of claim before the Arbitral Tribunal raising various claims aggregating ₹163,64,34,003.50/- on account of losses suffered on various counts as well as the refund of ₹29,74,321/-.

10. In addition to the said amount, the Contractor also claimed losses due to withholding of the cash security deposit amounting to ₹47,00,00,000/- (Rupees forty seven crores) and the contract performance guarantee of a value of ₹46,90,00,000/- (Rupees forty six crores ninety lacs only) as well as the costs.

11. The MCD also preferred counter claims.



12. The arbitral proceedings culminated in the impugned award, which was rendered on 19.03.2014.

13. The amounts awarded by the Arbitral Tribunal in favour of the parties as summarized in paragraph 3 of the present appeal, are set out below:

- “(i) Rs. 15,00,000 (Rupees Fifteen Lakhs) was allowed in favour of the Respondent herein with interest at 9% per annum from the date of the filing of the amended statement of claim, i.e. 05.08.2011 till payment (under Issue No. 4).
- (ii) Rs. 15,00,000 (Rupees Fifteen Lakhs) was allowed in favour of the Respondent with interest at 9% per annum from the date of the filing of the amended statement of claim, i.e. 05.08.2011 till payment (under Issue No. 5).
- (iii) Rs. 47,00,00,000/- (Rupees Forty Seven Crores) was allowed in favour of the Respondent with interest at the rate of 15% per annum from 16.07.2011 till the date of payment towards the refund of the cash security deposit.
- (iv) Return of the Bank Guarantee of Rs. 46,96,00,000/- (Rupees Forty Six Crores Ninety Six Lakhs) was allowed in favour of the Respondent alongwith interest on the said amount at the rate of 15% per annum from 16.07.2011 till the expiry of the Bank Guarantee, i.e. 12.02.2012 within 4 weeks from the date of this Award. In case the said amount is not paid within 4 weeks, it shall carry interest at the rate of 15% per annum for the period thereafter.



- (v) Bank charges of Rs. 44,71,286/- allowed in favour of the Respondent with interest at the rate of 15% per annum from 16.07.2011 till payment.
- (vi) Rs.24,33,178.00/- was allowed in favour of the Appellant on account of interest on the delayed payment with further interest at the rate of 15% per annum from the date of filing of the counter claim, i.e. 15.11.2011 till payment.
- (vii) 50% of the costs incurred by the Respondent, i.e. Rs.32,00,000/- (Thirty Lakhs Only), was allowed in favour of the Respondent as cost of the proceedings.”

14. MCD filed an application under Section 34 of the A&C Act (OMP 715/2014) to set aside the impugned award to the extent of the amounts awarded to the Contractor and to the extent its counter claims were rejected.

15. The learned Single Judge did not accept that there were any grounds for setting aside the impugned award and, accordingly, dismissed the application filed by the MCD.

16. MCD has filed the present appeal impugning the said decision.

REASONS AND CONCLUSION

17. At the outset, it is material to note that the MCD has accepted the impugned award to a substantial extent and has confined its challenge to the impugned award to two issues. First, grant of interest at the rate of 15% on refund of cash security as well as contract performance



guarantee [**Bank Guarantee**] furnished by the Contractor; and second, award of ₹32 lacs as costs.

18. Ms Trivedi, learned senior counsel appearing for MCD contended that the grant of interest on cash security deposit as well as Bank Guarantee furnished by the Contractor was in teeth of Clause 6.4(a) of the conditions of contract as applicable to the Agreement. Thus, the Arbitral Tribunal had no jurisdiction to award the same. She also referred to various decisions of the Supreme Court including in *Pam Developments (P.) Ltd. v. State of West Bengal: (2024) 10 SCC 715*; *Union of India v. Manraj Enterprises: (2022) 2 SCC 331*, *Garg Builders v. Bharat Heavy Electronics Ltd.: (2022) 11 SCC 697*; *Jaiprakash Associated Ltd. v. Tehri Hydro Development Corpn. (India) Ltd.*; *Sri Chittaranjan Maity v. Union of India: 2017 SCC OnLine SC 1181*; and *Union of India v. Bright Power Projects (India) Pvt. Ltd.: (2015) 9 SCC 695*. She also referred to the decision of a Coordinate Bench of this Court in *Punjab National Bank v. Prime Engineers Consultants: 2018 SCC OnLine Del 10516* in support of her contention.

