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

\+ **EFA(OS)29/2014**

% **Date of decision: 16th April, 2015**

MASHBRA INDUSTRIES PVT. LTD ..... Appellant
Through: Mr.Arpit Bhargava and Ms.Hina Bhargava, Advs.

versus

UNION OF INDIA ..... Respondent
Through: Mr.J.K. Singh, Adv.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE P.S.TEJI

GITA MITTAL, J. (Oral)

1. The instant appeal arises out of an arbitral award dated 13th November, 2006 directing the respondent to refund Rs.4,00,000/- out of the royalty amount deposited by the appellant to it (*Page No.30*). The respondent filed objections to the arbitral award which came to be registered as OMP No.105/2007 which remained pending in this Court for a considerable period. While dismissing these objections on 16th November, 2012 the learned Single Judge held that it was not just and fair for the respondent to retain the entire royalty amount which had been deposited by the appellant with it. It was further held that no grounds were made out to interfere with the arbitral award. While dismissing the objections, the learned

Single Judge directed payment of simple interest @9% p.a. on the amount awarded from 16th November, 2012 (the date of the order) till the date of the payment.

2. The appellant thereafter filed an application seeking correction and modification of the order dated 16th November, 2012 pointing out certain mistakes which had appeared in the order as well as regarding the award of interest. This application was registered as IA No.282/2013. By an order passed on 12th March, 2014 the learned Single Judge only directed certain typographical corrections in the order dated 16th November, 2012.

3. It appears that the respondent had also sought review of the order dated 16th November, 2012 by way of R.P. No.359/2013. This review petition had earlier been rejected by the order dated 12th March, 2014.

4. The appellant complains that despite the order, no payments were made by the respondents even from the date of the order dated 16th November, 2012. In this background, the appellant was compelled to file Execution Petition No.136/2014. Mr. Arpit Bhargava, learned counsel for the appellant has drawn our attention to the following submissions contained in para 7 of the petition:

"Amount of claim alongwith interest as per decree or any	Recovery of decretal amount of Rs.4,00,000/- together with interest @18% p.a. from the date of the award till the date of the decree dated 16.11.2012

other relief granted to the Decree Holder.	and future interest @9% p.a. from the date of the decree dated 16.11.2012 till 16.04.2014 (the date of filing of Petition). The break-up of the same is given below:	
	Principal Amount	Rs.4,00,000/-
	Interest @ 18% p.a. from the date of award dated 13.11.2006 till the date of the decree dated 16.11.2012	Rs.4,32,000/-
	Interest @9% from the date of decree dated 16.11.2012 till 16.04.2014 (the date of filing of present petition)	Rs.48,000/-
	Total	Rs.8,80,000/- (Eight Lakhs Eighty Thousand Only)"

5. In the execution case, before the learned Single Judge on 24th July, 2014, it was recorded that a cheque for Rs.4,54,345/- had been tendered on 11th June, 2014 which is the decretal amount. The appellant pointed out that the respondent was

required to pay interest as well to the appellant under Section 31 (7) (b) of the Arbitration & Conciliation Act, 1996. This position was reiterated on 11th September, 2014.

6. The appellant has by the present appeal assailed the order dated 14th October, 2014 passed by the learned Single Judge rejecting the prayer of the appellant for payment of interest in accordance with Section 31 (7) (b) of the Arbitration & Conciliation Act, 1996 for the period between 13th November, 2006 (the date of the award) till 16th November, 2012 (the date of dismissal of the objections under Section 34 of the Arbitration & Conciliation Act, 1996).

7. We have heard learned counsel for the parties and perused the available record. We may note that appellant raises no dispute for the award of interest @9% per annum between 16th November, 2012 and 12th March, 2014. We may also note that there is no dispute to the orders dated 12th November, 2012 and 12th March, 2014 to the extent that these orders granted interest @9% per annum from the date of dismissal of the objections under Section 34 of the Arbitration & Conciliation Act till the payment by the respondent. The only question placed before us is that in view of the facts that the award remained silent about the payment of interest, the appellant became statutorily entitled to the interest @18% per annum from 13th November, 2006, the date of the award till 12th of November, 2012 when the objections were dismissed.

8. For the purpose of consideration of this issue, we may usefully extract provisions of Section 31 (7) (b) of the Arbitration & Conciliation Act, 1996 which reads as under:

> "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.
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> (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."

