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

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**Date of Decision: 18.07.2024**

**OMP (ENF.) (COMM.) 174/2018**

**PARNIKA COMMERCIAL AND ESTATE PVT LTD**

.....Decree Holder

Through: Mr. Bhupesh Narula, Mr.  
Anugrah, Mr. Dinesh Singhal, Advts.

versus

**AIRPORT AUTHORITY OF INDIA**

.....Judgement Debtor

Through: Mr. Digvijay Rai, Mr. Archit  
Mishra, Mr. Vivek Gupta, Advts.

**CORAM:**

**HON'BLE MR. JUSTICE JASMEET SINGH**

**ORDER**

**18.07.2024**

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: **JASMEET SINGH, J (ORAL)**

1. This is a petition filed under section 36 of the Arbitration and Conciliation Act, 1996 ("1996 Act") seeking payment of interest on the Awarded Amount at the rate of 18% per annum.
2. In the arbitral proceedings, the claim No. 9 as sought by the decree holder read as under:-

*"Claim no 9: Claimant claimed presuit, pendente lite and future interest on all claims @18% per annum-with monthly rest from the date of its due till realization."*



3. The learned Arbitrator in para 21.3 of the Arbitral Award 05.09.2014 while dealing with the aforesaid claim held as under:-

*“Award: Although many of the claims were highly exaggerated, it cannot be said that they were all bogus claims. There can be no doubt that had the Claimant received the amounts justifiably due to him at the appropriate time, he could have used it to his benefit. Since he was denied that opportunity, he needs to be compensated, at least by way of interest. As in other claims where interest has been allowed, I consider that 10% simple interest, calculated from the dates indicated below, is a reasonable compensation.*

*i. For Claim Nos. 1, 4 and Additional Claim No.2 from 21.6.2011, the date of payment of the 32nd bill in which the final escalation payment was made and from which the amount of LD was recovered.*

*ii. For Claim Nos. 2.1, 2.2, 2.3, 2.4, 2.5 and 2. 7 from 1.10.2011 as the Final bill should have been paid latest by 30.9.2011.*

*iii. For Claim Nos.3 and 7, from 19.8.2012, the date of the Statement of Claims.”*

*The interest calculated on the above basis works out to Rs.39,43,069/- (Rupees thirty-nine lakh forty-three thousand sixty-nine only). up to the date of this award and I award the same to the Claimant against Claim No.9.”*

4. Mr. Narula, learned counsel for the decree-holder states that he is



entitled to the post award interest at the rate of 18% on the awarded amount on the basis of Section 31(7)(b) of 1996 Act.

5. He has drawn my attention to an Award passed by the learned Arbitrator Dr. Y.P.C Dangay in the case No. ARB/YPCD/538 titled as “**M/s P.C. Sharma & Co. vs Union of India**”, wherein claim No. 14 regarding the claim of interest reads as under:

*“Claimants claim interest @ 18% p.a. on amount of claim (i) present (ii) pendentalite and (iii) future.”*

*Award: On perusal of reference letter, it would appear that the claimants invoked arbitration on 20.12.96, whereas the persons designate appointed the arbitrator only on 5.6.98. The arbitrator entered upon the reference on 17.6.98. and given notice to both the parties for filing of their statement of facts (SOF) and counter statement of facts (CSF), respectively within 15 daytime. The claimants filed their SOF on 30.10.98 whereas respondents filed their CSF only on 19.5.99. The case was fixed for hearing on 24.12.98,15.3.98,11.5.99,5.7.99,5.8.99,14.9.99,2.11.99,10.12.99,2.3 2000,14.3.2000,2.5.2000,8.6.2000,21.6.2000 and 28.6.2000. The Hon'ble Supreme Court, in and its judgment as reported in JY 1991 (6) SC 349 in the case of Secretary Irrigation Dept. Vs. Shri G.C. Roy and Ors. has held that a person deprived of the use for the money to which he is legitimately entitled has a right to be compensated for the deprivation, call it any name. It may be called interest, compensation or damages, This basic consideration is as*



*valid for the period of dispute as pending before the arbitrator as it is for the period prior to arbitrator entering upon the reference. Grant of interest is also presumed to be an implied term of the agreement. Under the provision of arbitration act, arbitral award commence from the date when the request is received by the respondents stating that the dispute(s) be referred to arbitration. The Hon'ble Supreme Court in the case of Shri V. Bhaskaran Vs. M/s Sponge Iron India Ltd. AIR 1997 SCR 1324, has confirmed an award of simple interest @21% p.a. under the provisions of arbitration and conciliation provisions act, every arbitration award shall carry on interest @ 18% p.a. if not specified otherwise. I see no reason to disallow the claim of interest of the claimants which I award and 14% per annum (simple interest)with effect from 20.12.96 i.e. the date of invocation of clause 25 of the agreement on the amounts awarded above, till the date of award.”*

