

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

AA No.6/2006

Reserved on: **26.02.2026**

Pronounced on: **11.03.2026**

Uploaded on: **11.03.2026**

*Whether the operative part or
full judgment is pronounced: **Full***

M/S National Engineers “Wallia House”

Patel Nagar, Shanker Colony,
Behind Old Sabzi Mandi, Pathankot
through its partner Brij Wallia
S/O H.K Wallia.

.....Petitioners

Through: Mr. R.D.Singh Bandral, Adv.

Vs.

Union of India through
Commander Works Engineer,
Head Quarter 138 works Engineers
C/O 56 APO.

..... Respondents

Through: Mr. Vishal Sharma, DGSI with
Mr. Sumant Sudan, Adv.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

(JUDGMENT)

1. Applicant-M/S National Engineers, through the medium of this Arbitration Application under Section 34 of the J&K Arbitration & Conciliation Act, seeks setting aside of award dated 10.08.2005 and communication dated 04.10.2005 on an application moved U/S 33 of the Act, passed by the learned Sole Arbitrator Col. Balwinder Singh, in Arbitration Application titled “*National Engineers Vs. Commander Works Engineers, HQ 138 Works Engineeers.*” to the extent of non-payment of interest as the petitioner is entitled to recover interest @ 24 % per annum from the date of completion of contract agreement.

2. The facts in brief as narrated in the petition are that:

The petitioner-firm was allotted work vide Contract No.CWE/JP-06/9569 for providing external water lubricant pumps as long term water supply at Nagrota and a contract agreement was made in this regard. In order to complete the work within stipulated period, the petitioner, immediately after having the work order, made preparation by way of mobilizing the requisite resources and delivered pumps at Nagrota, however, the respondent instead of making payment to the petitioner started harassing it. The Board of Officers meeting was held on 25.11.1997, who inspected the pumps at site and recommended that the accepting officer may accept with deviation, as per prevailing practice and directed the accepting authority to accept these pumps, even then, the payment was not made which resulted in reference of dispute to the Arbitrator and an amount of ₹5,20,000/- was awarded without interest, which the petitioner received under protest and filed an application under Section 33 of the Arbitration Act for correction and interpretation of Award dated 08.09.2005 before the learned Arbitrator, who corrected the Award, vide communication dated 04.10.2005 to the extent that the awarded amount may be paid to the petitioner within four months from the date of receipt of original award, however, interest was not granted. Feeling aggrieved by the award dated 10.08.2005 and order dated 04.10.2005 passed by the learned Arbitrator, the petitioner has approached this Court by way of filing instant petition on the strength of averments made in it.

3. Upon notice, objecting the petition, respondent has filed the reply on 04.03.2008, stating therein that this petition be rejected being grossly misconceived as the petitioner prays for grant of interest; that the award dated 10.08.2005 itself is contrary to the terms and conditions of the Agreement. Respondent further contends that as per the contract agreement, the work was required to be completed by 02.10.1995 as the provision of water supply was a time bound and an important work, which petitioner did not complete within stipulated time and thereafter, the period of contract was extended upto 30.04.1996 and the petitioner even failed to complete the supply of water pumps of requisite specifications within extended period and his contract was cancelled. It is further contended that even the modified pumps provided by the petitioner were not found, as per specification mentioned in the contract agreement.

4. Respondent also contended that the award passed by the learned Arbitrator along with order passed under Section 33 of the Arbitration Act is unsustainable being totally incorrect, arbitrary beyond the scope of reference as also contrary to law and despite being the fact that petitioner failed to execute the contract within stipulated time, the learned Arbitrator has awarded an amount of ₹5,20,000/- for which petitioner-firm is not entitled to, thus, according to respondent, the petitioner is not entitled to the interest component.

5. Learned counsel for the petitioner, in furtherance to the case set up, argued that the petitioner is entitled to receive the interest from the date he has

supplied the water pumps, as per specifications as well as terms and conditions of the contract, however, the learned Arbitrator without assigning reasons disallowed the claim of the petitioner *qua* grant of interest; that due to non-payment of award, the petitioner has suffered huge losses as the petitioner has arranged the amount on interest @ 24 % from the market, for procuring the requisite pumps, thus, petitioner is entitled to interest @ 24% for delay in payment of the awarded amount; that failure to make payment after completion of the contract work, the petitioner was forced to file application under Section 33 of the J&K Arbitration and Conciliation Act, on 08.09.2005 seeking correction/interpretation of award dated 10.08.2005 along with interest, however, the said application was disposed of on 04.10.2005, without granting interest.

