

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

Arb.A.No. 43 of 2014 ()

AGAINST THE ORDER/JUDGMENT IN OPARB 817/2013 of II ADDL.DISTRICT
COURT,ERNAKULAM DATED 04-04-2014
APPELLANT(S)/PETITIONER:

M/S.BHARATH BUILDERS
ENGINEERS & CONTRACTORS, "SREE GOVINDAM"
CHITTOOR ROAD, AYYAPPANKAVU, COCHIN-18
REPRESENTED BY ITS PARTNER SRI. G. KARTHIKEYAN.

BY ADVS.SRI.MEIJO KURIAN PUVATHINGAL
SRI.K.V.JAYADEEP MENON
SMT.KRISHNA PRIYA

RESPONDENT(S) :

UNION OF INDIA
REPRESENTED BY THE CHIEF ENGINEER, NAVAL WORKS
MILITARY ENGINEERING SERVICES, NAVAL BASE, KATARIBAUG
COCHIN-682004.

R. BY ADV. SRI.S.KRISHNAMOORTHY, CGC

THIS ARBITRATION APPEALS HAVING BEEN FINALLY HEARD ON
25-3-2015, THE COURT ON 20.5.2015 DELIVERED THE FOLLOWING:

**T.R. RAMACHANDRAN NAIR &
P.V. ASHA, JJ.**

Arb. A. No.43 of 2014

Dated this the 20th day of May, 2015

JUDGMENT

Ramachandran Nair, J.

The short question that arises in this appeal is whether the appellant is entitled for grant of interest for the period from 22.2.2002 till 8.3.2005 which, even though was awarded by the Arbitrator, the same has been deleted by the learned Addl. District Judge. The learned Judge has upheld the grant of pendente lite interest at 10% but the rate fixed at 12% per annum as future interest has been modified to 10%.

2. We heard learned counsel for the appellant Shri Meijo Kurian and Shri S. Krishnamoorthy, learned Standing Counsel for the respondent.

3. Since the only issue considered by the learned Addl. District Judge is with regard to the interest granted, as the challenge against the award was finally confined to the same, we need not elaborate the details concerning the claims and the award in favour of the appellant.

4. The appellant was engaged for construction of AED Hanger at INS Garuda, Naval Base, Kochi. The contract was entered into on 24.8.1989 and the date of completion of the work was 3.3.1991, which was extended till 29.3.1992. It appears that when 85% of the work was completed, the Hanger collapsed and according to the appellant, it was due to the defect in the design. The appellant was directed to carry out rehabilitation work. In the meanwhile, according to the appellant, he was directed to wait till the design was examined by the Defence Directorate of designs at Pune. The original design was altered after a lapse of one year and he was directed to reconstruct the Hanger as per the revised design. According to the appellant, even though the work was completed in all respects, the respondent refused to make payment towards the value of the works done. At the time when the Hanger collapsed in March 1992, payments for works till that day was outstanding. The admitted amounts were also not paid according to the appellant, by some pretext or the other. A notice was sent by the appellant on 28.9.2001 raising various claims. Clause 70 of the General Conditions of Contract provides for reference of disputes

to the arbitrator to be appointed by the Engineer-in-Chief, Army Headquarters, New Delhi. This provision was invoked by the appellant by notice dated 21.2.2002. After waiting for three months the appellant approached this Court in A.R. No.17/2002 for appointment of an Arbitrator. It was ordered by this Court and the sole Arbitrator, viz. Brigadier K. John Kuruvila, Retd. Chief Engineer, MES, Mumbai was appointed. This was challenged in a writ petition by the respondent wherein this Court directed the parties to opt the agreed procedure. Thereafter, one Shri D.K. Sarma, Chief Engineer (Designs) Southern Command, Headquarters, Pune was appointed as the sole arbitrator. An award was passed which was challenged under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "the Act"). In appeal before this Court, on the finding that the Union of India was not given an opportunity to examine the expert examiner as witness, the award was set aside and the Engineer-in-Chief was directed to appoint an arbitrator to conduct *denovo* arbitration. Accordingly, a new arbitrator, Shri Satish Chander, Chief Engineer (Contracts) Panel of Arbitrators, Chandigarh - Chandi Mandir, Punjab was appointed and the final

award was passed on 22.8.2013. This was challenged under Section 34 of the Act by the respondent in which the impugned judgment has been passed.

