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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
ABHAY S. OKA; J., UJJAL BHUYAN; J.
CIVIL APPEAL NO. 3461 OF 2025; MAY 15, 2025

M/S. INTERSTATE CONSTRUCTION
versus
NATIONAL PROJECTS CONSTRUCTION CORPORATION LTD.

Arbitration and Conciliation Act, 1996 - Section 31(7) - Arbitral Tribunal's Discretion to Award Differential Interest Rates - Held, under Section 31(7), the arbitral tribunal has the authority to award varying interest rates for pre-reference, pendente lite, and post-award periods. The Supreme Court set aside the High Court's decision, which had overturned the tribunal's award of compound interest, affirming that the "sum" under Section 31(7)(b) includes the principal and accrued interest, permitting compound interest. The tribunal may exclude specific periods or subdivide the period between the cause of action and the award date, applying reasonable interest rates as deemed fit. The appeal was allowed, restoring the arbitral award with compound interest as granted. *[Relied on: Hyder Consulting (UK) Ltd. v. Governor, State of Orissa, (2015) 2 SCC 189, Pam Developments Pvt. Ltd. v. State of West Bengal, 2024 LiveLaw (SC) 613 and North Delhi Municipal Corporation v. S.A. Builders Ltd., 2024 LiveLaw (SC) 1010 (Paras 35 & 36]*

For Petitioner(s): Mrs. S. Janani, Sr. Adv. Ms. Madhu Moolchandani, AOR Ms. Sharika Rai, Adv.

For Respondent(s): Mr. Dhruv Mehta,Sr.Adv. Mr. Rajat Arora, AOR Ms. Mariya Shahab,Adv. Ms. Nishi Sangtani,Adv.

J U D G M E N T

UJJAL BHUYAN, J.

This appeal by special leave is directed against the judgment and order dated 01.08.2023 passed by the Division Bench of the High Court of Delhi in FAO (OS) (Comm) No.175 of 2021.

2. It may be mentioned that by the aforesaid judgment and order dated 01.08.2023 (impugned judgment), Division Bench of the High Court of Delhi (High Court) allowed the appeal of National Projects Construction Corporation Limited, (NPCC) or the respondent hereinafter, filed under Section 37 of the Arbitration and Conciliation Act, 1996 (briefly 'the 1996 Act' hereinafter) setting aside that part of the judgment and order dated 02.08.2021 passed by a learned Single Judge of the High Court under Section 34 of the 1996 Act upholding the directions contained in paragraph 58(b) of the award dated 28.10.2020 as well as setting aside the directions of the arbitral tribunal as contained in paragraph 58(b) of the said award.

3. Relevant facts may be briefly noted.

4. Respondent had engaged the services of the appellant for executing a contract relating to Ramagundam Super Thermal Power Project, Ramagundam, District Karimnagar in the then composite State of Andhra Pradesh. In this regard, two separate work orders were issued:

(i) Work order No.917344/838 dated 19.06.1984 in respect of the work *excavation of foundation package work-II 3 X 500 MW of National Thermal Power Corporation Limited, Ramagundam Super Thermal Power Project;*

(ii) Work Order No. 917344/2382 in respect of the work *foundation package work, stage-II, at Ramagundam Super Thermal Power Project;*

5. Thereafter, contract agreement was entered into between the parties. As per clause 4 of the conditions of contract read with clause 15 of the special conditions attached to the work orders, all the disputes and differences between the parties were to be settled by way of arbitration.

6. It is stated that appellant had completed the contract work in the year 1987. Respondent had paid the appellant the contractual dues after withholding certain sums on account of recoveries. Appellant disputed such recoveries. Additionally, appellant also raised certain claims which were not accepted by the respondent.

7. In view of such disputes and differences, appellant invoked the arbitration clause by issuing notice dated 17.05.1993.