6. Learned counsel for the petitioner further contended that Section 31(7)(a) of the J&K Arbitration and Conciliation Act, provides that unless otherwise agreed by the parties, where and in so far as 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. The petitioner further contended that a sum directed to be paid by an arbitral tribunal award, shall unless the award otherwise directs, carry interest at the rate of 18 % per annum, from the date of the award, to the date of payment.

7. It is also argued that since there is no such clause incorporated in the arbitration contract, therefore, the Arbitrator has committed misconduct by not awarding the interest and observed that claim of the petitioner is partially sustained and upheld. In support of the petitioner's case, the learned counsel for the petitioner, has placed reliance on the judgment of the Apex Court in '*Secretary, Irrigation Department, Government of Orissa & Ors. V. G C Roy*' reported as **1992 AIR (SC) 732** and in '*Gayatri Balasamy V. M/S ISG Novasoft Technologies Limited*' reported as **(2025) 7 SCC 1**. It was finally prayed that petition be allowed and interest @18% P.A. be also granted on the awarded amount passed by the learned Arbitrator.

8. Learned counsel for the respondent, *ex adverso*, in furtherance of the stand taken in the reply, argued vehemently, that the petitioner is not entitled to receive interest upon the awarded amount, which has also been wrongly awarded by the learned Arbitrator for the reason that the petitioner had not supplied the water pumps as per the contract within the specified period and as per the requisite specifications; that the petitioner had provided water pumps in some modified forms and despite extension of the time, the petitioner could not stick to the timeline for providing water pumps which was an urgent matter and ultimately the contract of the petitioner was cancelled. Therefore, the petitioner for having not performed his part of the contract well in time is not entitled to grant of any interest either pendente lite or future and that the learned Arbitrator

had rightly rejected the same in the impugned award dated 10.08.2005 and also the communication dated 04.10.2005 on an application seeking modification of the award for correction and interpretation, in terms of Section 33 of the Arbitration and Conciliation Act, particularly, refusing the interest.

9. Heard learned counsel for the parties, perused the record and considered their submissions.

10. The petitioner had been allotted work vide Contract No.CWE/JP-6/95-96 dated 19.05.1995 for providing external water lubricated pumps at long term water supply at Nagrota, which was followed by a contract agreement; as per the conditions of the contract agreement, designing, supplying, installing, testing and commissioning with following specifications:

(a) Deep well forced clear water lubricated vertical turbine pump only, each having discharge of 62500 G.P.H. and a head of 35 meter including column pipes, shafts considering 20 hours pumping suitable for working with existing hollow shaft vertical type squirrel cage induction motor (Frame V.H-200), 415 volts 3 phase, 50 cycles, 60 HP, 1460 RPM. Suitable for motor of make Kirloskar (Note motor with starter are already fixed at site).

(b) Taking out/vertical turbine pumps 78 L/S, 35 meter head, oil lubricating type from intake well at long term water supply lowered

upto 11 meter including column pipes shaft, bearing holder bowl assy, stabilizing spider etc, complete with motor 60 HP, 3 phase incl disconnection of cable connection and depositing only pump alongwith all accessories (except Electric motor) in the MES store yard of GE Nagrota all as directed by Engr-in-Charge.

(c) Re-installation of old vertical Hollow shaft Electric motor 3 phase, 415 volts 1460 RPM on the V.T Pump in position and making electric connection with the Existing cable including provision for fixing electric motor on discharge head, for an amount of Rs. 5,88,000/-. The time period for completion of the said works was four months.

11. On a dispute arising out of the contract, the agreement thereupon and performance of the contract, the matter was referred to an Arbitral Tribunal of Col. Balwinder Singh, who after proceeding in the arbitration passed an award dated 10.08.2005, awarding an amount Rs.5,20,000/-, however, no interest was granted. The petitioner, on 08.09.2005, moved the learned Arbitrator seeking interpretation and modification of the award in terms of Section 33 of the Act, however, vide communication dated 04.10.2005, the Tribunal again did not talk of any interest component.

12. Petitioner being not satisfied with the award and the order passed thereon later whereby interest had not been granted to the petitioner, through the medium of the instant petition, assailed the impugned award and order/communication on

the following grounds that the petitioner was entitled to be granted interest as per statutory provision of Section 31 (7) (a) of the J&K Arbitration and Conciliation Act, in view of the fact that the parties had not agreed otherwise to the payment of the interest and the arbitral award being for payment of money, the Arbitral Tribunal was under an obligation to include, any sum for which award is made, interest at such rate as it deemed 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.