5. At the outset, learned counsel for the appellant submitted that the power of the arbitrator to award interest is clear from Section 31(7) (a) of the Act which alone has been invoked. Unlike the Arbitration Act, 1940, in the light of the specific statutory provision in the present Act, the Arbitrator can award interest for the period arising from the date of accrual of cause of action till he enters upon reference, for the period from the date of entering on reference till the date of award (pendente lite) and future interest. It is submitted by relying upon the decisions of the Apex Court in **Food Corporation of India v. A.M. Ahmed & Co. and another** {(2006) 13 SCC 779}, **Indian Hume Pipe Co. Ltd. v. State of Rajasthan** {(2009) 10 SCC 187} and **State of Haryana and others v. S.L. Arora and Company** {(2010) 3 SCC 690} that the said legal position has been reiterated by the Apex Court.

6. Our attention was invited to the judgment of the learned Addl. District Judge and the conclusion drawn to delete the grant of interest

from 22.2.2002 till 8.3.2005. In paragraph 14 the learned Addl. District Judge found that going by Section 3 of the Interest Act, 1978 and in the light of Section 21 of the Arbitration and Conciliation Act, 1996 interest from the date of demand of the amount found legally due has to be paid. But the learned Addl. District Judge found that after issuing demand notice in February, 2002 the appellant remained silent without initiating action for getting an arbitrator appointed. W.P.(C) No.10520/2004 was filed only after two years and there is no excuse for the delay. Thus, on a finding that delay has occurred in the matter of appointment of arbitrator due to the default of the appellant, it was found that the Arbitrator went wrong in ordering payment of interest from 22.2.2002 till 8.3.2005.

7. Learned counsel for the appellant submitted that the said finding is totally wrong on the admitted facts itself. It is submitted that the learned Judge has gone wrong in finding that the appellant was remaining silent. Our attention was invited to the following dates and events:

<u>Date</u>	<u>Event</u>
21.2.2002	Date of issuance of notice whereby three months notice was given
28/6/2002	Application under Section 11 of the Act as A.R. NO.17/2002 was filed by the appellant
11/12/2003	A.R. No.17/2002 finally ordered
19/1/2005	W.P.(C)No.10520/2004 filed by the Union of India allowed setting aside the earlier order
28/2/2005	Shri D.K. Sarma was appointed as Arbitrator
8/3/2005	Arbitration proceedings commenced
31/12/2007	Award published
12/4/2012	Judgment of the Division Bench of this Court in Arb.A.No.17/2010 whereby the award was declared as void and Engineer-in-Chief, Army Head Quarters, New Delhi was directed to appoint a sole arbitrator within one month from the date of receipt of a copy of the judgment and to pass an award.
20/8/2013	Award passed by Shri Satish Chander, Sole Arbitrator

It is submitted that the finding by the learned Addl. District Judge that there was silence on the part of the appellant in initiating action for appointment of an arbitrator, cannot be sustained. Learned counsel further submitted that the court went wrong in reducing the rate of

future interest from 12%.

8. Learned Standing Counsel for the respondent Shri S. Krishnamoorthy submitted that the appellant did not claim any interest before the Arbitrator and in the absence of such a claim the Arbitrator could not have awarded any interest. It is submitted that on this sole ground the claim will have to fail. He also supported the adoption of uniform rate at 10% pendente lite and future interest. Finally, it is submitted that the award has been satisfied already by making payment and this appeal is filed thereafter.

9. In reply, Shri Meijo Kurian, learned counsel for the appellant submitted that in both the awards the respective Arbitrators have allowed interest uniformly for the pre reference period, pendente lite and future interest. Our attention was invited to the terms of reference which according to the learned counsel, will show that there is a specific claim under claim No.75, viz. interest due for non paid amount since 95 to 99.

