

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

+ EFA(OS) 14/2013

DELHI DEVELOPMENT AUTHORITY Appellant
Through: Ms. Amita Singh, Advocate.

versus

M/S JAGDISH CHANDER KHANNA & SONS Respondents
Through: None.

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL
HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER (ORAL)

: REVA KHETRAPAL, J.

1. This appeal is directed against the order of the learned Single Judge dated 22nd April, 2013 awarding future interest at the rate of 18% in terms of Sub-Section (7)(b) of Section 31 of the Arbitration and Conciliation Act, 1996.

2. The sole submission of learned counsel for the Appellant is that the grant of future interest by the learned Single Judge in execution proceedings is not in consonance with the award dated 31.10.2008, the Arbitrator having rejected the claim for present and future interest.

3. By his award dated 31.10.2008, the sole Arbitrator pursuant to Claim No.8 claiming interest at the rate of 18% pre-suit, pendente lite and future passed the following awards:-

“I deem it appropriate to award a simple interest @ 12% per annum with effect from 16.05.1996 to the date of award.”

4. The learned Single Judge vide the impugned order dated 22nd April, 2013 after recording the submission of counsel for the Decree Holder, being that in terms of Section 31(7)(b) of the Arbitration and Conciliation Act, 1996, the Decree Holder is entitled to interest at the rate of 18% per annum on the principal amount, i.e., about ₹ 6 Lakhs, granted the prayer of the Decree Holder for interest at the statutory rate of 18%. It may be noted at this juncture that before the learned Single Judge counsel for the Judgment Debtor made a statement that his client was agreeable to pay interest at the rate of 18% per annum as simple interest from the date of the award to the date of payment.

5. We have heard learned counsel for the parties. We do not find any infirmity or perversity in the order of the learned Single Judge. The Arbitration and Conciliation Act, 1996 contains a specific provision dealing with the power of the Arbitral Tribunal to award interest. The said provision as incorporated in Sub-Section (7) of Section 31 is, for the sake of ready reference, extracted below:-

“31. (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 eighteen per centum per annum from the date of the award to the date of payment.”

6. Thus, while Clause (a) of Section 31(7) of the Act relates to the pre-award period, Clause (b) relates to the post award period. It is settled law that the Arbitral Tribunal though has discretion under this clause with regard to the rate, the period and the quantum of interest, such discretion is always subject to the contract between the parties and the parties may even opt to contract out of interest. Insofar as Clause (b) is concerned, though this clause too gives discretion to the Arbitral Tribunal to award interest for the post award period, but that discretion is not relatable to the contract between the parties. If, however, the discretion to award interest is not exercised by the Arbitral Tribunal, the Act mandates the payment of interest at the statutory rate of 18% per annum for the post award period unless the same is specifically refused by the Arbitrator or unless the Arbitrator chooses to award interest at a lower rate than that mandated.

7. The summation of the law with regard to Section 31(7)(a) and (b) is lucidly contained in the judgment of the Hon'ble Supreme Court rendered in *State of Haryana and Others vs. S.L. Arora and Company, (2010) 3 SCC 690*. Since the present case relates only to post award interest, the relevant portion of the judgment is extracted hereinbelow:-

“24.6 Clause (b) of Section 31(7) is intended to ensure prompt payment by the award-debtor once the award is made. The said clause provides that the “sum directed to be paid by an arbitral award” shall carry interest at the rate of 18% per annum from the date of

award to the date of payment if the award does not provide otherwise in regard to the interest from the date of the award. This makes it clear that if the award grants interest at a specified rate up to the date of payment, or specifies the rate of interest payable from the date of award till the date of payment, or if the award specifically refused interest, clause (b) of Section 31 will not come into play. **But if the award is silent in regard to the interest from the date of award, or does not specify the rate of interest from the date of award, then the party in whose favour an award for money has been made, will be entitled to interest at 18% per annum from the date of award. He may claim the said amount in execution even though there is no reference to any post-award interest in the award.** Even if the pre-award interest is at much lower rate, if the award is silent in regard to post-award interest, the claimant will be entitled to post-award interest at the higher rate of 18% per annum. The higher rate of interest is provided in clause (b) with the deliberate intent of discouraging award-debtors from adopting dilatory tactics and to persuade them to comply with the award.

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.”

8. In view of the above, enunciation of the law, we do not find any merit in the present appeal, which is accordingly dismissed.

**REVA KHETRAPAL
JUDGE**

**PRATIBHA RANI
JUDGE**

July 29, 2013
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