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

+ **FAO(OS) (COMM) 105/2023**

M/S MODI CONSTRUCTION COMPANYAppellant

Through: Mr. Rajiv Shankar Dvivedi, Mr. Sushant Sarkar, Ms. Sugandha Bhardwaj and Ms. Singdha Singh, Adv.

Versus

M/S IRCON INTERNATIONAL LIMITEDRespondent

Through: Mr. Suman K Doval, Mr. Ramesh Wangnool and Mr. Lakshay Chaudhary, Adv.

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FAO(OS) (COMM) 106/2023, CM APPL. 18306/2025

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CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

22.07.2025

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1. The challenge in this appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act of 1996) is to an



Order dated 13.03.2023 passed by the learned Single Judge in O.M.P.(COMM.) 283/2021 and in O.M.P.(COMM.) 313/2021 whereby the learned Single Judge has dismissed the challenge made by the appellant herein to two awards of the learned Arbitrator on an identical issue in both the petitions. The only submission made by Mr. Dvivedi is with regard to the denial of the compound interest to the appellant herein.

2. The submission of Mr. Dvivedi by drawing our attention to clause 60.8 of the agreement is that the learned Arbitrator could not have overlooked the said clause which prescribe compound interest (though without rate) and instead granted simple interest @ 9% per annum. In other words, the clause of compound interest should have been given effect to.

3. The finding of the learned Arbitrator in paragraph 252 of the Award reads as under:

“[252] Having concluded that the Tribunal is empowered under the Contract to award interest claimed along with a Claim, the issue to be addressed is as to whether interest, compounded monthly or simple interest, be awarded.

The case laws relied upon by the Claimant cannot be disputed; it is well settled that payment of compound interest is in order, subject to the provisions of the Contract (emphasis given)

Provisions of the Contract, therefore, now need to be examined by the Tribunal. Sub-Clause 60.8(b) requires that the rate of interest will be that prescribed in the Appendix to Bid. It is undisputed that the said Appendix does not prescribe interest; in fact, it does not even mention it. Without the rate of interest, the said Clause cannot be operated, suffers from uncertainty and is ineffective. The said Clause is, therefore, void under Section 29 of The Indian Contract Act (emphasis added).

The Claimant's argument that notwithstanding the absence of mention of a rate of interest in the Appendix, prevailing/current prime lending rates must be considered as the Contract between the Parties is a commercial contract has no legal basis, as also his submission that the rate of interest to be adopted in the Contract was to be as per actual and accordingly the Parties willingly did not mention any



specific rate in the Appendix to Bid. The Arbitral Tribunal cannot amend a contract and introduce new conditions and provisions.

Further, the Claimant's argument of comparing and seeking support from the stipulations relating to Bridging Finance in the Contact Agreements is misplaced. The stipulation relating to Bridging Finance prescribed interest to be charged 'as per actual'; and as what constitutes actual was determined by the Conciliator in his Award. The stipulation relating to interest payable was thus not totally absent and, in any event, settled by a due process prescribed under the Act.

The Tribunal concludes that the contention of the Claimant that he is entitled to payment of compound interest on a monthly basis under the said Clause as untenable. In other words, the Claimant cannot seek any shelter under this Sub- Clause and the Respondent's objection, sustains."

4. The learned Arbitrator on a finding that the said clause is void under Section 29 of the Indian Contract Act has awarded a simple interest @ 9% per annum and not compound interest.

5. The learned Single Judge in the impugned order has in paragraph 26 has upheld the conclusion drawn by the Arbitrator by stating as under: -

"26. The Arbitral Tribunal interpreted the terms of the contract and while rejecting the claim of the petitioner for compound Interest, it gave various reasons in which the clause providing for interest was also considered and held to be defunct, null and void being incomplete and vague. The objections of the Appellant that there being no pleading seeking clause 60.8 (b) to be declared null and void, the Ld. Arbitrator has made out a 3rd case in itself, is totally not tenable as it was within the domain of the Arbitrator to interpret the terms of the contract. The Tribunal exercised its discretion on the rate of interest to be granted, in absence of an agreement to this effect. The Majority Award has given a well reasoned Award while granting simple interest."

6. The learned Single Judge, has also by referring to the judgment of the Supreme Court in ***Oriental Structural Engineers Private Limited Vs. State of Kerala*** (2021) 6 SCC 150, on which reliance has been placed on by Mr. Dvivedi, has rejected the only plea by stating the interpretation as given by



the learned Arbitrator cannot be a subject matter of judicial review under Section 34 of the Act of 1996.

7. The learned Single Judge has distinguished the judgment in the case of ***Oriental Structural Engineers Private Limited Vs. State of Kerala*** wherein it is held once there is a clause for levy of the interest merely because the rate of interest was not specified, would not amount to waiver and the learned Arbitrator exercising his discretion could award interest at any reasonable rate.

8. But it is not such a case here. The rate of interest was not left blank. Rather the appendix to the bid document did not specify any rate of interest. If that be so, the learned Arbitrator has rightly held the clause is void and awarded simple interest at the rate of 9% which has been upheld by the learned Single Judge. It is a plausible view.

9. Further there is no contest to the fact that the interpretation of a contract is within the purview of the learned Arbitrator and the learned Arbitrator having interpreted the provision in a particular manner and also granted a simple interest of 9% per annum, the learned Single Judge has rightly upheld the conclusion drawn in the award. We see no reason to interfere with such a conclusion.

10. The present appeals, alongwith the pending application, stand dismissed.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

JULY 22, 2025/Ab