10. The award shows that the Arbitrator has chosen to grant interest, past, present and future. After considering the same, in

paragraph 332 of the impugned award it is stated by the Arbitrator thus: “Therefore, I have come to the conclusion that this claim of the Claimant Contractor can be considered only from the date when the claimant had served the notice on the respondents to claim interest. Since the claimant has put up a separate claim for interest under Claim No.76 to 78 herein after, therefore this claim will be considered along with claim of interest” and in paragraph 333 it is stated that “in view of the above, no separate award is made against claimant's claim No.75.” Claim Nos.76 to 78 are under the heading “Claim for interest past, pendente lite and future”. Paragraph 334 of the award deals with the same. The Arbitrator has noted that the interest claimed is at the rate of 18% on the amounts claimed and awarded by the arbitrator for all the three stages. Past interest is claimed from the year 1992 onwards. Pendente-lite interest is claimed for the period during the pendency when reference to Arbitration was sought by the claimant by notice of request dated 21.2.2002 till completion of arbitration proceedings and publication of award by Arbitrator. In paragraph 334 the different periods have been mentioned as follows:

“(a) Past interest @ 18% per annum from the year March 1992 onwards till date as this amount had remained with the department with no justifiable reasons;

(b) Pendente-lite interest @ 18% per annum on amounts claimed/awarded for the period during the pendency when reference to Arbitration was sought by the Claimant by notice of request to appoint arbitrator to Engineer-in-Chief, New Delhi on 21 Feb 2002, received by the Engineer-in-Chief on 27 Feb 2002, till completion of arbitration proceedings and publication of award by Arbitrator; and

© Future interest @ 18% per annum for the amount/relief granted by the arbitrator in his award, till these are paid to the Claimant in full by the UOI.”

11. The Arbitrator has discussed the provisions under Section 31 (7)(a) and (b) of the Act and various decisions of the Apex Court. The relevant findings are contained in paragraph 338 which we extract hereinbelow:

“338. After due consideration of submissions made by the parties and the documentary evidence produced before me by both the parties and the case laws cited by both the parties, I am of the opinion that the claim of interest becomes justified when legitimate amounts due to one party is un-authorisedly held

back or denied or delayed by another party thereby resulting in financial injury to the suffering party. A party deprived of the use of money to which he is legitimately entitled has a justified right to seek compensation for deprivation. Interest Act 1978 is very much applicable to payments or due amounts arising out of contracts and becoming payable to contractors. In terms of law laid down by the Hon'ble Supreme Court of India in various judgments and the provisions of Interest Act 1978 and also provisions of Section 31(7)(a) and (b) of Arbitration and Conciliation Act, 1996 do justify award of interest on the amounts in arbitral awards. However merit of each case would decide whether arbitral award against a particular claim would carry past interest or not. This is peculiar case where the hanger structure had collapsed while under construction and the reason for collapse is attributable to the respondents on account of inadequacies in the design of hanger trusses, which has been analysed in detail under para 52 and 53 hereinbefore. Therefore, this case cannot be compared with normal disputes between the parties in a construction contract, because in this case the claimant has not been paid for rehabilitation and reconstruction of structure till the contractor achieved the stage of collapse of structure except issue of Sch 'B' stores at contract rates. The claimant had been demanding the payments towards rehabilitation and reconstruction work during currency of

contract but the respondents had not acceded to his demand except issue of Schedule 'B' stores for reconstruction of structure. As regards the defence taken by the respondents on the basis of case laws cited, I have carefully perused the Hon'ble Supreme Court judgments cited and have noted that these case laws are not relevant to the case at point, because firstly there is no prohibition on grant of interest in the contract agreement and secondly the Claimant has claimed interest in this case. He had served the Notice on the respondents vide letter dated 03 Jul 1997 (Exhibit CC-2) and then again on 21 Feb 2002, while invoking arbitration agreement. It has also been noted by me that amounts awarded against claim No.7 to 16, 21, 24 (24 & 25), 26, 27, 29 (29, 31, 32, 33, 38, 40, 41 & 43), 30, 34 (34, 35, 36 & 39), 45-A, 49, 52 and 53 were due to the claimant during currency of contract at relevant stages of work when these works were executed, but were payable at least along with final bill, which under normal circumstances should have been paid by 30 Jun 2000 in terms of Condition 66 of IAFW 2249 (General Conditions of Contract) forming part of contract agreement. However the claimant had given the Notice claiming interest only on 21 Feb 2002 while invoking arbitration agreement and the first notice dated 03 Jul 1997 is barred by limitation. Hence keeping in view the law laid down by Hon'ble Supreme Court and facts

surrounding the case including the Claim No.75 hereinbefore, I have come to the conclusion that the Claimant is entitled to interest only wef 22 Feb 2002 because the Claimant had given Notice to claim interest only on 21 Feb 2002.”

