

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Civil Revision No. 3877 of 2018
Date of decision: 15th May, 2023

M/s Chandi Contractors Pvt. Ltd.

Petitioner

Versus

Executive Engineer and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Dheeraj Mahajan, Advocate for the petitioner.
Mr. Sharad Aggarwal, DAG, Haryana.

AVNEESH JHINGAN, J (Oral):

1. This revision petition is filed seeking setting aside of order dated 22.3.2018 dismissing the execution petition.
2. The relevant facts are that the parties on 10.10.1997 entered into an agreement for replacing of head regulator/bridge at RD No. 144895. As a result of dispute between the parties, the work allotted was terminated on 8.7.1998. The arbitration proceedings at the instance of the petitioner, culminated in award dated 5.12.2003. The award was clarified on 19.12.2003. The objections filed by the respondents were dismissed on 1.12.2006. The award was set aside in the review filed by the respondent. The petitioner succeeded in appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') and the award was upheld.

Operative part of the order passed by this Court is reproduced below:

“In view of the aforesaid discussions, this appeal is accepted. Impugned judgment is set aside and the review petition is dismissed. Since the Arbitrator had awarded interest @12% per annum, but had not made it clear as to up to which date it was awarded, therefore, necessity to clarify the ambiguity has

arisen. Thus, while exercising the powers under Section 31(7) of the Arbitration and Conciliation Act, 1996, it is ordered that the appellant would be entitled to interest @12% per annum up to the date of award and at the rate of 18% per annum from the date of award till realization of the award amount.”

3. In the execution proceedings, the petitioner claimed interest @ 12% on principal amount of Rs.1,62,26,211/- quantified at Rs.1,02,70,736/-. The claim of interest on the interest *pendente lite* was rejected by observing that this Court had not ordered compounding of interest.

4. Learned counsel for the petitioner relies upon the decision of the Supreme Court in ***M/s Hyder Consulting (UK) Ltd. v. Governor, State of Orissa through Chief Engineer, 2015(2) SCC 189*** and ***UHL Power Company Ltd. v. State of Himachal Pradesh, 2022(1) R.C.R (Civil) 677*** to submit that the petitioner was entitled to interest on interest *pendente lite*.

5. Learned counsel for the respondents defends the impugned order.

6. It is undisputed fact that this court while allowing the appeal specifically awarded interest under Section 31(7)(a) and (b) of the Act.

7. The only issue involved in the present petition is as to whether interest as per Section 31(7)(b) of the Act is to be awarded on interest granted till the date of passing of the award or not?

8. The issue is no longer *res integra*. The Supreme Court in ***M/s Hyder Consulting (UK) Ltd.'s case (supra)*** held that the word 'sum' used in Section 31(7)(a) of the Act does not restrict it to the principal amount. Rather the interest awarded under Section 31(7)(a) of the Act will take the colour of 'sum' and there shall be no distinction between the principal amount and the interest awarded under Section 31(7)(a) of the Act for the purpose of calculating interest under Section 31(7)(b) of the Act. The relevant paragraphs are reproduced below:

“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 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 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.

xx

xx

xx

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 independent of each other. The interest component then loses its character of an "interest" and takes the colour of "sum" for which the award is made.

xx

xx

xx

Coming now to the post-award interest, Section 31(7)(b) of the Act employs the words, "A sum directed to be paid by an arbitral award...". Sub-clause (b) uses the words "arbitral award" and not the "arbitral tribunal". The arbitral award, as held above, is made in respect of a "sum" which includes the interest. It is, therefore, obvious that what carries under Section 31(7) (b) of the Act is the "sum directed to be paid by an arbitral award" and not any other amount much less by or under the name "interest". In such situation, it cannot be said that what is being granted under Section 31(7)(b) of the Act is "interest on interest". Interest under sub-clause (b) is granted

on the "sum" directed to be paid by an arbitral award wherein the "sum" is nothing more than what is arrived at under sub-clause (a).

Therefore, in my view, the expression “grant of interest on interest” while exercising the power under Section 31(7) of the Act does not arise and, therefore, the Arbitral Tribunal is well empowered to grant interest even in the absence of clause in the contract for grant of interest.”

9. The legal position emerges that the interest awarded till the passing of award partakes character of principal, in other words the 'sum'. It would be apposite to mention here that it was not a case of compounding of interest. The issue was required to be analysed from different angle i.e. whether the interest granted under Section 31(7)(a) of the Act is to be considered to be calculated under Section 37(1)(b) of the Act.

10. In view of the settled position of law, the petition is allowed. The impugned order is set aside. The executing court shall start the execution proceedings from the stage at which the impugned order was passed.

11. Since the main petition has been allowed, pending application(s), if any, is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

15th May, 2023
mk

- | | | |
|-------------------------------|---|----------|
| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |