

2025 LiveLaw (SC) 944

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

MANOJ MISRA; J., UJJAL BHUYAN; J.

SLP (CIVIL) NO. 10732 OF 2024; SEPTEMBER 24, 2025

HLV LIMITED (FORMERLY KNOWN AS HOTEL LEEAVENTURE PVT. LTD.)

versus

PBSAMP PROJECTS PVT. LTD.

Arbitration and Conciliation Act, 1996 (A&C Act) - Section 31(7) - Interest on arbitral award – Held, Section 31(7)(a) permits the arbitral tribunal to include interest in the award for the pre-award period at a reasonable rate, which is subject to agreement by the parties - Section 31(7)(b) mandates interest at 18% per annum on the award amount from the date of the award to payment unless otherwise directed by the award - If the arbitral award specifies a composite rate of interest, the award holder cannot claim additional 18% compound interest - Compound interest cannot be granted unless expressly awarded - Arbitral award here explicitly granted simple interest at 21% per annum till repayment as per the parties MOU, precluding additional or compound interest - The executing court's acceptance of full payment including interest was in accordance with the award - The High Court's remand for fresh consideration of interest was not justified - Set aside High Court's order - Appeal allowed. [Relied on *Hyder Consulting UK Ltd. v. Governor, State of Orissa* (2015) 2 SCC 189; *Morgan Securities and Credits Pvt. Ltd. v. Videocon Industries Ltd.* (2023) 1 SCC 602; Paras 17, 19-20, 24, 27-30]

For Petitioner(s): Mr. Dama Seshadri Naidu, Sr. Adv. Mr. Hemandranath Reddy, Sr. Adv. Mr. M Srinivas R Rao, Adv. Mr. M.V. Mukunda, Adv. Mr. Abid Ali Beeran P, AOR Mr. Sarath S Janardanan, Adv. Mr. Saswat Adhyapak, Adv. Ms. Namita Kumari, Adv.

For Respondent(s): Mr. P.b. Suresh, Sr. Adv. Mr. Mayank Jain, Adv. Mr. Madhur Jain, Adv. Ms. Aakriti Dhawan, Adv. Mr. Arpit Goel, Adv. Mr. Deepak Jain, Adv. Mr. Parmatma Singh, AOR

J U D G M E N T

UJJAL BHUYAN, J.

Leave granted.

2. This appeal by special leave is directed against the judgment and order dated 22.04.2024 passed by the High Court for the State of Telangana at Hyderabad (High Court) in Civil Revision Petition No. 60 of 2024 (*PBSAMP Projects Private Limited Vs. HLV Limited*). By the impugned judgment and order, the Division Bench of the High Court set aside the order dated 02.11.2023 passed by the Principal Special Court in the cadre of District Judge for trial and disposal of commercial disputes at Hyderabad (referred to hereinafter as 'the Executing Court') in CEP No. 05 of 2021 rejecting the petition filed by the respondent for enforcement of the arbitral award dated 08.09.2019 on the ground that respondent is not entitled to compound interest and that the amount paid by the judgment debtor (appellant) to the decree holder (respondent) i.e. Rs. 44,42,05,254.00 was in full satisfaction of the award.

3. Question for consideration in this appeal is whether in the facts and circumstances of the case, the decree holder (respondent) would be entitled to interest upon interest in terms of Section 31(7)(b) of the Arbitration and Conciliation Act, 1996 or the interest awarded by the arbitral tribunal in the award dated 08.09.2019 in terms of the memorandum of understanding dated 09.04.2014 entered into between the parties i.e.

between the appellant and the respondent fulfil the requirement of Section 31(7)(a) and (b) of the said Act?

4. The above question arises in the following factual backdrop.

5. The two parties had entered into a memorandum of understanding (MoU) on 09.04.2014. The MoU was with regard to sale and transfer of land situated at Road No. 10, Banjara Hills, Hyderabad admeasuring approximately 3 acres and 28 guntas. The details of the land are mentioned in the schedule to the MoU.

5.1. It may be mentioned that appellant as the vendor had acquired absolute ownership of the schedule land under different sale deeds which was to be used for construction of a five star hotel but for various reasons did not go ahead with the project and instead decided to sell the land to the respondent. Under the aforesaid MoU, respondent paid a sum of Rs. 15.5 crores as advance to the appellant. As differences arose between the parties, the MoU was terminated on 09.10.2024 whereafter the dispute was referred to arbitration. The arbitral tribunal comprised of three arbitrators: Mr. Justice TNC Rangarajan being nominated by the claimant i.e. the respondent and Mr. Justice A Kulasekaran being nominated by the appellant. The two arbitrators in turn nominated Justice Arijit Pasayat as the presiding arbitrator.

