

2022 LiveLaw (SC) 409

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
M.R. SHAH; B.V. NAGARATHNA, JJ.**

April 12, 2022

**CIVIL APPEAL NOS. 2921-2922 OF 2022 (Arising out of SLP (C) Nos. 24912-24913 of 2013)
INDIAN OIL CORPN.LTD. Versus U.B. ENGINEERING LTD. & ANR.**

Arbitration and Conciliation Act, 1996; Section 31(7) - Arbitral tribunal can grant post-award interest on the sum of the award which also includes the interest component - The word sum used under Section 31(7) includes the interest awarded on the substantive claims, therefore, the post award interest would be on both the amount awarded in respect of the substantive claims and the interest awarded on such claims. [Referred to Hyder Consulting (UK) Limited vs. Governor, State of Orissa, (2015) 2 SCC 189] (Para 6)

(Arising out of impugned final judgment and order dated 01-04-2013 in FAO No. 2345/2006 01-04-2013 in FAO No. 4000/2006 passed by the High Court of Punjab & Haryana at Chandigarh)

For Petitioner(s) Mr. V.N. Koura, Adv. Mrs. Paramjeet Benipal, Adv. Mr. Avneesh Arputham, Adv. For M/s. Arputham Aruna And Co, AOR; For Respondent(s) Mr. Dhaval Deshpande, Adv. Mr. Amir Arsiwala, AOR Mr. Gaurav Kejriwal, AOR

ORDER

1. Leave granted.
2. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Punjab and Haryana at Chandigarh in FAO Nos. 2345 and 4000 of 2006 by which the High Court has modified the award passed by the sole Arbitrator to the extent awarding the interest @ 18% post-Award only upon the principal amount awarded and even reducing the rate of interest from 18% p.a. to 9% p.a., the original Claimant-IOC has preferred the present Appeals.
3. The issue involved in the present Appeals lies in a very narrow compass. The dispute was referred to the sole Arbitrator. The appellant herein-original Claimant submitted the claim and even the counter-claim was submitted on behalf of the respondent. Ultimately, the learned Arbitrator awarded a sum of Rs.3,08,32,448.30 towards the principal claim and Rs. 2,27,58,137.08 towards the interest. The learned Arbitrator awarded the interest from the date of the claim till the award @ 18 % p.a. Thus, the learned Arbitrator awarded a total sum of Rs. 5 ,35,91,262.00. In appeal by the respondent, the High Court has observed and held that the appellant-original Claimant shall be entitled to the interest only upon the principal amount so awarded and shall not be entitled to the interest on interest that is interest @ 18% p.a. on Rs. 2,27,58,137.08 (the interest component). The High Court, by the impugned order, has also reduced the rate of interest from 18% p.a. to 9% p.a. even with respect to the principal amount so awarded by the Arbitral Tribunal.
4. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court in not awarding the interest @ 18 % p.a. on the interest component of Rs. 2,27,58,137.08 from the date of award till realization and even awarding the interest

@ 9% upon the principal amount awarded, the original Claimant – IOC has preferred the present Appeals.

5. We have heard Mr. V.N. Koura, learned counsel appearing for the appellant-IOC and Mr. Dhaval Deshpande, learned counsel appearing for the respondent-liquidator.

6. The issue whether the learned Arbitrator could have awarded the interest on the interest of Rs. 2,27,58,137.08 from the date of award till realization and whether the same can be said to be interest on interest is now not *res integra* in view of the decision of this Court in the case of **Hyder Consulting (UK) Limited vs. Governor, State of Orissa, (2015) 2 SCC 189**. In paras 27-32, it is observed and held as under:-

“27. Section 31(7)(a) employs the words "...the Arbitral Tribunal may include in the sum for which the award is made interest...". The words "include in the sum" are of utmost importance. This would mean that pre-award interest is not independent of the "sum" awarded. If in case, the Arbitral Tribunal decides to award interest at the time of making the award, the interest component will not be awarded separately but it shall become part and parcel of the award. An award is thus made in respect of a "sum" which includes within the "sum" component of interest, if awarded.

28. Therefore, for the purposes of an award, there is no distinction between a "sum" with interest, and a "sum" without interest. Once the interest is "included in the sum" for which the award is made, the original sum and the interest component cannot be segregated and be seen independent of each other. The interest component then loses its character of an "interest" and takes the colour of "sum" for which the award is made.

29. There may arise a situation where, the Arbitral Tribunal may not award any amount towards principal claim but award only "interest". This award of interest would itself then become the "sum" for which an award is made under [Section 31\(7\)\(a\)](#) of the Act. Thus, in a pre-award stage, the legislation seeks to make no distinction between the sum awarded and the interest component in it.

