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

Date of Decision: 22nd November, 2021

\+ **EX.F.A.15/2021**

DELHI DEVELOPMENT AUTHORITY ..... Appellant

Through: Mr. Prashant Mehta and Mr. Raghav Marwaha, Advocates. (M:9654909889)

versus

MSJ CONSTRUCTIONS PVT LTD ..... Respondent

Through: Ms. Sandeep Sharma, Mr. Amit Choudhary and Mr. Gurjas S. Narula, Advocates. (M:9891149413)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. **(Oral)**

1. This hearing has been done in physical Court. Hybrid mode is, however, permitted in cases where explicit permission has been taken from the Court.

CM APPL.41330/2021 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

CM APPL.41331/2021 (delay in filing)

3. For the reasons stated in the application, the delay in filing the appeal is condoned. Application is disposed of.

EX.F.A.15/2021 & CM APPL.41329/2021

4. The present appeal has been preferred challenging the order dated 5th September, 2019 passed by the Ld. ADJ, South East District, Saket, New Delhi (*hereinafter "Executing Court"*) in ***Ex. No.263/2017*** titled ***"M/s. M.S.J. Construction Pvt. Ltd. v. Delhi Development Authority"***. By the impugned order, it was held that the term "*amount so adjudged*" shall

include the *pendente lite* interest on the principal amount, thereby allowing execution in terms of the Arbitral Award dated 22nd September, 2008.

5. The short question that arises in the present appeal is whether future interest is liable to be granted upon the *pendente lite* interest of Rs.13,01,175/- as awarded by the Arbitral Award dated 22nd September, 2008, or not.

6. The background of this case is that the Appellant/Judgment Debtor- Delhi Development Authority (*hereinafter referred to as "DDA"*) awarded a contract for construction of multi-storied buildings at Motia Khan to the Respondent/Decree Holder- M/s. M.S.J. Construction Pvt. Ltd. Disputes arose between the parties, and there were two rounds of arbitration proceedings in respect of the said disputes. In the first round, the Award dated 27th January, 1992 was set aside by this Court, vide order dated 8th September, 2006. The matter was referred afresh for arbitration, and fresh appointment was made. The ld. Arbitrator, in the second round, passed the Award dated 22nd September, 2008, wherein a sum of Rs.21,68.265/- was awarded, which was inclusive of interest on the principal amount of Rs.8.67,450/-, at the rate of 9% per annum w.e.f. the date of invocation of arbitration i.e., 25th January, 1992 till the date of Award i.e., 22nd September, 2008. Further, the Ld. Arbitrator held that in case the awarded amount was not paid within 3 months from the date of the Award, the Decree Holder/Respondent herein would be entitled to future interest at 12% per annum on the principal amount. The operative portion of the Award dated 22nd September, 2008 reads as under:

> " *In face of the reasons given above the claimant is entitled to Rs.7,95,000/- +*

> *72450/- = Rs.867,450/-. It would be entitled to interest @ 9% per annum in view of the findings given above i.e. from 25.1.92 (Rs.13,01,175/-) **Rs.8,67,450/- + 13,01,175/- = Rs.21,68,625/-.** It is made clear that if the amount is not paid within three months claimant would be entitled to future interest @ 12% p.a. on the **amount so adjudged** till final payment is made."*

7. The Arbitral Award dated 22nd September, 2008 was challenged and objections were filed by both the parties. The said Arbitral Award was, however, upheld and made rule of the Court by judgment dated 21st March, 2013. The Special Leave Petition being ***SLP (C) No.24382/2013*** titled ***"Delhi Development Authority & Anr. v. M/s. MSJ Construction Pvt. Ltd."*** preferred by the Judgement Debtor/DDA challenging the said Award was also dismissed on 26th September, 2014.

8. An Execution Petition bearing no. ***Ex. P.109/2013*** was filed by the Decree Holder in the 2013 and in the said execution, objections were raised by the Judgment Debtor/DDA insofar as the grant of interest upon interest is concerned. On 1st December, 2014, the Judgement Debtor/DDA made a total payment of Rs.27,54,651/-, towards the stated satisfaction of the Arbitral Award. The ***Ex. P.109/2013*** was transferred to the Executing Court wherein it was registered as ***Ex. No.263/2017***. It was in this execution proceeding that the impugned order dated 5th September, 2019 was passed, by which the objections raised by the DDA were dismissed by the Executing Court.