19. Insofar as the award of costs is concerned, she submitted that the award of costs was exorbitant and without evidence as the parties had not led evidence as to the cost incurred.

20. It would be relevant to refer to the relevant contractual terms in order to address the issue whether award of interest on security deposits



and contract performance guarantee, is liable to be set aside as contrary to the terms of the Contract.

21. In terms of Clause 4 of the Tender Documents, the successful bidder was required to pay performance security and furnish performance security by way of (i) 'Cash Security' equal to three months of the contract fee calculated on the basis of the financial bid and average on a pro-rata basis for 36 months; and (ii) contract performance guarantee for an amount equal to three months instalments calculated on the basis of the bid document. The Cash Security was required to be deposited in the form of cash/demand draft/banker's cheque. And, the performance security was required to be provided in the form of an unconditional and irrevocable bank guarantee. The relevant Clauses as set out under the heading 'Award Criteria', as stipulated in the Tender Documents are reproduced below:

“4.0. Performance security and payment of remittance to the MCD: The successful applicant/bidder whose proposal has been accepted will have to pay performance security referred to as “Cash Security” and “Contract Performance Guarantee” in the Volume III, - “Draft Contract Agreement” of the RFP;

4.1.1 “Cash Security” equal to three months contract fee, calculated from the amount contained in financial bid and averaged on pro rate basis for 36 months, in form of a cash/demand draft/banker's cheque.

4.1.2 “Contract Performance Guarantee” equal three months instalments calculated from the amount



contained in the financial bid and averaged on pro rata basis for 36 months. The Performance security shall be an unconditional and irrevocable bank guarantee from and Indian Nationalized/scheduled bank This shall be acceptable to MCD maximum within 10 (ten) days from the date of issue of the letter of Acceptance (LOA) as per the draft of the bank guarantee proforma (appended at Annexure 12)

4.1.3 The performance security shall be valid throughout the contract Agreement period of 3 years and over and above this period for a minimum period of 180 days, which may be ended only at the notification of the Commissioner, MCD.

4.1.4 In addition to the above, monthly remittance shall be paid to the MCD. This shall be paid as 36 post dated cheques equivalent to one month's amount calculated from the cumulative and lump-sum figure contained in the financial bid for three years, averaged and equated on pro-rata basis for 36 months. These cheques will be deposited with the MCD covering the total period of the contract maximum within 10 (ten days) from the date of issue of the Letter of Acceptance (LOA).”

22. Clause 6 of the terms and conditions of the Agreement also contain provisions regarding the furnishing of performance securities. The said Clause is reproduced below:

“6. PERFORMANCE SECURITIES

6.1. Earnest Money Deposit

(a) The Contractor had submitted, along with his technical and financial offer as quoted in the



Proposal, an earnest money deposit of Rs.6,00,00,000 (Rupees Six Crores) by bank draft/banker's cheque of a scheduled / nationalized bank in favour of the Commissioner, Municipal Corporation of Delhi ("EMD"), payable in Delhi.

- (b) After issuance of Letter of Acceptance (LOA) vide letter dated 02.05.2008 to the Contractor, the EMD has been adjusted towards Cash Security.

6.2. Cash Security

- (a) Consequently, the Contractor has furnished as Security for the fulfillment of its obligations during the Term, deposit Rs.47 Crores (Rs. Forty Seven Crores only) being the equivalent of the three months Contract Fee, in cash/banker cheque/demand draft into the MCD's bank account in the Specified Bank ("Cash Security")
- (b) Subject to Clause 6.4, the Cash Security shall be liable to be set off against any amounts owed to the MCD by the Contractor at the end of the Term. The remaining amount, if any shall be refunded without any interest to the Contractor within [2] months of the expiry of the Agreement and upon the full compliance by the Contractor in discharging all its obligations and requirements hereunder.

6.3 Contract Performance Guarantee by the Contractor

- (a) Simultaneously with the signing of the Agreement, the Contractor has, as further security for the fulfillment of its obligations during the Term, furnished the MCD with an irrevocable and unconditional bank guarantees aggregating to Rs.46.96 Crores (Rupees Forty Six Crores & Ninety Six lacs only) from scheduled/nationalized banks in the format provided in Schedule 6.2 ("Contract Performance Guarantee").