30. Therefore, I am inclined to hold that the amount awarded under [Section 31\(7\)\(a\)](#) of the Act, whether with interest or without interest, constitutes a "sum" for which the award is made.

31. Coming now to the post-award interest, [Section 31\(7\)\(b\)](#) of the Act employs the words, "A sum directed to be paid by an arbitral award...". Clause (b) uses the words "arbitral award" and not the "Arbitral Tribunal". The arbitral award, as held above, is made in respect of a "sum" which includes the interest. It is, therefore, obvious that what carries under [Section 31\(7\)\(b\)](#) of the Act is the "sum directed to be paid by an arbitral award" and not any other amount much less by or under the name "interest". In such situation, it cannot be said that what is being granted under [Section 31\(7\)\(b\)](#) of the Act is "interest on interest". Interest under sub-clause (b) is granted on the "sum" directed to be paid by an arbitral award wherein the "sum" is nothing more than what is arrived at under subclause (a).

32. Therefore, in my view, the expression "grant of interest on interest" while exercising the power under [Section 31\(7\)](#) of the Act does not arise and, therefore, the Arbitral Tribunal is well empowered to grant interest even in the absence of clause in the contract for grant of interest.”

7. Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, the impugned judgment and order passed by the High Court denying the interest on the interest of Rs. 2,27,58,137.08 from the date of award till realization is unsustainable and the same deserves to be quashed and set aside and the award passed by the learned Arbitrator on the aforesaid aspect is required to be restored.

8. Now so far as the next question/issue whether the High Court was justified in reducing the interest from 18% to 9% is concerned, the same is also unsustainable in view of the statutory provision contained in [Section 31\(7\)\(b\)](#) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”) which was applicable pre-amendment Act, 2015. As per [Section 31\(7\)\(b\)](#) of the Act, the sum directed to be paid by the arbitral award shall, unless the award otherwise directs, carry interest @ 18% p.a. from the date of the award to the date of payment.

9. In the present case, learned Arbitrator specifically awarded the interest @ 18% p.a. from the date of award to the date of payment. Therefore, the same was absolutely in consonance with the statutory provision applicable.

10. Even the said issue is also now not *res integra* in view of the decision of this Court in the case of **Bharat Heavy Electricals Limited vs. Globe Hi-fabs Limited (2015) 5 SCC 718**. An identical question came to be considered in the aforesaid decision and it is held that the award shall contain the interest @ 18% p.a. from the date of award till the actual payment. In para 17, it is observed and held as under:-

“17. On the facts of the case we agree with the submission of Mr. Gourab Banerji that interest is only payable from the date of the award. However, we do not agree with him that the interest should be reduced because of Section 31(7)(b) of the Arbitration and Conciliation Act, 1996 which clearly states that rate of interest will be 18% p.a. Shri Gourab Banerji submitted that in some decisions, a lesser interest has been awarded. We cannot see how a lesser interest can be awarded when the statute specifically provides that the rate of interest will be 18% p.a. and the arbitrator has accepted and awarded this rate of interest. Judges cannot legislate or amend the law by judicial decisions. They have to maintain judicial discipline and give their decisions in accordance with law. Hence the lesser rate of interest cannot be awarded because that would be amending the law which is not within the powers of the judiciary”.

11. In that view of the matter even the impugned judgment and order passed by the High Court reducing the interest @ 9% from that of 18% p.a. from the date of award till the actual payment is also unsustainable and the same deserves to be quashed and set aside.

12. In view of the above and for the reasons stated above, the present appeals succeed. The impugned judgment and order holding that the appellant-Claimant shall not be entitled to the interest on interest of Rs.2,27,58,137.08 from the date of award till realization is hereby quashed and set aside. The impugned judgment and order passed by the High Court reducing the interest from 18% to 9% from the date of award till realization is also hereby quashed and set aside. The award passed by the learned Arbitrator is hereby restored.

13. The present appeals are, accordingly, allowed. In the facts and circumstances of the case, there shall be no order as to costs.

14. At this stage, learned counsel appearing on behalf of the respondent has submitted that the respondent is under liquidation under the IBC proceedings and the liquidator is appointed and therefore now the appellant has to submit the claim before the liquidator to make the payment as per Section 53 of the IBC.

It goes without saying that, whatever the formalities are to be complied with by the appellant for realizing the amount under the present order, the IOC will comply with the same, which will be considered in accordance with the provisions under the IBC. As and when the appellant now submits the claim before the liquidator, the same shall be dealt with by the liquidator in accordance with law and on its own merits.