12. In paragraph 339 interest has been awarded in the following manner:

“339. In view of the above, claim of contractor is partially sustained and I make following award against this claim:

(a) Past and Pendente-lite interest is awarded on the amounts awarded against Claim No. 7 to 16, 21, 24 (24 & 25), 26, 27, 29 (29, 31, 32, 33, 38, 40, 41 & 43), 30, 34 (34, 35, 36 & 39), 45-A, 49, 52 and 53. The interest shall be simple interest at the rate of 10% (TEN PERCENT) per annum and shall be calculated from 22 Feb 2002, to the date of award.

(b) Future interest: A period of three months from the date of award is allowed to the respondents for making payments in terms of this award. If the payment is not made by this date, then the net awarded amount (Total amount awarded to Claimant minus total amount awarded to UOI) shall carry simple interest at 12% (TWELVE PERCENT) per annum from 27 Nov. 2013 to date of actual payment.”

Therefore, simple interest at 10% is granted for past and pendente-lite

interest which will have to be calculated from 22.2.2002 to the date of award and future interest granted is at 12% per annum from 27.11.2013 to the date of actual payment after providing three months for the respondent to make payment.

13. Even though learned Standing Counsel for the respondent Shri S. Krishnamoorthy submitted that there was no claim for interest, we find that the court below has held that it is within the power of the Arbitrator to award reasonable interest. In para 338 of the award, the Arbitrator has held that “the claimant has claimed interest in this case.” In this context, we will refer to the contentions raised by both sides before the court below. In the petition filed under Section 34 of the Act, in paragraph 14 the ground taken is that “the arbitrator had exceeded his jurisdiction in awarding the disputed claims which is not in the realm of contract agreement.” The next averment is that “claim Nos.76 to 78, namely claim for interest past, pendente-lite and future interest are not claimed by the claimant, for deciding the issue in the Arbitration Request. The said claim had not been raised by the petitioner to be decided by the Arbitrator nor had the said claim not

been referred by the Appointing Authority, to the Arbitrator. Hence, basically the decision taken by the Arbitrator regarding the claims in respect of Claim No.76 to 78 are totally beyond the scope of Arbitration and the said claims are not contained in the Terms of Reference.” In paragraph 15, with regard to pendente-lite interest also, it is contended that only if such a claim has been raised to be looked into by the Arbitrator, such an award of pendente-lite interest can be granted by the Arbitrator. In grounds C and K to the said petition, it is stated that the grant of 10% interest past and pendente lite is unreasonable. In ground I, the substantial contention taken is that the dispute of the claim regarding interest is not referred to the Arbitrator.

14. These have been disputed by the learned counsel for the appellant before the learned Addl. District Judge by submitting “Notes on the Award of Interest.”

15. We will now examine whether the finding by the learned Addl. District Judge is correct. In the light of the dates and events which we have noted already, it cannot be said that the appellant could be alleged of inaction in invoking clause 70 of the General Conditions

of Contract for getting an Arbitrator appointed. It is evident that after three months period Arbitration Request under Section 11 of the Act was filed. The subsequent events will show that time was spent for disposal of various cases and finally the Arbitrator was appointed and he entered upon reference on 8.3.2005. By no stretch of imagination, the appellant can be said to be in fault for not invoking the arbitration clause in time. He had invoked the arbitration clause in time, viz. after issuing notice and after waiting for three months. A.R. No.17/2002 was filed seeking various reliefs. W.P.(C) No.10520/2004 was filed by the respondent and not by the appellant, but the learned Judge has held it otherwise erroneously. Delay cannot be attributed to the appellant. Therefore, the finding by the learned Addl. District Judge on this score cannot be sustained and we vacate the same.