- (b) The Contractor shall ensure that the Contract Performance Guarantee remains in full force and effect of a period of 6 months immediately following the Expiry date.
- (c) The Contract Performance Guarantee shall be for an amount equal to three months Contract Fee and the MCD shall have the right to encash and appropriate proceed of the Contract Performance Guarantee without notice to the Contractor in the event that the Contract commits a breach of its obligation hereunder including where:
- (i) this Agreement is terminated for reason other than the MCD's Event of Default or Force Majeure; or
 - (ii) any amount due and payable (including interest) by the Contractor to the MCD in accordance with this Agreement remains unpaid by the Contractor on its due date; or
 - (iii) there is a failure of the Contractor to renew or extend or replace the Contract Performance Guarantee at least [15] days prior to its expiry, unless such expiry is due to the termination or expiry of this Agreement.
- (d) The Contract Performance Guarantee shall be refunded without any interest to the Contractor within [2] months of the expiry or termination of the Agreement and upon the full compliance by the Contractor in discharging all its obligations and requirements hereunder.

6.4 Interest and Maintenance

- (a) The EMD, Cash Security and the Contract Performance Guarantee shall not carry any interest whatsoever in any circumstances.



- (b) The Contractor shall always maintain the original amount of said Performance Guarantee and shall forthwith deposit such further amount as may be necessary to make up the original amount of the said Performance Guarantees. In case a demand notice by the MCD is returned as failed by the bank that gave the said Performance Guarantee on behalf of the Contractor, the MCD shall be entitled to terminate the Agreement and encash the said Performance Guarantees for whatever amount is available.
- (c) In the event of said Contract Performance Guarantee being found insufficient or if the said Contract Performance Guarantees has been wholly forfeited, the balance or the total sum recoverable as the case may be shall be deducted from the Cash Security and any other sum due to the Contractor or which at anytime thereafter may become due to Contractor under this or any other contract, with the MCD, should that sum also be not sufficient to cover the full amount recoverable, the Contractor shall forthwith pay to the MCD on demand the remaining balance due or the same can be recovered as arrears of Taxes under the provision of the DMC Act and any other Applicable Laws.”

23. The term of the Agreement was three years, which expired on 16.05.2011. It was the Contractor’s case that on completion of the contract, the ‘Cash Security’ was required to be returned and the Bank Guarantee was required to be discharged. The Contractor stated that it had prior to the termination of the Agreement requested MCD to make arrangement to refund of the security deposits and discharge of the Bank Guarantee which were furnished as ‘Cash Security’ and ‘Contract Performance Guarantee’ in terms of the Agreement. However, MCD



failed to refund the deposits and the performance security without pointing out any claim, which could be adjusted against the security deposits. The Contractor also filed an application under Section 9 of the A&C Act seeking refund of the security deposits and the Bank Guarantee. However, the Court relegated the Contractor to agitate such claims before the Arbitral Tribunal.

24. The Contractor claimed that since in terms of Clause 6.4 of the Agreement, no interest would accrue on the amount of Cash Deposits or the amount blocked under the Contract Performance Guarantee, the respondent was liable to refund the same on the expiry of the term of the Agreement and in any event within a period of two months from the said date. The Contractor claimed that it had suffered substantial loss on account of the MCD continuing to withhold the amount of cash deposits and Bank Guarantee, without any justifiable grounds. It claimed that withholding of the amount had prevented the Contractor from participating in any other high value tender on account of the paucity of funds resulting in loss of business opportunities. The contractor also claimed that acts of MCD precluded it from using its funds and investing the same in other businesses. It also claimed that the concerned bank had furnished the Bank Guarantee against the assets, which were furnished as collateral. Thus, the assets of a value of approximately ₹150 crores were blocked for keeping the Bank Guarantee alive. On the basis of the aforesaid averments, the Contractor claimed that he was entitled to interest at the rate of 24% per annum on the securities (₹47,00,00,000/-) furnished as Cash Security and



₹46,96,00,000/- as Contract Performance Guarantee. Additionally, the Contractor also claimed bank charges for keeping the Bank Guarantee alive with effect from 16.05.2001 till its discharge as well as damages to the extent of ₹1 crore per month.