6. The arbitral tribunal passed an award dated 08th September, 2019, the operative portion of which reads as under:

The claimant is entitled to Rs. 15.5 crores with interest at 21% p.a. from the date it was given to the date it is repaid. The respondent has kept the documents of title in escrow for security purposes The respondent has admitted liability for Rs. 10 crores and disputed only the sum of Rs. 5.5 crores. Hence we direct that the respondent pay immediately the sum of Rs. 10 crores with interest The escrow arrangement will be limited to the disputed amount of Rs. 5.5 crores only. The claimant shall give the consent letter for release of the balance of Rs. 5.5 crores simultaneously with the tender of the amount by way of DD or certified cheque, NEFT/RTGS to a designated account by the respondent within 3 months from the date of the award. The amount will carry interest at 21% p.a. from the date it was received till the date of exchange of the DD, certified cheque, NEFT/RTGS with the consent letter. The respondent's counterclaim stands rejected. In the peculiar facts of the case, it is directed that the parties shall bear their respective costs.

7. Thus, the arbitral tribunal awarded Rs. 15.5 crores to the claimant (respondent) with interest at the rate of 21 percent per annum from the date it was given to the date it is repaid. Appellant filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (briefly, 'the 1996 Act' hereinafter) before the learned Special Court for trial and disposal of commercial disputes at Hyderabad (Special Court) for setting aside of the award which was registered as COP No. 118 of 2019. Learned Special Court *vide* the judgment and order dated 19.03.2021 dismissed COP No. 118 of 2019.

8. It appears that there was no further challenge to the award. Thus, the arbitral award dated 08.09.2019 attained finality.

9. Thereafter, respondent filed execution petition CEP No. 05 of 2021 before the executing court for execution of the arbitral award dated 08.09.2019.

10. In the course of hearing, the judgment debtor (appellant) paid a total of Rs. 44,42,05,254.00 on various dates and in various amounts starting from 22.07.2022 to 31.07.2023 which according to it was in full compliance to the award including interest.

11. Decree holder i.e. the respondent filed a calculation sheet before the executing court claiming compound interest over and above the rate of interest i.e. 21 percent as awarded by the arbitral tribunal. The executing court referred to Section 31(7) of the 1996 Act as well as to the decision of this Court in *Hyder Consulting (UK) Limited Vs. Governor, State of Orissa*¹, and thereafter held that claim of the decree holder for compound interest on the awarded amount was not sustainable. The executing court cannot go beyond the award passed by the arbitral tribunal. The decree holder is not entitled for compound interest as claimed. The amount paid by the judgment debtor to the decree holder i.e. Rs. 44,42,05,254.00 was in full satisfaction of the arbitral award. Accordingly, by the order dated 02.11.2023 executing court closed CEP No. 05 of 2021.

12. This order came to be assailed by the respondent before the High Court in a proceeding under Article 227 of the Constitution of India which was registered as Civil Revision Petition No. 60 of 2024. By the impugned judgment and order dated 22.04.2024, the High Court was of the view that the executing court had reached the conclusion in a cryptic and cavalier manner. Therefore, the order dated 02.11.2023 was set aside and the matter was remitted back to the executing court to reconsider the issue of interest under the award dated 08.09.2019 to the respondent though clarifying that it had not expressed any opinion on the merit of the claim.

13. Aggrieved, the related special leave petition came to be filed. This Court by order dated 14.05.2024 had issued notice and in the meanwhile, had stayed the order of remand.

14. Mr. Hemendranath Reddy, learned senior counsel for the appellant, at the outset, submits that the award neither granted compound interest nor granted post-award interest. Arbitral tribunal had awarded composite interest i.e. simple interest of 21% per annum from the dates payment became due to the date of repayment. Respondent did not challenge this part of the award. The award has since attained finality. Therefore, it is not open to the respondent now to claim either compound interest or post-award interest on the principal amount.

14.1. Mr. Reddy, learned senior counsel, submits that the executing court had specifically reasoned that the award had only granted 21% simple interest from the date when the cause of action arose till payment. For this entire period, the arbitral tribunal awarded simple interest at the rate of 21%. Neither any compound interest was granted nor any postaward interest. Therefore, respondent is not entitled to compound interest. This aspect of the matter was overlooked by the High Court which also did not consider the fact that the calculation submitted by the appellant was accepted by the executing court after due consideration of all the facts and circumstances of the case.

