

In the High Court of Punjab and Haryana, at Chandigarh

F.A.O. No. 3622 of 2008 (O&M)

Date of Decision: 23.12.2015

M/s Mehta Construction Co.

... Appellant

Versus

State of Haryana and Another

... Respondents

CORAM: Hon'ble Mr. Justice Amit Rawal.

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Sumit Gupta, Advocate
for the appellant.

Mr. Vishal Garg, Additional Advocate
General, Haryana for respondent No.1.

Amit Rawal, J.(Oral)

The appellant/contractor is in appeal under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "the Act") against the impugned order dated 7.3.2008 passed by the Objecting Court whereby the objections filed by the State of Haryana has been dismissed but the interest at the rate of 18% per annum, awarded by the Arbitrator, has been reduced to 9% per annum.

Mr. Sumit Gupta, learned counsel appearing for the appellant submits that the statutory provisions of Section 31(7) of the Act provides that the Arbitrator has a power to grant 18% interest.,

therefore, there was no occasion for the Objecting Court to reduce the interest. He further submits that the Arbitrator had awarded an amount of compensation to the tune of ₹ 31,24,688.15 ps. and interest at the rate of 24% till the pronouncement of award and 18% till its realization. Whereas, the Objecting Court has flatly reduced the same by fixing it to 9%. He further submits that though the Objecting Court ought not to have interfered with the order of interest at the rate of 18% per annum from the pronouncement of the award till realization, but yet exceeded its jurisdiction. In support of his contention, learned counsel has relied upon the judgment rendered by the Supreme Court in ***M/s Hyder Consulting (UK) Ltd. v. Governor, State of Orissa through Chief Engineer 2015(2) SCC 189*** to submit that the provisions of Section 31 of the Act empowers the Arbitrator to award 18% interest on the principal amount awarded, from the date of award till the date of payment and much less to include the interest in the sum for which award is to be made either on the whole or any part of the money. The sum awarded may be principal amount and such interest as Arbitral Tribunal deems fit. In essence, the Arbitrator has the power to award principal interest from the date of the dispute till the adjudication and thereafter as per the provisions of Sub Section 7 of Section 31 of the Act from the date of passing of the award till its realization.

Mr. Vishal Garg, learned counsel appearing for the State submits that as per the *ratio decidendi* culled out by Hon'ble the Apex Court in ***State of Haryana & Others v. M/s S.L.Arora and Company 2010(2) R.C.R.(Civil) 223:(2010)3 SCC 690***, it has

been held that the awarding of interest on the interest from the date of award is not permissible under Sub Section 7 of Section 31 of the Act.

I have heard learned counsel for the parties and perused the paper-book.

The judgment rendered by the Hon'ble Supreme Court in case ***S.L.Arora*** (*supra*) has been reconsidered by its three Judges Bench in ***M/s Hyder Consulting (UK) Ltd.***(*supra*) and as per the *ratio decidendi* 2:1, it has been held that the Arbitrator has a power to award principal by adding the interest on the principal and further order interest i.e. pre-award as well as post award. Since in my view the Arbitrator had awarded 24% interest from the date of application i.e. 23.7.1996 to 23.9.1996 and thereafter 18% till realization, whereas it should have been 18% flat. Accordingly, the Objecting Court while reducing the amount from 24% to 9% had not taken into consideration the provisions of Sub Section 7 of Section 31 of the Act.

Keeping in view the aforementioned facts, the order of the Objecting Court is hereby set aside and that of the Arbitrator is hereby modified. The interest awarded by the Arbitrator is taken as 18% from the date of cause of action till its realization.

With aforesaid modification, the appeal stands disposed of.

(Amit Rawal)
Judge

December 23, 2015

"DK"