16. The next question is whether actually there was a claim for interest. Document No.3 is the communication addressed by the Engineer-in-Chief on behalf of the respondent addressed to Shri D.K. Sharma, appointing him as sole Arbitrator. Disputes have been listed as Appendix A and item No.75 which we have already mentioned, is

relating to interest due for non paid amount since 95 to 99 (Rs.23,95,000/-). The claim for interest past, pendente lite and future have been elaborated under claim Nos.76 to 78 of the award. A reading of the order of the learned Addl. District Judge will show that in paragraph 5 it is observed that as regards claim No.75, interest during the period from 1995 to 1999 was practically rejected by the Arbitrator and the appellant did not challenge it. The learned Addl. District Judge found that while considering claim Nos. 76 to 78, the Arbitrator held that the appellant herein was entitled to get past, pendente lite and future interest. It is seen from paragraph 11 of the judgment that the respondent had argued that there is no provision in the agreement for payment of interest and that the question regarding entitlement of interest was not included in the terms of reference. Reliance was placed by the learned counsel on the decision of the Apex Court in **Union of India v. M/s. Krafters Engineering & Leasing (P) Ltd.** (AIR 2011 SC 2620). It is found in paragraph 13 of the order that the Arbitrator has jurisdiction to order interest when an award for payment of money is made, unless prohibited as per the agreement between the

parties. In paragraph 14 it has been held that the Arbitrator has got jurisdiction to order payment of interest, and reliance is placed on Section 3 of the Interest Act, 1978. Then, a finding was rendered that due to the fault of the appellant in not invoking the Arbitration clause in time, he will not be entitled to get interest for the period from 22.2.2002 to 8.3.2005.

17. Therefore, the contention raised by the respondent herein that there was no claim for interest was not accepted. We will refer to the decision relied upon by heavily by the learned Standing Counsel for the respondent, Shri S. Krishnamoorthy in this regard, viz. **M/s. Krafers Engineering & Leasing (P) Ltd.'s case** (AIR 2011 SC 2620). It was on a proceedings under the Arbitration Act, 1940. The question addressed is clear from paragraph 4 onwards which was: “Whether an Arbitrator has jurisdiction to grant interest despite the agreement prohibiting the same?” It was held by the Apex Court that clause 1.15 prohibits payment of interest on the amount payable to the contractor under the contract. Paragraph 7 of the judgment will show that the provisions of the Arbitration Act, 1940 alone were found to be

applicable to the facts of the case. After referring to various judgments of the Apex Court, it was held as follows in paragraph 14:

“.....Where the agreement between the parties does not prohibit grant of interest and where a party claims interest and the said dispute is referred to the arbitrator, he shall have the power to award interest pendente lite. In such a case, it must be presumed that interest was an implied term of the agreement between the parties.....”

In paragraph 15, it has been held as follows:

“15. In the light of the above principle and in view of the specific prohibition of contract contained in Clause 1.15, the arbitrator ceases to have the power to grant interest. We also clarify that the Arbitration Act, 1940 does not contain any specific provision relating to the power of arbitrator to award interest. However, in the Arbitration & Conciliation Act, 1996, there is a specific provision with regard to award of interest by the arbitrator. The bar under clause 1.15 is absolute and interest cannot be awarded without rewriting the contract.”

The difference between the Arbitration Act, 1940 and the Arbitration and Conciliation Act, 1996 has been mentioned therein. Therein, the

interest was not granted in view of the prohibition in the contract.

18. Herein, admittedly, there is no prohibition in the contract. When we come to the legal principles governing grant of interest for different periods, the decision of the Apex Court in **S.L. Arora's case** {(2010 (3) SCC 690) relied upon by the learned counsel for the appellant is the relevant one. The various principles have been discussed in detail. In paragraph 16, it was noted that under the Arbitration Act, 1940 there was no provision dealing with power of the Arbitral Tribunal to award interest. In paragraph 17, Section 31(7)(a) and (b) of the Arbitration and Conciliation Act, 1996 have been noted and we extract hereinbelow Section 31(7)(a) and (b):

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

In fact, in paragraph 19 their Lordships have noticed the tendency among contractors to elevate the claims for interest and costs to the level of substantive disputes. This is clear from the following sentence:

“19. There is a tendency among contractors to elevate the claims for interest and costs to the level of substantive disputes by describing them as separate and independent heads of claim.....”