14.2. According to him, the reasoning given by the executing court cannot be faulted. Calculation offered by the appellant having been accepted by the executing court with sufficient reasons, the High Court was not justified in setting aside the order passed by the executing court and remanding the matter back for fresh consideration.

14.3. Learned senior counsel submits that by 31.07.2023, the entire amount of Rs. 44,42,05,254.00 was paid by the appellant to the respondent in full compliance to the award which included the interest quotient as well. No further amount remains to be paid. Therefore, the executing court rightly closed the execution case.

¹ (2015) 2 SCC 189

14.4. It is submitted that respondent in its claim before the arbitral tribunal had itself calculated the interest portion at the rate of 21% simple interest from the date the payment became due till actual payment. As such, it is impermissible for the respondent to now turn around and claim compound interest i.e. post-award interest over and above the 21% interest agreed upon by the parties and awarded by the arbitral tribunal. Such claim virtually amounts to modification of the award which is impermissible at the stage of execution.

14.5. It is also submitted that Section 31(7)(a) and Section 31(7)(b) of the 1996 Act has no application to the facts of the present case as the arbitral tribunal itself awarded composite interest covering the entire period from the time the cause of action arose till payment. Arbitral tribunal did not award any post-award interest. Therefore, the decision of this Court in *Hyder Consulting (UK) Limited* (supra) would have no application.

14.6. Placing reliance on a subsequent decision of this Court in *Morgan Securities and Credits Private Limited Vs. Videocon Industries Limited*², learned senior counsel submits that this judgment has clarified the proposition laid down in *Hyder Consulting* (supra) by holding that an arbitral tribunal has the discretion to grant post-award interest either on the whole 'sum' or part of it. The decision in *Hyder Consulting* (supra) would only be applicable when the award is silent about payment of interest and not when the award clearly spells the method of paying interest including future interest. In fact, *Morgan Securities* (supra) has clarified the law laid down in *Hyder Consulting* (supra) by holding that when the award specifies the method of paying future interest, then *Hyder Consulting* (supra) would have no application. Therefore, the High Court clearly fell in error when it held that *Morgan Securities* (supra) would not apply to the facts of the case and remanding the matter back to the executing court for fresh decision placing reliance on *Hyder Consulting* (supra).

14.7. Learned senior counsel finally submits that High Court was not justified in summarily dismissing the order of the executing court as passed in a cryptic and cavalier manner.

14.8. He, therefore, submits that view taken by the High Court is not correct. The same is required to be set aside and quashed. Consequently, the appeal should be allowed by restoring the order of the executing court.

15. *Per contra*, Mr. P.B. Suresh, learned senior counsel for the respondent submits that the impugned order does not determine any *inter se* rights of the parties. It is only an order of remand with the observation that the High Court has not expressed any opinion on merit. Therefore, such an order calls for no interference, that too, under Article 136 of the Constitution of India.

15.1. As and when the executing court decides the issue finally, parties to the *lis* would have the right to take recourse to the remedy as provided under the law. In such circumstances, filing of the special leave petition by the appellant is clearly an abuse of the process of the court.

15.2. As per the interest calculation sheet as on 31.07.2023 filed by the respondent before the executing court, appellant was liable to pay Rs. 57,74,68,490.00. As against this, appellant has only paid to the respondent Rs. 44,42,05,254.00 till 31.07.2023. Therefore, an amount of more than Rs. 13 crores still remains outstanding. It is required to be paid by the appellant to the respondent.

² (2023) 1 SCC 602

15.3. Learned senior counsel for the respondent submits that the interest for the prior period till the date of the award has to be capitalized which will then be the 'sum' in terms of Section 31(7)(a) of the 1996 Act. On that basis, the judgment debtor is entitled to 21% post-award interest on the above 'sum' till the date of payment. In addition to placing reliance on the decision of this Court in *Hyder Consulting* (supra), learned senior counsel submits that the issue raised by the respondent is no longer *res integra*. The decision in *Hyder Consulting* has since been explained and reiterated by this Court in *North Delhi Municipal Corporation Vs. S.A. Builders Limited*³. As per the said judgment, respondent is entitled to compound interest under Section 31(7)(b) of the 1996 Act on the 'sum' determined in terms of Section 31(7)(a) of the said Act.