8. Respondent did not take immediate steps for appointment of an arbitrator. After considerable delay, by communication dated 07.10.1997, respondent appointed Shri Shivamoy Ghosh, Additional General Manager, NPCC, Madras Sector, Chennai as the sole arbitrator to arbitrate on the subject dispute.

9. Appellant filed statement of claims before the learned arbitrator on 20.01.1998 claiming an aggregate amount of Rs.4,46,29,404.00 along with *pendente lite* and future interest at the rate of 24 percent per annum till final realization of the amount.

10. Appellant sought for a direction from the learned arbitrator to the respondent to supply various documents related to the dispute. However, learned arbitrator only permitted the appellant an opportunity to inspect the documents and did not issue any direction to the respondent for supply of copies.

11. Aggrieved thereby, appellant filed a petition under Section 14 of the 1996 Act before the High Court seeking termination of the mandate of the learned arbitrator and for appointment of a new arbitrator in his place. This petition was registered as OMP No. 214/2002. By order dated 11.10.2004, learned Single Judge terminated the mandate of Shri Shivamoy Ghosh and appointed Shri A.S. Chandhiok, Sr. Advocate, as the sole arbitrator.

12. Respondent challenged the said order of the learned Single Judge dated 11.10.2004 before the Division Bench of the High Court in FAO (OS) No.241/2004. By order dated 02.02.2005, Division Bench appointed Shri L.R. Gupta, retired Director General of CPWD as the sole arbitrator.

13. Before Shri L.R. Gupta, the learned arbitrator, respondent while filing its reply to the statement of claims filed by the appellant, also challenged the authority of one Shri Jagdish Raj Yadav to file the claim on behalf of the appellant. In this regard an application dated 23.02.2007 was filed before the learned arbitrator. Learned arbitrator dismissed the said application *vide* the order dated 03.08.2007.

14. The said order dated 03.08.2007 was challenged by the respondent before the learned Single Judge of the High Court by filing a petition under Section 34 of the 1996 Act, being OMP No.537/2007.

15. It may be mentioned that Shri L.R. Gupta resigned as the sole arbitrator on 23.06.2008.

16. *Vide* order dated 30.01.2007, learned Single Judge disposed of the petition filed under Section 34 of the 1996 Act bearing OMP No.537/2007.

17. Appellant filed a petition under Section 15 of the 1996 Act before the High Court being OMP (T) (Comm) No. 30/2018 seeking appointment of an arbitrator in place of Shri L.R. Gupta who had resigned. The said petition was disposed of by the learned Single Judge of the High Court *vide* order dated 31.05.2018 reconstituting the arbitral tribunal by appointing Mr. Justice R.C. Jain, a former Judge of the High Court, as the sole arbitrator to arbitrate on the disputes between the parties.

18. New arbitrator held the first hearing on 03.05.2019 and finally pronounced the award on 28.10.2020. While the arbitral tribunal allowed the claims of the appellant under several heads, we are concerned with the contentious part of the award relating to payment of interest (claim No. 7) contained in paragraph 58 of the award. Relevant portion contained in paragraph 58 of the award reads as under:

58. *** *** *** ***

In a nutshell the claimant is held entitled to interest as under:

a) Pre-reference / past period interest: @ 18% per annum on a sum of Rs.34,43,490.61 w.e.f. July 1987 up-till 19.01.1998.

b) *Pendente lite* interest:

i) @ 12% per annum w.e.f. 20.01.1998 uptill 31.12.2008 on the total amount (i.e. principal amount + the amount of interest on the pre-reference/past period).

ii) @ 12% per annum w.e.f. 01.01.2017 till the date of award on the total amount (i.e. principal amount + the amount of interest for the pre-reference period and for the period from 20.01.1998 till 31.12.2008).

c) Future interest: @ 18% per annum from the date of the award till the date of payment on the total amount (i.e. principal amount + amount of interest on the pre-reference/past period+ amount of interest *pendente lite*).