In paragraph 23, the principle for awarding interest pre and post award period has been explained as shown hereinbelow:

“..... In a nutshell, in regard to pre-award period, interest has to be awarded as specified in the contract and in the absence of contract, as per discretion of the Arbitral Tribunal. On the other hand, in regard to the post-award period, interest is payable as per the discretion of the Arbitral Tribunal and in the absence of exercise of such discretion, at a mandatory statutory rate of 18% per annum.”

Therefore, for the pre-award period if interest has been provided in the contract, the same can be adopted and in the absence of it, the Arbitrator will have to apply his discretion. The entire scheme of Section 31(7)(a) of the Act has been discussed in paragraph 24.2 which we extract hereinbelow:

“(24.2.) The authority of the Arbitral Tribunals to award interest under section 31(7)(a) is subject to the contract between the parties and the contract will prevail over the provisions of section 31(7)(a) of the Act. Where the contract between the parties contains a provision relating to, or regulating or prohibiting interest, the entitlement of a party to the contract to interest for the period between the date on which the cause of action arose and the date on which the award is made, will be governed by the provisions of the contract, and the Arbitral Tribunal will have to grant or refuse interest, strictly in accordance with the contract. The Arbitral Tribunals cannot ignore the contract between the parties, while dealing with or awarding pre-award interest. Where the contract does not prohibit award of interest, and where the arbitral award is for payment of money, the Arbitral Tribunal can award interest in accordance with Section 31(7) (a) of the Act, subject to any term regarding interest in the contract.”

The dictum laid down in paragraph 24.2 will show that if in the contract there is a provision relating to, or regulating or prohibiting interest, the entitlement of the party will depend upon the same. If there is no prohibition to award interest, the same can be awarded subject to the term regarding interest in the contract. Paragraphs 24.4 and 24.5 also are relevant in this context and we extract the same hereinbelow:

“24.4 Where an arbitral tribunal awards interest under section 31(7)(a) of the Act, it is given discretion in three areas to do justice between the parties. First is in regard to rate of interest. The Tribunal can award interest at such rate as it deems reasonable. The second is with reference to the amount on which the interest is to be awarded. Interest may be awarded on the whole or any part of the amount awarded. The third is with reference to the period for which the interest is to be awarded. Interest may be awarded for the whole or any part of the period between the date on which cause of action arose and the date on which the award is made.

(24.5) The Act does away with the distinction and differentiation among the four interest bearing periods, that is, pre-reference period, pendente lite period, post-award period

and post-decree period. Though a dividing line has been maintained between pre-award and post-award periods, the interest bearing period can now be a single continuous period the outer limits being the date on which the cause of action arose and the date of payment, subject however to the discretion of the arbitral tribunal to restrict the interest to such period as it deems fit.”

There is discretion for the Tribunal to adopt the rate of interest which should be reasonable. It can be awarded for the whole or any part of the award amount and it can also be awarded 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.

19. Learned counsel for the appellant relied upon Section 21 of the Act which provides as follows:

“21. Commencement of arbitral proceedings.-- Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”

It is therefore submitted that the date 22.2.2002 herein is important, i.e.

on the date on which the request for reference of the dispute was made by the appellant and it is in evidence that it was received by the respondent on 27.2.2002. We are, therefore, of the view that the argument raised by the learned counsel for the appellant that for the period commencing from the date of arising of cause of action, interest can be awarded by the Arbitral Tribunal is justified and the learned Addl. District Judge also found that there is power for the arbitrator to grant interest.