15.4. He finally submits that the civil appeal is devoid of any merit and is, as such, liable to be dismissed.

16. Submissions made by learned counsel for the parties have received the due consideration of the Court.

17. At the outset, let us examine Section 31(7) of the 1996 Act which at the relevant point of time read thus:

31. Form and contents of arbitral award.

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

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

17.1. From a perusal of the aforesaid provision, it is seen that Section 31(7) has got two clauses: clause (a) and clause (b). Clause (a) starts with the expression 'unless otherwise agreed by the parties'. Thereafter, it says that where an award is for payment of money, the arbitral tribunal may include in the sum for which the award is made interest at such rate as it deems reasonable on the whole or any part of the money and for the whole or any part of the period from the date when the cause of action arose to the date when the award is made. In other words, clause (a) empowers the tribunal to include interest in the 'sum' for which the award is made. The arbitral tribunal is further conferred the discretion to award interest on the principal sum awarded at such rate as it deems reasonable. However, this discretion of the arbitral tribunal is subject to any decision which is agreed upon by the parties.

18. Clause (a) of Section 31(7) of the 1996 Act was examined by this Court in *S.A. Builders* (supra) whereafter it was held as under:

36.1. From a minute reading of sub-section (7), it is seen that it has got two parts: the first part i.e. clause (a) deals with passing of award which would include interest up to the date on which the award is made. The second part i.e. clause (b) deals with grant of interest on the "sum" awarded by the Arbitral Tribunal.

36.2. Let us now discuss in detail the contours of the two clauses. As per clause (a), when an award is made by the Arbitral Tribunal for payment of money, the "sum" which is

³ (2025) 7 SCC 132

awarded may include interest at such rate as the Arbitral Tribunal deems appropriate, on the whole or any part of the money and for the whole or any part of the period. The period for which the interest may be granted would be between the date on which the cause of action arose and the date on which the award is made. The expression which needs to be noticed in this part is the following: *the Arbitral Tribunal may include in the sum for which the award is made interest at such rate as it deems reasonable.*

36.3. The word “may” appearing in the above expression is quite significant. It implies that the Arbitral Tribunal has the discretion to grant interest at a reasonable rate. In other words, it may grant interest or it may not grant interest; but if it grants interest, it would be included in the “sum” which is awarded by the Arbitral Tribunal.

19. Insofar clause (b), as it stood at the relevant time is concerned, it provides for award of interest by the arbitral tribunal on the ‘sum’ adjudged under clause (a). It says that ‘unless the award otherwise directs’, a sum directed to be paid by an award shall carry interest at the rate of 18% per annum from the date of the award to the date of payment. In other words, clause (b) is subject to the interest that may be awarded by the arbitral tribunal. This provision was explained in *S.A. Builders* (supra) in the following manner:

36.4. This brings us to the second part i.e. clause (b) which deals with post-award interest. The “sum” directed to be paid by the Arbitral Tribunal shall, unless the award otherwise directs, carry interest @ 18% p.a. from the date of the award to the date of payment. Thus, what clause (b) provides for is that the Arbitral Tribunal may award interest on the “sum” adjudged under clause (a). But if no such interest is awarded, then there shall be interest @ 18% on the “sum” awarded by the Arbitral Tribunal from the date of the award to the date of payment. The two crucial words in this part are *sum* and *shall*. As seen from clause (a), the “sum” awarded by the Arbitral Tribunal would include interest if it is granted by the Arbitral Tribunal. Therefore, the “sum” as awarded by the Arbitral Tribunal may or may not include interest. Whether the “sum” so awarded includes or does not include interest, it would carry further interest @ 18% from the date of the award to the date of payment unless another rate of interest is granted by the Arbitral Tribunal. While granting of interest under clauses (a) and (b) by the Arbitral Tribunal is discretionary, the interest contemplated under clause (b) in the event of failure of the Arbitral Tribunal to award interest is mandatory. Therefore, the legislature has consciously used the word *shall*.

20. Thus, from a conjoint analysis of Section 31(7)(a) and Section 31(7)(b) of the 1996 Act, what is discernible is that insofar award of interest from the date on which the cause of action arose till the date of the award is concerned, the legislative intent is that the parties possess the autonomy to determine the interest and the rate of interest for the aforesaid period. Clause (a) i.e. discretion of the arbitral tribunal to award interest is subject to agreement by and between the parties. Therefore, party autonomy takes precedence over the discretion of the arbitral tribunal. However, clause (b) is subject to award of interest by the arbitral tribunal. In other words, as per clause (b), the ‘sum’ directed to be paid under an arbitral award shall carry interest at the rate of 18% per annum from the date of the award to the date of payment ‘unless the award otherwise directs’. Therefore, this provision is subject to award of interest by the arbitral tribunal. If it awards interest, then the same shall be applicable from the date of the award till the date of payment; if not, then the ‘sum’ as adjudged under clause (a) shall carry interest at the rate of 18%.