19. Respondent filed a petition under Section 34 of the 1996 Act before the Single Bench of the High Court for setting aside the award dated 28.10.2020. The same was registered as OMP (Comm) No. 78/2021. By the judgment and order dated 02.08.2021, learned Single Judge partly allowed the petition by setting aside the award with regard to future interest at the rate exceeding 9 percent per annum from the date of the award till the date of payment.

20. Aggrieved by the judgment and order dated 02.08.2021 passed by the learned Single Judge, respondent preferred an appeal under Section 37 of the 1996 Act before the Division Bench of the High Court which was registered as FAO (OS) (Comm) No. 175/2021. In the appeal, learned senior counsel for the respondent (which was the appellant before the Division Bench) clarified that the challenge would be restricted to the directions issued by the arbitral tribunal insofar the issue of interest was concerned. This was further clarified by submitting that the challenge was not with respect to the rate of interest or award of interest for the pre-reference/past period. Grievance highlighted was against the directions contained in sub-paragraph (b)(i) of paragraph 58 to the extent of the arbitral tribunal stipulating that interest for the period mentioned therein would be leviable not merely on the principal amount as awarded but upon the said amount inclusive of the amount of interest relating to the pre-reference/past period. Likewise, arbitral tribunal awarded interest on identical terms in subparagraph (b)(ii) of paragraph 58 which was objected to. Division Bench of the High Court *vide* the judgment and order dated 01.08.2023 (impugned judgment) allowed the appeal by setting aside the directions contained in paragraph 58(b).

21. Aggrieved thereby, appellant filed the related SLP (C) No.23235/2023 before this Court. By order dated 19.10.2023, this Court issued notice. In the hearing held on 25.02.2025, leave was granted.

22. Though there is no challenge by either parties to the award on merit, challenge of the respondent being confined only to the interest part, nonetheless, to have a complete picture, it would be appropriate to mention the claims of the appellant and the corresponding amounts awarded by the arbitral tribunal. The following statement in tabular form will throw light on the amounts claimed by the appellant and the amounts awarded by the arbitral tribunal under sixteen heads of claim. The tabular statement is as under:

Claim No.	Particulars	Amount Claimed	Amount Awarded
(a)	Escalation at 10% for work order 48/4	Rs.20,71,322.0 0	Rs.20,71,322 .00
(b)	Escalation at 10% for work order 47/11	Rs.1,84,418. 77	Rs.1,84,418.77
(c)	Refund of panel recovery of steel taking 5% of scrap wastage in place of 3% wastage: - I) Steel difference II) M.S. Found Steel III) 12 Dia M.S. IV) Structural Steel V) Steel Plates VI) Scrap made in labour rates	Rs.1,75, 132.00 Rs. 1,806.42 Rs. 68,750.00 Rs. 2,513.28 Rs. 2,649.84 Rs.12,000.00	
	Total	Rs.2,62,850.70	Rs.1,82,463. 70
d)	Unreasonable recoveries:- i) Cribes ii) Shutter plates	Rs. 3,747.75 Rs. 38,322.65	
	iii) B.F.P. Hire charges for shutter plates iv) B.F.P. Hire charges for shutter plates v) Refund of 28% overhead supply for metal vi) Dozer recovery for work order No. 48/4 vii) Cubes failure (never given in writing of any cube failure of any member) viii) Chain pulley block (not with us) ix) Clamps (already returned) x) Pipes (already returned)	Rs. 15,776.31 Rs. 64,521.00 Rs. 60,833.00 Rs. 10,676.00 Rs. 34,701.92 Rs. 8,000.00 Rs. 14,990.00 Rs. 89,353.00	
	Total	Rs.3,40,921.63	Rs.60,833.00
e)	Work order by other agencies but not in our scope like plastering etc.	Rs.84,447.00	Rs.84,447.00