9. Mr. Mehta, ld. Counsel appearing for the Judgment Debtor/DDA, makes the following submissions:

(i) The principal sum in the present case was Rs.8,67,450/-. Thus, the *pendente lite* and future interest could have been awarded only on the said amount, and not by combining the interest of Rs.13,01,175/- till the date of Award i.e., 22nd September, 2008. This would be contrary to Section 29 of the Arbitration Act, 1940 (*hereinafter "1940 Act"*), which is the applicable statute in the present case.

(ii) The provisions of Section 29 of the 1940 Act are in contrast with Section 31(7) of the Arbitration and Conciliation Act, 1996 (*hereinafter "1996 Act"*). He submits that, under the 1996 Act, the clear statutory mandate is that the *amount so adjudged* would include the *pendente lite* interest. Whereas, under the 1940 Act, this would not be the position.

(iii) The judgment in ***Indian Oil Corporation Ltd. v. G.S. Jain & Associates, [EFA (OS) No.17/2010, decided on 7th September, 2012]*** passed by the ld. Division Bench of this Court is the clear authority on this aspect to the effect that interest on interest cannot be awarded.

(iv) Further reliance is placed upon the judgment in ***Hyder Consulting (UK) Limited v. Governor, State of Orissa [(2015) 2 SCC 189]***, to argue that the sum under the said judgment, as per the 1996 Act, was to be the sum which would include the interest amount, but this would not be the position under the 1940 Act, which is stated to be applicable to the present case.

(v) The Executing Court can go behind the decree to the extent that the original Court or Arbitrator did not have the power to grant interest upon interest.

10. On the other hand, Mr. Sandeep Sharma, ld. Counsel appearing for the Decree Holder, relies upon the fact that the judgment in ***State of Haryana and Ors. v. S.L. Arora & Company, (2010) 3 SCC 690***, which upholds the proposition canvassed by Mr. Mehta, has been overruled by the Supreme Court in ***Hyder Consulting (supra)***. He further submits that the decision of Division Bench in ***G.S. Jain (supra)*** was prior to the rendering of the decision by the Supreme Court in ***Hyder Consulting (supra)***. In any event, he submits that the Division Bench, thereafter, in ***FAO (OS) 350/2011*** titled ***"M/s. MSJ Construction Pvt. Ltd v. Delhi Development Authority"***, vide judgment dated 21st March, 2013 upheld Arbitral Award dated 22nd September, 2008, and the grant of interest upon interest as well. Further, the Supreme Court has dismissed the Special Leave Petition preferred by the DDA. Finally, reliance is also placed upon the decision of the Supreme Court in ***Oil & Natural Gas Commission v. M.C. Clelland Engineers S. A., (1999) 4 SCC 327***, which has also been considered and upheld by the Supreme Court in ***Hyder Consulting (supra).***

11. Thus, the short question in this case is whether the *pendente lite* interest which was granted w.e.f. from 25th January, 1992 till the date of the Arbitral Award dated 22nd September, 2008, could be combined with the principal amount in the manner as has been done by the ld. Arbitrator.

12. A perusal of the Arbitral Award dated 22nd September, 2008 itself shows that the ld. Arbitrator has awarded the principal amount of Rs.8,67,450/-, along with the *pendente lite* interest w.e.f. from 25th January, 1992 till the date of the Arbitral Award dated 22nd September, 2008, i.e., an interest amount of Rs.13,01,175/-.

13. Whenever an arbitral award is passed, the arbitral tribunal has to deal

with the claims of the parties, and award a specified sum. There is no bar under the 1940 Act for awarding interest during the pendency of the arbitration proceedings. The only question is whether that amount would be added to the principal amount to constitute the amount so adjudged by the award.

14. Section 29 of the 1940 Act reads as under:

> *"Where and in* so *far* as *award is for the payment of money the Court may in the decree, order interest, from the date* of *the decree,* at *such rate* as *the Court deems reasonable,* to *be paid on* ***the <u>'principal sum'</u>*** **<u>as</u>** ***<u>adjudged by the award</u>*** *<u>and confirmed by the decree</u>."*

15. Section 31(7) of the 1996 Act reads as under:

> *"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, and 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 *eighteen per centum per annum from the date* of *the award to the date of payment."*

16. The question of awarding interest upon interest under Section 29 of the 1940 Act was considered in ***Oil & Natural Gas Commission (supra), U.P. Cooperative Federation Ltd. v. Three Circles [(2009)10SC C 374],*** as also in ***G.S. Jain (supra)***. *Per contra*, the said issue was considered under the 1996 Act in ***S.L. Arora (supra),*** and in ***Hyder Consulting (UK) Ltd. (supra)***.