21. The parties here are governed by the MOU dated 09.04.2014. Clause (6)(b) of the MoU is relevant and reads as under:

(b) The proposed purchaser may at its option terminate this MOU by sending to the proposed vendor an intimation of termination of MOU and demand for refund of advance paid together with 21% interest per annum from the respective dates of disbursement of the advances till actual date

of payment of the same. The proposed vendor shall tender the advances together with 21% interest per annum within 30 days of receipt of intimation of termination from the proposed purchaser.

It is clarified that the termination of the MOU will take effect only from the date of receipt of all advances together with 21% interest per annum up to date of receipt by the proposed purchaser. If for any reason the proposed vendor is unable to tender all advances with 21% interest per annum within 30 days of the receipt of intimation of termination of the MOU from the proposed purchaser, the proposed purchaser will have the option to call upon the proposed vendor to execute the sale deed in respect of the schedule property on as is where is basis for a total consideration of Rs. 65 crores (Rupees sixty-five crores) and pay the balance amount after adjusting advances paid.

21.1. The aforesaid clause in the MoU gave discretion to the respondent to terminate the MOU in which event it would be entitled to refund of the advance paid together with interest at the rate of 21% per annum from the respective dates of disbursement of the advances till the actual date of repayment.

22. The arbitral tribunal in the award dated 08.09.2019 applied the aforesaid clause of the MOU while declaring that the claimant was entitled to Rs. 15.5 crores with interest at the rate of 21% per annum from the date it was given to the date it is paid. Therefore, it is evident that the arbitral tribunal was guided by the rate of interest provided in the MOU and it clarified while passing the award that this rate of interest would be available to the respondent from the dates of disbursement till the actual date of repayment.

23. A two-Judge Bench of this Court in *State of Haryana Vs. S.L. Arora*⁴ considered the question as to whether Section 31(7) of the 1996 Act authorises and enables arbitral tribunals to award interest on interest from the date of the award? In the facts of that case, the consequential question formulated was as to whether the arbitral award granted future interest from the date of award, only on the principal amount found due to the respondent or on the aggregate of the principal and interest up to the date of the award? After an analysis of the aforesaid provision, the Bench observed that Section 31(7) makes no reference to payment of compound interest or payment of interest upon interest. It was held that in the absence of any provision for interest upon interest in the contract, arbitral tribunals do not have the power to award interest upon interest or compound interest either for the pre-award period or for the post-award period. It was held thus:

18. Section 31(7) makes no reference to payment of compound interest or payment of interest upon interest. Nor does it require the interest which accrues till the date of the award, to be treated as part of the principal from the date of award for calculating the post-award interest. The use of the words "*where and insofar as an arbitral award is for the payment of money*" and use of the words "*the Arbitral Tribunal may include in the sum for which the award is made, interest ... on the whole or any part of the money*" in clause (a) and use of the words "*a sum directed to be paid by an arbitral award shall ... carry interest*" in clause (b) of sub-section (7) of Section 31 clearly indicate that the section contemplates award of only simple interest and not compound interest or interest upon interest. "*A sum directed to be paid by an arbitral award*" refers to the award of sums on the substantive claims and does not refer to interest awarded on the "*sum directed to be paid by the award*". In the absence of any provision for interest upon interest in the contract, the Arbitral Tribunals do not have the power to award interest upon interest, or compound interest, either for the pre-award period or for the postaward period.

23.1. Thereafter the Bench upon a threadbare analysis concluded that Section 31(7) merely authorizes the arbitral tribunal to award interest in accordance with the contract

⁴ (2010) 3 SCC 690

and in the absence of any prohibition in the contract and in the absence of specific provision relating to interest in the contract, to award simple interest at such rates as it deems fit from the date on which the cause of action arose till the date of payment. The Bench further clarified that if the award is silent about interest from the date of award till the date of payment, the person in whose favour the award is made will be entitled to interest at 18% per annum on the principal amount awarded from the date of award till the date of payment. In the facts of that case, the Bench declared that the calculation that was made in the execution petition as originally filed was correct and that the modification sought for by the respondent increasing the amount due under the award was contrary to the award. It was concluded as under:

34. Thus it is clear that Section 31(7) merely authorises the Arbitral Tribunal to award interest in accordance with the contract and in the absence of any prohibition in the contract and in the absence of specific provision relating to interest in the contract, to award simple interest at such rates as it deems fit from the date on which the cause of action arose till the date of payment. It also provides that if the award is silent about interest from the date of award till the date of payment, the person in whose favour the award is made will be entitled to interest at 18% per annum on the principal amount awarded, from the date of award till the date of payment. The calculation that was made in the execution petition as originally filed was correct and the modification by the respondent increasing the amount due under the award was contrary to the award.