f)	Held amounts:- i) Amount held on account of grouting T.G. ii) Amount held on account of grouting C.E.P. iii) Staging held amount of T.G. iv) Work order No. 48/4 withheld amount v) Work Order No. 47/11 withheld amount vi) Work Order No. 48/4 shutter plates held vii) Curing held amount 48/4 viii) Work order No.48/4 E.S.P. rectification held amount ix) Work order No.48/4 T.G. held amount for final shape.	Rs.3,95,000.00 Rs.20,000.00 Rs.3,09,203.14 Rs.43,000.00 Rs.51,803.00 Rs.23,000.00 Rs.3,000.00 Rs.10,000.00 Rs.5,000.00	
	Total	Rs.8,60,004.14	Rs.8,60,004.14
g)	Balance payable in bills i) Payable in bills 47/11 ii) S.D. 47/11 total balance iii) Work order No. 48/4 money payable in bills	Rs.64,376.76 Rs.2,02,870.00 Rs.84,000.00	
	Total	Rs.3,51,246.76	
h)	Difference in excavation	Rs.1,31,464.00	
i)	Booking of C.E.P. in packageIV as agreed by E.D.S.R. differences	Rs.17,690.00	
j)	Claims of not allotting quarry as agreed by E.D.S.R.	Rs.2,66,000.00	
k)	1200 M3 of stone aggregate from Karim Nagar for rate differences of Rs. 70/- M^3 extra and the claim was agreed by EDSR referred to our letter ISC/ Claims/1 Dt.14.10.89 para III.	Rs.13,40,000.00	
l)	Idle labour charges refer our letter ISC/Claims/1 dt. 14.10.89, para IV	Rs.4,81,000.00	
m)	2% interest rate difference on mobilization advance.	Rs.50,000.00	
n)	Interest on delayed release of S.D. refer para 9 of our letter ISC/Claims/1 dt. 14.10.89.	Rs.2,40,000.00	
o)	Mental anguishes, torture and loss of social status suffered refer Letter No. ISC/ Claims/1 dt. 14.10.89 para II.	Rs.60,00,000.0 0	
p)	Addl. 24% interest for 10.5 years w.e.f. July 1987 upto Dec. 1997.	Rs.3,19,57,039. 0	
	Total	Rs.4,46,38,404.00	Rs.34,43,490.61

23. We have already extracted the nature of interest payment provided in the award dated 28.10.2020. However, for ready reference, interest awarded to the appellant by the arbitral tribunal may once again be noted which is as under:

(a) Pre-reference/past period interest at the rate of 18% per annum on the sum of Rs. 34,43,490.61 with effect from July 1987 uptill 19.01.1998.

(b) *Pendente lite* interest at the rate of 12% per annum with effect from 20.01.1998 uptill 31.12.2008 on the total amount (that is, principal amount plus the amount of interest for the pre-reference/past period).

(c) *Pendente lite* interest at the rate of 12% per annum with effect from 01.01.2017 till the date of the award on the total amount (that is, principal amount plus the amount of interest on the pre-reference period and for the period from 20.01.1998 till 31.12.2008).

(d) Future interest at the rate of 18% per annum from the date of the award till the date of payment on the total amount (that is, principal amount added to the amount of interest for the prereference/past period and interest *pendente lite*). 23.1. While holding that appellant was entitled to award of interest for the pre-reference period i.e. from the date on which the cause of action arose till filing of the claim before the arbitral tribunal as well as for the *pendente lite* period and also for the future period, arbitral tribunal agreed with the respondent that no interest should be awarded to the appellant for the period when there was absolute laches on the part of the appellant. Arbitral tribunal held that for the period from 01.01.2009 till 31.12.2016, that is for a period of about eight years, there was complete laches on the part of the appellant. Therefore, the arbitral tribunal declared that appellant would not be entitled to any interest for the aforesaid period.