17. In ***Oil & Natural Gas Commission (supra)***, the Supreme Court was concerned with a case where the two main claims were themselves relating to interest for delayed payment, and after awarding the two main claims, the Arbitrator had awarded interest at 12% per annum from the date of award till the date of award till realization. On the question of whether, on the said interest amount, further interest would be liable to be awarded from the date of award till realization, the Supreme Court observed as under:

> *"3. Shri B. Datta, learned senior counsel for the appellant, contended that what was awarded by the Arbitrators in respect of the two claims referred to earlier in the course of this order is itself interest for different periods. He, therefore, submitted that Arbitrators could not have further awarded interest on the claims awarded at 12% per annum from the date of award till realisation, He did not dispute, and very fairly and correctly, that the Arbitrators do have the power to grant interest on the amount claimed in the arbitration and the power of the Arbitrators was very characteristically described by him as 'before, during and after' of the arbitration proceedings. His point is that there cannot be interest upon interest when the claim itself is one of interest and interest upon that amount could not have been granted by the Arbitrators and relied upon Section 3 of the Interest Act.*
>
> *4. <u>There cannot be any doubt that the Arbitrators have powers to grant interest akin to Section 34 of the CPC which is the power of the court in view of Section 29 of the Arbitration Act, 1940.</u> It is clear that interest is not granted upon interest awarded but upon the claim made. The claim made in the proceedings is under two heads - one is the balance of amount claimed under invoices and letter dated February 10, 1981 and the amount certified and paid by the appellant and the second is the interest on delayed payment. <u>That is how</u>*

the claim for interest on delayed payment stood crystallized by the time the claim was filed before the Arbitrators. ***Therefore, the power of the Arbitrators to grant interest on the amount of interest which may, in other words, be termed as interest on damages or compensation for delayed payment which would also become part of the principal.*** *If that is the correct position in law, we do not think that Section 3 of the Interest Act has any relevance in the context of the matter which we are dealing with in the present case. Therefore, the first contention raised by Shri Datta, though interesting, deserves to be and is rejected."*

18. In ***Three Circles (supra)***, the Supreme Court once again had the occasion to examine the Arbitrator's power to award interest upon interest. In this regard, the Supreme Court relied upon the decision in ***McDermott International Inc. v. Burn Standard Co. Ltd, and Ors. [2006 (11) SCC 181]*** and held that the same was permissible in law, and observed as under:

> ***15.*** *Now the question comes which is related to awarding of 'interest on interest'. According to the appellant, they have to pay interest on an amount which was inclusive of interest and the principal amount and, therefore, this amounts to a liability to pay 'interest on interest. This question is no longer res integra at the present point of time. This Court in* ***McDermott International Inc. v. Burn Standard Co. Ltd, and Ors.*** *MANU/SC/8177/2006 : 2006 (11) SCC 181 has settled this question in which it had observed as follows:*
>
> > *The Arbitrator has awarded the principal amount and interest thereon upto the date of award and future interest thereupon which do not amount to award on interest on interest as interest awarded on the principal amount upto the date of award became the principal amount which is permissible in*

> *law.*
> ***16.*** *The High Court on this question has also rightly relied on a decision of this Court in the case of* ***Oil and Natural Gas Commission v. M.C. Clelland Engineers S.A.*** *1999 AIR SCW 1224. That being the position, we are unable to find any ground to set aside the judgment of the Division Bench of the High Court while considering the ground of 'interest on interest'.*

19. In ***S.L. Arora(supra)***, after analyzing the various decisions on the aspect of award of interest upon interest, the Supreme Court framed the following issue for consideration:

> *"7. (i) Whether Section 31(7) of the Act authorizes and enables arbitral tribunals to award interest on interest from the date of award?"*

20. On the above issue, the Court held as under:

> *"24. Thus, it is clear that Section 31(7) merely authorizes the arbitral tribunal to award interest in accordance with the contract and in the absence of any prohibition in the contract and in the absence of specific provision relating to interest in the contract, to award simple interest at such rates as it deems fit from the date on which the cause of action arose till the date of payment. It also provides that if the award is silent about interest from the date of award till date of payment, the person in whose favour the award is made will be entitled to interest at 18% per annum on the principal amount awarded, from the date of award till date of payment. The calculation that was made in the execution petition as originally filed was correct and the modification by the respondent increasing the amount due under the award was contrary to the Award."*