9. The operation of this statutory provision arose for consideration before the Supreme Court in the pronouncement reported at 2010 Volume 3 SCC 690 ***State of Haryana and Others vs. S.L. Arora and Company***. The difference between the various provisions of Section 31 (7) were noted by the Supreme Court and the principles on which the same must operate were laid down. The relevant paras of this judgment deserve to be considered *in extenso* and read thus:

> "21. Some Arbitral Tribunals have misconstrued clause (b) of section 31(7) of the Act and assumed that the said provision requires the rate of post-award interest in all arbitral awards should be 18% per annum, and that they

do not have any discretion in regard to post-award interest. Some have misconstrued it further to infer the rate of interest mentioned therein is an indication that invariably the rate of interest in arbitrations, either pre-award or post-award, should be 18% per annum. Both these assumptions are baseless and erroneous. If that was the legislative intention, there would have been no need for vesting discretion in Arbitral Tribunals, in the matter of interest, under section 31(7)(a).

22. The principles relating to award of interest, in general, are not different for courts and arbitral tribunals, except to the extent indicated in section 31(7) of the Act and CPC. A comparatively high rate of post-award interest is provided in section 31(7)(b) of the Act, not because 18% is the normal rate of interest to be awarded in arbitrations, but purely as a deterrent to award-debtors from avoiding payment or using delaying tactics. In fact a provision similar to section 31(7)(b) of the Act, if provided in section 34 of Code of Civil Procedure, will considerably reduce the travails of plaintiffs in executing their decrees in civil cases. Be that as it may.

23. The difference between clauses (a) and (b) of section 31(7) of the Act may conveniently be noted at this stage. They are:

(i) Clause (a) relates to pre-award period and clause (b) relates to post- award period. The contract binds and prevails in regard to interest during the pre-award period. The contract has no application in regard to interest during the post-award period.

(ii) Clause (a) gives discretion to the Arbitral Tribunal in regard to the rate, the period, the quantum (principal which is to be subjected to interest) when awarding interest. But such discretion is always subject to the contract between the parties. Clause (b) also gives discretion to the Arbitral Tribunal to award interest for the post-award period but that discretion is not subject to any contract; and if that discretion is not exercised by the arbitral Tribunal, then the statute steps in and mandates payment of interest, at the specified rate of 18% per annum for the post- award period.

(iii) While clause (a) gives the parties an option to contract out of interest, no such option is available in regard to the post-award period.

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.

24. As there is some confusion as to what section 31(7) authorizes and what it does not authorize, we will attempt to set out the legal position regarding award of interest by the arbitral tribunals, as emerging from section 31(7) of the Act.

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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 till 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 upto the date of payment, or specifies the rate of interest payable from the date of award till date of payment, or if the award specifically refused interest, clause (b) of Section 31 (7) 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." (Emphasis supplied)

10. In the impugned order dated 14th October, 2014, the learned Single Judge has distinguished the applicability of the pronouncement in ***S.L. Arora and Company*** *(supra)* on facts. However, so far as the principle of law is concerned, the same cannot be distinguished and has to guide and bind the consideration of the appellant's prayer for post award interest.

11. We find that there is no adjudication on the payment of interest from the date of the award either in the order dated 16th November, 2012 or in the order dated 12th March, 2014, though reference to the submission of the appellant has been made.

12. It cannot be denied that the appellant has been denied the benefits of its amount despite the passing of the award as back as on 12th November, 2006 Section 31 (7) (b) of Arbitration & Conciliation Act, 1996 is mandatory in its application. If in case the arbitral award does not direct payment of interest, the statute has peremptorily directed not only payment of interest ("*shall*") but also prescribed a rate of interest on the awarded amount

from the date of award till payment. So far as consideration of post award interest in a proceeding by the court is concerned, the discretion in awarding the interest has to be exercised in consonance with the principles as considered and laid down in ***S.L. Arora and Company*** *(supra)*. In the instant case the award dated 13th November, 2006 is silent to the payment of the interest. In this context, it is fairly conceded that in case the interest on the amount awarded is granted to the appellant from the date of award till 16th November, 2012, the appellant shall restrict its claim to simple interest @9% per annum. We accept this statement and the appellant shall remain bound by the statement.

13. In view of the above statutory, legal and factual position, we are of the view that the order dated 14th October, 2014 is not sustainable in law and is hereby set aside and quashed. It is held that the appellant shall be entitled to interest @9% per annum on Rs.4,54,345/- from 12th November, 2006 till 16th November, 2012. The payment shall be made by the respondent within a period of 8 weeks from today. This appeal is allowed in the above terms.

Dasti to all parties.

GITA MITTAL, J

P.S.TEJI, J

APRIL 16, 2015/ns