24. Respondent filed a petition under Section 34 of the 1996 Act before the High Court impugning the arbitral award dated 28.10.2020. *Vide* the judgment and order dated 02.08.2021, learned Single Judge upheld the claims awarded by the arbitral tribunal. On the question of interest, learned Single Judge framed the question as to whether interest awarded by the arbitral tribunal was exorbitant and unsustainable. Learned Single Judge held that arbitral tribunal's decision to award pre-reference interest at the rate of 18 percent per annum did not warrant any interference. As regards *pendente lite* interest, learned Single Judge while noting that arbitral tribunal had awarded 12 percent interest per annum for the period from 20.01.1998 till 31.12.2008 and again from 01.01.2017 till 28.10.2020, justified the decision of the arbitral tribunal not to award interest for the period from 01.01.2009 to 31.12.2016 as during this period the appellant was remiss and did not pursue its claim before the arbitral tribunal diligently. On the rate of interest, learned Single Judge held that interest at the rate of 12 percent per annum could not by any stretch be considered to be exorbitant or unreasonable but held that 18 percent future interest from the date of the award till the date of payment granted by the arbitral tribunal was *ex facie* erroneous as according to learned Single Judge the interest rate should have been 2 percent higher than the current rate of interest prevalent on the date of the award. Therefore, this portion of the award was set aside by the learned Single Judge; instead learned Single Judge awarded future interest holding that it could not have been in excess of 9 percent per annum. Therefore, learned Single Judge partly allowed the petition under Section 34 of the 1996 Act to the extent of setting aside the award of future interest at a rate exceeding 9 percent per annum from the date of the award till the date of payment.

25. This brings us to the impugned judgment and order dated 01.08.2023. We have already noted about the limited nature of challenge made by the respondent during the hearing of the appeal filed under Section 37 of the 1996 Act. Learned senior counsel appearing for the respondent clarified that the challenge to the award stood restricted to the directions issued by the arbitral tribunal insofar the issue of interest was concerned. He clarified that the challenge was not with respect to either the rate at which interest was awarded or the grant of interest for the pre-reference/past period. The grievance was confined to the directions contained in paragraph 58(b)(i) of the award and the similar nature of interest in paragraph 58(b)(ii) inasmuch as the arbitral tribunal proceeded to award interest on identical terms: on the principal amount plus the amount of interest for

the pre-reference/past period. Division Bench referred to Section 31(7)(a) and (b) of the 1996 Act as well as placed reliance on the decision of this Court in *Sayeed Ahmed and Company Vs. State of Uttar Pradesh*[1] and came to the following two conclusions:

i) Section 31(7) recognizes only two periods for which interest may be awarded. The two periods are, firstly from the date on which the cause of action arose till passing of the award and secondly from the date of the award till actual payment. Therefore, the distinction between prereference/past period and *pendente lite* period no longer existed. The period from the date of cause of action i.e. July, 1987 till the date of the award dated 28.10.2020 would constitute the period contemplated under Section 31(7)(a) of the 1996 Act. The period commencing from the date of award till payment would be the second period within the meaning of Section 31(7)(b) of the 1996 Act. Therefore, the arbitral tribunal committed an illegality in awarding interest for three periods: pre-reference/past periods, *pendente lite* and for the future period.

ii) Arbitral tribunal committed further illegality in forging the principal amount with interest as would be evident from paragraph 58(b) of the award. Interest awarded for the pre-reference period as well as for the *pendente lite* period have been subjected to further levy of interest for the said periods by adding the interest amount with the principal amount awarded. This amounted to levying compound interest which is impermissible. Accordingly, the directions contained in paragraph 58(b) were set aside by the Division Bench.

26. In our considered view, the reasonings given by the Division Bench are fallacious. We say so for the reasons mentioned hereunder.

27. Section 31 of the 1996 Act is the relevant provision. It deals with the form and contents of arbitral award. Section 31 has eight sub-sections. Sub-section (7) is central to the debate and after the amendment with retrospective effect from 23.10.2015 read as under:

31. Form and contents of arbitral award -

* * * * *

(7)(*a*) Unless otherwise agreed by the parties, where and in so far 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 two per cent higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

27.1. Before substitution and prior to 23.10.2015, clause (b) of sub-section (7) of Section 31 stood thus:

(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.

