AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ARBA No. 60 of 2011

South Eastern Coalfields Limited, Through the Chairman-cum-Managing Director, South Eastern Coalfields Limited, General Manager (Legal), Power of Attorney Holder of South Eastern Coalfields Limited, Seepat Road, Bilaspur (C.G.)

---- Appellant

Versus

M/s. Ramky Engineering Private Limited, Presently M/s. Ramky Infrastructure Limited, Somajiguda, A registered Private Limited Company, Head Office Gulmohar Avenue, Rajbhawan Road, Somajiguda, Hyderabad (Andhra Pradesh)

---- Respondent

For Appellant : Dr. N.K Shukla, Senior Advocate with Shri O.P. Agrawal, Advocate.

For Respondent : Mr. Rahul Jha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

22/09/2017

(1) This appeal has been preferred under Section 37 of the Arbitration and Conciliation Act, 1996 (for short "Act, 1996") by which appellant's application under Section 34(2) of the Act, 1996 has been rejected by learned District Judge.

(2) Learned counsel appearing for the appellant would submit that the learned Arbitrator has committed legal error in awarding interest @ 18% on the awarded sum of Rs.47,38,234/- from the date of award, which is contrary to the provisions contained Section 31(7)(b) of the Act, 1996.

(3) On the other hand, learned counsel for the respondent would submit that the learned arbitral Tribunal is justified in awarding interest @ 18% per annum on the sum of Rs. 47,38,234/-, which the petitioner is entitled and placed reliance upon the judgment of the Supreme Court in the matter of **Hyder Consulting (UK) Limited Vs. Governor, State of Orissa through Chief Engineer**[1] in support of his submission.

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

(5) In the matter of **State of Haryana & others** Vs. **S.L. Arora and Company**[2], it has been held by the Supreme Court that grant of interest on interest or compound interest is subject to agreement between the parties and in absence of provisions in the contract, Arbitral Tribunal is not empowered to award interest upon interest or compound interest either for pre-award period or for post-award period.

(6) The correctness of above-stated judgment was doubted and three judges Bench of the Supreme Court in the matter of **Hyder Consulting (UK) Limited** (supra) considered the issue and held that as per Section 31(7)(b) of the Act, 1996, the sum which is directed to be paid by the award, whether inclusive or exclusive of interest, shall carry interest at the rate of 18% per annum for the post-award period, unless otherwise directed. It was held as under:-

1 (2015) 2 SCC 189
2 (2010) 3 SCC 690

"7. Thus, when used as a noun, as it seems to have been used in this provision, the word "sum" simply means "an amount of money"; whatever it may include - "principal" and "interest" or one of the two. Once the meaning of the word "sum" is clear, the same meaning must be ascribed to the word in clause (b) of sub-section (7) of Section 31 of the act, where it provides that a *sum* directed to be paid by an arbitral award "*shall …. carry interest....*" from the date of the award to the date of the payment i.e. post-award. In other words, what clause (b) of sub-section (7) of Section 31 of the Act directs is that the "sum", whichis directed to be paid by the awad, whether inclusive or exclusive of interest, shall carry interest at the rate of eighteen per cent per annum for the post-award period, unless otherwise ordered.

(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 pendente lite.

(21) In the result, I am of the view that S.L. Arorar case (supra) is wrongly decided in that it holds that a sum directed to be paid by an Aribitral Tribunal and the refernece to the award on the substantive claim does not refer to interest pendente lite awarded on the “sum directed to be paid upon award” and that in the absence of any provision of interest upon interest in the contract, the Arbitral Tribunal does not have the power to award interest upon interest, or compond interest either for the pre-award period or for the post-award period. Parliamanet has the undoubted power to legislate on the subject and provide that the Arbitral Tribunal may award interest on the sum directed to be paid by the award, meaning a sum inclusive of principal sum adjudged and the interest, and this has been done by Parliament in plain language.”

Abhay Manohar Sapre, J, in his seperate but concurring judgment held as under:-

“**27.** Section 31(7)(a) employs the words “... the Arbitral Tribunal may include in the sum for which the award is made interest...”. The words “include in the sum” are of utmost importance. This would mean that pre-award interest is not independent of the “sum” awarded. If in case, the Arbitral Tribunal decides to award interest at the time of making the award, the interest component will not be awarded separately but it shall become part and parcel of the award. An award is thus made in respect of a “*sum”* which includes within the “*sum”* component of interest, if awarded.

28. Therefore, for the purposes of an award, there is no distinction between a “sum” with interest, and a “sum” without interest. Once the interest is “included in the

> sum" for which the award is made, the original sum and the interest component cannot be segregated and be seen indpendent of each other. The interest component then loses its character of an "interest" and taken the colour of "*sum"* for which the award is made.
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> **29.** There may arise a situation where, the Arbitral Tribunal may not award any amount towards principal claim but award only "*interest*". This award of interest would itself then become the *"sum"* for which an award is made under Section 31(7)(a) of the Act. Thus, in a pre-award stage, the legislation seeks to make no distinction between the sum awarded and the interest component in it."

(7) In view of the aforesaid enunciation of the Supreme Court in the matters **Hyder Consulting (UK) Limited** (supra), it is quite vivid that there is no bar in awarding post - award interest on the awarded amount under Section 37(1)(b) of the Act, 1996, therefore, the learned arbitral Tribunal is justified in awarding interest @ 18% per annum on the awarded sum of Rs.47,38,234/- from the date of award. I do not find any illegality in the award passed by the learned Tribunal and the application filed by the petitioner has rightly been rejected by the learned District Judge.

(8) Accordingly, the arbitration appeal fails and is hereby dismissed. No cost (s).

Sd/-

(Sanjay K. Agrawal)
Judge