24. The correctness of the view taken in *S.L. Arora* (supra) came up for consideration before a three-Judge Bench of this Court in *Hyder Consulting* (supra). The majority held that the conclusion reached in *S.L. Arora* (supra) was not in consonance with the clear language of Section 31(7) of the Act. After extracting Section 31(7) of the 1996 Act, the Bench explained clause (a) of sub-section (7) of Section 31 in the following manner:

4. Clause (a) of sub-section (7) provides that where an award is made for the payment of money, the Arbitral Tribunal may include interest in the sum for which the award is made. In plain terms, this provision confers a power upon the Arbitral Tribunal while making an award for payment of money, to include interest in the sum for which the award is made on either the whole or any part of the money and for the whole or any part of the period for the entire pre-award period between the date on which the cause of action arose and the date on which the award is made. To put it differently, subsection (7)(a) contemplates that an award, inclusive of interest for the pre-award period on the entire amount directed to be paid or part thereof, may be passed. The “sum” awarded may be the principal amount and such interest as the Arbitral Tribunal deems fit. If no interest is awarded, the “sum” comprises only the principal. The significant words occurring in clause (a) of sub-section (7) of Section 31 of the Act are “*the sum for which the award is made*”. On a plain reading, this expression refers to the *total amount* or *sum* for the payment for which the award is made. Parliament has not added a qualification like “principal” to the word “sum”, and therefore, the word “sum” here simply means “a particular amount of money”. In Section 31(7), this particular amount of money may include interest from the date of cause of action to the date of the award.

24.1. On the above analysis, the Bench explained clause (b) of sub-section (7) of Section 31 of the 1996 Act to mean that the ‘sum’ which is directed to be paid by the award, whether inclusive or exclusive of interest, shall carry interest at the rate of 18% per annum for the post-award period unless otherwise ordered. The above provision was explained as under:

7. Thus, when used as a noun, as it seems to have been used in this provision, the word “sum” simply means “an amount of money”; whatever it may include —

“principal” and “interest” or one of the two. Once the meaning of the word “sum” is clear, the same meaning must be ascribed to the word in clause (b) of sub-section (7) of Section 31 of the Act,

where it provides that a *sum* directed to be paid by an arbitral award “shall ... carry interest ...” from the date of the award to the date of the payment i.e. post-award. In other words, what clause (b) of sub-section (7) of Section 31 of the Act directs is that the “sum”, which is directed to be paid by the award, whether inclusive or exclusive of interest, shall carry interest at the rate of eighteen per cent per annum for the post-award period, unless otherwise ordered.

24.2. Finally, *Hyder Consulting* (supra) arrived at the following conclusion:

13. Thus, it is apparent that vide clause (a) of subsection (7) of Section 31 of the Act, Parliament intended that an award for payment of money may be inclusive of interest, and the “sum” of the principal amount plus interest may be directed to be paid by the Arbitral Tribunal for the pre-award period. Thereupon, the Arbitral Tribunal may direct interest to be paid on such “sum” for the post-award period vide clause (b) of subsection (7) of Section 31 of the Act, at which stage the amount would be the sum arrived at after the merging of interest with the principal; the two components having lost their separate identities.

25. The question as to whether the ‘sum’ awarded under clause (a) of sub-section (7) of Section 31 of the 1996 Act would include interest *pendente lite* or not again came up for consideration before a two-Judge Bench of this Court in *Delhi Airport Metro Express Private Limited Vs. Delhi Metro Rail Corporation*⁵. The Bench analyzed *Hyder Consulting* (supra) in the following manner:

15. It could thus be seen that the majority view of this Court in *Hyder Consulting (UK)* is that the sum awarded may include the principal amount and such interest as the Arbitral Tribunal deems fit. It is further held that, if no interest is awarded, the “sum” comprises only the principal amount. The majority judgment held that clause (a) of sub-section (7) of Section 31 of the 1996 Act refers to the total amount or sum for the payment for which the award is made. As such, the amount awarded under clause (a) of sub-section (7) of Section 31 of the 1996 Act would include the principal amount plus the interest amount *pendente lite*. It was held that the interest to be calculated as per clause (b) of sub-section (7) of Section 31 of the 1996 Act would be on the total sum arrived as aforesaid under clause (a) of sub-section (7) of Section 31 of the 1996 Act. S.A. Bobde, J. in his judgment, has referred to various authorities of this Court as well as *Maxwell on the Interpretation of Statutes*. He emphasised that the Court must give effect to the plain, clear and unambiguous words of the legislature and it is not for the courts to add or subtract the words, even though the construction may lead to strange or surprising, unreasonable or unjust or oppressive results.