28. We now come to the analysis of Section 31(7), both clauses (a) and (b). For the time being we concentrate on clause (a) insofar it deals with the period for which interest may be awarded. A reading of clause (a) reveals that interest may be 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. In real terms it means the period from the date on which the cause of action arose till filing of the claim petition by the claimant and from the date of

[1] (2009) 12 SCC 26

filing of the claim petition till the date of the award. Division Bench of the High Court relied upon *Sayeed Ahmed and Company* (supra) wherein this Court analyzed Section 31(7) of the 1996 Act and opined that the difference between pre-reference period and *pendente lite* period has disappeared insofar award of interest by the arbitrator is concerned. The said section now recognizes only two periods and makes the following provision:

i) In regard to the period between the date on which the cause of action arose and the date on which the award is made (pre-reference period + *pendente lite*), the arbitral tribunal may award interest at such rate as it deems reasonable for the whole or any part of the period unless otherwise agreed by the party;

ii) For the period from the date of award to the date of payment, interest at the rate of 18 percent per annum (this is in reference to the pre 23.10.2015 position) if no specific order is made in regard to interest; however, the arbitrator may award interest at a different rate for the period between the date of award and the date of payment.

29. Based on the aforesaid decision, the Division Bench held that it was not open for the arbitral tribunal to have carved out three periods for payment of interest: pre-reference, *pendente lite* and future when the statute provides for only two periods: first period being the period between the date on which the cause of action arose and the date on which the award is made and the second period is from the date of the award till the date of payment.

30. We are unable to agree with the view expressed by the Division Bench. Even in *Sayeed Ahmed and Company* (supra) relied upon by the Division Bench, the Bench held that Section 31(7) had carved out two periods, the first period being from the date on which the cause of action arose till the date on which the award is made and the second period being from the date of award till the date of payment. As regards the first period, the Bench clarified that it includes the pre-reference period plus *pendente lite* period. Though the arbitral tribunal had granted interest for three periods: pre-reference period, *pendente lite* and post award period, the first two period basically comprises of the period contemplated under clause (a) of sub-section (7) of Section 31. It is another matter that the arbitral tribunal awarded varying degrees of interest for the two sub-periods: 18 percent per annum for the pre-reference period and 12 percent as *pendente lite,* excluding from the said period, the period of eight years when the appellant was found to be remiss in pursuing its claims before the arbitral tribunal. This is also permissible as we shall explain.

31. Therefore, *Sayeed Ahmed and Company* (supra) does not exclude or does not say that interest should not be granted for the pre-reference period. All that it explains is that Section 31(7)(a) has joined the two periods of interest: pre-reference and *pendente lite*.

32. This position has been clarified by a recent decision of this Court in *Pam Developments Private Limited Vs. State of West Bengal*[2]. After extracting Section 31(7) of the 1996 Act, this Court held that power of the arbitrator to grant pre-reference interest, *pendente lite* interest and post award interest under Section 31(7) of the 1996 is now fairly well settled. The Bench, thereafter, culled out the following legal propositions in this regard highlighting the difference in the position of law *qua* the Arbitration Act, 1940 *vis-à-vis* the 1996 Act:

23. The power of the arbitrator to grant prereference interest, *pendente lite* interest, and postaward 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:

[2] (2024) 10 SCC 715

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. 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.

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 from awarding interest for the dispute in question.

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 (referring to the post 23.10.2015 position).

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 subsection; *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.

23.5. The power of the arbitrator to award prereference and *pendente lite* interest is not restricted when the agreement is silent on whether interest can be awarded or does not contain a specific term that prohibits the same.

23.6. While *pendente lite* interest is a matter of procedural law, pre-reference interest is governed by substantive law. Therefore, the grant of prereference 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.

24. In view of the above, the High Court had no reason to interfere with the arbitral award with respect to grant of pre-reference interest, since the contract between the parties does not prohibit the same.