13. The sole Arbitrator vide Award dated 10.08.2005 decided the arbitration reference and granted an amount of Rs.5,20,000/- to the petitioner. On an application dated 08.09.2005 seeking interpretation and modification of the award dated 10.08.2005 with prayer to grant past, pendente lite and future interest gave clarifications providing that the pumps to be taken by the Department along with standard guarantee of the manufacturer starting from the handing/taking over date, for use in future water supply schemes, since original site has been washed away as recommended by the Board of Officers. Facility to store the pumps will be provided by the department with double lock system (One lock of each party duly sealed) and Handing/Taking over to be completed within 02 months from the date of receipt of award, therefore, an amount of Rs.5,20,000/- was ordered to be paid to the petitioner by the respondent, within four months from the date of receipt of the original award. So far as the interest part is concerned in the

original award dated 10.08.2005, the Tribunal has returned the finding that the same was not sustained, however, in communication dated 04.10.2005 issued, pursuant to application filed on 08.09.2005 by the claimant seeking clarification/ interpretation of award dated 10.08.2005, the Arbitrator has not whispered anything about the interest to which the claimants shall be entitled to.

14. The question that craves for adjudication by this Court thus is whether a contractor is entitled to any interest on the awarded arbitral amount, in terms of Section 31 (7) (a) of the J&K Arbitration and Conciliation Act, which for reference is extracted as under:

Section 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.

15. Hon'ble the Supreme Court in a judgment, rendered by Five Judges Bench in a case titled "**Secretary, Irrigation Department & Ors. vs. G.C Roy**", reported as **[1992] 0 AIR (SC) 732**, has laid down in paragraph no.47 as follows:

47. The question still remains whether arbitrator has the power to award interest pendente lite, and if so on

what principle. We must reiterate that we are dealing with the situation where the agreement does not provide for grant of such interest nor does it prohibit such grant. In other words, we are dealing with a case where the agreement is silent as to award of interest. On a conspectus of aforementioned decisions, the following principles emerge:

(i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference. This is the principle of [Section 34](#), C.P.C., and there is no reason or principle to hold otherwise in the case of arbitration.

(ii) an arbitrator is an alternative form for resolution of disputes arising between the parties. If so, he must have the power to decide all the disputes or differences arising between the parties. If the arbitrator has no power to award interest pendente lite, the party claiming it would have to approach the Court for that purpose, even though he may have obtained satisfaction in respect of other claims from the arbitrator. This would lead to multiplicity of proceedings.

(iii) An arbitrator is the creature of an agreement It is open to the parties to confer upon him such

powers and prescribe such procedure for him to follow, as they think fit, so long as they are not opposed to law. (The proviso to [Section 41](#) and [Section 3](#) of Arbitration Act illustrate this point). All the same, the agreement must be in conformity with law. The arbitrator must also act and make his award in accordance with the general law of the land and the agreement.

(iv) *Over the years, the English and Indian Courts have acted on the assumption that where the agreement does not prohibit and a party to the reference makes a claim for interest, the arbitrator must have the power to award interest pendente lite. The award as has not been followed in the later decisions of this Court. It has been explained and distinguished on the basis that [in that case](#) there was no claim for interest but only a claim for unliquidated damages. It has been said repeatedly that observations in [the said judgment](#) were not intended to lay down any such absolute or universal rule as they appear to, on first impression. [Until Jena's](#) case almost all the Courts in the country had upheld the power of the arbitrator to award interest pendente lite. Continuity and certainty is a highly desirable feature of law.*

(v) *Interest pendente lite is not a matter of substantive law, like interest for the period anterior to reference (pre-reference period). For doing complete justice between the parties, such power has always been inferred.*

With the aforestated propositions, the court laid down the following correct principle:

“45. Where the agreement between the parties does not prohibit grant of interest and where a party claims interest and that dispute (along with the claim for principal amount or independently) is referred to the arbitrator, he shall have the power to award interest pendente lite. This is for the reason that in such a case it must be presumed that interest was an implied term of the agreement between the parties and therefore when the parties refer all their disputes – or refer the dispute as to interest as such to the arbitrator, he shall have the power to award interest. This does not mean that in every case the arbitrator should necessarily award interest pendente lite. It is a matter within his discretion to be exercised in the light of all the facts and circumstances of the case, keeping the ends of justice in view.”