21. In ***G.S. Jain (supra)***, the Division Bench of this Court held that the interest cannot be included in the principal sum for the calculation of the

future interest. The relevant portion of the said judgment has been extracted below:

> *23. We have noticed these catenae of judgments cited by both the sides. However, the question which confronts us has not been directly dealt with in any of these judgments. The nearest which one can get to is the discussion on the issue of compound interest in State of Haryana v. S.L. Arora's case (supra) whereby under the New Act which is law for the proposition that Section 31(7) of the New Act admits of only simple interest and compound interest is not to be granted unless it is specifically provided so in the contract or a statute. The question would, thus, arise whether the same principle on parity has to be applied under the Old Act and what should be the construction of the provision of Section 29 of the Old Act.*
>
> ***24.** We may point out at this stage that it has been brought to our notice that in SLP(C) No. 29407/2010 M/s Hyder Consulting (UK) Ltd. v. Governor, State of Orissa, Through Chief Engineer, a Bench of the Supreme Court vide order dated 13.03.2012 has referred the view taken by the Supreme Court in State of Haryana v. S.L. Arora's case (supra) to a larger Bench. However, till date no opinion has been rendered in this and thus State of Haryana v. S.L. Arora's case (supra) holds good.*
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> *xxxxxxxx*
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> ***27.** The issue is, thus, no more res integra in view of the judgment in Pt. Munshi Ram and Associates v. DDA's case (supra) where again there was absence of any contract for compound interest. In Chandigarh Housing Board v. JMK Associates and Anr.; AIR (2011) NOC 433 (P&H){Civil Revision No. 2509 of 2010 decided on 27.05.2011}where it was observed that the power to grant interest under the Old Act by the Arbitral Tribunal was to be governed by the provisions of the Interest Act, 1978, the grant of*

compound interest in the absence of a contract was held to be against the principles of law and statute.

28. *We may add that there is force in the contention of the Learned Counsel for the appellant that the golden rule of interpretation of statute must be followed and where the wordings of the statute are clear, plain and unambiguous, the courts are bound to give effect to the meaning irrespective of the consequences. In Section 29 of the Old Act, it is after a comma that a complete line comes, "to be paid on the principal sum as adjudged by the award and confirmed by the decree". This expression has to be read as a whole. The reference to 'confirmed by the decree' is, thus, in the context of a possible variation in the principal sum which may arise on account of modification of the award. The word 'principal' cannot be irrelevant and has to be understood as per the common parlance. The 'principal' is thus distinct from any other amount which would include interest. Similarly, costs would be a third category. The provisions of Section 29 of the Old Act thus provide for post decretal interest by the court only on the principal sum. If one may say, this is also in consonance with the general view of the legislature as is apparent from the provisions of Section 34 of the CPC and as to why the amendment was brought into force in Section 34 pursuant to the recommendations of the Law Commission of India in its 55th Report of 1973. The effect of the amendment carried out in 1956 was explained i.e. prior to the amendment of 1956, the Section left the rate of interest even for the post decree stage to discretion of the Court, but after the amendment, it provided for a maximum rate of interest. Moreover, the rate of interest was previously permissible on the aggregate sum and not merely on the principal as was the position under the unamended Section. The Minister of Legal Affairs was quoted in the report giving an explanation for the amendment of 1956 explaining the objective to be that interest ought* *not to be allowed on an amount of interest itself i.e. to prevent compound interest. Thus, where the expression 'principal' is used and continues to be used, it cannot be said that the legislature was ignorant of the complexity of the issue i.e., whether interest should be granted only on the principal sum or interest should be granted on the complete amount inclusive of interest i.e. the compound interest. In fact, conscious decisions have been taken to remove the concept of compound interest and exceptions which have been carved out as per the judicial interpretation are restricted to cases where there is a specific contract or statute providing compound interest.*

29. *In the facts of the present case, it is certainly not pleaded that the contract provides for compound interest.*

30. *We are thus of the view that despite the opinion rendered by the learned Judge qua his decree dated 15.12.2006 and the impugned order interpreting that order, compound interest could not have been granted i.e. the interest could not have been granted on the part of the award which was for interest element. If the statute does not permit it then the Court would not be able to grant it in the absence of any contract or statute. We are conscious of the fact that as per the opinion of the learned Judge dated 01.08.2012, the learned Judge consciously reduced the post decretal interest to 8% per annum as against the interest rate awarded by the arbitrator of 15% per annum, but in view of the prohibition in law that intent cannot be given effect to.*