20. The correctness of the view taken by the the two Judge Bench of the Apex Court in **S.L.Arora's case** {(2010 (3) SCC 690} that the word 'sum' in Section 31(7)(a) will not include the interest awarded on the principal amount, was referred to a larger Bench and the judgment of the three Judge Bench in **Hyder Consulting (UK) Limited v. Governor, State of Orissa** {(2015) 2 SCC 189}, has answered the said point by a majority. In **S.L. Arora's case** (supra), the main question considered was whether Section 31(7) of the Act authorises the arbitral tribunal to award interest on interest and it was held in paragraph 18 that “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 post-award period.” The said dictum has been overruled by the majority judgment in **Hyder Consulting (UK) Ltd.'s case** (supra). In the majority judgment rendered by the Hon'ble Justice S.A. Bobde, the two sub-sections of Section 31(7) have been analysed from paragraph 4 onwards. After analysing the meaning of the word “sum” occurring in Section 31(7)(a), it was held in paragraph 4 that “it contemplates an award inclusive of interest for the pre-award period on the entire amount directed to be paid or part thereof. We extract hereinbelow paragraph 4 for easy reference:

“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, sub-section (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 “*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.”

The further conclusions in the matter are also relevant for the purpose of this case and we hereinbelow extract paragraphs 8, 9, 10 and 13:

“8. Thus, sub-section (7) of Section 31 of the Act provides, firstly, vide clause (a) that the Arbitral Tribunal may include interest while making an award for payment of money in the sum for which the award is made and further, vide clause (b) that the sum so directed to be made by the award shall carry interest at a certain rate for the post-award period.

9. The purpose of enacting this provision is clear, namely, to encourage early payment of the awarded sum and to

discourage the usual delay, which accompanies the execution of the award in the same manner as if it were a decree of the court vide Section 36 of the Act.

10. In this view of the matter, it is clear that the interest, the sum directed to be paid by the arbitral award under clause (b) of sub-section (7) of Section 31 of the Act is inclusive of interest *pandente lite*.

13. Thus, it is apparent that vide clause (a) of sub-section (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 sub-section (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.”

21. Going by Section 31(7)(a) of Act, interest can be awarded 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 power, unlike in the provisions of the Arbitration Act, 1940, has been

made statutory in the Arbitration and Conciliation Act, 1996. Therefore, the finding in paragraph 10 of the above judgment that the interest, the sum directed to be paid by the arbitral award under clause (b) of sub-section (7) is inclusive of interest pendente lite, is significant.

22. Even though learned Standing Counsel for the respondent submitted that there should have been a specific claim for granting interest, in the light of the finding by the Arbitrator that there was a claim, we reject the said contention. Of course, claim No.75 was there for an earlier period and claim Nos.76 to 78 have been discussed by the Tribunal also. The same relates to the claim for interest for the three periods, past, pendente lite and future. The power of the Arbitrator to award such interest is clear from Section 31(7)(a) and 7(b) of the Act. When the power is conferred by the statute itself, unless there is a prohibition in the agreement, going by the judgment in **S.L. Arora's case** {(2010) 3 SCC 690}, the arbitrator has got the discretion to award interest for the whole amount or part of the amount, for the whole period or part of the period and at reasonable rate.

23. Shri Krishnamoorthy, learned counsel for the respondent contended that in the notice dated 21.2.2002 interest is claimed at 18% per annum for an amount of Rs.17.37 lakhs only and the periods have also been mentioned therein. It is submitted that the same is past interest which has not been granted by the Arbitrator. It is submitted that apart from the same, there was no separate claim for past, pendente lite and future interest. We have perused the said notice. After claiming simple interest for a total amount of Rs.17.37 lakhs at 18% per annum for the periods 1995-96, 1996-97 and 1997-98, there is a separate claim for an amount of Rs.26.55 lakhs for the year 1998-1999 along with interest at 18% per annum from March 1999 onwards. Thereafter, it is stated that “we claim interest @ 18% from the relevant dates, as afore stated, till realisation from the M.E.S. Department.” Section 23 of the Act will show that before the Arbitral Tribunal, the parties can file their claim statements and the respondent shall state their defence. In this case also, those have been filed as is clear from the award. In paragraph 3 of the award, the dates for filing statement of claim, pleadings by defence and rejoinder to the pleadings have

been stated. As we have already noted, the award shows that claim Nos.76 to 78 relates to claim for interest past, pendente lite and future. As far as claim for interest due for non paid amounts for the period from 1995 to 1999, under claim No.75, as we have already noted, the Arbitrator found that the said claim can be considered only from the date when the claimant had served the notice on the respondents to claim interest and that since there is a separate claim for interest under claim Nos.76 to 78, it can be considered along with the claim of interest. The finding by the Arbitrator in paragraph 33 is also that the claimant has claimed interest.