6. Further, the Division Bench of this Court in ***Union of India v. P.C. Sharma & Co., 2006 SCC OnLine Del 1619*** interpreted the said Award and the relevant extract is set out below:-

*“2. The brief facts of the case are that an execution petition was filed by the respondent/decreed holder against the appellants/judgment debtors praying inter alia, for execution of an award dated 24th November, 2000 published by Dr. Y.P.C. Dangay, an arbitrator appointed by the Chief Engineer (CDZ), New Delhi vide letter dated 5th*



June, 1998. The learned arbitrator published the award on 24th November, 2000 under which he awarded a sum of Rs. 3,03,178/- in favour of the respondent herein, claimant in the arbitration proceedings and against the appellants herein, respondents in the arbitration proceedings along with interest as awarded against claim No. 14, in full and final settlement of all the claims and counter claims raised before him.

9. Hence, the provision of the Statute itself makes it abundantly clear that unless an award otherwise specifies, any sum directed to be paid under an award shall automatically carry interest at the rate of 18% per annum from the date of the award till the date of payment. In view of the fact that in the present case, the award did not direct otherwise, it must be presumed that the amount directed to be paid under the award would carry interest at the rate of 18% per annum from the date of the award to the date of payment.....

10. It is, therefore, explicit from a perusal of the said provision that any sum which is directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of 18% per annum from the date of the award to the date of payment. This being the mandate of the provision of the Act, even if it was not so spelled out in the award, it has to be read into the award and the executing court cannot be faulted in doing so in the present



case. This cannot be termed as a modification of the award.....”

***Emphasis added***

7. Mr. Rai, learned counsel appearing for the judgment-debtor disputes the same and states that while awarding interest specifically at the rate of 10% from different dates mentioned in the award till the date of the award, the learned Arbitrator has considered claim No. 9 and rejected the same.
8. In this regard, he further states that there are *prima facie* observation in the order dated 30.04.2019 passed in the present petition which reads as under:

*“1. Mr. Narula, who appears for the decree holder, does not dispute the fact that the decree holder had sought for pre-arbitration, pendente lite and future interest. The relief in this behalf was sought under Claim No.9.*

*2. The learned Arbitrator in paragraph 21.3 of the Award makes this aspect very clear. For the sake of convenience, the relief sought under claim No. 9 and the observations made by the learned Arbitrator in that behalf in para 21.3 of the Award are set forth hereafter:*

.....

*3. Prima facie, the learned Arbitrator appears to have granted interest only for the pre-arbitration and pendente lite period. Interest for post award period has been declined. The award pegs the interest in absolute terms at Rs.39,43,069/-.*



4. *Mr. Narula says that the unamended Section 31(7) of the Arbitration and Conciliation Act, 1996 will come to the decree holder's aid.*
5. *In my view, prima facie, the aforementioned provision will not apply. Since facially it appears that the learned Arbitrator has declined the relief sought for grant of post award interest, Mr. Narula seeks time to place judgments on record in support of his submission.*
6. *It is not disputed by Mr. Narula that apart from future interest, other amounts have been paid by the judgment debtor.”*
9. He further places reliance on the judgement of “***Spicejet Limited vs. Kal Airways Pvt. Ltd. &Ors., 2023:DHC:5321*** and more particularly on para 88 which reads as under:-
- “88. Therefore, it is apparent that the Arbitral Tribunal had the jurisdiction and the power to grant and award an interest while passing the Award, since there existed no prior agreement between the parties pertaining to such interest. Along with such power and jurisdiction, there is a vast degree of discretion which is vested with the Arbitral Tribunal. The Hon'ble Supreme Court explicitly stated in the aforesaid judgment that “It has a discretion to award the interest or not to award”. Hence, there is not dispute to this effect that since there were no explicit terms pertaining to the issue of interest decided and agreed between the parties before this Court, the Arbitral Tribunal was free to exercise*



*its discretion and grant or not grant an award of interest to the best of its judgment, upon looking into the entirety of the material before it, while also ensuring that such an award does not render the Award patently illegal.”*

10. He submits that the Arbitral Tribunal has categorically rejected the claim of the decree-holder with respect to the post award interest and the executing court cannot go beyond the terms of the Arbitral Award.
11. Mr Rai further states that the phrase “*ends of justice*” would meet as there was due deliberation by the learned Arbitrator for granting 10% interest and not granting any post award interest.
12. I have learned counsel for the parties.
13. The provisions of Section 31(7)(b) of 1996 Act is extracted below which reads as under:-

