

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Revision No.2561 of 2003 (O&M)

Date of Decision: May 14, 2019

The Chief General Manager, Telecom Department, Ambala & others

...Petitioners

Versus

R.P.Garg

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. H.P.S.Ghuman, Advocate,
for the petitioners.

Mr. Rakesh Gupta, Advocate,
for the respondent.

AMIT RAWAL, J.

The present revision petition is directed against the order dated 04.03.2003 of the Additional District Judge, Faridabad, whereby the appeal of the respondent-plaintiff under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 1996 Act), has been allowed.

The brief facts of the case are that respondent-contractor sought the arbitration against the petitioners under Section 7(B) of the Indian Telegraph Act by filing an application before the Civil Court, Faridabad. On 24.10.2000, the matter was referred to the Arbitrator. Contractor filed claim petition claiming interest @ 24% per annum from 30.08.1998 and also at the same rate from the date of presentation of the claim till payment. The Arbitrator, vide award dated 08.03.2001, allowed certain claims, but denied the claim of the respondent for interest in view of sub-clause (iv) of Clause 1 of the agreement. Even claim for litigation expenses was dismissed. The

contractor sought execution of the aforementioned award and also simultaneously filed the objections qua non-grant of interest and also filed an application under Section 31 of 1996 Act in the pending execution application claiming interest from the date of award till payment of the amount. Vide order dated 10.10.2002, the objections were dismissed and on 27.11.2002, execution application was dismissed in default. It is against order dated 10.10.2002, contractor filed an appeal which has erroneously been allowed and interest has been awarded.

Mr. H.P.S.Ghuman, learned counsel for the petitioners submitted that as per sub-clause (iv) of Clause 1 of the terms of the contract unambiguously laid down that no interest would be payable on the earnest money or security amount **OR** any amount payable to the contractor under the contract, but the Addl. District Judge failed to refer to the same and relied upon certain case law in view of the latest judgment rendered by Hon'ble the Supreme Court in **Jaiprakash Associates Ltd. (Jal) through its Director Versus Tehri Hydro Development Corporation India Ltd. (THDC) through its Director, (2019) 2 ArbiLR 1**, wherein the entire previous case law with regard to the payment of interest rendered in **Bharat Heavy Electricals Limited Versus Globe Hi-Fabs Limited, (2015) 5 SCC 718**, **Ambica Construction Versus Union of India, (2017) 14 SCC 323** and **State of Uttar Pradesh Versus Harish Chandra and Company, (1999) 1 SCC 63** has been considered and it has been held that the aforementioned view has been rendered while considering all the case law pertaining to grant of interest on the payment of the interest post award has been declined. The provisions of Section 31(7) of 1996 Act, in such circumstances, would not apply as it does not bind the parties.

Per contra, Mr. Rakesh Gupta, learned counsel representing the respondent submitted that in view of the law laid down by Hon'ble the Supreme Court in **Reliance Cellulose Products Limited Versus Oil and Natural Gas Corporation Limited**, (2018) 9 SCC 266, the power of the Arbitrator to award pendent lite interest has been held to be valid, though it was a case pertaining to a dispute arisen from 1940 Act.

In **M/s. Hyder Consulting (UK) Ltd. Versus Governor, State of Orrisa Through Chief Engineer**, 2015(2) SCC 189, expression “sum” awarded could be included as principal amount and such interest as the Arbitral Tribunal deems fit. Expression “sum” used in Clause (b) of Section 31(7) to be construed to carry interest @ 18% for the post award period.

In **State of Haryana and Ors. Versus S.L.Arora and Company**, AIR 2010 Supreme Court 1511, the Court noticing the provisions of Section 31(7) held that the scope of awarding pre-award interest is always subject to terms of the contract, but for post award the contract has no application. The Tribunal has discretion to specify the rate and in the absence of the same, rate of 18% would apply. Mr.Gupta has also cited the judgment in **Union of India Versus Saraswat Trading Agency and Anr.**, AIR 2010 SC (Supp) 839.

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

It would be apt to reproduce sub-clause (iv) of Clause 1 of the contract which reads thus:-

“No interest will be payable on the earnest money or security deposit amount or any amount payable to the contractor under the contract.”

From the plain and simple language of the terms of the contract,

it is revealed that the contractor shall not be entitled to interest on the earnest money or security and as well as any other amount payable to him.

The facts, as noticed above, i.e., the demand raised before the Arbitrator, passing of award and acceptance of the claim are not in dispute. The question to be pondered is whether in view of the expressed bar of non-entitlement of interest as the Arbitral Tribunal derived its powers to award the post award interest in view of the law laid down in **M/s. S.L.Arora and Company's case (supra)**. The Hon'ble Supreme Court while construing the provisions of clause (b) of Section 31(7) of the 1996 Act, held that the Arbitral Tribunal is incapacitated from awarding interest, i.e., post award.

On going through the facts and circumstances of the aforementioned case, it is revealed that there was no such clause in the contract debarring payment of the contractor. The other judgments relied upon by Mr. Gupta pertained to some proposition including **Hyder Consulting (UK) Ltd.(supra)**, but a question arose in **Jaiprakash Associates Ltd.'s case (supra)**, wherein by applying the rule of *ejusdem generis*, Hon'ble the Supreme Court found that once the terms of the contract prohibit the entitlement of interest, the same cannot be awarded. It would be apt to reproduce Clauses 50 and 51 of the contract giving rise to a dispute:-

“Clause 50. Interest on money due to the contractor.