31. *The result of the aforesaid is that the appeals are allowed and it is held that the appellant is liable to pay interest on only the principal component of the award and not the interest component of the award. The parties are left to bear their own costs."*

22. Finally, in ***Hyder Consulting (UK) Ltd. (supra)***, the Supreme Court

considered the aspect of award of interest upon interest once again under Section 31(7) of the 1996 Act, and held as under:

> *<u>"64. It is not possible to agree with the conclusion in S.L. Arora's case that Section 31(7) of the Act does not required that interest, which accrues till the date of the Award, be included in the "sum" from the date of Award for calculating the post-award interest. In my humble view, this conclusion does not seem to be in consonance with the clear language of Section 31(7) of the Act.</u>*
>
> *xxx xxx xxx*
>
> *66. Clause (a) of Sub-section (7) provides that where an Award is made for the payment of money, the Arbitral Tribunal may include interest in the sum for which the Award is made. In plain terms, this provision confers a power upon the Arbitral Tribunal while making an Award for payment of money, to include interest in the sum for which the Award is made on either the whole or any part of the money and for the whole or any part of the period for the entire pre-award period between the date on which the cause of action arose and the date on which the Award is made. <u>To put it differently, Sub-section (7)(a) contemplates that an Award, inclusive of interest for the pre-award period on the entire amount directed to be paid or part thereof, may be passed. The "sum" awarded may be principal amount and such interest as the Arbitral Tribunal deems fit. If no interest is awarded, the "sum" comprises only the principal.</u> The significant words occurring in Clause (a) of Sub-section (7) of Section 31 of the Act are "the sum for which the award is made." On a plain reading, this expression refers to the total amount or sum for the payment for which the Award is made. Parliament has not added a qualification like "principal" to the word "sum," and therefore, the word*

"sum" here simply means "a particular amount of money." In Section 31(7), this particular amount of money may include interest from the date of cause of action to the date of the award.

67. The Oxford Dictionary gives the following meaning to the word "sum":
Sum, 'if noun': A particular amount of money.
Sum, 'if verb': The total amount resulting from the addition of two or more numbers, amounts, or items.

68. In Black's Law Dictionary, the word "sum" is given the following meaning:
SUM. In English law-A summary or abstract; a compendium; a collection. Several of the old law treatises are called "sum." Lord Hale applies the term to summaries of statute law. Burrill. The sense in which the term is most commonly used is "money"; a quantity of money or currency; any amount indefinitely, a sum of money, a small sum, or a large sum. U.S. v. Van Auken MANU/USSC/0259/1877: 96 U.S. 368 : 24 L. Ed. 852;Donovan v. Jenkins 52 Mont. 124, 155 P. 972, 973.

69. 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," which is directed to be paid by the Award, 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.*

70. 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.

71. The purpose of enacting this provision is clear, namely, viz. 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.

72. 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 pendent lite.
xxx xxx xxx

77. In the result, I am of the view that S.L. Arora's case is wrongly decided in that it holds that a sum directed to be paid by an Arbitral Tribunal and the reference to the Award on the substantive claim does not refer to interest pendente lite awarded on the "sum directed to 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 compound interest either for the pre-award period or for the post-award period. Parliament 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."

Pertinently, the judgment in ***S.L. Arora(supra)*** was overruled in ***Hyder Consulting (UK) Ltd. (supra).***

23. A perusal of Section 29 of the 1940 Act and Section 31(7) of the 1996 Act, extracted above, clearly shows that interest can be awarded by the Arbitral Tribunal. The manner of awarding interest could differ from case to case. In the present case, the stand of the Respondent/Decree Holder was that the amount was due and payable w.e.f. 25th January, 1992. There were two rounds of arbitral proceedings and it was in the second round that the amount was finally awarded. The award of this amount was challenged by the parties. However, the Award has been upheld by the Division Bench of this Court, vide judgment dated 21st March, 2013 in ***FAO (OS) 350/2011*** titled ***"M/s. MSJ Construction Pvt. Ltd v. Delhi Development Authority"*** Further, the Special Leave Petition being ***SLP (C) No.24382/2013*** titled ***"Delhi Development Authority & Anr. v. M/s. MSJ Construction Pvt. Ltd."*** preferred by the Judgement Debtor/DDA was also dismissed on 26th September, 2014. Thus, the scope of execution proceedings would be very limited as to whether the awarded amount has been paid or not. The award of interest and the manner in which the Award is worded could at best have been subject matter of challenge in the proceedings under Section 34. However, once the Award has been upheld can the objection now sought to be raised be considered by the Executing Court? In the opinion of this Court, the answer is a `No'.