25. The Arbitral Tribunal accepted the Contractor's claim for interest on the Cash Security and the Contract Performance Guarantee. However, the Arbitral Tribunal reduced the rate of interest from 24% to 15%. The Arbitral Tribunal found that MCD was liable to return the cash deposits as well as the Bank Guarantee, but had failed to do so. The Arbitral Tribunal was of the view that this case was a gross case where MCD had raised false claims in order to cover its own breaches. And, had retained the cash deposits of ₹47,00,00,000/- and Bank Guarantee of a value of ₹46,96,00,000/- resulting in losses and prejudice to the Contractor. The Arbitral Tribunal's conclusions in respect of the aforesaid claims are set out below:

“397. In view of the findings rendered earlier, the Respondent is clearly liable to return the cash deposit of Rs.47,00,00,000/- and the Contract Performance Guarantee of Rs.46,96,00,000/- which was renewed once, to the Claimant.

398. The Tribunal is of the considered opinion that this a gross case where a Respondent, which is a public body raised false claims in order to cover its own breaches of contract and retained the Cash Deposit of Rs.47,00,00,000/- and the Contract Performance Guarantee of Rs.46,96,00,000/- even after the expiry of the agreement. The said



conduct of the Respondent has caused severe losses and prejudice to the Claimant herein.

399. In view of the above, it cannot be denied that the Claimant has suffered substantial financial losses on account of the unreasonable withholding of the total amount of Rs.93,96,00,000/- from 16/5/2011.
400. The Claimant has made a threefold claim for damages/compensation on account of withholding of the cash security and performance bank guarantee, i.e (1) interest at the rate of 24% per annum on the amount of Rs. 93,96,00,000/-, viz. cash security of Rs. 47,00,00,000/- and contract performance guarantee of Rs. 46,96,00,000/-; (2) bank charges incurred by the Claimant to keep the bank guarantee alive after the contract period; and (3) damages to the extent of Rs. 1,00,00,000/- per month from 16/05.2011 till the date of return of the aforesaid cash security deposit and contract performance guarantee.
401. In view of the findings hereinbefore, the Respondent is liable to forthwith return the cash deposits and the original Bank Guarantee furnished by the Claimant. In so far as the claim for damages/compensation is concerned, the Claimant has not adduced any justification for arriving at the claim of damages of Rs. 1 crores per month. This is however, according to the Tribunal, a fit case to grant the interest at 15% per annum as damages on account of the wrongful withholding of the cash security deposit and the contract performance guarantee. The interest of 15% per annum shall be payable on the cash security deposit, with effect from 16.07.2011 till the date of payment. As regards the contract



performance guarantee in the form of bank guarantee, the interest at the rate of 15% shall be payable from 16.07.2011 till the date of expiry of the bank guarantee, i.e. 12.02.2012 (the bank guarantee was renewed only upto 12.02.2012). In addition to this, the Respondent under the said circumstances is also liable to pay to the Claimant, the bank charges of Rs. 44,71,286/- with interest at the rate of 15% per annum from 16.07.2011 till payment. The CW-2 has proved the payment of bank charges and a certificate of the Chartered Accountants in that regard is also placed at Annexure-CW-2/5.”

26. The learned Single Judge rejected the contention that the Arbitrator could not award any interest on the securities furnished by the Contractor in the following words:

“20. The submissions of the learned senior counsel for the Petitioner cannot be accepted as the Arbitrator has not awarded interest on the refund of the security amount for the period of the contract but only after the expiry of the same. The agreement does not forbid grant of interest after the expiry of the contract, on the other hand, Clause 6.3 (d) states that the security amount shall be refunded within two months of the expiry of the agreement. The agreement expired on 16th May, 2011 and therefore, cash security should have been refunded by 16th July, 2011, having been not refunded, the Arbitrator was within its power to award interest on the same with effect from 16th July, 2011 till the date of payment.”

27. Insofar as the ground of interest on Bank Guarantee is concerned, the learned Single Judge accepted MCD’s contention that the bank guarantee had not been encashed and therefore, granting interest on the



said amount would not arise. However, the court rejected the contention that interest could not be awarded on the said amount for the reason that the same was awarded as damages for wrongfully withholding the Bank Guarantee. The Arbitral Tribunal had found that the Contractor had suffered losses on the said count. The learned Single Judge also referred to Section 31(7)(a) of the A&C Act and observed that the same empowered the Arbitral Tribunal to award interest at such rate as it deems reasonable.