16. Hon’ble Supreme Court, in a case titled **“Gayatri Balasamy vs. M/S ISG Novasoft Technologies Limited”**, reported as **(2025) 7 SCC 1**, held in para 72 as under:

“72. The next question that arises is: do courts possess the power to declare or modify interest, especially post award interest? In respect of pendente lite interest, Section 31(7)(a) (Annexure A), states that unless otherwise agreed by the parties, the arbitral tribunal may include in its sum for the award,

interest, at such rate it deems reasonable on whole or part of the money for whole or part of the period on which the cause of action arose and the date on which the award is made. In respect of post-award interest, Section 31(7)(b) (Annexure A) states that unless an award provides for interest on a sum directed to be paid by it, the sum will carry an interest at a 2% higher rate than the current rate of interest prevalent on the date of the award, from the date of the award till the date of payment. The explanation defines the expression 'current rate of interest'.

17. The Supreme Court in a case titled “**M/S C & C Constructions Ltd. vs. Ircon International Ltd.**”, reported as **2025 Live Law (SC) 148**, relied upon by the respondent, held in paragraph 28 as under:

“28. In the case of Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking in paragraph 18, this court held thus:

“18. At the outset, we may state that the jurisdiction of the court under Section 37 of the Act, as clarified by this Court in MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , is akin to the jurisdiction of the court under Section 34 of the Act. [Id, SCC p. 167, para 14:

14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference

under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision.”].

Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act.”

18. The admitted factual position, in the case on hand is that there was no provision in the agreement, with regard to payment of interest or otherwise, on the delayed payments, to be made to the contractor. The dispute between the parties had been referred to the Arbitral Tribunal on 20.01.2003, who answered the arbitral reference on 10.08.2005, granting the award of Rs.5,20,000/- but with no interest, as the learned Arbitrator had declaimed the interest, stating ‘*Claim No.3 not sustained*’.

19. It is apparent on the face of the Arbitration Award that the petitioner had delayed in execution of the contract as the same was to be performed within a period of four months, but the execution was not only delayed but the Water Pumps that were supplied were also not of requisite specifications. It appears that due to these facts in its backdrop, the learned Arbitrator declaimed grant of interest past or pendetelite and rightly so, due to delay in execution of the contract

of supply of Water Pumps. The learned Arbitrator, however, did not grant the pendente lite or future interest as well.

20. In view of the law laid down by the Apex Court in G C Roy (supra) and Gayatri Balasamy (supra) wherein it had been held that the arbitrator being a creature of the agreement, has to act and make his award in accordance with the general law of the land and the agreement and that all the courts in the country had held the power of the arbitrator to award interest pendente lite and that continuity and certainty is a highly desirable feature of law; that in terms of Section 31 (7) (a) of the J&K Arbitration and Conciliation Act, the interest is payable on the award, from the date of the award till the date of payment. The judgment in the case of Ircon International Limited (supra) relied upon by the respondents is not directly on the point and as such is distinguishable with regard to powers of the courts under Sections 34 and 37 of the Act differently.

21. The petitioner was deprived of the use of money, to which it was legitimately entitled, has a right to be compensated for the deprivation, by interest, compensation or damages, any name we may call. In the considered opinion of this court, the Arbitral Tribunal, had inherent powers to compensate the person, who has been deprived from the use of money, through payment of interest on the awarded amount for its delayed payment.

22. Viewed thus, even in absence of any provision in the contract agreement in respect of interest, the learned Arbitrator was well within the jurisdiction to award payment of future interest, over the awarded amount, in terms of Section

31 (7) (a) of the J&K Arbitration and Conciliation Act, as the learned Arbitrator has fallen in error to refuse grant of interest to the petitioner.

23. Having regard to the foregoing reasons and the observations made hereinabove, this court is of the considered opinion that petitioner is entitled to receive future interest on the awarded amount, from the date of Award passed by the learned Arbitrator i.e. on August 10, 2005, till the satisfaction of the award.

24. Viewed thus, the petition is disposed of as **allowed**, with modification of the impugned award, that the awarded amount shall be paid to the petitioner along with future simple interest @ 10% P.A. from 10.08.2005, until the whole of the amount is paid after adjustment of the amount paid, if any, to the petitioner. No order as to costs.

25. The Arbitration Application, is thus disposed of as granted, alongwith pending application(s).

(M A Chowdhary)
Judge

JAMMU
11.03.2026
Raj Kumar

Whether order is speaking: Yes/No
Whether order is reportable: Yes/No