24. The stand of the DDA is, however, that the Court ought to consider the amount of Rs.13,01,175/- as the interest component, and the future interest should only be granted upon the principal amount of Rs.8,67,450/-, and not on the combined sum inclusive of *pendente lite* interest.

25. The Arbitrator was conscious of Section 29 of the 1940 Act while passing the award in this matter. The Arbitrator awarded the principal sum and the *pendente lite* interest together constituting the *amount so adjudged* i.e., Rs.21,68,625/-. The Arbitrator directed the Judgment Debtor/DDA to pay the same amount within a period of three months. If the same was not paid within three months, the Arbitrator directed that future interest at the rate of 12% per annum would be liable to be paid on the *amount so adjudged*. The question is whether the manner in which the Arbitrator has framed the award would entitle the Decree Holder/Respondent for interest on the sum of Rs.13,01,175/-, i.e., the *pendente lite* interest or not.

26. Whenever an arbitral award is passed, and the award adjudicates the sum payable, the challenge to such an award is always at the risk at the party who has suffered the award. The Claimants/Decree Holder becomes entitled to the said amount from the date when the award is passed. If payment is made to the Claimant/Decree Holder on the said date, the Claimant is entitled to reap the benefits of the entire awarded amount from the date of award itself. The party against whom the award is made has the choice of paying the entire awarded sum, subject to any challenge, so that future interest does not accrue on the awarded amount. However, if such party chooses to challenge the award, and thereafter, fails in the said challenge, it cannot then argue that the awarded sum needs to be diluted or decreased in any manner. The interest would be payable on the awarded sum in the manner as has been captured in the award.

27. The Arbitrator has not delineated the principal and the interest and simply directed payment of the same. The Arbitrator has made it clear as to what would be the *amount so adjudged* i.e., what would be the sum

adjudged under the award on which future interest would be payable. Thus, the intent of the Arbitrator was to award future interest on the entire sum awarded, inclusive of the *pendente lite* interest. In terms of ***Oil & Natural Gas Commission (supra)***, the same could even be considered as interest on damages or compensation for delayed payment which also becomes part of the principal amount.

28. Even on first principles, this Court is of the opinion that whenever disputes arise and are referred to arbitration, the arbitral award ought to be considered as being final between the parties. Any challenges to the said Award is purely at the risk of the losing party and delay in payment of the awarded amount ought not to be to the detriment of the successful party. If the award of interest is read in the manner as is being proposed by the DDA, then the losing party can continuously deprive the successful party of the awarded amount and pay interest merely on the principal amount instead of the awarded amount, which would be completely inequitable.

29. The rationale in ***Hyder Consulting (UK) Ltd. (supra)*** is quite clear as captured in paragraph 71 of the said judgment, as extracted hereinabove, to the effect that there ought to be encouragement for early payment of the awarded sum, and discouragement for usual delay which accompanies execution of such awards. The present case is a classic example of the same. The judgment in ***G.S. Jain & Associates (supra)*** relied upon by the Petitioner was passed prior to ***Hyder Consulting (UK) Ltd. (supra).***

30**.** The manner in which the Arbitrator has framed the award shows that as per the Arbitrator, the *`amount adjudged'* i.e., the principal amount as adjudged by the award and confirmed by the decree, in terms of Section 29 would be Rs.21,68,625/-, and not Rs.8,67,450/-.

31. In the opinion of this Court, the Executing Court has rightly followed the judgment in ***Oil & Natural Gas Commission (supra)*** which is a decision under the 1940 Act, where the Court has clearly held that interest upon interest would be payable, depending upon the facts of the case. Accordingly, this Court does not find any illegality in the impugned order dated 5th September, 2019 passed by the Executing Court.

32. In the facts of the present case, there is no merit in the present appeal. Accordingly, the appeal is dismissed.

33. Considering the issue raised before this Court in the present appeal, the awarded amount shall now be paid by the Judgment Debtor/DDA within a period of six weeks. No further interest would be liable to be paid for the said six weeks. However, if there is any further delay in payment of the awarded amount, future interest would be liable to be paid in terms of the Award dated 22nd September, 2008.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 22, 2021/*dk/Ad*
(Corrected and released on 1st December, 2021)