28. It is material to note that neither the Arbitral Tribunal nor the learned Single Judge considered the import of Clause 6.4(a) of the Agreement, which specifically stipulates that “*the EMD, Cash Security and the Contract Performance Guarantee shall not carry any interest whatsoever in any circumstances.*” In our view, there is no ambiguity in the said clause and it expressly proscribes accrual of any interest in any circumstances. It is now well settled that where a contract between the parties expressly limits the liability to pay interest, the same cannot be awarded contrary to the agreement. This question is no longer *res integra*.

29. In *Pam Developments (P) Ltd. v. State of W.B.* (*supra*), the Supreme Court had explained as under:

“**23.** The power of the arbitrator to grant pre-reference interest, pendente lite interest, and post-award interest under Section 31(7) of the Act is fairly well-settled. The judicial determinations also highlight the difference in the position of law under the Arbitration Act, 1940. The



following propositions can be summarised from a survey of these cases:

23.1. Under the Arbitration Act, 1940, there was no specific provision that empowered an arbitrator to grant interest. However, through judicial pronouncements, this Court has affirmed the power of the arbitrator to grant pre-reference, pendente lite, and post-award interest on the rationale that a person who has been deprived of the use of money to which he is legitimately entitled has a right to be compensated for the same. [*State of Orissa v. G.C. Roy*, (1992) 1 SCC 508, para 43(i). Also see *State of Orissa v. N.C. Budharaj*, (2001) 2 SCC 721; *Union of India v. Krafters Engg. & Leasing (P) Ltd.*, (2011) 7 SCC 279 : (2011) 3 SCC (Civ) 533] When the agreement does not prohibit the grant of interest and a party claims interest, it is presumed that interest is an implied term of the agreement, and therefore, the arbitrator has the power to decide the same. [*State of Orissa v. G.C. Roy*, (1992) 1 SCC 508, paras 43 (iv) & 44]

23.2. Under the 1940 Act, this Court has adopted a strict construction of contractual clauses that prohibit the grant of interest and has held that the arbitrator has the power to award interest unless there is an express, specific provision that excludes the jurisdiction of the arbitrator [*Port of Calcutta v. Engineers-De-Space-Age*, (1996) 1 SCC 516, paras 4 and 5; *Madnani Construction Corpn. (P) Ltd. v. Union of India*, (2010) 1 SCC 549 : (2010) 1 SCC (Civ) 168; *Tehri Hydro Development Corpn. Ltd. v. Jai Prakash Associates Ltd.*, (2012) 12 SCC 10 : (2013) 2 SCC (Civ) 122, paras 18-20; *Union of India v. Ambica Construction*, (2016) 6 SCC 36 : (2016) 3 SCC (Civ) 36 (First Ambica Construction Case); *Ambica Construction v. Union of India*, (2017) 14 SCC 323 : (2018) 1 SCC (Civ) 257 (Second Ambica Construction Case); *Raveechee & Co. v. Union of India*,



(2018) 7 SCC 664 : (2018) 3 SCC (Civ) 711; *Reliance Cellulose Products Ltd. v. ONGC Ltd.*, (2018) 9 SCC 266 : (2018) 4 SCC (Civ) 351] from awarding interest for the dispute in question [*State of U.P. v. Harish Chandra*, (1999) 1 SCC 63].

23.3. Under the 1996 Act, the power of the arbitrator to grant interest is governed by the statutory provision in Section 31(7). This provision has two parts. Under clause (a), the arbitrator can award interest for the period between the date of cause of action to the date of the award, *unless otherwise agreed by the parties*. Clause (b) provides that unless the award directs otherwise, the sum directed to be paid by an arbitral award shall carry interest @ 2% higher than the current rate of interest, from the date of the award to the date of payment.