33. This position has been further explained by a recent decision of this Bench in *North Delhi Municipal Corporation Vs. S.A. Builders Ltd.*[3]. After adverting to Section 31(7) of the 1996 Act, this Court explained 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.

33.1. Thereafter the Bench observed that under Section 31(7) of the 1996 Act, an arbitral tribunal has the power to grant – (i) pre-award (ii) *pendente lite* (iii) post-award interest. The Bench explained the reason for award of such interest in the following manner:

39. Generally, going by the provisions contained in Section 31(7) of the 1996 Act, it is evident that an arbitral tribunal has the power to grant (i) pre-award (ii) *pendente lite* (iii) post-award interest. Intention behind awarding pre-award interest is primarily to compensate the claimant for the

[3] (2024) SCC Online SC 3768

pecuniary loss suffered from the time the cause of action arose till passing of the arbitral award. Further, this is also to ensure that the arbitral proceeding is concluded within a reasonable period to minimise the impact of the pre-award interest as well as interest *pendente lite*; thereby promoting efficiency in the arbitration process. Similarly, grant of post-award interest also serves a salutary purpose. It primarily acts as a disincentive to the award debtor not to delay payment of the arbitral amount to the award holder.

34. Thus, what Section 31(7)(a) has done is that there is now a statutory recognition of the power of the arbitral tribunal to grant pre-reference interest from the date on which the cause of action arose till the date on which the award is made. There was a vacuum in the Arbitration Act, 1940 as there was no such provision for granting pre-reference interest. It was through judicial pronouncements that such power of the arbitrator to grant pre-reference interest was conferred. Now under Section 31(7)(a) of the 1996 Act, such power is statutorily recognized.

35. Let us revert back to clause (a) of sub-section (7) of Section 31 of the 1996 Act. A careful and minute reading of this provision will make it clear that the arbitral tribunal has the discretion to include in the sum awarded interest at such rate as it deems reasonable on the whole or any part of the money awarded for the whole or any part of the period from the date on which the cause of action arose till the date on which the award is made. We may exclude that part of the sentence 'on the whole or any part of the money' from our analysis since this is not relevant to the controversy. If we exclude this portion, what then becomes discernible is that the arbitral tribunal has the discretion to include in the sum awarded : firstly, *interest at such rate as it deems reasonable;* and secondly, *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.* This would mean that the arbitral tribunal can exclude a period from the date on which the cause of action arose till the date on which the award is made for the purpose of grant of interest, as has been done in the present case. It would also mean that the arbitral tribunal can grant interest 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. It can be a composite period or the said period can be further sub-divided, as done in the present case i.e. from the date of cause of action to filing of the claim and from the date of filing of the claim till the date of the award excluding the period when the appellant was found to be remiss. It would also mean that there can be one rate of interest for the whole period or one or more rates of interest for the sub-divided periods as has been done in the instant case. In our opinion, this would be the correct approach to interpret Section 31(7)(a), given the scheme of the 1996 Act.

36. That being the position, we are of the view that the Division Bench had fallen in error by holding that the arbitral tribunal had no jurisdiction to award interest for two periods i.e. pre-reference and *pendente lite* when the statute provides for only one period viz. from the date when the cause of action arose till the date of the award. The view expressed by the High Court is not the correct interpretation of Section 37(1)(a) of the 1996 Act as explained by us supra as well as in *Pam Developments Private Limited* (supra) and *S.A. Builders Ltd.* (supra).

37. This brings us to the second issue on which the High Court set aside the directions of the arbitral tribunal contained in paragraph 58(b) of the award. According to the Division Bench, the arbitral tribunal had committed an illegality in forging the principal amount with interest while computing the awarded amount on which future interest is to be paid. Interest awarded for the past period could not have been subjected to further levy of interest during the *pendente lite* or post award period on merger with the principal amount as this would amount to levy of compound interest.