25.1. Thereafter, the Bench made an analysis of clause (a) of sub-section (7) of Section 31 of the 1996 Act and noted that it begins with the expression ‘unless otherwise agreed by the parties’. This expression was explained by the Bench by holding as under:

17. It could thus be seen that the part which deals with the power of the Arbitral Tribunal to award interest, would operate if it is not otherwise agreed by the parties. If there is an agreement between the parties to the contrary, the Arbitral Tribunal would lose its discretion to award interest and will have to be guided by the agreement between the parties. The provision is clear that the Arbitral Tribunal is not bound to award interest. It has a discretion to award the interest or not to award. It further has a discretion to award interest at such rate as it deems reasonable. It further has a discretion to award interest on the whole or any part of the money. It is also not necessary for the Arbitral Tribunal to award interest for the entire period between the date on which the cause of action arose and the date on which the award is made. It can grant interest for the entire period or any part thereof or no interest at all.

25.2. Thus, this Court was of the view that power of the tribunal to award interest would operate if it is not otherwise agreed by the parties. If there is an agreement between the parties to the contrary, the arbitral tribunal would lose its discretion to award interest and

⁵ (2022) 9 SCC 286

will have to be guided by the agreement between the parties. Thus, the expression ‘unless otherwise agreed by the parties’ assumes significance and concluded as under:

20. If clause (a) of sub-section (7) of Section 31 of the 1996 Act is given a plain and literal meaning, the legislative intent would be clear that the discretion with regard to grant of interest would be available to the Arbitral Tribunal only when there is no agreement to the contrary between the parties. The phrase “unless otherwise agreed by the parties” clearly emphasises that when the parties have agreed with regard to any of the aspects covered under clause (a) of sub-section (7) of Section 31 of the 1996 Act, the Arbitral Tribunal would cease to have any discretion with regard to the aspects mentioned in the said provision. Only in the absence of such an agreement, the Arbitral Tribunal would have a discretion to exercise its powers under clause (a) of subsection (7) of Section 31 of the 1996 Act. The discretion is wide enough. It may grant or may not grant interest. It may grant interest for the entire period or any part thereof. It may also grant interest on the whole or any part of the money.

25.3. From the above, the view of the court is clearly discernible in that the discretion to grant interest would be available to the arbitral tribunal under clause (a) of subsection (7) of Section 31 only when there is no agreement to the contrary between the parties. When the parties agree with regard to any of the aspects covered under clause (a) of subsection (7) of Section 31, the arbitral tribunal would cease to have any discretion with regard to the aspects mentioned in the said provision. Only in the absence of such an agreement, the arbitral tribunal would have the discretion to exercise its powers under clause (a) of sub-section (7) of Section 31 of the 1996 Act.

25.4. In the facts of that case it was held that in view of the specific agreement between the parties, the interest quotient prior to the date of the award so also after the date of the award will be governed by article 29.8 of the concession agreement which was also directed by the arbitral tribunal.

This view was accordingly affirmed by this Court.

26. In *Morgan Securities and Credits Private Limited Vs. Videocon Industries Limited*⁶, a two-Judge Bench of this Court again examined the decision in *Hyder Consulting* (supra). After an extensive analysis, the Bench was of the view that the decision in *Hyder Consulting* (supra) was on the limited issue of whether post-award interest could be granted on the aggregate of the principal and the pre-award interest. The opinion authored by Bobde, J. was limited to this aspect of post-award interest. Thereafter, the Bench noted that the issue before it was whether the phrase ‘unless the award otherwise directs’ in Section 31(7)(b) of the 1996 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. Thereafter it was noted that both clauses (a) and (b) of sub-section (7) of Section 31 are qualified. While clause (a) is qualified by the arbitration agreement between the parties, clause (b) is qualified by the arbitration award. The words ‘unless otherwise agreed by the parties’ occurring at the beginning of clause (a) qualifies the entire provision. However, the words ‘unless the award otherwise directs’ occurring in clause (b) only qualifies the rate of post-award interest. Thereafter, this Court summarized the findings and we extract only those portions which are relevant for our present purpose:

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.