23.4. The wording of Section 31(7)(a) marks a departure from the Arbitration Act, 1940 in two ways : *first*, it does not make an explicit distinction between pre-reference and pendente lite interest as both of them are provided for under this sub-section; *second*, it sanctifies party autonomy and restricts the power to grant pre-reference and pendente lite interest the moment the agreement bars payment of interest, even if it is not a specific bar against the arbitrator. [*Sayeed Ahmed & Co. v. State of U.P.*, (2009) 12 SCC 26, paras 14, 23, 24 : (2009) 4 SCC (Civ) 629; *Union of India v. Saraswat Trading Agency*, (2009) 16 SCC 504 : (2011) 3 SCC (Civ) 499; *Sree Kamatchi Amman Constructions v. Railways*, (2010) 8 SCC 767, para 19 : (2010) 3 SCC (Civ) 575; *Union of India v. Bright Power Projects (India) (P) Ltd.*, (2015) 9 SCC 695, para 13 : (2015) 4 SCC (Civ) 702; *Reliance Cellulose Products Ltd. v. ONGC Ltd.*, (2018) 9 SCC 266, para 24 : (2018) 4 SCC (Civ) 351; *Jaiprakash Associates Ltd. v. Tehri Hydro Development Corpn. (India) Ltd.*, (2019) 17 SCC 786, paras 13-15 : (2020) 3 SCC (Civ) 605; *Delhi Airport Metro Express (P)*



Ltd. v. DMRC, (2022) 9 SCC 286, paras 16-20, 24 : (2022) 4 SCC (Civ) 623]

23.5. The power of the arbitrator to award pre-reference and pendente lite interest is not restricted when the agreement is silent on whether interest can be awarded [*Jaiprakash Associates Ltd. v. Tehri Hydro Development Corpn. (India) Ltd.*, (2019) 17 SCC 786, para 13.2 : (2020) 3 SCC (Civ) 605.] or does not contain a specific term that prohibits the same [*Oriental Structural Engineers (P) Ltd. v. State of Kerala*, (2021) 6 SCC 150, paras 15-18 : (2021) 3 SCC (Civ) 548.]

23.6. While pendente lite interest is a matter of procedural law, pre-reference interest is governed by substantive law. [*Central Bank of India v. Ravindra*, (2002) 1 SCC 367, para 39 following *State of Orissa v. G.C. Roy*, (1992) 1 SCC 508, para 43(v)] Therefore, the grant of pre-reference interest cannot be sourced solely in Section 31(7)(a) (which is a procedural law), but must be based on an agreement between the parties (express or implied), statutory provision (such as Section 3 of the Interest Act, 1978), or proof of mercantile usage [*Central Bank of India v. Ravindra*, (2002) 1 SCC 367, para 39; *Central Coop. Bank Ltd. v. S. Kamalaveni Sundaram*, (2011) 1 SCC 790, para 13 : (2011) 1 SCC (Civ) 331].”

30. In view of the above, the Contractor can draw no support from the provisions to Section 31(7)(a) of the A&C Act for sustaining the award of interest. Clearly, if the parties had agreed that the contract securities “*shall not carry any interest whatsoever in any circumstances*”, the Arbitral Tribunal would have no power to award interest by virtue of Section 31(7)(a) of the A&C Act. As is apparent from the plain language of the said clause, the power to award interest



under the said clause would arise only if the parties had not agreed otherwise.

31. In *Garg Builders v. Bharat Heavy Electronics Ltd.* (*supra*), the Supreme Court considered the question regarding the power of the arbitrator to award interest in the backdrop of Clause 17 of the Agreement between the concerned parties. The said clause expressly provided that “*no interest shall be payable by BHEL on earnest money deposit, security deposit or on any moneys due to the contractor.*”

32. The Court rejected the contention that the arbitrator could award interest on the amounts due notwithstanding the said clause. The Supreme Court further observed as under:

“10. We have carefully considered the submissions of the learned counsel for both the parties made at the Bar. The law relating to award of pendente lite interest by arbitrator under the 1996 Act is no longer res integra. The provisions of the 1996 Act give paramount importance to the contract entered into between the parties and categorically restricts the power of an arbitrator to award pre-reference and pendente lite interest when the parties themselves have agreed to the contrary.”

