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

Date of Decision: 21st October, 2021

\+ **EFA(OS) (COMM) 2/2021 & CM No. 10663/2021**

OVEREAS DRILLING LIMITD ..... Appellant
Through Mr.Neeraj Sharma, Adv.

versus

DIRECTORATE GENERAL OF HYDROCARBONS OF INDIA ..... Respondent
Through Mr.Somiran Sharma, Mr.K.R. Sasiprabhu, Mr.Tushar Bhardwaj, Mr.Sadyant Sasiprabhu, Advs.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. The appeal has been taken up today as 18.10.2021 was declared a holiday.

2. This appeal has been filed by the appellant challenging the judgment and order dated 06.01.2020 passed by the learned Single Judge of this Court in OMP(ENF.)(COMM.) 2/2018, recording the satisfaction of the Arbitral Award and disposing of the Execution Petition as satisfied.

3. The Arbitral Award dated 29.08.2009 had granted the following reliefs in favour of the appellant:

> *"A) The Respondent shall pay to the Claimant the sum of USD*

6,201,867.00 together with interest at the rate of 6.82985% per annum from 1st December, 2006 until payment.
B) The Respondent shall also pay to the Claimant the sum of Rs.25,00,000/- towards costs.
C) The Respondent shall reimburse the Claimant the Stamp Duty payable on this Award under the law.
D) There shall be an award accordingly."

4. The said Arbitral Award has attained finality with the challenge thereto filed by the respondent being dismissed.

5. The short controversy that remains to be adjudicated now is as to whether the appellant is entitled to claim interest under Section 31(7)(b) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') on the reliefs as granted by the Arbitral Tribunal.

6. It is the case of the appellant that as far as Relief (A) of the Arbitral Award is concerned, the same grants interest only pre-reference and *pendente lite*. The interest post-award should therefore be computed under Section 31(7)(b) of the Act and in accordance with the judgment of the Supreme Court in ***Hyder Consulting (UK) Limited v Governor, State of Orissa,*** (2015) 2 SCC 189. The appellant claims that accordingly it is entitled to post-award interest at the rate of 6.82985% on the sum awarded, that is, USD 6,201,867.00 plus pre-award interest computed till the date of the award, that is, 29.08.2009.

7. As far as the claim on interest awarded by Relief (B) and (C) is concerned, the appellant claims that as no specific rate of post-award interest has been awarded on the sum payable as costs and stamp duty in terms of the Arbitral Award, the appellant is entitled to interest as specified under Section 31(7)(b) of the Act.

8. The learned counsel for the appellant, while reiterating the above submissions, places reliance on the judgment of the Supreme Court in ***Hyder Consulting*** (*supra*).

9. We have considered the submission made by the learned counsel for the appellant, however, find no merit in the same. Section 31(7) of the Act is reproduced herein below:

> *"31. (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.*
> *(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.*
> *Explanation.—The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978)."*

10. A reading of the above provision would show that, unless otherwise agreed by the parties, a discretion has been vested in the Arbitral Tribunal to grant interest on the 'sum directed to be paid under an Award'. Such interest may be for pre-reference, post reference and for post award period and at such rate as the Arbitral Tribunal in its discretion prescribe. The Arbitral Tribunal, therefore, has primacy and discretion in matter of award of interest.

11. In ***Hyder Consulting*** (*supra*), the Supreme Court interpreted the term "*sum directed to be paid by an Arbitral Award*" in Section 31(7)(b) of the Act. It was held that Sub-Section 7(a) of Section 31 of the Act contemplates that an award, inclusive of the interest for pre-

award period on the entire amount directed to be paid or part thereof, may be passed. The "*sum*" awarded may be the principal amount and such interest as the Arbitral Tribunal deems fit. If no interest is awarded, the "*sum*" comprises only the principal. In Section 31(7)(b) of the Act, the "*sum directed to be paid by the Arbitral Award*", may be inclusive or exclusive of interest and shall carry interest at the rate as specified in the said section, unless otherwise ordered by the Award. It was further held that if the Arbitral Tribunal has awarded post-award interest payable from the date of the award to the date of payment at a particular rate in its discretion then it will prevail, else the party will be entitled to claim post-award interest on the awarded sum at the statutory rate specified in clause (b) of Section 31(7) of the Act.

12. A reading of the above provisions of the Act as well as the judgment of the Supreme Court in ***Hyder Consulting*** (*supra*), would clearly show that the "*sum directed to be paid by an Arbitral Award*" in Section 31(7)(b) of the Act shall include the principal amount as also the pre-award interest awarded by the Arbitral Tribunal, and shall also carry interest at the rate specified in Section 31(7)(b) of the Act from the date of the award to the date of payment, unless the award otherwise directs. The Arbitral Award therefore, is given primacy as far as interest for the post-award period is also concerned. Section 31(7)(b) of the Act is a default provision which operates in absence of the Arbitral Award specifically providing for the post-award interest.

13. In the present case, Relief (A) granted by the Arbitral Award clearly provides for interest not only till the date of the award but also

post-award till the date of payment. It awards post-award interest also only on the principal amount of USD 6,201,867.00. As observed hereinabove, the Arbitral Award being explicit on the interest for the post-award period, has primacy over the default provision of Section 31(7)(b) of the Act. There is therefore, no scope for adding the pre-award interest into the principal amount for calculating post-award interest by applying Section 31(7)(b) of the Act.

14. As far as the claim of post-award interest on Relief (B) and (C) is concerned, the same falls under Section 31(8) of the Act which, on the date of the Arbitral Award, read as under:

> *"31. (8) Unless otherwise agreed by the parties,-*
> *(a) the costs of an arbitration shall be fixed by the arbitral Tribunal;*
> *(b) the arbitral Tribunal shall specify,-*
> *(i)the party entitled to costs,*
> *(ii) the party who shall pay the costs,*
> *(iii) the amount of costs or method of determining that amount, and*
> *(iv) the manner in which the costs shall be paid.*
> *Explanation.—For the purpose of clause (a), "costs" means reasonable costs relating to—*
> *(i) the fees and expenses of the arbitrators and witnesses,*
> *(ii) legal fees and expenses,*
> *(iii) any administration fees of the institution supervising the arbitration, and*
> *(iv) any other expenses incurred in connection with the arbitral proceedings and the arbitral award."*

15. The legislation had therefore, clearly made a distinction between "*sum directed to be paid by an Arbitral Award*" and the "*costs of an arbitration*".

16. The cost of arbitration are to be 'fixed' by the Arbitral Tribunal.

17. Section 31A of the Act by the Arbitration and Conciliation

(Amendment) Act, 2015, vested in the Arbitral Tribunal, by insertion of Section 31A(4)(g) to the Act, a power to order payment of interest on costs. It reads as under:

> *"31A. **Regime for costs.**-*
> *xxxx*
> *(4) The Court or arbitral tribunal may make any order under this section including the order that a party shall pay-*
> *xxxx*
> *(g) interest on costs from or until a certain date."*

18. It was, therefore, for the Arbitral Tribunal to grant interest, if any, on the costs 'fixed'. In absence of such grant, the appellant cannot rely on Section 31(7)(b) of the Act for grant of interest on the cost fixed by the Arbitral Tribunal.

19. Therefore, in absence of a direction in the Award itself, no post-award interest was payable on the amount of relief granted by the Arbitral Tribunal as "*costs*" in Reliefs (B) and (C).

20. In view of the above, we find no merit in the present appeal. The same is dismissed. There shall be no order as to cost.

NAVIN CHAWLA, J

MANMOHAN, J

OCTOBER 21, 2021/Arya/AB