*“(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.”*

14. The Hon’ble Supreme Court in ***Morgan Securities and Credits Private Limited vs. Videocon Industries Limited, (2023) 1 SCC 602*** and more particularly para 25 reads as under:-

*“25. Section 31(7)(a) confers a wide discretion upon the arbitrator in regard to the grant of pre-award interest. The arbitrator has the discretion to determine the rate of reasonable interest, the sum on which the interest is to be paid, that is whether on the whole or any part of the*



*principal amount, and the period for which payment of interest is to be made — whether it should be for the whole or any part of the period between the date on which the cause of action arose and the date of the award. When a discretion has been conferred on the arbitrator in regard to the grant of pre-award interest, it would be against the grain of statutory interpretation to presuppose that the legislative intent was to reduce the discretionary power of the arbitrator for the grant of post-award interest under clause (b). Clause (b) only contemplates a situation where the arbitration award is silent on post-award interest, in which event the award-holder is entitled to a post-award interest of eighteen per cent.”*

15. On perusal, it is clear that once the award is silent on post award interest, in view of section 31(7)(b) of 1996 Act, the award holder is entitled to post award interest of 18%.
16. In the present case, and on perusing the claim No. 9 of the Award under execution, the learned Arbitrator has not categorically rejected the post award interest but is silent on the same. Further, the learned Arbitrator has granted 10% interest on the claims made by the decree-holder in full and final settlement up to the date of the award but has not discussed the post award interest.
17. The judgment of Division Bench in *Union of India (supra)* as well as the judgment of *Morgan Securities and Credits Private Limited (supra)* clearly hold that the Section 31(7)(b) of 1996 Act gets attracted in a situation where the Award is silent regarding post-award interest.



Had the learned Arbitrator considered the post-award interest and refused to grant the same, this Court may have been bound by the discretion exercised by the learned Arbitrator. The present case is one where the award is totally silent on the post-award interest.

18. Mr Rai states that the executing court cannot go beyond the terms of the Award. I am in full agreement with the submission of Mr Rai but once the Award is silent on the post award interest and section 31(7)(b) of 1996 Act clearly says to award 18% in the absence of any post award interest then the executing court with the aid of section 31(7)(b) of 1996 Act is entitled to award 18% as post award interest, reliance is placed on *Union of India (supra)*.
19. The Coordinate bench of this Court in “*Madhu Mehra vs Pritpal Singh*”, 2010:DH:3016 was dealing with the similar circumstances and has held as under:-

*“Should the court in a case where an arbitral award is silent with regard to the payment of interest from the date of the award till realization, direct payment of interest for the said period @ 18% per annum having regard to the provisions of Section 31(7)(b) of the Arbitration and Conciliation Act, 1996?*

.....

*The learned Additional District Judge vide order dated July 17, 2009 has declined the relief so claimed on the ground that the Court has only to execute the award as it stands and that since the arbitrator has not awarded any interest as claimed by the decree-holder, it is deemed to have been*



refused.

*Feeling aggrieved by the order so passed, the present appeal has been preferred.*

.....

*It is clear from clause (b) of Section 31(7) of the Act that a sum directed to be paid by an arbitral tribunal shall carry interest @18% per annum from the date of the award to the date of payment, unless the award otherwise directs. In other words, it means that if the arbitral tribunal awards no interest from the date of the award till the date of the payment, the mandate of clause (b) shall take effect and the award in that event will carry interest @ 18% per annum from the date of the award till realization. However, if in a given case, the arbitral tribunal does award interest from the date of the award till payment but not @ 18% per annum but at a different rate, then what is awarded by the arbitrator shall hold good, unless the same is modified by the Court on objections filed to the award by either of the parties.*

***Emphasis added***

**20.** Reliance placed on *Spicejet Limited (supra)* does not render any assistance as the said judgment states that the Arbitral Tribunal exercise its discretion to grant or not grant an award of interest. In the present case, the Arbitral Tribunal exercised its discretion and has granted 10% interest up to the date of the Award which is not disputed by either of the parties. The present controversy as noted above is related to the post



award interest and in view of section 31(7)(b) of 1996 Act and the judgements noted above, the decree holder is entitled to 18% as post award interest.

21. For the said reasons, the petition is allowed and the judgment-debtor shall pay interest at the rate of 18% on the awarded amount from the date of the Award till the date of payment within 6 weeks from today.
22. The petition is disposed of with the above observations.
23. The decree-holder is at liberty to revive the petition in case the amount is not paid to the judgment-debtor within 6 weeks from today.

**JASMEET SINGH, J**

**JULY 18, 2024/MSQ**

*(corrected and released on 26<sup>th</sup> July, 2024)*

*Click here to check corrigendum, if any*