33. It is also relevant to refer to a recent decision of the Supreme Court in *Union of India v. Manraj Enterprises* (*supra*). The Supreme Court had set aside the decision of this Court declining to interfere with an arbitral award whereby an arbitral tribunal had awarded *pendente lite* and future interest on the entire awarded amount except earnest money



deposit and security deposit. The application preferred by the Union of India for setting aside the award on the ground that award of interest was contrary to the terms of the contract was rejected by the learned Single Judge of this Court. The appeal preferred against the said order under Section 37 of the A&C Act was also rejected by the Division Bench of this Court. On a further appeal preferred by the Union of India, the Supreme Court examined Clause 16(2) of the General Conditions of Contract in that case, which is reproduced below:

“(2) No interest will be payable upon the earnest money or the security deposit or amounts payable to the contractor under the contract, but government securities deposited in terms of sub-clause (1) of this clause will be repayable with interest accrued thereon.”

34. The Supreme Court referred to the earlier decisions and held as under:

“... in view of Clause 16(2) of the GCC, the arbitrator could not have awarded the interest, pendente lite or future interest on the amount due and payable to the contractor under the contract in the instant case.”

35. We also consider it relevant to refer to the decision of the Coordinate Bench of this Court in *Punjab National Bank v. Prime Engineering Consultants: 2018 SCC OnLine Del 10516*. In that case, the relevant clause expressly provided as under:

“No interest is allowed on initial security deposit. Earnest money and retention money.”



36. The Agreement also provided that “*the initial security deposit including earnest money shall be refunded to the contractor after 14 days of issue of virtual completion certification by the Employer*”.

37. Notwithstanding the aforesaid stipulation, the Arbitral Tribunal had awarded interest. The learned Single Judge of this Court rejected the application under Section 34 of the A&C Act to set aside the arbitral award. In an appeal preferred under Section 37 of the A&C Act, the Division Bench of this Court referred to the decision of the Supreme Court in ***Union of India v. Bright Power Projects (India) (P) (Ltd.): (2015) 9 SCC 695*** and had observed that the interest to the extent it was granted in excess of the stipulated and agreed amount was inadmissible “*inasmuch as it proceeds beyond the contractual condition.*”

38. In the present case, we find there is a clear bar, which proscribes award of interest on the security deposit and the performance securities.

39. In view of the above, the impugned award to the extent that it awards interest on cash securities and performance bank guarantee cannot be sustained. The impugned award is, accordingly, set aside to the aforesaid extent.

40. Insofar as the bank charges on keeping the Bank Guarantee alive is concerned, we find no ground to interfere with the impugned award. The Arbitral Tribunal had concluded that withholding of Bank Guarantee was unjustified and the Contractor was compelled to keep



the same alive. The Contractor had also placed material/led evidence to establish the quantum of bank charges incurred by it.

41. We are also unable to accept the contention that the award of cost by the Arbitral Tribunal suffers from any patent illegality. It is well settled that the Indian Evidence Act, 1872 does not apply to arbitral proceedings. Undisputedly, the Contractor had placed material before the Arbitral Tribunal to substantiate its claim for the cost incurred towards cost of arbitration and legal expenses. The Arbitral Tribunal had accepted the same and awarded 50% of cost incurred by the Contractor. The relevant extract of the impugned award reads as under:

“Cost of the Arbitration

405. Both the Parties have claimed costs from the opposite side and have accordingly submitted their respective bills of expenses. This is a case where the Tribunal has been inclined to grant the claims of the Claimant partially. On the other hand, only a small amount of the counter claim has been granted. The counter claim raised by the Respondent is clearly false, imaginary and without any basis. The Claimant is put to severe losses and hardships on account of the highhanded and unreasonable conduct of the Respondent by withholding the cash security deposit and contract performance guarantee. Therefore, the Tribunal is inclined to direct the Respondent to pay 50% of the costs incurred by the Claimant and bear its own costs. The Claimant has claimed a sum of Rs. 64,15,142/- (rounded off to Rs. 64 Lakhs) towards the cost of arbitral tribunal and legal expenses. Accordingly, the Tribunal directs the Respondent to pay a sum of Rs. 32 Lakhs to the Claimant by way of costs of the arbitration and legal expenses.”



2025:DHC:5520-DB



42. We are unable to accept that the said award of cost is vitiated on the ground of patent illegality or is conflict with the public policy of India.

43. In view of the above, the present appeal is partly allowed to the limited extent that the award of interest on cash security and contract performance security is set aside. The parties are left to bear their own costs.

VIBHU BAKHRU, J

TEJAS KARIA, J

JULY 14, 2025
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