24. As rightly pointed out by the learned counsel for the appellant, Shri Meijo Kurian, Section 31(7)(a) of the Act clearly gives power to the Arbitrator to award interest from the date on which the cause of action has arisen. Herein, the interest now awarded by the Arbitrator as per the award is for the period from 22.2.2002, the date of the notice till the date of award as well as future interest. The judgment of the Apex Court relied upon by Shri Krishnamoorthy, learned counsel for the respondent in **M/s. Krafters Engineering & Leasing (P)**

Ltd.'s case (AIR 2011 SC 2620) is under the provisions of the Arbitration Act, 1940. The Apex Court in **Sayed Ahmed & Co. v. State of U.P.** {(2009) 10 SCC 26} has made it clear that the decisions of the Apex Court with reference to the awards under the old Arbitration Act as regards interest awarded, may not apply to arbitrations governed by the Arbitration and Conciliation Act, 1996. This position has been further clarified in **Kamatchi Amman Constructions v. Railways** (2010) 8 SCC 767}. (See paragraphs 57 and 58 of **Hyder Consulting U.K. Ltd.** (supra). Therefore, the said judgment in **Krafters Engineering and Leasing (P) Ltd.'s case** (supra) and the principles stated therein may not be relevant for the purpose of this case.

25. Apart from the same, as already noticed, the learned Addl. District Judge has also not found that there was no claim for pendente lite and future interest by the appellant. There is no appeal or cross objection by the respondent in this case. For all these reasons we reject the contention of the learned counsel for the respondent.

26. We have also perused the judgment in A.R. No.17/2002

which is dated 11.12.2003 and on the application of the appellant this Court appointed an arbitrator, viz. Brigadier K. John Kuruvila, Retd. Chief Engineer. This was challenged in W.P.(C) No.10520/2004 by the respondent which was disposed of by a Division Bench of this Court by judgment dated 19.1.2005. The Division Bench set aside the order of the learned Single Judge and directed the authority to appoint an arbitrator as provided in Clause 70 of the general conditions of contract within one month from the date of receipt of a copy of the judgment. Therefore, the conclusion of the learned Addl. District Judge in paragraph 14 that W.P.(C) No.10520/2004 was filed by the appellant after two years from the date of notice, is an apparent error.

27. Indian Hume Pipe Co. Ltd.'s case {(2009) 10 SCC 187} referred to before us, is a case mainly arising under the Arbitration Act, 1940. The relevant principles concerning the power of the Arbitrator to award interest in three stages have been reiterated therein. The last of the decisions is **Food Corporation of India's case** {(2006) 13 SCC 779} wherein in paragraph 33, after adopting a uniform rate of interest at 9% per annum instead of 12% awarded by the Arbitrator throughout,

the Apex Court put a rider that the amounts shall be paid with interest at 9% by the Food Corporation of India within two months from the date of the order passed by the Apex Court, failing which the balance amount will carry interest at 12% from the date of its being due till realisation. This is relied upon by the learned counsel for the appellant to contend that the method adopted by the Arbitrator in this case is perfectly justified and the rate adopted should not have been reduced from 12% to 10%, by the learned Addl. District Judge. We find that the Arbitrator has power to do so, but in exercise of the discretion, the learned Addl. District Judge has fixed it at 10% for the future period also, i.e. from 8.3.2005 till realisation uniformly. We find no reason to interfere with the discretion exercised by the learned Addl. District Judge.

28. In the light of the above discussion, we allow the appeal. It is held that the appellant will be entitled for payment of interest during the period from 27.2.2002 till 8.3.2005 at the rate of 10% per annum and at the same rate of 10%, to the date of the award. It will also be entitled for interest at the rate of 10% from the date of award till the

date of actual payment.

The parties will suffer their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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