38. This aspect of the matter is no longer *res integra.*

39. In *State of Haryana Vs. S.L. Arora*[4], a two-Judge Bench of this Court observed that as regards pre-award period, interest has to be awarded as specified in the contract and in the absence of any contract, as per the discretion of the arbitral tribunal. However, with regard to the post-award period, the interest is payable as per the discretion of the arbitral tribunal and in the absence of exercise of such discretion, at the mandatory statutory rate of 18 percent per annum. Award of interest like award of cost are ancillary matters. Therefore, the expressions *sum for which the award is made* and *the sum directed to be paid by an arbitral award* contextually refers to the award on the substantive claims and not ancillary or consequential directions relating to interest or cost. It was held that arbitral tribunals did not have the power to award interest upon interest or compound interest either for the pre-award period or for the post-award period.

40. A three-Judge Bench of this Court in *Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa*[5], opined that it was not possible to agree with the conclusion in *S.L. Arora* (supra) that Section 31(7) of the 1996 Act does not require that interest which accrues till the date of the award be included in the *sum* from the date of the award for calculating the postaward interest. Justice Bobde (as His Lordship then was) authoring the majority opinion was of the view that the conclusion reached in *S.L. Arora* (supra) did not seem to be in consonance with the clear language of Section 31(7) of the 1996 Act. *Hyder Consulting (UK) Ltd.* (supra) declared that *S.L. Arora* (supra) was wrongly decided in that it held that a sum directed to be paid by an arbitral tribunal and the reference to the award on the substantive claim did not refer to interest *pendente lite* awarded on the *sum directed to be paid upon award* and that in the absence of any provision of interest upon interest in the contract, the arbitral tribunal did 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 has been clarified that the 'sum' includes the principal as adjudged together with the interest granted.

41. A three-Judge Bench of this Court in *UHL Power Company Ltd. Vs. State of Himachal Pradesh*[6] declared that the judgment in *S.L. Arora* (supra) has since been overruled by a three-Judge Bench of this Court in *Hyder Consulting (UK) Ltd.* (supra). The majority view in *Hyder Consulting (UK) Ltd.* (supra) is that post-award interest can be granted by an arbitrator on the interest amount awarded.

42. This view was reiterated by this Court in subsequent decisions (please see *Delhi Airport Metro Express Private Ltd. Vs. Delhi Metro Rail Corporation*[7] and *Morgan Securities and Credits Private Ltd. Vs. Videocon Industries Limited*[8]*).*

43. Finally, in *S.A. Builders* (supra), this Bench after a thorough analysis of Section 31(7)(a) and Section 31(7)(b) of the 1996 Act came to the following conclusion:

38. Natural corollary to the above analysis would be that the 'sum' so awarded by the arbitral tribunal which may include interest from the date when the cause of action arose to the date of the award, would carry further interest of 18 percent from the date of the award to the date of payment unless the arbitral award otherwise directs (referring to the pre 23.10.2015 position). Thus, the legislative intent is that the awarded sum whether inclusive of interest or not, in case

[4] (2010) 3 SCC 690
[5] (2015) 2 SCC 189
[6] (2022) 4 SCC 116
[7] (2022) 9 SCC 286
[8] (2023) 1 SCC 602

included, then from the date of cause of action to the date of award, would carry further interest from the date of the award to the date of payment.

44. It has been held that the sum awarded would mean the principal amount plus the interest awarded from the date of cause of action upto the date of the award. The sum awarded in Section 31(7)(a) would mean principal amount plus the interest awarded. Thereafter, as per Section 31(7)(b) of the 1996 Act, the sum (principal amount + interest) would carry further interest at the rate of 2 per cent higher than the current rate of interest prevalent on the date of the award to the date of payment.

45. Therefore, in view of the clear legal position delineated as above, impugned judgment of the Division Bench dated 01.08.2023 cannot be sustained.

46. Thus, having regard to the discussions made above, impugned judgment and order dated 01.08.2023 passed by the Division Bench of the High Court is hereby set aside. Civil appeal is accordingly allowed. However, there shall be no order as to cost.