

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal No. 221 of 2006**

M/s. Patel Construction Company Contractor, New Timber  
Market Fafadih, Raipur (C.G.) .... Applicant

**---- Appellant****Versus**

1. The General Manager, South Eastern Railway (Now South Eastern Central Railway), Bilaspur (C.G.)
2. The Chief Project Officer, South Eastern Railway, Bilaspur (C.G.) (Now South Eastern Central Railway).

**---- Respondents**


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| For Appellant   | : | Mr. Sunil Otvani, Advocate.   |
| For Respondents | : | Mr. H.S. Ahluwalia, Advocate. |

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**Hon'ble Shri Justice Sanjay K. Agrawal****Order On Board****12/05/2017**

(1) This appeal is directed against the order dated 12.09.2005 passed by District Judge, Raipur by which appellant's application under Sections 15 & 16 of the Arbitration Act, 1940 has been dismissed.

(2) Learned counsel for the appellant submits that the appellant is entitled for the interest on the awarded sum and, therefore, the arbitrator as well as learned District Judge have committed illegality in passing the impugned order, which are liable to be set aside.

(3) Learned counsel for the respondents would submit that

clause 62(1) of the General Conditions alongwith other conditions of the contract will bar the payment of interest and, therefore, learned District Judge and arbitrator are wholly justified in rejecting the claim of interest on the awarded sum.

(4) I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove, also gone through the record with utmost circumspection.

(5) Clause 62 (1) of the General Condition of the contract and standard specifications states as under:-

**“62. (1) Determination of contract owing to default of Contractor. If the Contractor should:-**

- (i) become bankrupt or insolvent, or
- (ii) make an arrangement with or assignment in favour of his creditors, or agree to carry out the contract under a Committee of Inspection of his creditors, or
- (iii) being a Company or Corporation, go in to liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or
- (iv) have an execution levied on his goods or property on the works, or
- (v) assign the contract or any part thereof otherwise than as provided in clause 7 of these conditions, or
- (vi) abandon the contract, or
- (vii) persistently disregard the instructions of the Engineer, or contravene any provision of the contract, or
- (viii) fail to adhere to the agreed programme of work by a margin of 10% of the stipulated period, or
- (ix) fail to remove materials from the site or to pull down and replace work after receiving from the Engineer notice to the effect that the said materials or works have been condemned or rejected under clauses 25 and 26 of these Conditions, or

(x) fail to take steps to employ competent or additional staff and labour as required under clause 26 of the Conditions, or

(xi) fail to afford the Engineer or Engineer's representative proper facilities for inspecting the works or any part thereof as required under clause 28 of these Conditions, or

(xii) promise offer or give any bribe, commission, gift or advantage either himself or through his partner, agent or servant to any officer or employee of the Railway or to any person on his or on their behalf in relation to the execution of this or any other contract with the Railway.

(xiii)(A) At any time after the tender relating to the contract has been signed and submitted by the contractor, being a partnership firm, admit as one of its partners or employ under it or being an incorporated Company elect or nominate or allow to act as one of its directors or employ under it in any capacity whatsoever any retired engineer of the gazette rank or any other retired gazetted officer working before his retirement, whether in the executive or administrative capacity, or whether holding any pensionable post or not, in the Engineering Department of any of the Railways for the time being owned and administered by the President of India before the expiry of two years from the date of retirement from the said service of such engineer or officer unless such engineer or officer has obtained permission from the President of India or any officer or authorized by him in this behalf to become a partner or a director or to take employment under the contractor, as the case may be, or

(6) The aforesaid clause clearly bars the payment of interest on the earnest money or the security deposit or amounts payable to the Contractor except government securities.

(7) In the matter of M/s. Sree Kamatchi Amman Constructions v. Divisional Railway Manager (Works), Palghat & others<sup>1</sup>, their Lordships of the Supreme Court have held that Arbitral Tribunal cannot award interest from date of cause of action to date of award, on amount awarded to contractor under contract in terms of which there was specific bar on payment of interest.

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1 AIR 2010 SC 3337

(8) Recently, the Supreme Court in the matter of **Madnani Construction Corpn. (P) Ltd v. Union of India**, reported in **(2010) 1 SCC 549** has held that if the contract expressly prohibited award of interest pendente lite, the same cannot be awarded by the arbitrator and held as under :-

“Thus, the answer to the reference is that if the contract expressly bars award of interest pendente lite, the same cannot be awarded by the arbitrator. We also make it clear that the bar to award interest on delayed payment by itself will not be readily inferred as express bar to award interest pendent lite by the Arbitral Tribunal, as ouster of power of the arbitrator has to be considered on various relevant aspects referred to in the decisions of this Court, it would be for the Division Bench to consider the case on merits.”

(9) In view of above settled legal position, this Court is of the opinion that learned District Judge, Raipur is absolutely justified in rejecting application filed under Section 15 & 16 of the Arbitration Act, 1940, as such the misc. appeal is liable to be dismissed.

(10) Accordingly, the misc. appeal fails and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)  
Judge

D/-