No omission on the part of the Engineer in charge to pay the amount due upon measurement or otherwise shall vitiate or make void the contract, nor shall the contractor be entitled to interest upon any guarantee or payments in arrears nor upon any balance which may on the final settlement of his account,

be due to him.

Clause 51. No claim for delayed payment due to dispute etc.

No claim for interest or damage will be entertained or be payable by the corporation in respect of any amount or balance which may be lying with the corporation owing to any dispute, different or misunderstanding between the parties or in respect of any delay or omission on the part of the Engineer in charge in making intermediate or final payments on in any other respect whatsoever.”

After thrashing out of the entire case law, in Paras 17, 18, 19 and 22, it was concluded as under:-

“17) Another reason given by the High Court is equally convincing. The Clauses 50 and 51 of GCC are pari materia with Clauses 1.2.14 and 1.2.15 of GCC in THDC case. Those clauses have been interpreted by holding that no interest is payable on claim for delayed payment due to the contractor. Same construction adopted in respect of these clauses, which, in fact, is a case between the same parties, is without any blemish.

18. In this backdrop, the only argument of the appellant that remains to be considered is as to whether such a construction is contrary to the judgment in Harish Chandra case.

19) Complete answer to this argument is provided in Reliance Cellulose Products Limited judgment. Following discussion contained therein which discussed THDC judgment would amply demonstrate this:

"Also, unlike the clause in Tehri Hydro Development Corporation Ltd. (Supra), clause 16 does not contain language which is so wide in nature that it would interdict an arbitrator from granting pendente lite interest. It will be remembered that the clause in Tehri Hydro Development Corporation Ltd. (supra) spoke of no claim for interest being entertained or payable in respect of any money which may be lying with the

Government owing to disputes, difference or misunderstanding between the parties and not merely in respect of delay or omission; Further, the clause in Tehri Hydro Development Corporation Ltd. (supra) goes much further and makes it clear that no claim for interest is payable “in any other respect whatsoever.”

It is pertinent to mention that the aforesaid judgment also discusses and analyses Harish Chandra case. In the first place, the judgment in Harish Chandra case is under the 1940 Act. More pertinently, this judgment is explained and distinguished in Sayeed Ahmed and Company case in the following paragraphs:

"17. The appellant strongly relied upon the decision of this Court in State of U.P. v. Harish Chandra & Co. [(1999) 1 SCC 63] to contend that Clause 1.09 of the contract did not bar the award of interest. The clause barring interest that fell for consideration in that decision was as under: (SCC p. 67, para 9)

“1.09. No claim for delayed payment due to dispute, etc. —No claim for interest or damages will be entertained by the Government with respect to any moneys or balances which may be lying with the Government owing to any dispute, difference; or misunderstanding between the Engineer-in-Charge in making periodical or final payments or in any other respect whatsoever.”

This Court held that the said clause did not bar award of interest on any claim for damages or for claim for payment for work done. We extract below the reasoning for such decision: (SCC p. 67, para 10)

“10. A mere look at the clause shows that the claim for interest by way of damages was not to be entertained against the Government with respect to only a specified type of amount, namely, any moneys or balances which may be lying with the Government owing to any dispute, difference between the Engineer-in-Charge and the

contractor; or misunderstanding between the Engineer-in-Charge and the contractor in making periodical or final payments or in any other respect whatsoever. The words ‘or in any other respect whatsoever’ also referred to the dispute pertaining to the moneys or balances which may be lying with the Government pursuant to the agreement meaning thereby security deposit or retention money or any other amount which might have been with the Government and refund of which might have been withheld by the Government. The claim for damages or claim for payment for the work done and which was not paid for would not obviously cover any money which may be said to be lying with the Government. Consequently, on the express language of this clause, there is no prohibition which could be culled out against the respondent contractor that he could not raise the claim for interest by way of damages before the arbitrator on the relevant items placed for adjudication.”

(emphasis supplied)

18. In Harish Chandra [(1999) 1 SCC 63] a different version of Clause 1.09 was considered. Having regard to the restrictive wording of that clause, this Court held that it did not bar award of interest on a claim for damages or a claim for payments for work done and which was not paid. This Court held that the said clause barred award of interest only on amounts which may be lying with the Government by way of security deposit/retention money or any other amount, refund of which was withheld by the Government.

19. But in the present case, Clause G1.09 is significantly different. It specifically provides that no interest shall be payable in respect of any money that may become due owing to any dispute, difference or misunderstanding

between the Engineer-in-Charge and contractor or with respect to any delay on the part of the Engineer-in-Charge in making periodical or final payment or in respect of any other respect whatsoever. The bar under Clause G1.09 in this case being absolute, the decision in Harish Chandra [(1999) 1 SCC 63] will not assist the appellant in any manner.”

22) The upshot of the aforesaid discussion would be to hold that the conclusions of the High Court in the impugned judgment are correct and need no interference. This appeal is accordingly dismissed.”

The cumulative reading of the aforementioned ratio and relying upon condition of the contract had binding effect on the parties, which cannot be said to be non-existence in case of the dispute, the order of the Lower Appellate Court in awarding interest post award is wholly fallacious and illegal. The same is hereby set-aside.

Revision petition stands allowed.

May 14, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No