⁶ (2023) 1 SCC 602

28.5. Section 31(7)(b) does not fetter or restrict the discretion that the arbitrator holds in granting postaward 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.

27. Though learned senior counsel for the respondent placed heavy reliance on *S.A. Builders Limited* (supra), we are of the view that *S.A. Builders Limited* (supra) is a continuum of what was held by this Court in *Delhi Airport Metro Express Private Limited* (supra) and in *Morgan Securities and Credits Private Limited* (supra). We have already noted as to how a two-Judge Bench of this Court in *S.A. Builders Limited* (supra) (of which I was also a member) had analyzed clauses (a) and (b) of sub-section (7) of Section 31 of the 1996 Act. We have also noted that this Court had observed that the provision in Section 31(7)(a) of the 1996 Act begins with the expression 'unless otherwise agreed by the parties', thereby highlighting the legislative stance that the parties possess the autonomy to determine pre-award interest on the payment of money that may be awarded by the arbitral tribunal. However, no such discretion is available to the parties under Section 31(7)(b) of the 1996 Act though such discretion is available to the arbitral tribunal. It was in that context this Court in the facts of that case noted that it was not the case of the appellant that the interest portion is covered by the contract agreement between the parties. In the absence thereof, Section 31(7)(a) as well as Section 31(7)(b) of the 1996 Act would have their full effect. Therefore, it was concluded as under:

70. That apart, it is not the case of the appellant that the interest portion is covered by the contract agreement between the parties. In the absence thereof, Section 31(7)(a) as well as Section 31(7)(b) of the 1996 Act would have their full effect. The sum awarded would mean the principal amount plus the interest awarded from the date of cause of action up to the date of the award.

Thereafter, as per Section 31(7)(b) of the 1996 Act, the sum (principal plus interest) would carry interest @ 18% from the date of the award to the date of payment. This would be consistent with the law laid down by this Court in *Hyder Consulting*.

28. Therefore, even *S.A. Builders Limited* (supra) lays down the proposition that the discretion of the arbitral tribunal to award interest under Section 31(7)(a) of the 1996 Act is subservient to the agreement between the parties. In other words, party autonomy, so crucial to arbitration, reigns supreme.

29. Reverting back to the facts of the present case, we have already adverted to clause 6(b) of the MoU dated 09.04.2014 which expressly provided that in the event of termination of the MoU, the appellant must refund all advances with interest at the rate of 21% per annum from the respective dates of disbursement till repayment. Thus, in the light of the express provision contained in clause (a) of subsection (7) of Section 31, the arbitral tribunal awarded interest in terms of the MoU from the date of the cause of action till the date of repayment. As the arbitral tribunal had expressly provided interest till the date of repayment, question of additional or compound interest under clause (b) of sub-section (7) of Section 31 of 1996 Act would not arise. The arbitral tribunal in its award dated 08.09.2019 has faithfully complied with the MoU agreed by and between the parties. Thus, the arbitral tribunal exercised its discretion within the overall framework of Section 31(7) of the 1996 Act aligning with the legislative intent that the award, rather than the statutory default, should govern the parties, more so in a case as in the present one where the parties have themselves made provision for interest throughout.

30. Therefore, reliance placed by the respondent on *Hyder Consulting* (supra) to claim post-award interest is misplaced. That principle would apply only when the arbitral tribunal

leaves a matter unqualified or is silent. In the present case the arbitral tribunal bound by the MoU and exercising its statutory discretion had already specified the interest rate (21% per annum) and the duration (until repayment). As held in *Morgan Securities and Credits Private Limited* (supra), reaffirmed in *Delhi Airport Metro Express Private Limited* (supra) and explained in *S.A. Builders Limited* (supra), once parties agree on the interest regime, the arbitrator's role is confined to enforcing it and the courts would not rewrite or enlarge the award by introducing further interest at the execution stage.

31. The MoU did not stipulate compounding of interest; the arbitral tribunal did not award compound interest; therefore, respondent cannot at the stage of execution seek to introduce claim of compound interest by drawing on general principles. Allowing such a claim would amount to rewriting the award at the stage of execution which is impermissible.

32. In the circumstances, we are of the view that the High Court was not justified in setting aside the order of the executing court and remanding the matter for fresh determination.

33. For the reasons aforementioned, the impugned judgment and order of the High Court dated 22.04.2024 is hereby set aside. Consequently, order of the executing court dated 02.11.2023 is restored.

34. Civil appeal is accordingly allowed. However, there shall be no order as to cost.

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